STRENGTHENING THE BIOLOGICAL WEAPONS CONVENTION:
KEY POINTS FOR THE SIXTH REVIEW CONFERENCE

FOREWORD

The States Parties to the Biological and Toxin Weapons Convention (BTWC) are holding the Sixth Review Conference of the Convention from 20 November to 8 December 2006.

The Biological and Toxin Weapons Convention (BTWC) is a very important convention. International security depends on its continued faithful implementation. It is the third critical pillar of the international disarmament and non-proliferation regime. The BTWC regime has several successes to its credit. We need to work hard to make it more effective and more successful. In this context, we need to be fully responsive to the contemporary trends, threats, challenges and opportunities. As we have all observed during the period 2003 to 2005, civil society, industry, and international organisations have taken keen interest in the work under the BTWC. The advances in life sciences and the growing role of the biotechnology industry in the international economy make our work in preparing for the Sixth Review Conference so relevant and vital.

There is a wide range of important and challenging substantive issues which lie before the States Parties and which will have to be dealt with at the Review Conference. I have stressed to the States Parties that we need to make the best use of time and resources between now and the beginning of the Review Conference to ensure that once the conference is underway, it can deal efficiently and comprehensively with every issue that needs attention.

As President-Designate I am very encouraged by the amount of thinking and preparation which is already taking place – among delegations and also by academics and non-governmental organisations.

We have a challenging task ahead. I have found so far an encouraging willingness to explore solutions, to build on the successes of the BTWC regime, and to address deficits.

I am confident that with creativity, flexibility and resilience we will succeed in finding mutually acceptable paths to further strengthen the BTWC regime. I am confident that we shall succeed.

I have encouraged everyone – both States Parties and those in academia and the NGOs – to liberally provide their inputs to facilitate our preparations for the Review Conference. I am especially keen to receive detailed proposals for how the various important and challenging substantive issues can be addressed at the Review Conference.

I thank the Department of Peace Studies of the University of Bradford and commend the individual authors for the initiative they have taken in preparing this detailed and informative Briefing Book. The compilation provides information on a wide range of issues relevant to the Biological and Toxin Weapons Convention in a manner that will inform the States Parties' preparation for the Sixth Review Conference.

Ambassador Masood Khan
Permanent Representative of Pakistan
President-Designate of the Sixth Review Conference
of the States Parties to the Biological and Toxin Weapons Convention
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SUCCESSFUL OUTCOMES FOR THE REVIEW CONFERENCE

by Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando

1. The Sixth Review Conference of the Biological and Toxin Weapons Convention (BTWC) is taking place ten years after the last review of the operation of the Convention which produced a Final Declaration at the Fourth Review Conference in 1996, and fifteen years after the last full review, at the Third Review Conference in 1991. Article XII of the Convention requires:

*Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.*

All States Parties need to prepare now to ensure a successful outcome to the Sixth Review Conference. As others have pointed out, success is rarely accidental and needs to be planned for.

2. States Parties at the Sixth Review Conference need to seize the opportunity to **both** reaffirm the norm that biological weapons are totally prohibited and strengthen the effectiveness of the Convention by agreeing appropriate measures. These Key Points are prepared to help States Parties identify and review the issues that have arisen since the Fourth Review Conference and to suggest language that individual States Parties might draw upon in preparing the contributions that each State Party is encouraged to put forward to the Committee of the Whole whose task is to draw these together for the Drafting Committee to finalise as a draft Final Declaration for the Sixth Review Conference.

3. In this introductory chapter, we recall briefly some developments relevant to the Convention between the Fourth and Fifth Review Conferences followed by the BTWC-specific and wider international activities of the States Parties to the Convention since the Fifth Review Conference, the importance of sustaining and nurturing the Convention through the Sixth Review Conference and then set out some of the successful and achievable outcomes that are already attracting support from a number of States Parties. These are all considered further in later sections of this Briefing Book, which considers each Article in turn. Following the style adopted in the Briefing Books prepared for the Fourth Review Conference\(^1\) and the Fifth Review Conference\(^2\), these major issues are considered in outline here as this will help to set the scene and the expectations for the Review Conference.

**Developments between the Fourth and Fifth Review Conferences**

\(^1\)Graham S. Pearson & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference*, University of Bradford, Department of Peace Studies, November 1996. Available at http://www.brad.ac.uk/acad/sbtwc

\(^2\) Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at http://www.brad.ac.uk/acad/sbtwc
4. It is relevant to recall briefly the following developments that took place between the Fourth and Fifth Review Conferences:

   a. The entry into force on 29 April 1997 and subsequent implementation of the Chemical Weapons Convention (CWC);

   b. The scientific and technological developments relevant to the Convention. There have been major developments – indeed the 21st Century has been declared as the age of biotechnology and genomics. These developments are of particular relevance not only to Article I – the basic prohibition – but also to Article VII – assistance – and to Article X – technical cooperation.

   c. The lack of unanimity in the Security Council which led to the termination at the end of 1998 of the operations of the United Nations Special Commission (UNSCOM) in Iraq and its replacement by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) which by 2001 had yet to commence its operations in Iraq.

   d. The continued stalemate in the trilateral process involving the UK, the USA and Russia addressing the dismantlement of the offensive biological weapons programme of the former Soviet Union, which cast doubt on the credibility of the commitment to fulfil their arms control and disarmament obligations and to prevent proliferation made on 31 January 1992 by the Security Council meeting at Heads of State and Government level.

   e. The negotiations in the Ad Hoc Group that had seen the development of the rolling text and the creation of the Chairman’s composite text which had attracted the support of the majority of the States Parties engaged in the negotiations but failed in July 2001 to find consensus.

   f. The increased concern worldwide and especially in the United States following the anthrax attacks in September/October 2001 about the use of biological agents and toxins by sub-State actors which underlined the importance of taking further the steps that were taken at the Fourth Review Conference to ensure that individuals or subnational groups are effectively prevented from acquiring or using such agents for other than peaceful purposes.

   g. The absence of any on-going body or standing secretariat to steer the regime to totally prohibit biological weapons, which had become all the more glaring by comparison with the Organization for the Prohibition of Chemical Weapons (OPCW) and its implementation of the Chemical Weapons Convention (CWC). When coupled with the rate in which major developments are occurring in biotechnology and microbiology, there is a compelling argument for a dedicated standing secretariat to nurture and sustain the regime against biological weapons.
The Fifth Review Conference

5. It will be recalled that the Fifth Review Conference opened on 19 November 2001. On the final day, 7 December 2001, the President said that the final declaration was 95 per cent ready but there seemed to be a serious lack of understanding concerning the issue of the Ad Hoc Group where the differences between positions seemed to be irreconcilable at least in the time remaining that day. Consequently, the Review Conference was adjourned until 11 to 22 November 2002.

6. At the resumption in November 2002, the President of the Review Conference presented a proposal for the outcome of the Fifth Review Conference in the form of a draft decision establishing follow-up meetings over the next three years. This reflected the conclusion that he had reached that this was the only outcome which could realistically hope to be achieved that would ensure a continued multilateral approach to the implementation and strengthening of the Convention in a way that involved all States Parties. The draft decision called for a one-week annual Meeting of States Parties each year, with each such meeting to be preceded by a two-week Meeting of Experts. Five topics were set out for consideration by these meetings, with a timetable for which topic would be considered in which year. The five topics were:

   i. The adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;

   ii. National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;

   iii. Enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

   iv. Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants;

   v. The content, promulgation, and adoption of codes of conduct for scientists.

It was proposed that items i and ii would be addressed in 2003, iii and iv in 2004 and v in 2005. The proposal was agreed by the States Parties and the resumed Fifth Review Conference concluded on 15 November 2002 when the Final Report was adopted.


BTWC-Specific Developments since the Fifth Review Conference

7. As already noted, the outcome of the Fifth Review Conference was a decision that there would be an annual one week Meeting of States Parties in 2003, 2004 and 2005 prepared for by an earlier two week Meeting of Experts. The topics addressed in 2003 were:

i. The adoption of necessary, national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;

ii. National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;

8. The report\(^7\) of the annual Meeting of States Parties in 2003 included the following concluding paragraphs:

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:

To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibitions of the Convention, and which enhance effective security of pathogens and toxins.

The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.


It was evident from reports of both the Meeting of Experts\(^8\) and the Meeting of States Parties\(^9\) that they provided an opportunity for States Parties to share information on the approaches that they had taken nationally to address these two topics. Although decisions on further action were left to the Sixth Review Conference, the annual meetings had been effective in bringing the two topics to the attention of the States Parties.

9. The topics addressed in 2004 were:

\[\begin{align*}
\text{iii. Enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;} \\
\text{iv. Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants;}
\end{align*}\]

10. The report\(^{10}\) of the annual Meeting of States Parties in 2004 included the following concluding paragraphs:

18. On the mandate to discuss, and promote common understanding and effective action on strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants, the States Parties recognised that:

a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

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d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

19. The States Parties consequently agreed on the value of:

a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.
22. The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topics under discussion at the Meeting of Experts, as contained in the Annex II of the Report of the Meeting of Experts (BWC/MSP/2004/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2004/L.1, which are attached to this report as Annexes II and III. These annexes were not discussed or agreed upon and consequently have no status.

It was again evident from reports of both the Meeting of Experts\(^\text{11}\) and the Meeting of States Parties\(^\text{12}\) that these had provided opportunities for States Parties to share information on the approaches being taken to address these two topics. Although decisions on further action were left to the Sixth Review Conference, the annual meetings were again effective in focussing the attention of the States Parties on these two topics.

11. The topic addressed in 2005 was:

\[ v. \text{The content, promulgation, and adoption of codes of conduct for scientists.} \]

12. The report\(^\text{13}\) of the annual Meeting of States Parties in 2005 included the following concluding paragraphs:

\[ 18. \text{On the mandate to discuss, and promote common understanding and effective action on the content, promulgation and adoption of codes of conduct for scientists, the States Parties recognised that:} \]

(a) while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

(b) codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;


(c) a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

(d) codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

(e) science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

19. The States Parties recognised that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

20. On the content of codes of conduct, recognising the principles listed in paragraph 18, the States Parties agreed on the importance of codes of conduct being:

(a) compatible with national legislation and regulatory controls and contributing to national implementation measures;

(b) simple, clear and easily understandable both to scientists and to wider civil society;

(c) relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

(d) sufficiently broad in scope;

(e) regularly reviewed, evaluated for effectiveness, and revised as necessary.

21. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the States Parties agreed on the value of:

(a) demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

(b) using existing codes, mechanisms, frameworks and bodies as far as possible; and

(c) tailoring adoption strategies according to the needs of each relevant sector.

22. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and
understood, the States Parties agreed on the value of continuous efforts on promulgation through appropriate channels.

23. The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topic under discussion at the Meeting of Experts, as contained in Annex I of the Report of the Meeting of Experts (BWC/MSP/2005/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2005/L.1, which is attached to this report as Annex I. This annex was not discussed or agreed upon and consequently has no status.

It was again evident from reports of both the Meeting of Experts14 and the Meeting of States Parties15 that these had provided opportunities for States Parties to share information on the approaches being taken to address this topic. Although decisions on further action were left to the Sixth Review Conference, the annual meetings were again effective in focussing the attention of the States Parties on this topic.

13. The one week Meeting of States Parties in 2003, 2004 and 2005 prepared by the two week Meeting of Experts has worked well. As the interval between the Meeting of Experts and the Meeting of States Parties has lengthened – August to November 2003, July to December 2004 and June to December 2005 – so has the effectiveness of the intersessional process improved as the time between a Meeting of Experts held in June and a subsequent Meeting of States Parties held in December of the same year has enabled the States Parties to have sufficient time to consider the synthesis prepared by the Chairman following the Meeting of Experts and hence to prepare and arrive at useful conclusions for the Report of the Meeting of States Parties.

14. The outcomes from these annual meetings are addressed in these Key Points for the Sixth Review Conference in the relevant chapters addressing the individual Articles of the Convention as several topics considered at the annual meetings are relevant to more than one Article of the Convention.

Wider International Developments since the Fifth Review Conference

15. The summer of 2002 saw the agreement by the G-8 Leaders meeting at Kananaskis, Canada of a Global Partnership against the spread of weapons and materials of mass destruction. Their statement started by saying:

The attacks of September 11 demonstrated that terrorists are prepared to use any means to cause terror and inflict appalling casualties on innocent people. We commit


ourselves to prevent terrorists, or those that harbour them, from acquiring or
developing nuclear, chemical, radiological and biological weapons; missiles; and
related materials, equipment and technology. We call on all countries to join us in
adopting the set of non-proliferation principles we have announced today.

In a major initiative to implement those principles, we have also decided today to
launch a new G8 Global Partnership against the Spread of Weapons and Materials of
Mass Destruction.

and went on to say that:

Recognizing that this Global Partnership will enhance international security and
safety, we invite other countries that are prepared to adopt its common principles and
guidelines to enter into discussions with us on participating in and contributing to
this initiative.

16. It then set out Principles to prevent terrorists, or those that harbour them, from gaining
access to weapons or materials of mass destruction as follows:

The G8 calls on all countries to join them in commitment to the following six
principles to prevent terrorists or those that harbour them from acquiring or
developing nuclear, chemical, radiological and biological weapons; missiles; and
related materials, equipment and technology.

1 Promote the adoption, universalization, full implementation and, where
necessary, strengthening of multilateral treaties and other international
instruments whose aim is to prevent the proliferation or illicit acquisition of
such items; strengthen the institutions designed to implement these
instruments.

2 Develop and maintain appropriate effective measures to account for and
secure such items in production, use, storage and domestic and international
transport; provide assistance to states lacking sufficient resources to account
for and secure these items.

3 Develop and maintain appropriate effective physical protection measures
applied to facilities which house such items, including defence in depth;
provide assistance to states lacking sufficient resources to protect their
facilities.

4 Develop and maintain effective border controls, law enforcement efforts and
international cooperation to detect, deter and interdict in cases of illicit
trafficking in such items, for example through installation of detection
systems, training of customs and law enforcement personnel and cooperation
in tracking these items; provide assistance to states lacking sufficient
expertise or resources to strengthen their capacity to detect, deter and
interdict in cases of illicit trafficking in these items.

5 Develop, review and maintain effective national export and transshipment
controls over items on multilateral export control lists, as well as items that
are not identified on such lists but which may nevertheless contribute to the
development, production or use of nuclear, chemical and biological weapons
and missiles, with particular consideration of end-user, catch-all and brokering aspects; provide assistance to states lacking the legal and regulatory infrastructure, implementation experience and/or resources to develop their export and transshipment control systems in this regard.

6 Adopt and strengthen efforts to manage and dispose of stocks of fissile materials designated as no longer required for defence purposes, eliminate all chemical weapons, and minimize holdings of dangerous biological pathogens and toxins, based on the recognition that the threat of terrorist acquisition is reduced as the overall quantity of such items is reduced.

These principles have led to a number of initiatives addressing one or more aspects in many countries during the subsequent years.

17. Of particular interest are the countries which have joined this G8 Global Partnership. A year later in 2003 at Evian it was announced that six countries: Finland, Netherlands, Norway, Poland, Sweden and Switzerland had joined the Global Partnership as donors. In 2004 at Sea Island, the G8 welcomed the decision of a further seven countries: Australia, Belgium, the Czech Republic, Denmark, Ireland, the Republic of Korea, and New Zealand to join. No further countries had joined by the 2005 summit in Gleneagles or the 2006 summit in St. Petersburg.

18. The G8 at their meeting in St. Petersburg on 16 July 2006 issued a statement on non-proliferation which stated in its opening paragraphs that:

The proliferation of weapons of mass destruction (WMD) and their means of delivery, together with international terrorism remain the pre-eminent threat to international peace and security. The international community must therefore boldly confront this challenge, and act decisively to tackle this threat. We reaffirm our determination and commitment to work together and with other states and institutions in the fight against the proliferation of WMD, including by preventing them from falling into hands of terrorists.

As an essential element of our efforts to confront proliferation, we are determined to fulfil arms control, disarmament and non-proliferation obligations and commitments under relevant international treaties, conventions and multilaterally agreed arrangements to which we are parties or in which we participate. We call on all other states to meet their obligations and commitments in full in this regard. We rededicate ourselves to the re-invigoration of relevant multilateral fora, beginning with the Conference on Disarmament. These efforts will contribute to the further reinforcement of the global non-proliferation regime.

We call on all states not Party to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BTWC) and the 1925 Geneva Protocol to accede to them without delay and those states that have not yet done so to subscribe to the Hague Code of Conduct Against Ballistic Missile Proliferation.

19. This statement went on to specifically address the BTWC stating that:
We look forward to a successful 6th BTWC Review Conference dedicated to the effective review of the operation of the Convention. We will facilitate adoption by the Review Conference of decisions aimed at strengthening and enhancing the implementation of the BTWC.

We call upon all States Parties to take necessary measures, including as appropriate the adoption of and implementation of national legislation, including penal legislation, in the framework of the BTWC, in order to prohibit and prevent the proliferation of biological and toxin weapons and to ensure control over pathogenic microorganisms and toxins. We invite the States Parties that have not yet done so to take such measures at the earliest opportunity and stand ready to consider appropriate assistance. In this regard, we welcome initiatives such as the 2006 EU Joint Action in support of the BTWC.

It is helpful to note the commitment of the G8 nations – Canada, France, Germany, Italy, Japan, Russia, UK and the USA as well as the European Union – to adoption by the Sixth Review Conference of decisions aimed at strengthening and enhancing the implementation of the BTWC.

20. A closely related initiative is the Proliferation Security Initiative (PSI) which was announced by the United States in Krakow, Poland on 31 May 2003 and to which eleven nations – Australia, France, Germany, Italy, Japan, Netherlands, Poland, Portugal, Spain, UK and USA – agreed in Paris on 4 September 2003. The PSI is part of a cooperative international counterproliferation effort intended to apply intelligence, diplomatic, law enforcement, military, and other tools to prevent transfers of WMD-related items to states and non-state actors of proliferation concern. The PSI is seen as reinforcing not replacing other non-proliferation mechanisms. In June 2006, there were over 70 countries involved in this initiative with a Operational Experts Group made up in 2006 of 20 states (Argentina, Australia, Canada, Denmark, France, Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Singapore, Spain, Turkey, UK and USA) working to develop practical cooperation on behalf of all PSI participants and to identify effective techniques to counter proliferation of weapons of mass destruction.

22. Another development was the adoption on 28 April 2004 by the Security Council of Resolution 1540 (2004)\textsuperscript{16}. The preamble to the resolution recalled the Security Council statement of 31 January 1992 when the Council had met for the first time at the Heads of State or Government level:

Reaffirming, in this context, the Statement of its President adopted at the Council’s meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

23. The preamble went on to set out the Council’s support for the international treaties prohibiting biological and chemical weapons and to emphasise the importance for the States Parties to these treaties to implement them fully:

Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

24. The key operative paragraphs in the resolution record that the Council:

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;
25. Consequently, paragraph 2 requires all States, whether or not a State Party to the BTWC or other Conventions to adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. Furthermore, paragraph 3 requires all States whether or not a State Party to the BTWC to take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials. Paragraph 5 makes it clear that none of the obligations set out in the resolution shall conflict with or alter the rights and obligations of State Parties to ... the Biological and Toxin Weapons Convention.

26. However, it needs to be recognized that the obligations under Article IV of the BTWC are more comprehensive in scope than those addressed in SCR 1540 (2004) in that Article IV requires that each State Party take necessary measures “to prohibit and prevent” [Emphasis added] which requires more than just to prohibit and enforce. Nor is Article IV limited to non-State actors. Unlike paragraph 2 of SCR 1540, the BTWC is addressed as fully to States and individuals in the service of a State as to anyone else. Article IV does not differentiate between agents of the State and others. All must be prohibited and prevented from engaging in any of the activities encompassed by Article I of the Convention.

27. As pointed out in Bradford Briefing Paper No. 6 (Second Series) 17 in July 2003, by definition, the national measures taken must do more than merely prohibit the forbidden activities; they must also prevent them. This prevention requirement sets a high standard of effectiveness. It is indeed a very stringent criterion to attach to national implementing measures, but it is explicitly included in Article IV of the Convention and thus constitutes one of the obligations flowing from the Convention. It can usefully be regarded as a test of the effectiveness of legislation and other measures of a prohibitory nature in each State Party. If a State Party's legislative and other prohibitions are not strong enough even when enforced to prevent the activities involving biological weapons which are defined in Article I of the Convention, they may not meet the SCR 1540 standard of “appropriate effective laws which prohibit” but they will certainly not meet the high standard set by Article IV. Such a State Party accordingly risks falling short of full compliance with its international obligations under the Convention.

28. The States Parties to the BTWC at the Sixth Review Conference need therefore to address both elements of Article IV – to prohibit and prevent – and it would be desirable for the Review Conference in its Final Declaration to express a common understanding of the significance of the prevention criterion set by Article IV and to recommend that States Parties take effective action by reviewing the effectiveness of their national measures to implement the prohibitions of the Convention in meeting the prevention criterion.

29. The Security Council on 27 April 2006 adopted Resolution 1673 (2006) 18 which extends the mandate of the 1540 Committee for a further two years and calls upon all States which have not yet presented a first report on steps they have taken or intend to take to implement resolution 1540 (2004) to do so without delay. It is to be noted that the reports that have been submitted by States to the 1540 Committee are available at

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http://disarmament2.un.org/Committee1540/report.html – on 1 September 2006 this had reports from 132 States and from the European Union – and that the 1540 Committee has also compiled a legislative database available at http://disarmament2.un.org/Committee1540/list-legdb.html – on 1 September 2006 this had links to legislation from 124 States and the European Union.

30. Further developments between the Fifth and Sixth Review Conferences were the UN Secretary-General’s High Level Panel and his own report on the Millennium Declaration, and the Weapons of Mass Destruction Commission chaired by Dr. Hans Blix of Sweden. Each of these considered how the regimes for the prohibition of biological and toxin weapons might be strengthened.

31. The Secretary-General’s High-Level Panel on Threats, Challenges and Change was established on 3 November 2003 with the terms of reference specifically to:

(a) Examine today’s global threats and provide an analysis of future challenges to international peace and security. While there may continue to exist a diversity of perceptions on the relative importance of the various threats facing particular Member States on an individual basis, it is important to find an appropriate balance at a global level. It is also important to understand the connections between different threats;

(b) Identify clearly the contribution that collective action can make in addressing these challenges;

(c) Recommend the changes necessary to ensure effective collection action, including but not limited to a review of the principal organs of the United Nations.

The Report of the High Level Panel was issued on 2 December 2004. In his covering note the Secretary-General said that he wholly endorsed the core arguments of the High Level Panel for "a broader, more comprehensive concept of collective security: one that tackles new and old threats and addresses the security concerns of all States – rich and poor, weak and strong." [Emphasis in original] The Secretary-General also urged that "we should move forward quickly and take action on recommendations wherever we can.” An analysis of the biological weapons issues in the High Level Panel report was issued as Bradford Review Conference Paper No. 14 which in its conclusions noted that:

Many of the High Level Panel’s conclusions and recommendations have merit but it is regretted that the High Level Panel in a number of areas omitted inclusion of parallel recommendations for the BTWC to those included for the NPT and the CWC especially as a strong argument has been made for the Sixth Review Conference to establish an interim supportive institution that could fulfil such parallel recommendations. It is also concluded that the wording of some of the recommendations that suggest involvement of the WHO with the Security Council in regard to any suspicious outbreak are verging on dangerous ground which could

20 United Nations General Assembly, Note by the Secretary-General, A/59/565, 2 December 2004.
jeopardize the central role of the WHO. There is, however, a case for the WHO, OIE and FAO being able through the Secretary-General to alert the Security Council in the event of overwhelming outbreaks of human, animal or plant disease, regardless of its cause, to facilitate the mobilization of aid and the containment of the outbreak.

32. The Secretary-General’s comprehensive report In larger freedom: towards development, security and human rights for all on the Millennium Declaration was presented to the General Assembly on 21 March 2005. In the introduction to this report, the Secretary-General says that he has drawn inspiration from two wide-ranging reviews of our global challenges — one from the 16-member High-level Panel on Threats, Challenges and Change, whom I asked to make proposals to strengthen our collective security system (see A/59/565); and the other from the 250 experts who undertook the Millennium Project. The Secretary-General went on to state that:

I have resisted the temptation to include all areas in which progress is important or desirable. I have limited myself to items on which I believe action is both vital and achievable in the coming months. These are reforms that are within reach — reforms that are actionable if we can garner the necessary political will. With very few exceptions, this is an agenda of highest priorities for September. Many other issues will need to be advanced in other forums and on other occasions.

Although the intention was that the recommendations from the Secretary-General should be considered for decision by the Heads of State and Government at the Summit Plenary of the General Assembly on 14 – 16 September 2005, the Summit Plenary produced nothing relating to non-proliferation or disarmament, because despite strenuous efforts by many participants to offer acceptable language there was no agreement on the content of the relevant section of the outcome document.

33. The Weapons of Mass Destruction Commission chaired by Dr. Hans Blix of Sweden was set up in December 2003 with the following mandate:

The Commission should seek to identify desirable and achievable directions for international cooperation. It should present realistic proposals aimed at the greatest possible reduction of the dangers of weapons of mass destruction. These should comprise both short-term and long-term approaches and aim at preventing the further spread of weapons as well as at their reduction and elimination. The scope of the investigation should be comprehensive and include nuclear, biological, chemical and radiological weapons and the means of delivering them, as well as possible links between these issues and terrorists.

The Commission should not be engaged in any tasks or negotiations at the governmental or intergovernmental level.

The Commission should help to stimulate an informed public debate about international and national efforts against weapons of mass destruction. It should therefore undertake outreach activities within its capacity to engage civil society and non-governmental organisations.

The Commission’s Final Report entitled Weapons of Terror: Freeing the World of Nuclear, Biological, and Chemical Arms was issued on 1 June 2006 when the WMDC Chairman Dr. Hans Blix presented the Commission report to the United Nations Secretary-General Kofi Annan in New York. The report contains sixty concrete proposals on how the world could be freed of nuclear, biological and chemical weapons. An analysis of the biological and toxin weapons issues in the Commission’s report was issued as Bradford Review Conference Paper No. 1723 which in its conclusions noted that:

The recommendations of the WMDC, in some cases with slight modification, are thus highly relevant to the forthcoming Sixth Review Conference of the BTWC to be held in Geneva from 20 November to 8 December 2006. The States Parties are urged to take these recommendations into account in their preparations for the Review Conference and, as recommended in Bradford Review Conference Paper No. 16, to start considering successful outcomes identified therein now and to draft language that they can submit to the Committee of the Whole in regard to the relevant Articles of the Convention. In addition, States Parties with a particular interest in one or more of the successful outcomes are encouraged to prepare and submit Working Papers to the Review Conference. As noted in the introduction, success is rarely accidental and needs to be planned for.

34. The section in the WMD Commission’s Report addressing the strengthening of the BTWC concludes with a final paragraph that states accurately and correctly:

The last full review of the operation of the BTWC was in 1991. In view of developments since then, the parties need to carry out a full review during the 2006 Review Conference. It is crucially important for the BTWC states parties to use the Sixth Review Conference, to be held in late 2006, to reassert the Convention’s role as the central component of the overall regime and agree on concrete measures to implement it. The Commission’s recommendations aim at making maximum use of this opportunity.

The Commission is to be complimented for focussing on recommendations that make maximum use of the opportunity at the Sixth Review Conference from 20 November to 8 December 2006 of reasserting the BTWC’s central role in the overall regime and to agree on concrete measures to implement it.

Preparing for the Sixth Review Conference

35. The Sixth Review Conference of the Biological and Toxin Weapons Convention (BTWC) will be held in Geneva during the period from 20 November to 8 December 2006. Article XII of the Convention requires that:

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being

realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.

As there has not been a review of the operation of the Convention which produced a Final Declaration since 1996, it is especially important that all States Parties prepare now to ensure a successful outcome to the Sixth Review Conference. As others have pointed out, success is rarely accidental and needs to be planned for.

36. Article XII of the Convention provided only for one Review Conference, five years after the BTWC's entry into force. In 1980 it was touch and go whether the First Review Conference would reach agreement on convening another; its timing remained contentious until late 1984. The Review Conferences of 1986, 1991, 1996 and 2001/2 generated expectations of a continuing series at 5-year intervals. This is the pattern into which the Sixth Review Conference fits.

Formal functions

37. All six Review Conferences are primarily governed by the Article XII mandate "to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention...are being realized." This includes taking into account the impact of "any new scientific and technological developments relevant to the Convention." That is their common agenda.

38. Each Conference's Final Declaration, apart from the Fifth Review Conference which had no such Final Declaration, has supplemented the common agenda with specific tasks laid upon the next Review Conference. Thus the Fourth Review Conference asked the Fifth also to consider the relevance of the provisions and implementation of the CWC on the effective implementation of the BTWC (updating the original Article XII provision that "negotiations on chemical weapons" be given particular attention); the effectiveness of confidence-building measures agreed at the Second and Third Review Conferences; the conclusions of the expected (post-Ad Hoc Group) Special Conference "and further action as appropriate"; and the UN Secretary-General's provision of staff and other resources required to assist the effective implementation of Fourth Review Conference decisions.

Informal functions

39. In practice, the Review Conferences have acquired additional, informal functions. These are performed imperfectly and unevenly (as indeed are the formally stated functions). However, they are essential for the nurturing of the BTWC treaty regime. In the absence of other institutions, the evolution of that regime has depended heavily upon the Review Conferences and their Final Declarations performing four, inter-connected, functions in particular:

1. Registering consensus on definitions and extended understandings of specific terms used in the Convention, especially those which reinforce the general purpose criterion and comprehensive coverage of Article I.

2. Identifying and elaborating procedures within the framework of the Convention, notably Article V, using the latent potential of the text as it stands together with the definitions and extended understandings it has accumulated through this review process.
3. Reaffirming the positions established at earlier Review Conferences and moving beyond them to the extent consensus allows.

4. Steering the evolution of the BTWC treaty regime through the next five years.

41. In 2006 the third of these functions is vitally important especially given the failure of the Fifth Review Conference to agree a Final Declaration. The Sixth Review Conference will need to reaffirm – whether specifically or generally – the body of understandings built up between 1980 and 1996 and move beyond them to the extent consensus allows, drawing in particular on the 2003–2005 reports of the annual Meetings of States Parties and integrating their findings into the cumulative text carried forward. There is much value in the cumulative drafting process, in which the last Review Conference's Final Declaration is the starting point and new language is added. Such cumulation deepens and extends the common positions, agreed procedures and politically-binding commitments which the BTWC States Parties are willing to endow with their collective authority.

**Steering the treaty regime**

42. There is also a strong case for paying particular attention in 2006 to the fourth of the informal functions listed above: steering the evolution of the BTWC treaty regime through the next five years. This is not something at which previous Review Conferences have excelled. They have left the BTWC to evolve in an uncoordinated fashion, divergent and unbalanced as between the different sectors into which its treaty regime can be divided for purposes of analysis. It has also been evident during the past decade that a number of other initiatives have been pursued outside the BTWC regime and the Sixth Review Conference provides the opportunity to adopt an integrated and comprehensive approach to strengthen the regime prohibiting biological and toxin weapons. To achieve convergence and equilibrium in its constructive evolution will require deliberate steering. But in the absence of any other treaty institutions it is up to the Review Conference to undertake such steering or create the means by which a representative body may act on its behalf; or it will not be done at all.

43. The treaty regime does need steering – it will not flourish through neglect. And it must be steered by its States Parties collectively. The BTWC is a fully multilateral treaty, binding 155 sovereign states, and it needs institutions to match.

**Successful Outcomes for the Sixth Review Conference**

44. In this introductory chapter to the Key Points for the Sixth Review Conference a look ahead is made to successful outcomes for the Sixth Review Conference in the light of the developments relevant to the Convention around the world recalled earlier in this chapter. A number of successful outcomes are identified and it is recommended that the States Parties adopt a modular approach obtaining agreement where consensus is achievable.

**Background**

45. The BTWC is the multilaterally agreed norm that totally prohibits biological and toxin weapons and provides the cornerstone against the risks that such weapons might be used by States Parties or by sub State actors. It also enhances international peace and security against
the risk that advances in the life sciences may provide novel ways of causing harm to humans, animals or plants.

46. There is no doubt about the risks posed by biological and toxin weapons. Their capabilities were proven in national offensive programmes in the years prior to the entry into force of the BTWC in 1975.24 It is also evident that public awareness and concerns about outbreaks of disease in humans, animals and plants are greatly heightened – SARS, Avian Flu and Foot and Mouth Disease outbreaks have caused widespread public alarm. In addition, the past decade has seen heightened concern about the possible use of biological or toxin agents by sub-State actors notably following the attempts to disperse anthrax and botulinum toxin by the Aum Shinrikyo sect in Tokyo in 1993/4 without casualties and the anthrax letters in the United States in September/October 2001 which resulted in five deaths.

47. There is widespread recognition of the value to international peace and security provided by the BTWC. For example, recent statements by the G-8, EU, NAM, ASEAN, the Rio Group as well as major powers such as China and the Russian Federation have all reaffirmed the importance of the BTWC and the need to take steps to increase its effectiveness.

48. Consequently, as we approach the Sixth Review Conference there are widespread expectations both politically and publicly that the States Parties will demonstrate their accountability and commitment to the obligations that they have undertaken in becoming States Parties to the Convention. There is also a widespread anticipation that the States Parties will act responsibly by adopting a constructive approach to achieving a successful outcome to the Sixth Review Conference and thereby demonstrating in concrete terms the real value to international peace and security made by the Convention.

49. The Preparatory Committee met in Geneva on 26 to 28 April 2006. The atmosphere at the Preparatory Committee Meeting in preparation for the Sixth Review Conference was positive.25 Many of the group statements and individual statements by States Parties emphasized the importance of successful carrying out a comprehensive article by article review of the Convention at the Sixth Review Conference. There was ready agreement on a three-week duration for the Review Conference from 20 November to 8 December 2006. Although there were divergences between Iran and the USA on the wording of draft Agenda item 11 – which replaced Agenda items 11 and 12 in the Agenda adopted by the Fifth Review Conference – a successful compromise was found. There was a significant step forward in the agreement to request six background documents. The new background document showing the additional understandings and agreements reached by previous Review Conferences is particularly welcome, as it will be up to the Sixth Review Conference to consider how to further extend these understandings and agreements, thereby strengthening the Convention. Equally welcome was another new background document on developments since the last Review Conference in other international organizations, as it has become increasingly clear during the past few years that there are initiatives being taken by other international organizations that are relevant to the Convention, and that the Sixth Review Conference needs to take stock of these developments.

24 For a comprehensive account see Mark Wheelis, Lajos Rozsa and Malcolm Dando (eds), Deadly Cultures: Biological Weapons since 1945, Harvard University Press, Cambridge, Massachusetts, 2006.
50. The Provisional Agenda for the Sixth Review Conference agreed by the Preparatory Committee and subsequently issued as BWC/CONF.VI/1 is as follows:

1. Opening of the Conference
2. Election of the President
3. Adoption of the agenda
4. Submission of the final report of the Preparatory Committee
5. Adoption of the Rules of Procedure
6. Election of the Vice-Presidents of the Conference and Chairmen and Vice-Chairmen of the Committee of the Whole, the Drafting Committee and the Credentials Committee
7. Credentials of representatives to the Conference
   (a) Appointment of the Credentials Committee
   (b) Report of the Credentials Committee
8. Confirmation of the nomination of the Secretary-General
9. Programme of work
10. Review of the operation of the Convention as provided for in its Article XII
    (a) General debate
    (b) Articles I-XV
    (c) Preambular paragraphs and purposes of the Convention
11. Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action
12. Other matters, including the question of future review of the Convention
13. Report of the Committee of the Whole
14. Report of the Drafting Committee
15. Preparation and adoption of the final document(s)

Successful Outcomes

51. In looking ahead to the Sixth Review Conference, all States Parties need to reaffirm the value of a strong Biological and Toxin Weapons Convention (BTWC) and to recognise that the regime has been strengthened effectively by the extended understandings agreed by the States Parties in their Final Declarations at successive Review Conferences. There is a great deal that the States Parties can achieve at the Sixth Review Conference in November/December 2006. It will be important to concentrate on substance, to be reasonably ambitious and by adopting a modular approach obtain agreement where there is consensus.

52. In this introductory chapter to the Key Points for the Sixth Review Conference a number of successful outcomes are examined which could be adopted in a modular approach. The focus is on the possible outcomes that appear to have been most thoroughly considered and hence to be likely to be successfully achieved. Each single successful outcome is self-contained and independent of any other outcome. Subsequent chapters will address in more detail how each of these successful outcomes might best be achieved.

Final Declaration

53. As already noted above in the consideration of the Preparatory Committee meeting held on 26 to 28 April 2006, many of the group statements and individual statements by States Parties emphasized the importance of successful carrying out a comprehensive article by article review of the Convention at the Sixth Review Conference. In addition, the States Parties agreed to request that a new background document be provided showing the additional understandings and agreements reached by previous Review Conferences. This is particularly welcome, as it will help the States Parties to prepare for the Sixth Review Conference by considering how to further extend these understandings and agreements, thereby strengthening the Convention. The chapters in these Key Points for the Sixth Review Conference consider in an Article by Article review and recommend how these understandings and agreements might be further extended by proposing language that States Parties might put forward in their submissions in the Committee of the Whole. As already observed, there is much value in the cumulative drafting process, in which the last Review Conference's Final Declaration is the starting point and new language is added. Such cumulation deepens and extends the common positions, agreed procedures and politically-binding commitments which the BTWC States Parties are willing to endow with their collective authority.

Universality

54. At successive Review Conferences the States Parties have called upon States which have not yet ratified or acceded to the Convention to do so without delay. Thus at the Fourth Review Conference in the Final Declaration under Article XIV:

1. The Conference notes with satisfaction that a number of States have acceded to the Convention since the Third Review Conference.
2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention.
3. In this connection, the Conference requests States Parties to encourage wider adherence to the Convention.
4. The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.

In addition, the resolution adopted by the General Assembly without a vote on 8 December 2005 as A/RES/60/96 included as its first operative paragraph:

1. Notes with satisfaction the increase in the number of States parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, reaffirms the call upon all signatory States that have not yet ratified the Convention to do so
without delay, and calls upon those States that have not yet signed the Convention to become parties thereto at an early date, thus contributing to the achievement of universal adherence to the Convention.

55. There is therefore a widespread and continuing recognition by all States Parties of the importance of achievement of universal adherence to the Convention. However, the rate at which States have become Parties to the Convention has been very slow during recent years:

<table>
<thead>
<tr>
<th>Date</th>
<th>Number of States Parties</th>
<th>Number of Signatory States</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2001</td>
<td>144</td>
<td>18</td>
</tr>
<tr>
<td>October 2002</td>
<td>146</td>
<td>17</td>
</tr>
<tr>
<td>November 2003</td>
<td>151</td>
<td>16</td>
</tr>
<tr>
<td>December 2004</td>
<td>153</td>
<td>16</td>
</tr>
<tr>
<td>June 2005</td>
<td>155</td>
<td>16</td>
</tr>
</tbody>
</table>

56. This slow rate of approaching universality is all the more pronounced when a comparison is made with the Chemical Weapons Convention which entered into force on 29 April 1997. At its First Review Conference\(^{28}\) in April/May 2003, the States Parties in regard to universality of the CWC agreed that:

*The First Review Conference recommended that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it.*  
[Emphasis added]

The background paper\(^{29}\) provided by the OPCW on adherence to the CWC for the First Review Conference provided a summary of the participation in the Convention on the anniversaries of its entry into force:

<table>
<thead>
<tr>
<th>Date</th>
<th>Number of States Parties</th>
<th>Number of States Parties for which Entry into Force was pending</th>
<th>Signatory States not Party</th>
<th>Non-Signatory States not Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 April 1997</td>
<td>87</td>
<td>0</td>
<td>78</td>
<td>28</td>
</tr>
<tr>
<td>29 April 1998</td>
<td>107</td>
<td>1</td>
<td>60</td>
<td>25</td>
</tr>
<tr>
<td>29 April 1999</td>
<td>121</td>
<td>0</td>
<td>48</td>
<td>24</td>
</tr>
<tr>
<td>29 April 2000</td>
<td>132</td>
<td>3</td>
<td>37</td>
<td>21</td>
</tr>
<tr>
<td>29 April 2001</td>
<td>143</td>
<td>0</td>
<td>31</td>
<td>19</td>
</tr>
<tr>
<td>29 April 2002</td>
<td>143</td>
<td>0</td>
<td>31</td>
<td>19</td>
</tr>
</tbody>
</table>

57. Since adoption of the Action Plan on Universality following the CWC Review Conference, the number of States Parties has increased\(^{30}\) significantly:

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25
<table>
<thead>
<tr>
<th>Date</th>
<th>Number of States Parties</th>
<th>Number of States Parties for which Entry into Force was pending</th>
<th>Signatory States not Party</th>
<th>Non-Signatory States not Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2003</td>
<td>151</td>
<td>2</td>
<td>25</td>
<td>16</td>
</tr>
<tr>
<td>October 2003</td>
<td>154</td>
<td>3</td>
<td>22</td>
<td>15</td>
</tr>
<tr>
<td>June 2004</td>
<td>164</td>
<td>0</td>
<td>18</td>
<td>12</td>
</tr>
<tr>
<td>February 2005</td>
<td>167</td>
<td>0</td>
<td>16</td>
<td>11</td>
</tr>
<tr>
<td>March 2006</td>
<td>178</td>
<td>0</td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>

58. It is thus evident that in March 2006, the States Parties to the CWC are some 178, over twenty more than the number of States Parties to the BTWC. There is consequently a window of opportunity at the forthcoming Sixth Review Conference in November/December 2006 for the States Parties to the BTWC to mount an initiative to encourage all those States which have acceded to the CWC to also accede to the BTWC. Rather than just adopting an exhortation, as at previous Review Conferences, it would be timely to agree to actually do something to achieve the objective of universality. Whilst this might be called an Action Plan there might be advantage in adopting some different terminology such as an achievement timeline with the objective of reaching 180 States Parties to the BTWC no later than the Seventh Review Conference in 2011. The States Parties at the Sixth Review Conference in agreeing this achievement timeline need to also agree on how the initiative is to be progressed and how the progress towards this objective will be reported regularly to the States Parties. Such a progress report would be appropriate at future annual Meetings of the States Parties or other representative body – such as an Intersessional Committee of Oversight – at which agreement could be reached on additional action should that be necessary.

National Implementation

59. At successive Review Conferences the States Parties have reaffirmed the importance of Article IV of the Convention. Thus at the Fourth Review Conference the Final Declaration under Article IV stated:

1. The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the 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. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their


obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

2. The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

60. In addition, national implementation was one of the issues considered during the 2003 to 2005 intersessional process when the topic in 2003 was:

i. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;

The outcome of the Meeting of States Parties in 2003 was to agree a short report on both of the topics saying:

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:

To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibition of the Convention, and which enhance effective security of pathogens and toxins.

The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and


procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

61. It should also be recalled that national implementation measures have been the subject of an Action Plan undertaken by the States Parties to the CWC following their First Review Conference in 2003. At that Review Conference the States Parties agreed:

The First Review Conference called upon States Parties that have not already done so to inform the OPCW by the next regular session of the Conference of the status of their adoption of the legislative and administrative measures necessary for or taken by them to implement the Convention, of any problems they have encountered, and of any assistance they require. Having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties as well as the Secretariat, the First Review Conference...

(h) agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties. [Emphasis added]

62. Bradford Review Conference Paper No. 13 described the action being taken by the OPCW and a further update was published in the CBW Conventions Bulletin of September/December 2005. The situation can be summarised as follows:

<table>
<thead>
<tr>
<th>Status at Date</th>
<th>Number of States Parties</th>
<th>Number (and percentage) of States Parties that have submitted national implementation</th>
<th>Legislation covers area key to the enforcement of the CWC</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1997</td>
<td>87</td>
<td>0 (0%)</td>
<td>Not available</td>
</tr>
<tr>
<td>December 1997</td>
<td>103</td>
<td>24 (23%)</td>
<td>Not available</td>
</tr>
<tr>
<td>November 1998</td>
<td>120</td>
<td>40 (33%)</td>
<td>Not available</td>
</tr>
<tr>
<td>July 1999</td>
<td>125</td>
<td>43 (34%)</td>
<td>Not available</td>
</tr>
<tr>
<td>May 2000</td>
<td>133</td>
<td>48 (36%)</td>
<td>Not available</td>
</tr>
<tr>
<td>May 2001</td>
<td>143</td>
<td>53 (38%)</td>
<td>Not available</td>
</tr>
</tbody>
</table>

This shows that even after the Action Plan, although almost two thirds of the States Parties to the CWC had submitted information on their national implementation to the OPCW, only about one third of the States Parties had succeeded in adopting legislation that covered the areas key to the enforcement of the CWC.

63. It is therefore essential that legislation adopted under Article IV of the BTWC encompasses the full scope of the prohibitions contained in the Convention. It is recommended that this should extend to the control and monitoring of relevant dual-use materials and technologies.

64. The situation in regard to the adoption of national measures to implement the BTWC, as required by Article IV of the Convention which requires:

> Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

is much less certain than that for the CWC. There is, however, no basis on which to conclude that the situation is any better and it is likely to be worse.

65. There is widespread recognition of the importance of all States Parties adopting national legislation to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention. The adoption of Security Council Resolution 1540 (2004)\(^\text{37}\) has also provided additional impetus for all States – and not solely the States Parties to the BTWC – to adopt national legislation. Operative paragraph 2 requires:

> 2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them; [Emphasis added]

It would therefore be timely – and bring significant benefits to all States Parties – for the States Parties to the BTWC at the forthcoming Sixth Review Conference in November/December 2006 to do more than simply adopt an exhortation along the lines of those agreed previously at Review Conferences. There is a need for action to adopt national legislation to counter the continuing threat posed by biological and toxin weapons whether by States or by sub-State actors. It is, however, appreciated that the action plan adopted by the

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OPCW has required significant resources from the Technical Secretariat and comparable resources are currently not available for the States Parties to the BTWC.

66. As recognised by SCR 1540 (2004) in its seventh operative paragraph, States may require assistance to implement this resolution:

7. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

Consequently, at the Sixth Review Conference particular attention should be given to seeking a commitment from those States Parties in a position to do so to provide assistance to States Parties requiring such assistance in developing and adopting national implementation legislation.

67. Although there may be some consideration to whether to adopt an action plan, it would be wise to adopt different terminology as the resources provided by the OPCW to support the CWC Article VII national implementation action plan will not be available. It is suggested that an achievement timeline which sets a target for two thirds of the States Parties to the BTWC to have adopted national implementation legislation by the time of the Seventh Review Conference would be an effective and desirable outcome. It would be greatly aided by one or more States Parties undertaking to provide resources to facilitate the adoption of legislation by States Parties as well as to monitor and report to the States Parties annually on progress towards this target. Such a progress report would be appropriate at future annual Meetings of the States Parties or other representative body – such as an Intersessional Committee of Oversight – at which agreement could be reached on additional action should that be necessary.

**Education, Outreach and Codes of Conduct**

68. At the Fourth Review Conference the States Parties in the Article IV section of the Final Declaration noted the importance of:

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

using language slightly developed from that agreed at the Second and Third Review Conferences.

69. At the annual Meeting of States Parties in 2005 consideration was given to the topic of:

The content, promulgation and adoption of codes of conduct for scientists.

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The report\textsuperscript{39} of this Meeting of States Parties recognised that codes of conduct could have a significant and effective role in conjunction with national legislation and helping those engaged in the relevant scientific communities relevant to the Convention to fulfil their legal, regulatory and professional obligations and ethical principles.

70. Seminars carried out in the last two years in the UK, US, Finland, Germany, Netherlands and South Africa have shown\textsuperscript{40} that there is little awareness of the BTWC amongst those engaged in the life sciences. It is consequently evident that for in depth implementation of the necessary measures required by Article IV to prohibit and prevent the development, production, stockpiling, acquisition or retention of agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention the States Parties need to take steps for education, outreach and codes of conduct. It is recommended that the States Parties should agree to hold an annual Meeting of States Parties prepared for by a Meeting of Experts during the intersessional period before the Seventh Review Conference to consider the topic:

\textit{Education and outreach for all those concerned with the life sciences.}

\textbf{Article V Consultation and Cooperation Procedures}

71. At the Third Review Conference the States Parties agreed\textsuperscript{41} procedures to strengthen the implementation of Article V:

\textit{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.}

\textit{The Conference reaffirms the agreement reached at the Second Review Conference, and agrees that in order to strengthen the implementation of the provisions of Article V the following provisions should be adopted:}

- A formal consultative meeting could be preceded by bilateral or other consultations by agreement among those States parties involved in the problems which had arisen;

- Requests for the convening of a consultative meeting shall be addressed to the Depositaries, who shall immediately inform all States parties of the request and shall convene within 30 days an informal meeting of the interested States parties to discuss the arrangements for the formal consultative meeting, which shall be convened within 60 days of receipt of the request;


\textsuperscript{40} Malcolm R. Dando, \textit{Article IV: Education, Outreach and Codes of Conduct}, in Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando (eds), \textit{Key Points for the Sixth Review Conference}, University of Bradford, Department of Peace Studies, September 2006. Available at \url{http://www.brad.ac.uk/acad/sbtwc}

- With regard to the taking of decisions, the consultative meeting shall proceed in accordance with rule 28 of the rules of procedure of the Review Conference;

- The costs of the consultative meeting shall be met by the States parties participating in accordance with the United Nations assessment scale prorated to take into account differences between the United Nations membership and the number of States parties participating in the meeting;

- A consultative meeting may consider any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, suggest ways and means for further clarifying, inter alia, with assistance of technical experts, any matter considered ambiguous or unresolved, as well as initiate appropriate international procedures within the framework of the United Nations and in accordance with its Charter;

- The consultative meeting, or any State party, may request specialized assistance in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, through, inter alia, appropriate international procedures within the framework of the United Nations and in accordance with its Charter;

- The States parties agree that, should the consultative meeting, or any State party, make use of such procedures within the framework of the United Nations, including lodging a complaint with the Security Council under Article VI of the Convention, the Secretary-General may be kept informed;

- The Conference considers that States parties shall cooperate with the consultative meeting in its consideration of any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention, and in clarifying ambiguous and unresolved matters, as well as cooperate in appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

72. At the Fourth Review Conference in 1996 the States Parties in their Final Declaration under Article V noted the following in regard to these procedures:

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. While noting that these procedures have not yet been invoked, the Conference reaffirmed their present validity. The Conference 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.

73. These procedures were used in 1997 when an allegation was made by Cuba. It will therefore be appropriate to review the procedures at the Sixth Review Conference in the light of the experience gained in the 1997 implementation of them and the developments in the international scene since then. A successful outcome at the Sixth Review Conference is thus a review and reaffirmation or amendment of the procedures for consultation and cooperation under Article V of the Convention.

Confidence-Building Measures

74. The States Parties agreed at the Second Review Conference in 1986 to submit information annually under Confidence Building Measures (CBMs). The CBMs were reviewed and extended at the Third Review Conference in 1991:

In accordance with the decision of the Second Review Conference, and taking into account views expressed concerning the need to strengthen the implementation of the provisions of Article V, the Conference reviewed the effectiveness of the provisions in Article V for consultation and cooperation and of the cooperative measures agreed in the Final Declaration of the Second Review Conference, and considered whether or not further actions were called for to create further cooperative measures. The Conference came to the following conclusions and recommendations:

The Conference notes the importance of the confidence-building measures agreed upon at the Second Review Conference, as well as the modalities elaborated by the Ad Hoc Meeting of the Scientific and Technical Experts from States parties to the Convention held in 1987. The Conference recognizes the exchange of information that took place on this agreed basis between 1987 and 1991. The Conference urges all States parties to submit information to future rounds of information exchange.

With a view to promoting increased participation and strengthening further the exchange of information, the Conference agrees to reaffirm those measures established at the Second Review Conference with the following improvements: to add a declaration on "Nothing to declare" or "Nothing new to declare"; to amend and extend the exchange of data on research centres and laboratories; to amend the exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins; to amend the measure for the active promotion of contacts; and to add three new confidence-building measures entitled "Declaration of legislation, regulations and other measures"; "Declaration of past activities in offensive and/or defensive biological research development programmes"; and "Declaration of vaccine production facilities".

43 For an account of the way in which the Article V procedures were used to deal with the Cuban allegation see Graham S. Pearson, Article V: Consultation and Cooperation, in Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, Key Points for the Fifth Review Conference, University of Bradford, Department of Peace Studies, November 2001. Available at: http://www.brad.ac.uk/acad/sbtwc

Accordingly, the Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States parties are to implement, on the basis of mutual cooperation, the following measures set out in the annex to this Final Declaration, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international cooperation in the field of peaceful bacteriological (biological) activities:

1. Declaration form on "Nothing to declare" or "Nothing new to declare"

2. Confidence-building measure "A":
   - Part 1: Exchange of data on research centres and laboratories;
   - Part 2: Exchange of information on national biological defence research and development programmes.

3. Confidence-building measure "B":
   - Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.

4. Confidence-building measure "C":
   - Encouragement of publication of results and promotion of use of knowledge.

5. Confidence-building measure "D":
   - Active promotion of contacts.

6. Confidence-building measure "E":
   - Declaration of legislation, regulations and other measures.

7. Confidence-building measure "F":
   - Declaration of past activities in offensive and/or defensive biological research and development programmes.

8. Confidence-building measure "G":
   - Declaration of vaccine production facilities.

The Conference also agrees that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual basis and should cover the previous calendar year.
75. At the Fourth Review Conference\textsuperscript{45}, the States Parties did not carry out a detailed review of the CBMs as they were aware that the Ad Hoc Group was then engaged in considering the incorporation of existing and further enhanced CBMs into a regime of compliance measures to strengthen the Convention:

5. 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 Third 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 also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future. The Conference notes that the Ad Hoc Group of States Parties established by the Special Conference in 1994 is, as part of its continuing work, considering the incorporation of existing and further enhanced confidence-building and transparency measures, as appropriate, in a regime to strengthen the Convention.

76. At the Fifth Review Conference, a number of useful proposals to strengthen the CBMs were submitted by South Africa\textsuperscript{46}. These are well worth further consideration, along with other ideas for improving the responses from the States Parties in their annual submissions of CBM returns, at the forthcoming Sixth Review Conference in November/December 2006. Consideration needs to be given to a review of the existing CBMs and their format; proposals for new CBMs; provision for electronic submission and circulation; collation, translation and elaboration procedures; and the provision of assistance, where requested. It needs, however, to be considered whether there will be sufficient time at the Sixth Review Conference to consider the details of the existing CBMs and how they might be improved. It should be recalled that at the Second Review Conference in 1986 the States Parties agreed to hold an ad hoc meeting in 1987 of scientific and technical experts from States Parties to finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure.

77. There would be merit in the States Parties at the Sixth Review Conference agreeing that a Meeting of States Parties should be held in 2007 to consider and decide how to improve the effectiveness of the CBM process with this Meeting being prepared for by an earlier two week Meeting of Experts. The Meeting of Experts on CBMs to prepare for the annual Meeting would provide an opportunity for States Parties to share best practice in compiling annual CBM returns and identifying how the effectiveness of the CBM process might best be


improved. It is evident from the experience gained during the period from 2003 to 2005 that the process of annual one week Meetings of States Parties prepared by an earlier two week Meeting of Experts has worked well and been effective in achieving a good exchange of information.

**Strengthening the effectiveness and improving the implementation of the Convention**

78. This is historically a contentious issue but is not one that can be ignored. There is little doubt that the majority, if not all, of the States Parties would indeed support, in principle if not in specific terms, the requirement to strengthen the effectiveness and improve the implementation of the Convention. Within the agenda for the Sixth Review Conference, this could be taken under the heading of “possible consensus follow-up action” in Agenda item 11, or under the review of Article V in Agenda item 10(b).

79. Work on how to strengthen the effectiveness and improve the implementation of the Convention could be taken forward as a part of the modular approach by the States Parties at the Sixth Review Conference agreeing to hold an ‘ad hoc’ meeting of experts from States Parties in 2007 as an appendix to the Conference to consider future action to strengthen the Convention, as recommended in Review Conference Paper No. 1447.

80. As noted in Review Conference Paper No. 14, there is no value in continuing recriminations about why the negotiations of the Ad Hoc Group came to an end in July 2001. Rather, a fresh start needs to be made. This could therefore be to consider all developments since the Third Review Conference in 1991 and its decision to *strengthen the effectiveness and improve the implementation* of the Convention – an aim which must surely still command consensus amongst all States Parties. It is hard to imagine that any State Party would object to such an objective and it is argued that all States Parties would indeed agree to this.

81. Having agreed this objective, the next step is to consider how best the States Parties can achieve this objective starting from the Sixth Review Conference in 2006. By recognizing the common agreement to the objective, the onus is put onto all States Parties to address how best to move forward to achieve this. It also needs to be recognized that the Sixth Review Conference is not the occasion on which to address the details of how best to achieve this objective as there is a great deal of substantive business that needs to be accomplished during the three weeks of the Review Conference. The Final Declaration of the Sixth Review Conference should include in its Article V section or in an Agenda item 11 section at the end language along the lines of:

> The Conference reaffirms the importance of strengthening the effectiveness and improving the implementation of the Convention and agrees that experts from the States Parties shall meet in 2007 to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

It would be up to this ‘ad hoc’ meeting of experts in 2007 to recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention. Language as suggested above would be effective in moving the process forward in 2006.

47 Graham S. Pearson, *The UN Secretary-General’s High Level Panel: Biological Weapons Issues*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 14, May 2005. Available at http://www.brad.ac.uk/acad/sbtwc
82. The meeting proposed in 2007 would have no preconditions but simply require the experts from the States Parties to consider collectively how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention taking into account all the international developments over the past fifteen years.

*Article VI Investigations*

83. The States Parties at the Fourth Review Conference agreed in their Final Declaration under Article VI that:

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 notes that the provisions of Article VI will be taken into account, as appropriate, for any future verification regime resulting from the consideration by the Ad Hoc Group of a system of measures to promote compliance with the Convention. 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.

84. In addition, the Final Declaration also included:

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.

85. In addition, the States Parties at their annual meetings in 2004 considered the topic:

   iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

and in their Report⁴⁹ they agreed:

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

   a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

   b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

   c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

   a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

   b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

86. As reported⁵⁰ at the time, the draft outcome paper for the December 2004 Meeting of States Parties had initially contained the following:

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(b) that consideration should be given to reviewing the Secretary-General’s mechanism for investigation of cases of alleged use of biological and toxin weapons and to invite the Secretary-General to report to the Sixth Review Conference on any actions that may be taken in this regard on the basis of consideration by the United Nations General Assembly.

However, consensus could not be found on this language or on a development thereof. Consequently, all consideration had to be deferred to the Sixth Review Conference.

87. At the Sixth Review Conference, it is recommended that consideration be given to two aspects relating to Article VI Investigations. The first is that the States Parties should consider developing the modalities of the procedure implicit in the first paragraph of Article VI of the Convention which states that:

1. Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

2. Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

The modalities of the procedure implicit in the first paragraph might be elaborated along the following lines:

1. The State Party lodging a complaint should identify which obligation under the Convention it considers has been breached and in what manner the breach has occurred.

2. The State Party lodging the complaint should compile a report containing all possible evidence relating to the alleged breach of obligations and the evidence therein should be validated to the extent possible.

3. The State Party lodging a compliant should implement the procedure as soon as possible after the alleged breach of the obligations under the Convention has taken place.

88. Secondly, the States Parties should recognise that it is in the interests of all States Parties to the BTWC to ensure that any investigation that may be carried out is both effective and credible. Consequently, the States Parties should consider what steps are needed to ensure that the Secretary-General’s mechanism for the investigation of cases of alleged use of biological and toxin weapons would indeed be effective and credible. There have been significant developments since the Secretary-General’s mechanism was first set up – for example, the OPCW has set up its own mechanism for investigation of alleged use of chemical weapons and UNMOVIC has developed its procedures for investigations. In both cases, the importance of trained experts and of accredited laboratories that have validated procedures for the analysis of samples have been recognised. The Secretary-General’s
mechanism has neither and is therefore seriously deficient in regard to the current internationally expected standard. This is a matter which should be of special concern to the States Parties to the BTWC and proposals for remedying the deficiencies of the mechanism should find a place in the Article VI section of the Final Declaration.

Assistance

89. Article VII of the Convention states:

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, 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.

90. At the Fourth Review Conference, the States Parties agreed in their Final Declaration51 under Article VII that:

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 desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested.

91. It is considered that the States Parties at the Sixth Review Conference should include as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

To develop a procedure for the provision of timely emergency assistance to States Parties on request.

This topic would be broader than the narrowly drawn conditions under which Article VII applies. It would, for example, include assistance to States Parties attacked by a non-party or by a non-State actor, or from an unknown source. Such an annual Meeting should clearly involve participation by the WHO, FAO and OIE.

92. It should, however, be recognised that the provision of timely assistance to States Parties is wider than solely being concerned with emergency assistance. For example, it is widely recognised that States Parties may require assistance with national implementation and with the preparation of annual CBM returns as well as in areas such as surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants. There

would therefore be advantage in further broadening the scope of the topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts to:

\[ \text{To develop a procedure for the provision of timely assistance to States Parties on request.} \]

International Cooperation

93. At the Fourth Review Conference, the States Parties in the Article X section of the Final Declaration\(^2\) agreed seventeen paragraphs relating to international cooperation. In particular, consideration was given to how existing institutional ways and means of promoting multilateral cooperation might be developed further:

5. The Conference notes that existing institutional ways and means of ensuring multilateral cooperation between the developed and developing countries would need to be developed further in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture.

6. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of bacteriological (biological) agents and toxins for peaceful purposes.

7. The Conference recommends that invitations to participate in this discussion and examination should be extended to all States Parties, whether or not they are members of the United Nations or concerned specialized agencies.

94. In addition, the Final Declaration in its section on Article X addressed the response to infectious diseases:

10. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring of disease and encourages States Parties to support the World Health Organization, including its relevant newly established division, the FAO and the OIE, in these efforts directed at assisting Member States to strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

and also went on to list a number of possible measures:

12. The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion

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of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:

1. Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;

2. Wider transfer and exchange of information, materials and equipment among States on a systematic and long-term basis;

3. Active promotion of contacts between scientists and technical personnel on a reciprocal basis, in relevant fields;

4. Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);

5. Facilitating the conclusion of bilateral, regional and multiregional agreements providing, on a mutually advantageous, equal and non-discriminatory basis, for their participation in the development and application of biotechnology;

6. Encouraging the coordination of national and regional programmes and working out in an appropriate manner the ways and means of cooperation in this field;

7. Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;

8. The promotion of programmes for the exchange and training of scientists and experts, and the exchange of scientific and technical information in the biological field between developed and developing countries.

95. The Final Declaration also called for the Secretary-General to collate annually reports on how Article X is being implemented:

14. The Conference requests the Secretary-General to collate on an annual basis, and for the information of States Parties, reports on how this article [X] is being implemented.

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their
Article X obligations and encourages States Parties in a position to do so to provide such information.

96. Thus far, there has been no such annual report by the Secretary-General and the information provided by a number of States Parties has largely been limited to working papers provided to Review Conferences. It is recommended that at the Sixth Review Conference the States Parties should include as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

The proposed development of a CBM to provide transparency of Article X cooperation would help to focus attention on the actual situation rather than the rhetoric so often expressed in this area. Information on actual cooperation under Article X would make it easier for States Parties to recognise what cooperation is already taking place – and, through transparency, to be aware of what is achievable bringing benefits to all States Parties.

Interim Supportive Structures

97. The BTWC needs support. It has long suffered from an institutional deficit lamentable in a multilateral treaty of such importance. The Sixth Review Conference can begin to remedy this institutional deficit, by choosing among a set of options for organisational arrangements. In the long run, an Organization for the Prohibition of Bacteriological (Biological) and Toxin Weapons (OPBW) is needed, to strengthen the effectiveness and improve the implementation of the Convention. But until there is an OPBW with the capacity to match the requirements of the BTWC, the Convention needs a modest set of interim supportive structures to nurture its treaty regime as, with careful steering, it starts to overcome its long-recognised fragility.

98. Almost every useful advance one could imagine coming out of the Conference would benefit from continuing institutional capacity. By creating interim supportive structures, the Conference would be providing such capacity for the period between the Sixth and Seventh Review Conferences in the first instance, without prejudice to the diverse positions of States Parties on the desirability of an OPBW in the long run.

99. It is recommended that the Conference should return to the commendation of the organizational arrangements set out below in its Solemn Declaration, as was done by the Third Review Conference in 1991, and for the substance of these arrangements should introduce a new, second, part to the Article XII Review Conferences section of its Final Declaration. This second part of the Article XII section would authorise the President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences.

100. The principal strengthening structure might take the form of a representative Intersessional Committee of Oversight or of an Annual Meeting of States Parties. In either case, it might be empowered to take decisions, supported by advisory panels and a dedicated standing secretariat, which are the other interim supportive structures recommended. The Article XII chapter of this Briefing Book includes in its recommended language for the Final
Declaration two alternative texts for Part Two of the Article XII section. These alternative texts include mandates for an Intersessional Committee of Oversight and an Annual Meeting of States Parties respectively, with much common ground between them, while also providing for advisory panels and a dedicated standing secretariat.

101. Two things must be re-emphasised. First, the case for BTWC supportive structures is a long-established one, developed and articulated since the 1980s. Second, they must be seen as interim arrangements, pending eventual establishment, in the long run, of a permanent OPBW.

102. It is appropriate to include the relevant text in the Article XII section, as addressing the institutional deficit of the BTWC while ensuring that interim supportive structures take their authority from the Review Conference, which is the subject of Article XII.

103. Through interim supportive structures the Sixth Review Conference can put in place the organizational arrangements necessary to steer the BTWC treaty regime into constructive channels and nurture its evolution, pending the arrival of a permanent OPBW which remains vital to its strengthening in the long run.

Conclusions

104. This introductory chapter has looked ahead to the Sixth Review Conference in the light of the developments relevant to the Convention around the world. As we approach the Sixth Review Conference there are widespread expectations both politically and publicly that the States Parties will demonstrate their accountability and commitment to the obligations that they have undertaken in becoming States Parties to the Convention. There is also a widespread anticipation that the States Parties will act responsibly by adopting a constructive approach to achieving a successful outcome to the Sixth Review Conference and thereby demonstrating in concrete terms the real value to international peace and security made by the Convention.

105. A number of successful outcomes are identified and it is recommended that the States Parties adopt a modular approach obtaining agreement where consensus is achievable. States Parties are urged to start considering such successful outcomes now and to drafting language for the Final Declaration that they can submit to the Committee of the Whole in regard to the relevant Articles of the Convention. In addition, States Parties with a particular interest in one or more of the successful outcomes are encouraged to prepare and submit Working Papers to the Review Conference. Once again it is worth emphasising that success is rarely accidental and needs to be planned for.
ARTICLE I - SCOPE

by Malcolm R. Dando & Simon M. Whitby

Consideration of Article I at the Fourth Review Conference

1. Article I of the Biological and Toxin Weapons Convention (BTWC) states that:

   Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

   (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

   (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The States Parties have agreed extended understandings of these prohibitions which are recorded in the Final Declarations of previous Review Conferences53.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration54 had nine paragraphs in respect of Article I stating that:

   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 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 their use.

53 Graham S. Pearson and Malcolm R. Dando (eds), Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference, University of Bradford, Department of Peace Studies, November 1996. Available at http://www.brad.ac.uk/acad/sbtwc

5. 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.

6. 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.

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

8. 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.

9. 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 agrees that the application by States Parties of positive approaches in accordance with the provisions 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. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

3. These nine paragraphs were developed from those in the Article I section of Final Declaration of the Third Review Conference in 1991 by the removal of one paragraph on safety precautions necessary when undertaking permitted activities, the separation of paragraphs five and six (which were combined in 1991), and the addition of new paragraphs three and four which underlined that use was totally prohibited by reaffirming that use, in any way or under any circumstances, that is not consistent with prophylactic, protective or other peaceful purposes is effectively a violation of Article I and that the Conference reaffirmed the undertaking in Article I never in any circumstances to develop, stockpile or otherwise acquire or retain weapons ... in order to exclude completely and forever the possibility of their use.

4. The 1996 Final Declaration therefore had two paragraphs (1 and 2) on the importance and full scope of the prohibition, two paragraphs on use (3 and 4), two paragraphs on scientific and technological developments (5 and 6), one paragraph on experimentation involving open-

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air release of pathogens (7), one paragraph appealing through States Parties to their scientific communities to support the Convention (8) and a final paragraph on non-compliance (9).

5. The fifth paragraph clearly demonstrates the comprehensive nature of the prohibition in its reaffirmation that:

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.

This reaffirmation has been developed from part of the third paragraph in the Article I section of the Final Declaration of the Third Review Conference which stated that:

The Conference also reaffirms that the Convention unequivocally covers all microbial agents or toxins, naturally or artificially created or altered, whatever their origin or method of production.

This in turn was developed from the fifth paragraph in the Final Declaration of the Second Review Conference which stated in part that

The Conference reaffirms that the Convention unequivocally applies to all natural or artificially created microbial or other biological agents or toxins whatever their origin or method of production.

It is consequently evident that the Convention unequivocally covers all natural or artificially created or altered microbial or other biological agents or toxins, as well as their components, whatever their origin or method of production.

6. The successive Review Conferences in addressing Article I have considered three issues: the impact of scientific and technological changes; the possibility of noncompliance; and other issues (e.g. use in 1996) topical at the time of particular Review Conferences.

Developments since the Fourth Review Conference

Scientific and Technological Changes

7. Successive Review Conferences have given attention to relevant scientific and technological developments as part of the consideration of Article I. Thus two of the nine paragraphs of the Final Declaration\(^\text{56}\) of the Fourth Review Conference were concerned with the shared understandings of these scientific and technological changes. One paragraph reaffirmed the scope of the prohibitions and the other addressed apprehensions\(^\text{57}\). The Final Declaration stated that:


\(^{57}\) Graham S. Pearson, New Scientific and Technological Developments of Relevance to the Fifth Review Conference. Review Conference Paper No. 3, Department of Peace Studies, University of Bradford, July 2001. Available at http://www.brad.ac.uk/acad/sbtwc
5. The Conference also reaffirms that the Convention 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.

6. 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 application 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 undertakings given by the States Parties in Article I applies to all such developments.

The reference to genome studies was new. The 1996 Fourth Review Conference had therefore extended the shared understandings from those of the 1991 Third Review Conference to include "any application resulting from genome studies" well in advance of the completion of the Human Genome Project at the turn of the 20th century.58

8. The current revolution in biology began in the 1970s with the first successful attempts at genetic engineering. The announcement of completion of the draft human genome sequence signified an astonishing rate of scientific progress over two or three decades. The development of rapid sequencing techniques has led to the opening up of the new field of genomics - the extraction of information from complete DNA sequences of organisms and the cataloguing and systematic analysis of that information. Furthermore, developments in our understanding of the physical chemistry of the proteins that are specified by the DNA hereditary material, and the beginning of our understanding of how these proteins interact, has opened up the new field of proteomics. In a very short period of time, we gained unprecedented capabilities to experiment with and model cellular events in precise ways.59 Associated with, and reinforced by, the need to deal with this vast deluge of data there was also been an enormous improvement in the information technology systems available to retain and to 'mine' the data. Thus, alongside the new scientific fields of genomics and proteomics there were major developments in bioinformatics, and because of the concurrent growth of the Internet much of the accumulating data, and the programmes for its analysis, are easily available worldwide.

9. All this scientific progress is to be welcomed because it forms the basis for further beneficial outcomes in, for example, medicine and agriculture. Moreover, there are very good reasons to expect that these quite revolutionary developments in biology will continue at a rapid pace for some decades to come.60

10. Unfortunately, however, it is quite clear that this new knowledge could also be misused in future offensive biological weapons programmes. Since genomics lies at the heart of biology, progress in this area necessarily affects everything else. For example, in regard to the pathogenicity of microorganisms, within one or two years more than 70 major bacterial, fungal and parasitic pathogens of humans, animals and plants were expected to have been

completely sequenced.\textsuperscript{61} This enormous amount of information is already providing many new insights into the biology of these disease agents. This information can be used in the design of new diagnostics and treatments. Yet it might also be used to make such pathogens more dangerous, less detectable or harder to treat.

11. Similarly, the enormous increase in our knowledge of receptor structures in the nervous, immune and endocrine systems (brought about by the impact of genomics in the 1990s) combined with the more recent ability to 'knock out' specific receptor subtypes in mouse models and to generate huge numbers of potential ligands through combinatorial chemistry suggests great promise for the development of new drugs. Again, however, this process of drug development will necessarily generate numerous new types of toxic or otherwise bioactive molecules that could be misused.\textsuperscript{62} Moreover, major advances are being made in the more effective and efficient delivery of such drugs.

12. The main reason to expect the scientific revolution in biology to continue apace in the coming decades is that applications of the new knowledge will help to solve problems of significance in the real world. Major illnesses such as cancer may well become amenable to very successful treatment, new anti-microbial compounds may become available to treat pathogens which have become drug-resistant, and new vaccines may prevent new and re-emerging diseases from taking hold. In such a situation, large-scale investment in the pharmaceutical industry is to be expected worldwide. Moreover, opportunities in agriculture, for example in pest control, and in bioremediation (environmental clean-up) will also lead to major new investments in these industries.

13. As we have seen, the revolution in biology has involved major technological developments in sequencing technologies, in bioinformatics and in chemistry. However, there are many more technological developments already available and in use, and more can be expected to be developed.\textsuperscript{63}

14. Of particular significance are developments in DNA chip technology and upcoming developments in protein chip technology. These technologies open up the possibility of monitoring what sets of genes are required in a pathogen - for example to cause infection, virulence and antibiotic resistance.\textsuperscript{64} Such information would clearly be of great benefit, but it is also open to misuse. Additionally, technologies are being developed to carry out 'directed molecular evolution' in which genes are broken down into pieces and then 'shuffled' in a rearrangement which produces daughter genes which have new properties. This technology greatly accelerates what could previously be done by recombination techniques. Whilst this technology is presently being used to enhance proteins of interest to civil industry,\textsuperscript{65} it could obviously also be misused.

15. Another major recent industrial development was large-scale investment in the search for Single Nucleotide Polymorphisms (SNPs) - the single DNA changes that vary in frequency


between different human groups and which could be of significance in drug metabolism. This knowledge of pharmacogenomics could be extremely valuable to ensure the most effective and efficient targeting of drugs, but concerns have been expressed over the holding of such information on very large and possibly insecure databases.66

16. By the turn of the century there was increasing public concern over some aspects of the genomics-related research being reported in the open literature. A scientific advisor to the U.S. Secretary of Defence, was reportedly of the view that the next issue is "how far certain categories of biological information may eventually have to be classified". One experiment that caused particular concern was carried out in Australia on mousepox - a close relative of smallpox - and reported in the Journal of Virology.68 Apparently, the biologists were attempting to deal with serious mice pests by producing a contraceptive vaccine which would cause the mice to reject their own eggs. They took a benign strain of mousepox virus and genetically engineered into it genes for proteins carried on the surface of the mouse egg. They presumed that cells in the mouse infected by the virus would produce this protein and that female mice would produce antibodies against the eggs. To increase this effect they also added the gene for interleukin-4 (IL-4) to the virus since IL-4 is a protein known to boost the production of such antibodies. What they found was that the IL-4 also closed down the part of the animal's immune system that deals with cellular infection so that the mouse was unable to deal with the mousepox. Even mice previously vaccinated against the virus were killed within days. The dangers of a similar manipulation of smallpox were all too obvious.69 Other examples of reports in the open literature that caused concern were the successful addition of antibiotic resistance to Bacillus anthracis (anthrax),70 and of the successful addition of genes that cause a masking autoimmune response to Legionella infection.71

17. The language in the Final Declaration of the Fourth Review Conference of the Biological and Toxin Weapons Convention (BTWC) makes it clear that the prohibition applies to all agents and munitions that may be used for hostile purposes to affect human, animals and crops. Paragraph two of the Final Declaration of the Fourth Review Conference states that:

"2. The Conference reaffirms that the Convention prohibits the developments, 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."[Emphasis added]

This quite rightly makes it clear that the prohibitions in the Convention apply equally to plants and animals as well as to humans.

71 Homeland Defense, Interview: Dr. Sergei Popov, 1 November, 2000. Available at www.homelanddefense.org/journal/Interviews/Popov Interview_001117.htm
18. The literature relating to offensive biological warfare programmes clearly shows that investigations into acquiring a military capability to wage biological warfare against crops has formed an important component in all known biological warfare programmes about which there is publicly-available information. Further to this a number of states (the US and the former Soviet Union) developed agents and munitions for waging biological warfare against crops, and concern has been expressed recently in regard to the proliferation of this form of warfare (Iraq).\textsuperscript{72} Concern were also expressed – but not substantiated – that since the Fourth Review Conference this form of warfare may have been used covertly.\textsuperscript{73}

\textit{Plant Inoculants and Biocontrol Agents}

19. Between the Fourth and Fifth Review Conference important scientific and technological developments took place in plant science. As well as the sequencing of pathogens that affect plants, the decade following the 1996 Review Conference represented a landmark in plant science with the sequencing of two entire plant genomes – those for \textit{thale cress} and for \textit{rice}.\textsuperscript{74} During this period a first generation of genetically-modified crop products expressing specific traits emerged into the market. Millions of acres have been given over to the production of genetically modified crops with large-scale production of modified varieties of corn, cotton and soya, respectively the products of gene transfer techniques that confer herbicide-tolerance and insect-resistant in crops. Plant science is now beginning to focus on a second generation of crops which have been genetically modified to express a more broad and complex range of the traits that are found in plants. Genome studies and bioinformatics represent important tools as plant science now turns to assign functions to genes. Such developments also open up a range of possibilities regarding the malign application of this important area of dual-use science and technology.

20. By the Fifth Review Conference two important areas of activity emerging from the discipline of phytopathology had been identified as being of particular significance to the Convention, those being related to the production of Plant Inoculants and Biocontrol Agents. Both areas are of relevance to the Convention due to the ease with which each could easily be diverted to hostile use for biological warfare against plants and crops.

21. Plant inoculants are formulations, containing living microorganisms, used in the treatment and propagation of seeds and plant propagation materiel for enhancing growth and disease resistance in plants, and for use in the restoration of ground microflora. Biocontrol agents are living organisms, such as bacteria, fungi, insects, mites, or weeds, or microorganisms that are utilized in the control of other organisms and microorganisms. Scientific and technological developments relating to each of the above fields and the relevance of such developments to the BTWC are addressed in the paragraphs that follow.

22. \textit{Plant Inoculants}. Research into formulations containing nutrients that are essential for plant growth, such as nitrogen, phosphate and other nutrients (14 other nutrients are essential to plant growth), has been conducted for a number of years. However, the first combination formulation containing nitrogen and phosphate only become available in 1996. \textit{Rizobia} bacteria are most commonly associated with nitrogen-producing formulations, whereas, fungi

\textsuperscript{72} Simon M. Whitby, \textit{Biological Warfare against Crops}, Palgrave, London, 2001
\textsuperscript{73} Paul Rogers, Simon Whitby and Malcolm Dando, Biological warfare against crops. \textit{Scientific American}, June 1999.
such as Vascular Arbuscular Mycorrhiza (VAM) and *Penicillium bilaii* are used in formulations designed to increase the uptake of phosphates. Such formulations are now available as both natural and recombinant plant nutrients. Plant inoculants act upon the roots of plants directly, and indirectly convert nutrients in the soil surrounding the plant into forms that are more readily available to plant life. Plant inoculants also provide protection against pathogens that are deleterious to the growth of the plant.

23. Plant inoculants are available in both powder and liquid formulations with powder formulations such as sterile peat-based formulation being applied direct into crop furrows and liquid formulations that may be delivered to crops via irrigation systems. Unsophisticated technology is required for the production of the former which is popular in developing countries as large quantities of this kind of inoculant can be produced with unsophisticated means. However, production of the latter requires sophisticated means of production including industrial fermenters, centrifuges and related equipment.

24. The sophistication of plant inoculant production facilities is increasing and, as in the case of vaccine production, such facilities are of relevance to the Convention. Future developments in regard to the delivery methods for inoculants in both dried (powder) and liquid (aerosolized) forms may further increase the relevance of developments relating to plant inoculants. Further to this, scientific and technological advances relating to the genetic manipulation of microorganisms that form the active ingredients of plant inoculants may enhance their effectiveness and consequently their relevance to the Convention.

25. **Biocontrol Agents.** Exacting environmental, seasonal and temporal conditions are required for the successful application of biocontrol agents. Three main approaches to biocontrol have been identified: the classical approach; augmentation; and conservation. The first approach involves the identification of a specific biocontrol agent, either bacteria, fungi, insects, mites, or weeds, or microorganisms, to which a specific plant disease, pest or unwanted plant is susceptible. The second approach, known as augmentation, involves a practice that is intended to increase the number of natural enemies to plant diseases, pests or unwanted plants and may include the breeding of biocontrol agents and their subsequent release against a target. The third approach is referred to as conservation of natural enemies and concerns the identification and control of factors that act to reduce the effectiveness of the biocontrol agent. The effectiveness of a biocontrol agent against a plant disease, pest or unwanted plant is greatest if introduced as a preventative measure prior to the target becoming established.

26. Biocontrol agents are being increasingly applied in order to control plant disease, pests or unwanted plants. Application of biocontrol agents has taken place in circumstances where alien plants have become established due to the absence of natural enemies but are regarded by States to be pests. The use of biocontrol agents has been envisaged in connection with the destruction of already well-established narcotics crops. In this connection, *Fusarium* fungi (affecting cannabis and coca) and *Pleospora* fungi (affecting poppy plants) have been envisaged as potential biocontrol agents.\(^\text{75}\)

27. However, concern has been expressed over the dual-use nature of biocontrol agents. Whilst ideal biocontrol agents will be those that are highly effective against their intended target, and have low levels of susceptibility to the environmental circumstances into which

they are released, a question mark must remain over the specificity of the biocontrol agent until it has been shown that such agents do not affect unintended targets. Biocontrol agents are difficult to apply and care must be taken in regard to their application.

28. In summary, plant inoculants are of relevance to the Convention in terms of:

- Rapidly advancing industrial production facilities which could easily be diverted to the production of plant inoculants for hostile purposes.
- Increasing emphasis on research into genetic manipulation of plant inoculants in order to increase their effectiveness.
- Developments in regard to the potential for large-scale dissemination of liquid inoculants agents through aerosolisation.

29. Biocontrol agents are of relevance to the BTWC in terms of:

- The dual-use nature of biocontrol agents and the ease with which research and development and the application of such agents could be adapted for hostile uses.
- The application of biocontrol agents requiring great scrutiny and control as undesired plant pests, weeds and plants in one country may be of commercial value and significance in another country.
- Industrial developments in regard to the increased sophistication of production facilities having the potential for being diverted for hostile uses.

Language should be included in the Final Declaration of the Review Conference making it clear that the use of plant inoculants and biocontrol agents for purposes inconsistent with the objectives and provisions of the Convention are covered by the prohibition in Article I.

Animal Disease

30. The experience in 2001 of the prion disease BSE, and the Foot and Mouth Disease (FMD) epidemic, in the United Kingdom graphically illustrated the potential impact of animal diseases on livestock industries. Given the very narrow genetic diversity\(^76\) of most animal husbandry stocks, and the virulence of major diseases such as FMD, they provide an ideal target also to bioterrorism.\(^77\) The rate of increase in the knowledge of these genomes and therefore their potential malign manipulation remains high. It is therefore essential that the inclusion in the prohibition of anti-animal attacks is re-emphasised at the Review Conference.

Background Paper on Science and Technology for the Fifth Review Conference


\(^77\) See Agricultural Research Service, United States Department of Agriculture at http://www.mipt.org/pdf/puttingcttoworkappendixk.pdf
31. The ongoing developments in science and technology were reviewed in the contributions submitted by a number of States Parties for the background paper on science and technology issued in 2001 prior to the Fifth Review Conference. The background paper for the 2001 Review Conference had contributions from five countries: Bulgaria, South Africa, Sweden, the UK and the United States.

32. The Bulgarian contribution outlined some activities within Bulgaria relevant to the Convention. The South African contribution began by noting that there were many developments relevant to the Convention, but signalled its intention to deal just with biocontrol agents and plant inoculants. After a thorough review of these issues, the South African contribution concluded that there were many aspects of concern. For example, in regard to plant inoculants:

   A growing industry and more sophisticated production facilities that have the potential to be diverted to BW-producing facilities, as in the case of vaccine production facilities.

   and:

   The development of liquid inoculants that will make their application by spraying and aerosolisation a possibility.

   South Africa concluded by stating that:

   It is clear that plant inoculants and biological control of plant pests, weeds and plants are relevant to the BWC and, therefore, their references to them should be included in the final declaration on Article I.

33. Sweden began its contribution to the background paper with the observation that:

   The development within the field of biotechnology continues to be fast and innovative especially in the field of medicine. Part of this development is of concern to the BWC...

   It added:

   Our understanding of the molecular mechanisms of microbial infections has increased immensely over the last decade...

   Sweden also referred to the well-known inadvertent outcome of the Australian mousepox experiment and pointedly suggested that it showed that even inadvertent outcomes of peaceful research could “play into the hands of those with malevolent aims.” In general, Sweden concluded that:

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Since the last Review Conference in 1996 the research in the field of biotechnology and molecular biology has entered a new and more complex era. Huge amounts of knowledge concerning basic principles of life have found worldwide applications....While these developments have been and are mostly beneficial they can also be misused...

The contribution from Sweden appeared to be agreeing with the widely-held view that, in some senses, the completion of the Human Genome Project had signified the translation of biology and associated sciences into a new and more powerful state. Sweden concluded its contribution by stating that:

**Sweden is of the understanding that Article I of the Convention is sufficiently comprehensive and covers the current developments in areas relevant to it.**

34. The UK provided the largest contribution to the background paper. The 29 page contribution had sections on:

- Genomics and proteomics;
- Bioinformatics;
- Human Genome Project and human diversity;
- Gene therapy;
- Virulence and pathogenicity;
- Vaccines and novel therapies;
- Recombinant protein expression;
- Toxins and other bioactive molecules;
- Detection and identification technologies;
- Human infectious disease patterns;
- Smallpox destruction;
- Drug resistance;
- Disease in agriculture;
- Pest control in agriculture;
- Global initiatives to tackle disease;
- Molecular biology applications and crops;
- Trends in protein production technologies;
- International co-operation and biosafety: activities under the Biodiversity Convention;
- Means of delivery of agents or toxins;
- Use of pathogens to control weeds and ‘criminal’ crops;
- Bioremediation: the destruction of materiel;
- Countering the threat of bioterrorism;
- Impact of the entry into force of the CWC.

The UK contribution concludes in its final paragraph prior to the detailed appendix that:

**Throughout the various studies and consultations carried out by the UK to inform this review, it has been clear that the rate of change in science and technology fields relevant to the BTWC has been much greater than in the previous five-year period, that is between the third and fourth Review Conferences.**

This concluding paragraph continues by stating that:
A number of advances in scientific knowledge and its applications could be of consequence for the provisions of the BTWC. Given the accelerating pace in science and technology, the UK wonders whether it is prudent to maintain a five year gap between such assessments under the BTWC. The UK suggests that the upcoming Review Conference consider establishing a mechanism for States Parties to work together on a more frequent basis to conduct such scientific and technical reviews and to consider any implications at the necessary level of expertise.

35. The contribution from the United States to the background paper refers many times to the rapid developments in science and technology relevant to the BTWC. In its second paragraph, the contribution states that:

   Since the 4th Review Conference in 1996, there have been significant advances in the field of biotechnology. The major advances have occurred in the fields of genetic modification, genomics, proteomics, bioremediation, biocontrol agents, vaccine development and bioinformatics...

   It continues:

   ...Of special interest to the BWC are applications in directed molecular evolution (i.e. genetic modification), proteomics, bioinformatics, and vaccinology...

   These issues are addressed in some detail in the United States contribution. In the opinion of the United States, for example in regard to bioinformatics:

   The first and most striking change in the last 5 years has been the amount of genetic information available worldwide....

   Second, is the rapid increase in information technology that enables discovery of new constructs and their interrelationships to others on readily available low-cost computer equipment...

   and in regard to microbial genetics:

   Since the publication of the Haemophilus influenzae genome in 1995, the sequences of close to 30 microbial genomes have been completed during the past 5 years, and the sequences of more than 100 genomes, including several traditionally considered to be agents capable of being developed as biological weapons, should be completed within the next 2 to 4 years...

36. The United States contribution goes on to state that “[s]cience, particularly in the biological and genomic areas, has advanced at incredible speed during the last 5 years, in large measure due to the stimulus of the Human Genome Project.” This reflects the fact that this project did move biology in the direction of ‘Big Science’ with huge funding and co-ordinated direction towards a particular goal. The point is made in the summary of the US contribution where it is indicated that the advances in the biological sciences have been enabled by parallel advances in other sciences and “large-scale, international collaborative efforts.”

37. The United States contribution concluded by stating that:
Since the last Review Conference in 1996, remarkable progress has been made in the life sciences, particularly in the fields of genetic modification, genomics, proteomics, bioremediation, biocontrol agents, vaccine development and bioinformatics. The progress made in these areas of biotechnology has been enabled by parallel advances in other disciplines, especially, physics, chemistry, computational sciences, engineering sciences, and materials sciences, and is marked by large-scale, international collaborative efforts. While we cannot predict the future of the technologies referenced in this document; we can assume that most are relevant to the Biological and Toxin Weapons Convention (BWC).

and that:

The United States continues to believe that all of the scientific and technological developments described above are encompassed comprehensively under Article I of the BWC, which in turn places them within the purview of the Convention.

Responsibilities of scientists in the life and associated sciences

38. A further development in the context of the advances in science and technology relevant to the Convention has been in relation to the responsibilities of the scientific communities. It will be recalled that the eighth paragraph of the Final Declaration agreed by the Fourth Review Conference stated:

8. 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.

39. Two reports by the United States National Academies of Science have further emphasised the responsibilities of scientists in the life and associated sciences. One report – known as the ‘Fink Committee’ report – in 2004 addressed the problem of advanced biological research activities potentially causing disruption or harm through subsequent misuse through theft or diversion of the dangerous agents that are the subject of research or because of the knowledge or techniques developed facilitating the creation of dangerous new threat agents. The committee's remit concentrated on reviewing the current situation in the United States and making recommendations for its improvement.

40. The Fink Committee crucially recommended that the established system in the United States of review of experiments involving recombinant DNA conducted by the National Institutes of Health be augmented to review seven classes of experiments – Experiments of Concern – involving microbial agents that could raise anxieties about their future potential for misuse. These experiments were those that:

1. Would demonstrate how to render a vaccine ineffective. This would apply to both human and animal vaccines. Creation of a vaccine resistant smallpox virus would fall into this class of experiments.

2. Would confer resistance to therapeutically useful antibiotics or antiviral agents.

This would apply to therapeutic agents that are used to control disease agents in humans, animals, or crops. Introduction of ciprofloxacin resistance in Bacillus anthracis would fall in this class.

3. **Would enhance the virulence of a pathogen or render a nonpathogen virulent.** This would apply to plant, animal, and human pathogens. Introduction of cereolysin toxin gene into Bacillus anthracis would fall into this class.

4. **Would increase transmissibility of a pathogen.** This would include enhancing transmission within or between species. Altering vector competence to enhance disease transmission would also fall into this class.

5. **Would alter the host range of a pathogen.** This would include making nonzoonotics into zoonotic agents. Altering the tropism of viruses would fit into this class.

6. **Would enable the evasion of diagnostic/detection modalities.** This could include microencapsulation to avoid antibody-based detection and/or the alteration of gene sequences to avoid detection by established molecular methods.

7. **Would enable the weaponization of a biological agent or toxin.** This would include the environmental stabilization of pathogens. Synthesis of smallpox virus would fall into this class of experiments.

The committee noted that the seven areas of concern addressed only potential microbial threats. They pointed out that modern biological research is much broader, encompassing all of the health sciences, agriculture and veterinary science, and a variety of industrial applications. Moreover, all of these areas are changing rapidly. The great diversity as well as the pace of change make it imprudent to project the potential both for good and ill too broadly and too far into the future. Consequently the Committee initially limited its concerns to cover those possibilities that represent a plausible danger and has tried to avoid improbable scenarios. Over time, however, the Committee believed that it will be necessary to expand the experiments of concern to cover a significantly wider range of potential threats.

41. Significantly, the Fink Committee also concluded that a national board should be set up in the United States in order to provide advice, guidance and leadership for the new system of review. Subsequently the Administration accepted this recommendation and a National Science Advisory Board for Biosecurity (NSABB)80 has been grappling with the complex issues involved since 2005. Its four open meetings (in June/July and November 2005, March and July 2006) are available as webcasts and it has a subsequent series of five meeting scheduled through to early 2008.

42. A second report81 in 2006 clearly built on the work of the Fink Committee, but its focus was global rather than just on the United States. This report addressed advances in the life and associated sciences that might alter the biological threat spectrum over the next 5 to 10 years. The committee argued that it was difficult to predict what might happen over even this short period given the nature of the changes occurring in the life sciences. However, the committee classified the advances under four headings:

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80 NSABB information available at www.biosecurityboard.gov/
Acquisition of novel biological or molecular diversity;
Directed design;
Understanding and manipulation of biological systems; and
Production, delivery, and packaging.

as they considered that this classification would help, for example, in making predictions about future emerging technologies.

43. Thus, under the heading of "Acquisition of Novel Biological or Molecular Diversity", the committee paid particular attention to the important developments in DNA synthesis capabilities. The biotechnology advances of recent decades have relied on increasing capabilities for rapid and inexpensive sequencing of DNA but now major efforts are being made in an attempt to gain similar capabilities in DNA synthesis. The chemical synthesis of polio virus genome in 2002, whilst only requiring about 7,500 nucleotides to be assembled, brought the possible misuse of the technology into the security debate but, as the report notes, this was rapidly overshadowed by further syntheses and technical advances. Any doubts about the potential hazards involved were removed when, in late 2005, it was announced that the genome of the 1918 Spanish influenza - an extinct virus that had probably killed more human beings in one epidemic that any other microbe - had not only been sequenced but also synthesised.\(^{82}\)

44. Two of the committee’s recommendations are of particular interest. Following on from the Fink Committee’s concerns over a broadening of the threat spectrum in the future, the second recommendation of this report was that the threat spectrum had already grown far beyond microbes and toxins:

2. The committee recommends adopting a broader perspective on the “threat spectrum.”

2a. Recognize the limitations inherent in any agent-specific threat list and consider instead the intrinsic properties of pathogens and toxins that render them a threat and how such properties have been or could be manipulated by evolving technologies.

2b. Adopt a broadened awareness of threats beyond the classical “select agents” and other pathogenic organisms and toxins, so as to include, for example, approaches for disrupting host homeostatic and defense systems and for creating synthetic organisms.

The committee also stressed the increasing responsibilities of scientists in such circumstances:

4. The committee recommends the adoption and promotion of a common culture of awareness and a shared sense of responsibility within the global community of life scientists.

4a. Recognize the value of formal international treaties and conventions, including the 1972 Biological and Toxin Weapons Convention (BWC) and the

The committee has clearly recognized the importance globally of emphasizing the need for an increasing awareness of the potential dangers and of responsibilities.

Non-Compliance

45. At previous Review Conferences concerns over non-compliance by States Parties have been expressed. Such concerns were reflected in the ninth paragraph of the Article I section in the Final Document of the Fourth Review Conference which stated:

9. 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 agrees that the application by States Parties of positive approaches in accordance with the provisions 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. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

46. Compliance with the Convention has continued to be a concern especially in the United States which in the Presidential report to the US Congress in August 2005 on compliance addresses the activities of eight countries: China, Cuba, Iran, Iraq, Libya, North Korea, Russia (and the former Soviet Union) and Syria. The conclusions reached by the United States are that that China maintains some elements of an offensive BW capability in violation of its BTWC obligations, that the situation in regard to Cuba is unclear, that Iran has an offensive biological weapons program in violation of the BTWC, that Iraq, during Saddam Hussein’s regime, pursued an active offensive BW development program and that various aspects of this program violated its obligations under the BTWC, that Libya no longer has an offensive biological weapons program, that North Korea has a dedicated, national level effort to develop a BW capability and has developed, produced, and may have weaponized for use, BW agents in violation of the BTWC, that Russia, based on all available evidence, continues to maintain an offensive BW program in violation of the Convention and that Syria is developing an offensive biological warfare capability that would constitute a violation of the BTWC if Syria were a State Party. It is, however, welcomed that the Presidential report to the Congress now includes for each country a section on ‘Compliance-Related Dialogue and Analysis’ which gives some indication of whether the United States has engaged bilaterally

83 Graham S. Pearson and Malcolm R. Dando (eds), Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference, University of Bradford, Department of Peace Studies, November 1996. Available at http://www.brad.ac.uk/acad/sbtwc
84 United States, Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments. Department of State, Washington, D.C., August 2005
with the State concerned regarding the US concerns. It can be expected that the United States will refer to these concerns in its statement during the General Debate and the Sixth Review Conference. However, it should also be noted that concerns have also been raised by some commentators\(^85\) over whether certain parts of the vast increase in US biodefence activities during the past few years might be misperceived by other countries unless very careful measures are taken by the United States to ensure adequate transparency in their CBM declarations. The posting of CBM declarations on the web by the United States and other States Parties is to be particularly welcomed in this context.

47. At a workshop held in Prague, Czech Republic in May 2001 entitled “New Scientific and Technological Developments of Relevance to the Biological and Toxin Weapons Convention” it was noted\(^86\) that Article I (2) of the Convention has language relating to delivery systems:

\[
\text{Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:}
\]

- (1) Microbial or other biological agents, or toxins, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

This second element of Article I contains no qualifying clause on types and quantities, unlike the first element – highlighted in bold above. Consequently any language crafting an extended understanding of delivery systems - Article I (2) - has to be carefully worded to avoid any weakening of the prohibition.

48. The Article I section of the Final Declaration of the Fourth Review Conference in 1996 contained two paragraphs related to this:

\[
4. \text{The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, in order to exclude completely and forever the possibility of their use.}
\]

and

\[
7. \text{The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to man, animals or plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.}
\]

\(^{85}\) Petro, J. B. and Carus, W. S. (2005), Biological threat characterization research: A critical component of national biodefense. *Biosecurity and Bioterrorism*, 3 (4), 295-308. See also correspondence between Tucker, J. and the authors in *Biosecurity and Bioterrorism*, 4 (2), 195-199 and 200-203.

These paragraphs are important because a number of issues have arisen which may be considered ‘grey areas’ in which the question of compliance/non-compliance is not easily judged.

49. The first issue relates to the growing capabilities for the delivery of biological agents both through improved methods of drug delivery by oral and nasal routes and through improving capabilities to use microbial agents as vectors (carriers) for other biological agents, for example, in gene therapy treatments for cancer. Both of these improving capabilities for vectorization are obviously easily susceptible to dangerous misuse. It was therefore suggested at the Prague workshop\(^\text{87}\) that the seventh paragraph of the Final Document of the 1996 Fourth Review Conference might usefully be amended to read:

> 7. The Conference notes that vectorization and experimentation involving open-air release of pathogens or toxins harmful to man, animals or plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

50. Similarly, concerns have been raised over the possible misuse of biological agents in programmes aimed at the eradication of drug crops in conflict-prone regions of the world.\(^\text{88}\) It was therefore suggested at the Prague workshop that in view of the very rapid increase in capabilities in biological control of plants that are presently underway it would also be sensible to add biological control to extend the understanding of Article I to read:

> 7. The Conference notes that biological control, vectorization and experimentation involving open-air release of pathogens or toxins harmful to man, animals or plants that have no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

51. Finally, suggestions have been made that efforts in the United States to replicate key parts of a biological bomb designed in the former Soviet Union raise issues in regard to possible non-compliance with Article I of the BTWC.\(^\text{89}\) Whatever the merits of the different arguments in this case it does reinforce the need for the Review Conference to reconfirm the fourth paragraph of the 1996 Final Document which dealt specifically with weapons, equipment or means of delivery designed for hostile purposes. This paragraph states that:

> 4. 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 their use.

This particular case underlines also the essential need for mechanisms through which States Parties can demonstrate their compliance with the Convention and through which possible ambiguities, anomalies and uncertainties can be addressed.

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\(^{87}\) Graham S. Pearson, New Scientific and Technological Developments of Relevance to the Fifth Review Conference. Review Conference Paper No. 3, Department of Peace Studies, University of Bradford, July 2001. Available at http://www.brad.ac.uk/acad/sbtwc

\(^{88}\) Paul Rogers, Simon Whitby and Malcolm Dando, Biological warfare against crops. Scientific American, June 1999.

Other Issues

52. The accelerating genomics revolution and the spread of biotechnology capabilities around the world brings the responsibilities of biomedical scientists and technologists into sharp focus. As we have noted, the mousepox experiment in Australia has led a scientific advisor in the United States to raise the question of whether open future publications of such work are sensible.\(^9\) In his statement of 1 November 2001 President Bush proposed\(^9\) a number of measures to strengthen the Convention which included proposals regarding the monitoring and possible regulation of national biomedical communities. He proposed that all States Parties should, _inter alia_: 

- Establish sound national oversight mechanisms for the security and genetic engineering of pathogenic organisms;
- Devise a solid framework for bioscientists in the form of a code of ethical conduct that would have universal recognition; and
- Promote responsible conduct in the study, use, modification, and shipment of pathogenic organisms

53. These proposals suggest that the biomedical community worldwide will need to give much greater consideration to the potential misuse of its work than it has done in the past.\(^9\) The Review Conference might with advantage draw attention to the responsibilities of biomedical scientists and technologists, and the professional associations, by adding a sentence to the eighth paragraph in the Article I section of the Final Document of the 1996 Review Conference so that it reads:

> 8. 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. The Conference emphasised the responsibilities of individual scientists and technologists, and their professional associations, in supporting the Convention and preventing misuse and urged them to develop effective mechanisms of self-monitoring and awareness raising.

The fact that anthrax has been used in terrorist attacks in the United States\(^9\) and that there are concerns that smallpox\(^9\) might be used as a terrorist weapon emphasises how important this issue of responsibility of scientists in the biomedical community has become.

**Issues for the Sixth Review Conference**

54. The Article I issues for the Sixth Review Conference will be the impact of scientific and

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technological changes, the possibility of non-compliance, and other issues topical at the time of the Review Conference.

The Impact of Scientific and Technological Changes

55. States Parties will wish to reaffirm that the scope of the Convention covers all scientific and technological developments. However, as the genomics revolution enters the consolidation phase and major developments are taking place across the whole range of biology and medicine at an increasing pace, it would be desirable to provide further reaffirmation that all such developments are embraced by the Convention.

56. Three particular issues should be considered important enough to be addressed through the addition of new language. First, it is clear that the scientific and technological developments that could be of concern apply to animals and plants as well as to human beings. Second, as the genomics revolution is impacting on all aspects of biology and medicine, the process of adding discrete new topics that are causing apprehension could be misleading. It would be clearer and better to use language making it clear that developments throughout the whole of the life sciences could potentially be of concern. This could then be complemented with an explanatory sentence mentioning some of the specific recent areas in which significant advances have occurred along the lines of "Consequently, genomics, proteomics, synthetic biology and bioinformatics are covered."

57. These first two issues could be addressed by amending the sixth paragraph from the Fourth Review Conference so that it reads:

6. The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the life sciences in animals and plants as well as in humans, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertakings given by the States Parties in Article I applies to all such developments. Consequently, genomics, proteomics, synthetic biology and bioinformatics are covered.

These additions highlighted above would make it clear that humans, animals and plants are all protected by the prohibition and remove any uncertainty as to the relative importance of different aspects of the life sciences for the prohibition.

58. Thirdly, in view of growing knowledge of the dangers of prion diseases, the increasing capabilities for manipulation of receptors and ligands in the nervous, endocrine and immune systems, and the growing understanding of how proteins may be designed for particular purposes, the States Parties are recommended to extend the fifth paragraph of the Final Declaration of the Fourth Review Conference. As with the addition of an explanatory sentence on toxins in the Final Declaration95 of the Second Review Conference which read:

The Conference reaffirms that the Convention unequivocally applies to all natural or artificially created microbial or other biological agents or toxins whatever their

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origin or method of production. Consequently, toxins (both proteinaceous and non-proteinaceous) of a microbial, animal or vegetable nature and their synthetically produced analogues are covered.

it is recommended that an explanatory sentence should be added at this Review Conference on prions, bioregulators and proteins. The additional text would then read:

**Consequently, prions, proteins and bioregulators and their synthetically produced analogues and components are covered.**

This additional sentence would eliminate any doubt as to the scope of the Convention in covering these rapidly developing fields of the life sciences.

59. As it is clear that dramatically new capabilities in synthetic biology will increasingly allow the recreation of extinct organisms and the creation of novel ones, it is therefore important to ensure that synthetic biology, and any applications from synthetic biology, are understood to be covered by the prohibition embodied in the Convention and in the extended understandings of Article I developed at successive Review Conferences. It is recommended that the language adopted at the Sixth Review Conference in this part of the Article I section should be developed from that of the Second Review Conference as the phrase “all natural or artificially created microbial or other biological agents or toxins” makes it unequivocally clear that any advances from synthetic biology are indeed covered. This formulation is much to be preferred over that adopted at the Fourth Review Conference “all microbial or other biological agents or toxins, naturally or artificially created or altered” as the position of the comma might erroneously imply that toxins alone are covered by the words “naturally or artificially created or altered” which is not so.

Non-Compliance

60. It is recommended that the language to be adopted at the Sixth Review Conference should be developed from that adopted at the Fourth Review Conference. In particular, following the anthrax attacks in the United States and the widespread concern about such attacks, emphasis on compliance with Article IV should now be added to the previous emphasis on Articles I, II and III.

Other Issues

61. The rapid spread of advanced biotechnology capabilities around the world, the potentially dangerous nature of some experimentation undertaken by the biomedical community and the breaking of the taboo on using biological agents in terrorism point to the need for much more responsible behaviour by the biomedical community in support of the Convention. It is recommended that the Conference emphasises this responsibility and urges individuals and their professional associations to be much more proactive in raising awareness of the dangers and introducing effective mechanisms of self-monitoring.

**Language for the Sixth Review Conference Final Declaration**

62. It is recommended that the language of the Sixth Review Conference in the Article I section of the Final Declaration should be developed from that adopted at the Fourth Review Conference with the amendments highlighted in bold:
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 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 their use.

5. The Conference also reaffirms that the Convention unequivocally covers all natural or artificially created or altered microbial or other biological agents or toxins, 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. Consequently, prions, proteins and bioregulators and their synthetically produced analogues and components are covered.

6. The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the life sciences in animals and plants as well as in humans, 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. Consequently, genomics, proteomics, synthetic biology and bioinformatics are covered.

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

8. 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. The Conference emphasises the responsibilities of individual scientists and technologists, and their professional associations, in supporting the Convention and preventing misuse and urges them to develop effective mechanisms of self-monitoring and awareness-raising.

9. 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, III and IV. The Conference agrees that the application by States Parties of positive
approaches in accordance with the provisions of the Convention is in the interest of all States Parties and that any noncompliance with its provisions could undermine confidence in the Convention. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

**ARTICLE II: DESTRUCTION OF AGENTS AND WEAPONS**

by Graham S Pearson

Consideration of Article II at the Fourth Review Conference

1. Article II of the Convention states that:

   Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration
d in respect of Article II stated that:

   1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.

   2. The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Third Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.

   3. The Conference notes that the submission to the Centre for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.

   4. The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

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3. This Final Declaration had two new additional paragraphs -- the first and third -- to the two paragraphs -- the second and fourth -- which were closely similar to the two paragraphs of the Final Declaration\(^\text{97}\) of the Third Review Conference:

*The Conference notes the importance of Article II and welcomes the statements made by States which have become parties to the Convention since the Second Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention. The Conference believes that such statements contribute to enhancing confidence in the Convention.*

*The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.*

**Developments since the Fourth Review Conference**

4. Since the Fourth Review Conference a number of States have become States Parties to the Biological and Toxin Weapons Convention and may have made comparable statements of non-possession.

5. A further development since the Fourth Review Conference has been the entry into force of the Chemical Weapons Convention (CWC)\(^\text{98}\). The consideration of production facilities in the CWC is markedly different from that in the Biological and Toxin Weapons Convention (BTWC). This difference is examined here and consideration is given to how this anomaly might be remedied by language in the Final Declaration to be adopted by the Fifth Review Conference.

**Production Facilities in the BTWC**

6. There is no explicit mention of "production facilities" in the BTWC. The basic prohibition in Article I is all embracing in respect of both biological agents and the means of delivery:

> *Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:*

> 

> (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;*


(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

7. Article II places an undertaking on States Parties to destroy, or divert to peaceful purposes, all biological agents, toxins, weapons and means of delivery in a safe way:

*Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.*

8. Article IV obliges each State Party to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents specified in Article I:

*Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.*

It can be argued that it is thus implicit that there should be no biological weapons production facilities within a State Party and that any such facilities should, in accordance with Article II, have been destroyed or diverted to peaceful purposes upon entry into force of the Convention for a State Party.

**Production Facilities in the CWC**

9. In contrast to the BTWC, there is considerable explicit attention paid in the CWC to chemical weapon production facilities (CWPF) with a specific undertaking in Article I *General Obligations* obliging each State Party to destroy any CWPF:

4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.

Furthermore Article V *Chemical Weapons Production Facilities* sets out the specific requirements relating to CWPF with detailed requirements for the implementation of this Article being specified in the Verification Annex *Part V: Destruction of Chemical Weapons Production Facilities and its Verification Pursuant to Article V*.

10. It is clear from the CWC that the intention is that CWPF should be destroyed. However, there is provision for a State Party to request, in exceptional cases of compelling need, permission from the Conference of the States Parties to use the CWPF for purposes not prohibited under the Convention as elaborated in paragraphs 13 to 15 of Article V:

13. A State Party may request, in exceptional cases of compelling need, permission to use a chemical weapons production facility specified in paragraph 1 for purposes not prohibited under this Convention. Upon the recommendation of the
Executive Council, the Conference of the States Parties shall decide whether or not to approve the request and shall establish the conditions upon which approval is contingent in accordance with Part V, Section D, of the Verification Annex.

14. The chemical weapons production facility shall be converted in such a manner that the converted facility is not more capable of being reconverted into a chemical weapons production facility than any other facility used for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes not involving chemicals listed in Schedule 1.

15. All converted facilities shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part V, Section D, of the Verification Annex.

11. Detailed procedures for the conversion of CWPF are set out in the Verification Annex, Part V, Section D. Conversion of Chemical Weapons Production Facilities to Purposes not prohibited under this Convention. This includes procedures for requesting conversion, actions pending a decision, conditions for conversion, decisions by the Executive Council and the Conference of States Parties, detailed plans for conversion and a review of the detailed plans. It also includes provision for verification for a minimum of 10 years after the Director-General has certified that conversion is complete:

85. For the 10 years after the Director-General certifies that conversion is complete, the State Party shall provide to inspectors unimpeded access to the facility at any time. The inspectors shall have the right to observe all areas, all activities, and all items of equipment at the facility. The inspectors shall have the right to verify that the activities at the facility are consistent with any conditions established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right, in accordance with provisions of Part II, Section E, of this Annex to receive samples from any area of the facility and to analyse them to verify the absence of Schedule 1 chemicals, their stable by-products and decomposition products and of Schedule 2 chemicals and to verify that the activities at the facility are consistent with any other conditions on chemical activities established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right to managed access, in accordance with Part X, Section C, of this Annex, to the plant site at which the facility is located. During the 10-year period, the State Party shall report annually on the activities at the converted facility. Upon completion of the 10-year period, the Executive Council, taking into account recommendations of the Technical Secretariat, shall decide on the nature of continued verification measures.

Analysis

12. Although it is interesting to speculate why the treatment of production facilities under the BTWC and the CWC is so different⁹⁹, it is nevertheless a clear difference and one which

⁹⁹The different treatment may well reflect the negotiation of the CWC in a situation where at least two States -- the USA and the Soviet Union -- were admitted possessors of chemical weapons and thus the continued possession of chemical weapon production facilities presented a clear risk to the Convention. In contrast, the BTWC was negotiated at a time when arms control treaties were still short documents without any detailed provisions for verification or for monitoring of compliance, following the unilateral abandonment by the United States of its biological and toxin weapons and of its production facilities and without any admission by the Soviet Union of its biological weapon capabilities.
should be addressed as the continued existence of biological weapons production facilities presents undoubted risks to the BWC. Although it had been proposed\textsuperscript{100} that the regime being negotiated in 1994 to 2001 to strengthen the effectiveness and improve the implementation of the Convention should subject past biological weapons facilities, particularly those remaining in government ownership, to an appropriate compliance monitoring regime, paralleling that under the CWC, this was not been taken forward by these negotiations. Although the rolling text and the Chairman's composite text\textsuperscript{101} included requirements for the declaration of a past offensive biological weapons programme including a list of all facilities, including test ranges, that participated in such programmes and/or activities, there were no provisions for a compliance monitoring regime for past offensive biological weapons facilities as such.

13. Examination of the obligations in Articles I, II and IV of the Convention makes it clear that States Parties are required to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention [emphasis added] and thus that there is an implicit requirement to ensure that all facilities which participated in past offensive biological weapon facilities are converted or destroyed.

14. It is suggested that a useful strengthening of the BTWC regime could be achieved by the Sixth Review Conference in its Final Declaration adopting language that would affirm the requirement for the conversion to peaceful purposes or destruction of all facilities which participated in past offensive biological weapon programmes and/or activities. This could readily be achieved by extending the language adopted in the Final Declaration for Article II which at the Fourth Review Conference declared that:

\begin{quote}
\textit{The Conference recognizes that for any State acceding to the Convention after entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.}
\end{quote}

The second sentence should be extended so that it reads as follows:

\begin{quote}
\textit{The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.}
\end{quote}

State Party declaration of biological weapons programmes

15. On 19 December 2003, the government of Libya, a State Party to the BTWC, announced that it had decided to “be completely free of internationally proscribed weapons.” and its

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intention to comply fully with the Biological and Toxin Weapons Convention. The United States Department of State Fact Sheet stated that Libya’s historic decision was preceded by months of behind the scenes negotiations with the United States and the United Kingdom as well as visits by US and UK experts to Libyan WMD and missile facilities. It went on to say that following the 19 December 2003 statement Libya looked to the US and the UK and relevant international bodies for assistance in implementing its decision and verifying its eliminations. A comprehensive verification effort was conducted from January through September 2004. Insofar as biological weapons are concerned the Fact Sheet states that:

- Libya provided full access to its biological facilities and personnel, and answered all questions from experts.
- Libya reaffirmed its commitment to the BWC, and agreed to submit BWC Confidence Building Measures by April 2005.

16. No further information is provided about the Libyan biological facilities or whether they have been destroyed or diverted.

**Issues for the Sixth Review Conference**

17. It is therefore recommended that the Fifth Review Conference should adopt similar language to that in the Final Declaration of the Fourth Review Conference whilst extending the first paragraph to reaffirm that any past biological weapons facilities should be destroyed or diverted:

1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.

2. The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Fourth Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.

3. The Conference notes that the submission to the Department for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.

4. The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.
ARTICLE III: NON-TRANSFER

by Graham S. Pearson & Nicholas A. Sims

Consideration of Article III at the Fourth Review Conference

1. Article III of the Convention states that:

   Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\(^{102}\) in respect of Article III stated that:

   1. The Conference notes the 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.

   2. The Conference notes that a number of States Parties stated that they have already 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 Third 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.

   3. The Conference discussed the question whether multilaterally-agreed guidelines or multilateral guidelines negotiated by all States Parties to the Convention concerning the transfer of biological agents, materials and technology for peaceful purposes to any recipient whatsoever might strengthen the Convention. In the development of implementation of Article III, the Conference notes that States Parties should also consider ways and means to ensure that individuals or subnational groups are effectively prevented from acquiring, through transfers, biological agents and toxins for other than peaceful purposes. The Conference notes that these issues are being considered as part of the ongoing process of strengthening the Convention.

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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.

3. The four paragraphs in this Final Declaration had developed from the three paragraphs on Article III in the Final Declaration of the Third Review Conference. The first paragraph in the Fourth Review Conference Final Declaration in respect of Article III is identical to the first two sentences of the first paragraph of the Third Review Conference Final Declaration. It should be noted that the reaffirmation of comprehensiveness in the second sentence has been carried forward from the Second Review Conference where it was introduced on the initiative of Finland. As cumulative text it serves an important purpose by effectively extending the concept of "any recipient whatsoever" from the prohibition on transfer alone to the prohibitions on assistance, encouragement and inducement too. The second paragraph was developed from the third and fourth sentences of the first paragraph of the Third Review Conference Final Declaration with the addition of the words shown in bold in the following: "a number of States Parties stated that they have already 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 Third Review Conference." The final sentence of the Third Review Conference Final Declaration stating that "The implementation of this Article with respect to such transfers should continue to be the subject of multilateral consultation" was developed into a new third paragraph in the Fourth Review Conference Final Declaration. The fourth paragraph in the Fourth Review Conference Final Declaration was essentially the same as that in the Third Review Conference Final Declaration with the addition of the words shown in bold in the following: "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." where the words "under Article X" replaced the previous "to States Parties".

Developments between the Fourth and Fifth Review Conferences

4. The implementation of Article III was one of the contentious topics in the negotiations in the Ad Hoc Group with divergent views being expressed. An analysis in 2001 of several control regimes for dual-use materials:

a. Chemical Weapon Agents and Precursors
b. Banned and Severely Restricted Chemicals
c. Pathogens and Genetically Modified Organisms
d. Narcotic Drugs and Psychotropic Substances
e. Chemical and Biological Terrorism Preparedness

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showed that the monitoring and control of exports and imports in dual-use materials is becoming the standard as more and more countries around the world want to safeguard public health and the environment and thereby promote safety, security and prosperity. The trend is increasingly towards more controls over potentially harmful materials to ensure that these are not misused to cause harm to people or to States.

5. It had been argued in an earlier analysis\(^\text{105}\) in January 2000 that for transfers of biological materials and technology to be made, the obligations under Article III require that an exporting State Party needs to have confidence that the transfer to a State Party is:

a. **only** being used for permitted purposes;

b. **not** being retransferred, without approval, to another facility within the receiving State Party; and

c. **not** being retransferred, without approval, to another State Party.

There are thus three requirements. First, that there should be **transparency** as to what the transferred materials and equipment are being used for. Secondly, there should be **national internal** controls on the facilities within a State Party in which particular agents are handled and on transfers between such facilities. Thirdly, there should be **national** controls of **interstate** transfers from one State Party to other States Parties.

6. Some States Parties to the BTWC have already taken steps to implement controls on transfers of biological materials and equipment that seek to prevent transfers should there be concerns and doubts as to whether the transfers are for legitimate purposes. These States Parties recognize that such controls enhance both their safety and security and that of the international community as misuse of biological materials to attack humans, animals or plants whether by States or by non-State actors will have widespread ramifications and cause harm to many States. Other States Parties have yet to take such steps.

7. Moreover, some States Parties have reviewed and strengthened their existing national controls. For example, following the events of 11 September 2001, the United Kingdom later that year introduced a new Anti-Terrorism, Crime and Security Act\(^\text{106}\) which strengthened the UK law, the Biological Weapons Act of 1974, prohibiting work on biological weapons and introduced new national security controls on pathogens and toxins. The extension of the law on biological weapons included language making it an offence to transfer biological agents or toxins outside the United Kingdom or to assist another person to do so:

\[
(1A) \text{A person shall not—}
\]

\[
(a) \text{transfer any biological agent or toxin to another person or enter into an agreement to do so, or}
\]

\[
(b) \text{make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so, if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other}
\]


peaceful purposes and he knows or has reason to believe that that is the case.”

In addition, language was included to extend UK jurisdiction to offences under the Biological Weapons Act carried out overseas by a UK person:

1A Extraterritorial application of section 1

(1) Section 1 applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.
(2) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.
(3) Her Majesty may by Order in Council extend the application of section 1, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.
(4) In this section “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.

Language was also included to make it an offence for a UK person outside the UK to assist a foreigner to do an act which would, for a UK person, be contrary to the Biological Weapons Act of 1974. Such offences carry a sentence of up to life imprisonment:

Assisting or inducing weapons-related acts overseas

50 Assisting or inducing certain weapons-related acts overseas

(1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene any of the following provisions—

(a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins);
(b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons); or
(c) section 47 above (offences relating to nuclear weapons).

(3) Nothing in this section applies to an act mentioned in subsection (1) which—

(a) relates to a relevant act which would contravene section 47; and
(b) is authorised by the Secretary of State;

and section 48(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section.

(4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any
defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

8. The 2001 security controls identify a list of pathogens and toxins and define a dangerous substance as being one of these pathogens or toxins or anything infected by or a carrier of such pathogens. Notification is required prior to keeping or using any dangerous substance and information can be sought about the security of dangerous substances and the premises in which these are held as well as about persons with access to such dangerous substances. The definition of dangerous substance is as follows:

(4) In this Part “dangerous substance” means—

(a) anything which consists of or includes a substance for the time being mentioned in Schedule 5; or

(b) anything which is infected with or otherwise carries any such substance.

Schedule 5 lists the pathogens and toxins that potentially pose the greatest risk to human life if misused by terrorists – it will be observed that the Notes extend the Schedule to include genetic modifications:

SCHEDULE 5

PATHOGENS AND TOXINS

VIRUSES

Chikungunya virus
Congo-crimean haemorrhagic fever virus
Dengue fever virus
Eastern equine encephalitis virus
Ebola virus
Hantaan virus
Japanese encephalitis virus
Junin virus
Lassa fever virus
Lymphocytic choriomeningitis virus
Machupo virus
Marburg virus
Monkey pox virus
Rift Valley fever virus
Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus)
Variola virus
Venezuelan equine encephalitis virus
Western equine encephalitis virus
White pox
Yellow fever virus

RICKETTSIAE

Coxiella burnetii
Bartonella quintana (Rochalimea quintana, Rickettsia quintana)
Rickettsia prowazeki
Rickettsia rickettsii

BACTERIA

Bacillus anthracis
Brucella abortus
Brucella melitensis
Brucella suis
Chlamydia psittaci
Clostridium botulinum
Francisella tularensis
Burkholderia mallei (Pseudomonas mallei)
Burkholderia pseudomallei (Pseudomonas pseudomallei)
Salmonella typhi
Shigella dysenteriae
Vibrio cholerae
Yersinia pestis

TOXINS

Botulinum toxins
Clostridium perfringens toxins
Conotoxin
Ricin
Saxitoxin
Shiga toxin
Staphylococcus aureus toxins
Tetrodotoxin
Verotoxin
Microcystin (Cyanginosin)
Aflatoxins

Notes

1 Any reference in this Schedule to a micro-organism includes—

   (a) any genetic material containing any nucleic acid sequence associated with
       the pathogenicity of the micro-organism; and
   (b) any genetically modified organism containing any such sequence.

2 Any reference in this Schedule to—
(a) a biological agent does not include an agent in the form of a vaccine; 
(b) a toxin does not include any immunotoxin (but does include subunits of a 
toxin); and 
(c) a botulinum toxin does not include a botulinum toxin which satisfies 
prescribed conditions.

Provision is also included for extension of these provisions to include animal and plant 
pathogens, pests or toxic chemicals:

75 Power to extend Part 7 to animal or plant pathogens, pests or toxic chemicals

(1) The Secretary of State may, in relation to anything to which this section applies, 
make an order applying, or making provision corresponding to, any provision of this 
Part, with or without modifications.

(2) This section applies to—

(a) toxic chemicals (within the meaning of the Chemical Weapons Act 1996 (c. 6)); 
(b) animal pathogens; 
(c) plant pathogens; and 
(d) pests.

(3) The power under this section may be exercised in relation to any chemical only if 
the Secretary of State is satisfied that the chemical is capable of endangering life or 
causing serious harm to human health.

(4) The power under this section may be exercised in relation to any pathogen or pest 
only if the Secretary of State is satisfied that there is a risk that the pathogen or pest 
is of a description that could be used to cause—

(a) widespread damage to property; 
(b) significant disruption to the public; or 
(c) significant alarm to the public.

10. This UK legislation of 2001 provided a good example of the way in which States Parties 
can and should review, following the anthrax attacks in the United States, their existing 
national provisions to implement Article III and Article IV of the Convention.

Developments at and since the Fifth Review Conference

11. The States Parties at the Fifth Review Conference agreed in their Final Document\textsuperscript{107} to 
hold an annual Meeting of States Parties in 2003 to consider two topics:

ii. the adoption of necessary national measures to implement the prohibitions set 
forth in the Convention, including the enactment of penal legislation;

\textsuperscript{107} United Nations, 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 
iii. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;

It was also agreed that:

(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.

12. These two topics are both relevant to Article III of the Convention as well as to Article IV. Consequently, the outcome of the annual Meeting of States Parties at which these topics were considered is directly relevant to the consideration of Article III at the Sixth Review Conference and, furthermore, the Sixth Review Conference is mandated to consider the work of these meetings and decide on any further action. As a starting point in deciding on any further action, the Conference could usefully endorse the principal findings of the 2003 Meeting of States Parties and write them into the cumulative text of its Final Declaration as extended understandings of the implications of Article III and Article IV.

13. The report\textsuperscript{108} of the Meeting of States Parties in 2003 included the following:

\textit{At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:}

\begin{quote}
To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibition of the Convention, and which enhance effective security of pathogens and toxins.
\end{quote}

\begin{quote}
The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.
\end{quote}

\begin{quote}
The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.
\end{quote}

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

In addition, the Meeting of States Parties agreed that all the statements, presentations and contributions made available to the Chairman by States Parties would be attached to this Report, in the languages of submission, as Annex II. Consequently, Annex II provides a valuable resource of information on the two topics considered in 2003 that is available to the States Parties in preparation for the Sixth Review Conference.

14. The States Parties at the Sixth Review Conference in either the Article III or the Article IV section of the Final Declaration – our recommendation is that this language be included as paragraph 5 of the Article IV section of the Final Declaration (see paragraphs 23 – 24 and 43 of the Article IV chapter in this Briefing Book) – could usefully include the following language, developed from that of the report of the Meeting of States Parties:

The Conference notes that notwithstanding the differing legal and constitutional arrangements among the States Parties to the Convention, States have adopted similar basic approaches and share common principles. The Conference stresses the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The Conference agrees, to that end, on the value of the following:

a. To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibitions of the Convention, and which enhance effective security of pathogens and toxins.

b. The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

c. The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes recognising the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

The Conference considers that agreement on the value of these measures discussed constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention.

15. At the Preparatory Committee meeting for the Sixth Review Conference, it was proposed that the Secretariat should prepare for the States Parties:

(b) A background information document on compliance by States Parties with all their obligations under the Convention. For the purpose of compiling this document the Secretariat would request States Parties to provide information regarding compliance with all the provisions of the Convention, including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005;

Although the agreed version omitted the final phrase including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005, it is to be expected that States Parties will indeed include information on any actions that they have taken following the annual Meetings of Experts and Meetings of States Parties during 2003 to 2005. In many cases these actions are likely to relate to compliance with Article III.

16. A further development was the adoption of Security Council Resolution 1540 (2004) on 28 April 2004. This records in its second paragraph that the Security Council:

2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

17. Furthermore, in its third paragraph this records that the Security Council:

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

   (a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

   (b) Develop and maintain appropriate effective physical protection measures;

   (c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

   (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

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18. The resolution also makes the point in its fifth paragraph that the Security Council:

5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

19. Further paragraphs in the resolution record that the Security Council:

6. Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

8. Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. Calls upon all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials*;
The term related materials is defined in SCR 1540 (2004) for the purpose of the resolution only as being materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

20. This resolution thus places an obligation on all States, whether they are party to the BTWC or not, to adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery [Emphasis added]. However, it needs to be recognized that the obligations under Article III of the BTWC are more comprehensive in scope than those addressed in SCR 1540 (2004) in that Article III requires that Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly and is thus not limited to non-State actors. Unlike paragraph 2 of SCR 1540, the BTWC is addressed as fully to States and individuals in the service of a State as to anyone else. Article III does not differentiate between agents of the State and others.

21. However, it also needs to be noted that in one respect, namely “illicit trafficking”, SCR 1540 is more demanding in its requirement in its tenth paragraph that all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials; This prevention requirement sets a high standard of effectiveness. It is indeed a very stringent criterion to attach to requirements to prevent illicit trafficking, but it is explicitly included in SCR 1540 and thus constitutes one of the obligations flowing from the Resolution. It can usefully be regarded as a test of the effectiveness of legislation and other measures relating to transfers in each State Party. If a State Party's legislative and other prohibitions are not strong enough even when enforced to prevent such activities involving biological weapons and related materials, they will not meet the SCR 1540 standard of “action to prevent illicit trafficking”.

22. The States Parties to the BTWC at the Sixth Review Conference need to apply the same rigorous understanding of their own undertakings under Article III in order therefore to address the requirements not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce. This should be understood to include unwitting assistance through negligence or recklessness. The requirements of SCR 1540 for all States to pursue at the earliest opportunity the development of national control lists and for all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials should be reflected as regards biological weapons, their means of delivery, and related materials, and extended beyond illegal trafficking alone, in the Article III section of the Final Declaration of the Sixth Review Conference.

23. This could be done by adoption of language along the following lines:

The Conference taking note of SCR 1540 (2004) agrees that all States Parties, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any recipient whatsoever, including any non-State actor, to manufacture, acquire, possess, develop, transport, transfer or use biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an
accomplice, assist or finance them;

The Conference also agrees that all States Parties shall take and enforce effective measures to establish domestic controls to prevent the proliferation of biological weapons and their means of delivery, including by establishing appropriate controls over related materials which could be used for the design, development, production or use of biological weapons and their means of delivery, and to this end shall:

(a) Develop and maintain appropriate effective physical protection measures;

(b) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(c) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

The Conference recognizes the utility of effective national control lists and calls upon all States Parties, when necessary, to pursue at the earliest opportunity the development of such lists;

The Conference further recognizes that some States Parties may require assistance in implementing such measures within their territories and invites States Parties in a position to do so to offer assistance as appropriate in response to specific requests to the States Parties lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

The Conference calls upon all States Parties

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of the Convention;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the Convention;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the Biological and Toxin Weapons Convention, as an important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;
The Conference calls upon all States Parties to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of biological weapons and their means of delivery;

Further to counter that threat, the Conference calls upon all States Parties, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in biological weapons, their means of delivery, and related materials and to prevent transfer, assistance, encouragement or inducement to any recipient whatsoever, including unwitting assistance through negligence or recklessness;

24. A recent development has been the adoption by the European Union of a Joint Action 2006/184/CFSP111. This Joint Action to be carried out in 2006 and 2007 has as one of its objectives support for the implementation of the BTWC by the States Parties through the carrying out of a project aimed at assistance to States Parties for the national implementation of the BTWC, in order to ensure that States Parties transpose the international obligations of the BTWC into their national legislation and administrative measures. This sets out three common elements that must be achieved in the national implementing approach of the States Parties as being:

(i) adoption of national legislation, including penal legislation, which encompasses the full scope of the prohibitions of the Convention;

(ii) effective regulations or legislation to control and monitor transfers of relevant dual-use technologies;

(iii) effective implementation and enforcement to prevent violations and to sanction breaches. [Emphasis added]

Issues for the Sixth Review Conference

25. The principal Article III issue for the States Parties to consider at the Sixth Review Conference will be to call upon all States Parties to ensure that they do not transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention. States Parties should be required to take and enforce effective measures to establish domestic controls to prevent the proliferation of biological weapons and their means of delivery, including by establishing appropriate controls over related materials. This should have been given an added impetus by the consideration at the Review Conference of the Final Report112 of the annual Meeting of States Parties in 2003 and by the requirements of Security Council Resolution 1540 (2004)113. As indicated earlier, the

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outcome of the 2003 Meeting of States Parties and the requirements of SCR 1540 (2004) could usefully be incorporated into the Article III section of the Final Declaration.

26. As there continues to be great concern about the dangers of terrorist attack and other criminal activity, including the use of biological agents as in the still unsolved case of the attacks in September/October 2001 in the United States in which anthrax was sent through the postal system, it can be expected that the States Parties will be keen to adopt even stronger language in their Final Declaration at the Sixth Review Conference urging all States Parties to adopt any necessary national measures and national controls over biological materials.

27. At the Sixth Review Conference it will be necessary to identify the ways and means to ensure that individuals and subnational groups are effectively prevented from acquiring through transfers, biological agents and toxins for other than peaceful purposes. Language needs to be adopted in both the Article III and Article IV sections of the Final Declaration of the Fifth Review Conference to require the strengthening of national controls of pathogens and toxins both internally and in regard to international transfers.

Language for the Sixth Review Conference

28. The language to be adopted by the Sixth Review Conference in its Final Declaration might be similar to that adopted at the Fourth Review Conference but with stronger encouragement of States Parties to enact national measures. As recommended in paragraph 14 above the language relating to the outcome of the 2003 Meeting of States Parties is not included here but is recommended for paragraph 5 of the Article IV section. The language recommended for the Article III section, with the changes from the Fourth Review Conference shown in bold, is thus:

1. The Conference emphasizes the 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 reaffirms that Article III is sufficiently comprehensive to cover any recipient whatsoever at international, national or subnational levels.

2. The Conference notes that a number of States Parties stated that they have already 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 all States Parties to urgently review and strengthen their existing measures and adopt such measures, if such measures do not already exist. Transfers relevant to the Convention should be authorized only when the intended use is for purposes not prohibited under the Convention.

3. The Conference taking note of SCR 1540 (2004) agrees that all States Parties, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any recipient whatsoever, including any non-State actor, to manufacture, acquire, possess, develop, transport, transfer or use biological weapons and their means of delivery, in particular for terrorist purposes,
as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

4. The Conference also agrees that all States Parties shall take and enforce effective measures to establish domestic controls to prevent the proliferation of biological weapons and their means of delivery, including by establishing appropriate controls over related materials which could be used for the design, development, production or use of biological weapons and their means of delivery, and to this end shall:

(a) Develop and maintain appropriate effective physical protection measures;

(b) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(c) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

5. The Conference recognizes the utility of effective national control lists and calls upon all States Parties, when necessary, to pursue at the earliest opportunity the development of such lists;

6. The Conference further recognizes that some States Parties may require assistance in implementing such measures within their territories and invites States Parties in a position to do so to offer assistance as appropriate in response to specific requests to the States Parties lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

7. The Conference calls upon all States Parties

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of the Convention;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the Convention;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the Biological and Toxin Weapons Convention, as an important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting
international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

8. The Conference calls upon all States Parties to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of biological weapons and their means of delivery;

9. Further to counter that threat, the Conference calls upon all States Parties, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in biological weapons, their means of delivery, and related materials and to prevent transfer, assistance, encouragement or inducement to any recipient whatsoever, including unwitting assistance through negligence or recklessness.

10. The Conference affirms that the States Parties should urgently consider ways and means to ensure that, in addition to States, groups of States and international organizations, individuals or subnational groups are also effectively prevented from acquiring, through national or international transfers, assistance, encouragement or inducement, biological agents and toxins for other than peaceful purposes.

12. 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.
ARTICLE IV: NATIONAL IMPLEMENTATION

by Nicholas A Sims & Graham S. Pearson
Consideration of Article IV at the Fourth Review Conference

1. Article IV of the Convention states that:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the States Parties underlined the importance of Article IV by giving considerably more attention in the Final Declaration\(^ {114}\) to Article IV with seven paragraphs compared to the six paragraphs in the Final Declaration of the Third Review Conference\(^ {115}\).

1. The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the 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. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

2. The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

3. The Conference notes the importance of:

- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:


4. The Conference believes that such measures which States Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by the Second and Third Review Conferences.

5. The Conference notes that some States Parties, as requested by the Second Review Conference, have provided to the United Nations Department for Disarmament Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invites these States Parties, and encourages all States Parties, to provide such information and texts in the future. In this regard the Conference welcomes information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures". In addition, the Conference encourages all States Parties to provide any useful information on the implementation of such measures.

6. The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.

7. The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.

3. The opening paragraph not only said that the Conference "underlines the importance" rather than "notes the importance" of Article IV but it went on, unlike the simple single sentence in the Third Review Conference, to set out what the "necessary measures" required under Article IV should be:

These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the 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.

and went on to stress the importance of national measures in a context that gave them added urgency. They were declared essential to the effective fulfillment of States Parties’ obligations in order to exclude, among other things, the use of biological or toxin weapons in terrorist or criminal activity:

The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

4. The second paragraph used identical language to that of the Third Review Conference to note those measures already taken by some States in regard to the implementation of Article IV, such as the adoption of penal legislation, and reiterated its call to any State Party that had
not yet taken any necessary measures to do so immediately. Such measures should apply within the territory of a State Party, under its jurisdiction or under its control anywhere. The Conference also invited each State Party to consider the application of such measures to actions taken anywhere by natural persons possessing its nationality.

5. The third and fourth paragraphs also used almost identical language to that in the Article IV section of the Final Declaration\(^{116}\) of the Third Review Conference which had noted the importance of:

- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of microbial or other biological agents, or toxins;

- Inclusion in textbooks and in medical, scientific and military educational programmes of information dealing with the prohibition of microbial or other biological agents or toxins and the provisions of the Geneva Protocol of 1925.

and that such measures would strengthen the effectiveness of the Convention. The only change made by the Fourth Review Conference in 1996 was that the BTWC was named in the last of these three subparagraphs with its revised wording of “dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.”

6. The fifth paragraph also used identical language to that of the Third Review Conference in noting that some States Parties, as requested by the Second Review Conference (and before then by the First Review Conference), had provided to the United Nations Department for Disarmament Affairs information on and the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invited these States Parties, and encouraged all States Parties, to provide such information and texts in the future. The Conference also welcomed the information provided by States Parties in response to the agreement by States Parties participating in the Third Review Conference to implement a new confidence-building measure entitled "Declaration of legislation, regulations and other measures.” In addition the Conference invited all States Parties to provide any useful information on the implementation of such measures.

7. The sixth paragraph reflected a similar sense to the corresponding paragraph in the Third Review Conference but used different language referring to "cooperation and initiatives" in more general terms than the specific references to the Mendoza Declaration and other regional initiatives taken in 1991:

*The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.*

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8. The final paragraph was new, having no parallel in the Third Review Conference, with language reaffirming that use is effectively prohibited by the Convention:

_The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention._

**Evolution of the review process in respect of Article IV, 1980 to 1996**

9. Article IV obliges each State Party to ensure national implementation in the broadest possible terms, as the scope clauses at the end of the Article spell out clearly. Although the word _legislation_ does not appear in this Article, the commonest response to this obligation among those States Parties which have made known any response whatever (and they are all too few) has been either to legislate in such a way as to give domestic legal effect to the prohibitions contained in Article I, or to determine on examination of their existing laws that no further specific legislation is necessary. National implementation also embraces government decrees, regulations and administrative memoranda to law enforcement agencies, but little is yet known of what action, if any, States Parties have taken under those headings. It is understandable, therefore, that national implementation has come to be identified closely with the adoption of new legislation.

10. Such legislation ties the Convention into national legal systems in the clearest possible way. It contributes to the strengthening of compliance by expanding the constituency with an institutional interest in the success of the Convention. It also builds the treaty regime flowing from the Convention into normative structures at the national level, in the form of rules and expectations and procedures for upholding them. These rules, expectations and procedures in turn uphold their counterparts at the international level. They reinforce the international treaty regime and help, even if only marginally, to ensure its survival by constituting one more obstacle which would have to be overcome if the Convention were to come under attack.

11. The first four Review Conferences have reinforced Article IV with successive layers of consensually agreed language, as each Final Declaration has built on its predecessor and added new material to the inherited paragraphs.

12. In 1980 the United Kingdom, with Belgian and Finnish support, persuaded the First Review Conference to invite:

_States Parties which have found it necessary to enact specific legislation or take other regulatory measures relevant to this Article to make available the appropriate texts to the United Nations Centre for Disarmament, for [the] purposes of consultation._

In 1986 this invitation was repeated, as was the 1980 call

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117United Nations, _The First 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_, Geneva, 3–21 March 1980, BWC/CONF.I/9, 21 March 1980. Available at http://www.opbw.org. The intrusive _the_ was deleted when the invitation was repeated in 1986 (see note 5 below) “for purposes of consultation,” the Australian delegation, in editing the text for the Drafting Committee, having restored the original UK language at the request of its author.
upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes, as required by the Article, to do so immediately.\textsuperscript{118} [The words emphasised were added in 1986.]

13. The Second Review Conference took a modest step forward in regime-building for strengthening compliance with the Convention on the foundations of Article IV. It did so by widening, on the initiative of the then German Democratic Republic, the range of national implementation actions which were given international commendation. After repeating the invitations contained in the 1980 declaration as indicated above it added a new passage:

\textit{The Conference notes the importance of}

- legislative, administrative and other measures designed effectively to guarantee compliance with the provisions of the Convention within the territory under the jurisdiction or control of a State Party;

- legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of pathogenic or toxic material; and

- inclusion in textbooks and in medical, scientific and military educational programmes of information dealing with the prohibition of bacteriological (biological) and toxin weapons and the provisions of the Geneva Protocol

\textit{and believes that such measures which States might undertake in accordance with their constitutional process[es] would strengthen the effectiveness of the Convention.}\textsuperscript{119}

14. The Third Review Conference continued the process of regime-building in this area, repeating the declarations of 1980 and 1986 and adding to them, notably, an explicit reference to penal legislation, as an example of national implementation; an invitation to each State Party to consider applying measures to actions taken anywhere by natural persons possessing its nationality; and a new confidence-building measure entitled ‘Declaration of legislation, regulations and other measures’.\textsuperscript{120} The new CBM, labelled E, went beyond simply addressing those State Parties which had legislated or taken other implementing action in this area. It asked every State Party to complete a straightforward annual questionnaire answering four questions yes/no:

- do you have legislation?
- do you have regulations?


\textsuperscript{119}ibid. Process seems to have been a typographic error in the Final Declaration carried through to the Final Document (Geneva 1986). It was corrected to processes when the 1986 text was repeated in 1991. The GDR proposal of 1986 (which used the plural processes) is reproduced in BWC/CONF.II/9 (22 September 1986), Annex, pp.16-17. Available at http://www.opbw.org

- do you have other measures?
- has there been any amendment since last year to your legislation, regulations or other measures?

These four questions were applied to three areas of policy, requiring twelve yes/no answers altogether. The first area of policy was the direct concern of Article IV with domesticking the prohibitions in Article I. The second and third were export and import control respectively, specified as “the export and import of micro-organisms pathogenic to man, animals or plants, or of toxins, in accordance with the Convention.” These export and import controls were of particular concern to the United Kingdom, which successfully proposed their addition to a CBM which would otherwise have been limited to making more universal and systematic the invitations issued in 1980 and 1986.

15. The information-sharing commitments of the Third Review Conference in this area went further still. From 15 April 1992 States Parties, under Confidence-Building Measure E,

shall be prepared to submit copies of the legislation or regulations or written details of other measures on request to the United Nations Department for Disarmament Affairs or to an individual State Party.\[121\]

Each State Party has accordingly been able since 1992 to request these details bilaterally under the authority of the Third Review Conference, instead of depending solely upon the circulation of texts made available to the United Nations. States Parties have in effect accepted the principle of mutual accountability for their national legislation, regulations and other measures. This constitutes a further stage in the evolution of the review process in respect of Article IV.

16. The main contribution of the Fourth Review Conference to this process was the strengthening of language in the Final Declaration, to underline the importance of Article IV, as analysed in detail in paragraphs 2 to 8 above.

**Developments after the Fourth Review Conference**

**Biological Terrorism**

17. Increased attention is being paid to the possibility that biological materials may become attractive to sub–State actors, splinter groups or terrorists. The incidents in the Tokyo subway in March 1995 in which the Aum Shinrikyo sect planned to place some eleven small containers of the nerve gas, sarin (GB), on baggage racks or on the floor of subway trains and for these to then be punctured by Aum members to release the sarin, has heightened international awareness that sub-State actors might seek to use chemicals to further their aims. Subsequent reports\[122\] make it clear that the Aum Shinrikyo sect had also been working on developing biological weapons and was close to completing this by March 1995;

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it is reported that they had been working on botulinum toxin and anthrax and had devices that might be used to disseminate such agents. The Aum sect also sent a team to Zaire in 1992 to assist in the treatment of Ebola victims - and it is claimed that their aim was to find a sample of Ebola virus to take back to Japan for culturing purposes. The Tokyo incidents show all too clearly the impact of quite limited chemical contamination and the need to take steps to counter possible use of chemical or biological materials.

18. One important counter to such possibilities is the enactment of national legislation to make the misuse of biological materials a criminal act. Some States, such as the UK, have enacted such legislation: the Biological Weapons Act\textsuperscript{123} of 1974 makes it a criminal offence within the UK to develop, produce, stockpile, acquire or retain any biological agent or toxin or means of delivery; any person shall on conviction be liable to life imprisonment. The United States has enacted an "Antiterrorism and Effective Death Penalty Act of 1996"\textsuperscript{124} which strengthens the provisions of its Biological Weapons Anti-Terrorism Act of 1989 and provides for both the regulatory control of biological agents and the regulation of transfers of listed biological agents. Insofar as the regulatory control of biological agents is concerned this provides for:

\begin{itemize}
\item \textit{(1) List of biological agents -}
\item (A) In General - The Secretary [of Health and Human Services] shall, through regulations promulgated …. establish and maintain a list of each biological agent that has the potential to pose a severe threat to public health and safety.
\item (B) Criteria - In determining whether to include an agent on the list under Subparagraph (A), the Secretary shall -
\begin{itemize}
\item (i) consider-
\begin{itemize}
\item (I) the effect on human health of exposure to the agent;
\item (II) the degree of contagiousness of the agent and the method by which the agent is transferred to humans;
\item (III) the availability and effectiveness of immunizations to prevent and treatments for any illness resulting from the infection by the agent; and
\item (IV) any other criteria that the Secretary considers appropriate; and
\end{itemize}
\item (ii) consult with scientific experts representing appropriate professional groups.
\end{itemize}
\end{itemize}

On transfers, the Secretary of Health and Human Services is required to enact regulations for:

\begin{itemize}
\item (1) the establishment and enforcement of safety procedures for the transfer of biological agents listed …. including measures to ensure -
\item (A) proper training and appropriate skills to handle such agents; and
\end{itemize}

\textsuperscript{123} Biological Weapons Act 1974, HMSO, 1974 Chapter 6. Available at http://www.opbw.org
(B) proper laboratory facilities to contain and dispose of such agents;

(2) safeguards to prevent access to such agents for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

(4) appropriate availability of biological agents for research, education and other legitimate purposes.

The final rule was published in the Federal Register of 24 October 1996\textsuperscript{125} with an effective date of 15 April 1997.

19. Following the events of 11 September 2001, the United Kingdom introduced a new Anti-Terrorism, Crime and Security Act 2001\textsuperscript{126} which strengthens the UK law, the Biological Weapons Act of 1974, prohibiting work on biological weapons and introduces new national security controls on pathogens and toxins. The extension of the law on biological weapons includes language making it an offence to transfer biological agents or toxins outside the United Kingdom or to assist another person to do so:

\textit{(1A) A person shall not—}

\hspace{1cm} (a) transfer any biological agent or toxin to another person or enter into an agreement to do so, or

\hspace{1cm} (b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so,

\hspace{1cm} if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case.”

In addition, language is included to extend UK jurisdiction to offences under the Biological Weapons Act carried out overseas by a UK person:

\textit{1A Extraterritorial application of section 1}

\hspace{1cm} (1) Section 1 applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

\hspace{1cm} (2) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

\textsuperscript{125} United States, Federal Register, Department of Health and Human Services, \textit{Additional Requirements for Facilities Transferring or Receiving Select Agents}, Rules and Regulations, Volume 61, No. 207, Thursday 24 October 1996, 55190 - 55200.

\textsuperscript{126} House of Commons, \textit{Anti-Terrorism, Crime and Security Act 2001}. Available at http://www.opsi.gov.uk/ACTS/acts2001/20010024.htm
(3) Her Majesty may by Order in Council extend the application of section 1, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

(4) In this section “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.

Language is also included to make it an offence for a UK person outside the UK to assist a foreigner to do an act which would, for a UK person, be contrary to the Biological Weapons Act of 1974. Such offences carry a sentence of up to life imprisonment:

Assisting or inducing weapons-related acts overseas

50 Assisting or inducing certain weapons-related acts overseas

(1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene any of the following provisions—
   (a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins);
   (b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons); or
   (c) section 47 above (offences relating to nuclear weapons).

(3) Nothing in this section applies to an act mentioned in subsection (1) which—
   (a) relates to a relevant act which would contravene section 47; and
   (b) is authorised by the Secretary of State; and section 48(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section.

(4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

20. The 2001 security controls identify a list of pathogens and toxins and define a dangerous substance as being one of these pathogens or toxins or anything infected by or a carrier of
such pathogens. Notification is required prior to keeping or using any dangerous substance and information can be sought about the security of dangerous substances and the premises in which these are held as well as about persons with access to such dangerous substances. The definition of dangerous substance is as follows:

(4) In this Part “dangerous substance” means—

(a) anything which consists of or includes a substance for the time being mentioned in Schedule 5; or

(b) anything which is infected with or otherwise carries any such substance.

Schedule 5 lists the pathogens and toxins that potentially pose the greatest risk to human life if misused by terrorists -- it will be observed that the Notes extend the Schedule to include genetic modifications:

SCHEDULE 5

PATHOGENS AND TOXINS

VIRUSES

Chikungunya virus
Congo-crimean haemorrhagic fever virus
Dengue fever virus
Eastern equine encephalitis virus
Ebola virus
Hantaan virus
Japanese encephalitis virus
Junin virus
Lassa fever virus
Lymphocytic choriomeningitis virus
Machupo virus
Marburg virus
Monkey pox virus
Rift Valley fever virus
Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus)
Variola virus
Venezuelan equine encephalitis virus
Western equine encephalitis virus
White pox
Yellow fever virus

RICKETTSIAE

Coxiella burnetii
Bartonella quintana (Rochalimea quintana, Rickettsia quintana)
Rickettsia prowazeki
Rickettsia rickettsii

BACTERIA
Bacillus anthracis
Brucella abortus
Brucella melitensis
Brucella suis
Chlamydia psittaci
Clostridium botulinum
Francisella tularensis
Burkholderia mallei (Pseudomonas mallei)
Burkholderia pseudomallei (Pseudomonas pseudomallei)
Salmonella typhi
Shigella dysenteriae
Vibrio cholerae
Yersinia pestis

TOXINS

Botulinum toxins
Clostridium perfringens toxins
Conotoxin
Ricin
Saxitoxin
Shiga toxin
Staphylococcus aureus toxins
Tetrodotoxin
Verotoxin
Microcystin (Cyanginosin)
Aflatoxins

Notes

1 Any reference in this Schedule to a micro-organism includes—

   (a) any genetic material containing any nucleic acid sequence associated with
       the pathogenicity of the micro-organism; and
   (b) any genetically modified organism containing any such sequence.

2 Any reference in this Schedule to—

   (a) a biological agent does not include an agent in the form of a vaccine;
   (b) a toxin does not include any immunotoxin (but does include subunits of a
       toxin); and
   (c) a botulinum toxin does not include a botulinum toxin which satisfies
       prescribed conditions.

Provision is also included for extension of these provisions to include animal and plant
pathogens, pests or toxic chemicals:

75 Power to extend Part 7 to animal or plant pathogens, pests or toxic chemicals
(1) The Secretary of State may, in relation to anything to which this section applies, make an order applying, or making provision corresponding to, any provision of this Part, with or without modifications.

(2) This section applies to—

(a) toxic chemicals (within the meaning of the Chemical Weapons Act 1996 (c. 6));
(b) animal pathogens;
(c) plant pathogens; and
(d) pests.

(3) The power under this section may be exercised in relation to any chemical only if the Secretary of State is satisfied that the chemical is capable of endangering life or causing serious harm to human health.

(4) The power under this section may be exercised in relation to any pathogen or pest only if the Secretary of State is satisfied that there is a risk that the pathogen or pest is of a description that could be used to cause—

(a) widespread damage to property;
(b) significant disruption to the public; or
(c) significant alarm to the public.

21. This 2001 UK legislation provides a good example of the way in which States Parties can and should review, following the anthrax attacks in the United States, their existing national provisions to implement Article III and Article IV of the Convention. Other States are to be encouraged to take similar action to criminalize BW and attention should be given to seeking international agreement that using or knowingly aiding in the production, acquisition or use of biological weapons is a crime under international law. Other counters are the preparation of response plans for such incidents as well as more widespread recognition of the need to control biological materials to facilitate the safety of the community and the environment.

Developments at and since the Fifth Review Conference

22. At the Fifth Review Conference the States Parties in their Final Document agreed:

(a) To hold three annual meetings of the States Parties of one week duration each year commencing in 2003 until the Sixth Review Conference, to be held not later than the end of 2006, to discuss, and promote common understanding and effective action on:

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iv. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;

v. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;

vi. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

vii. strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants;

viii. the content, promulgation, and adoption of codes of conduct for scientists.

It was also agreed that:

(d) The meetings of experts will prepare factual reports describing their work.

(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.

23. Three of these topics – topics i, ii and v – are relevant to Article IV of the Convention. Consequently, the outcome of the annual Meetings of States Parties at which these topics were considered is directly relevant to the consideration of Article IV at the Sixth Review Conference and, furthermore, the Sixth Review Conference is mandated to consider the work of these meetings and decide on any further action. As a starting point in deciding on any further action, the Conference could usefully endorse the principal findings of the relevant Meetings of States Parties and write them into the cumulative text of its Final Declaration as extended understandings of the implications of Article IV.

24. The first two topics were considered in 2003 and the report129 of the Meeting of States Parties in 2003 included the following:

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:

To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibition of the Convention, and which enhance effective security of pathogens and toxins.

The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

In addition, the Meeting of States Parties agreed that all the statements, presentations and contributions made available to the Chairman by States Parties would be attached to this Report, in the languages of submission, as Annex II. Consequently, Annex II provides a valuable resource of information on the two topics considered in 2003 that is available to the States Parties in preparation for the Sixth Review Conference.

25. The fifth topic was considered in 2005 and the report\textsuperscript{130} of the Meeting of States Parties in 2005 included the following:

\textit{On the mandate to discuss, and promote common understanding and effective action on the content, promulgation and adoption of codes of conduct for scientists, the States Parties recognised that:}

(a) while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

(b) codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

(c) a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

(d) codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

(e) science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

19. The States Parties recognised that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

20. On the content of codes of conduct, recognising the principles listed in paragraph 18, the States Parties agreed on the importance of codes of conduct being:

(a) compatible with national legislation and regulatory controls and contributing to national implementation measures;

(b) simple, clear and easily understandable both to scientists and to wider civil society;

(c) relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

(d) sufficiently broad in scope;

(e) regularly reviewed, evaluated for effectiveness, and revised as necessary.

21. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the States Parties agreed on the value of:

(a) demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

(b) using existing codes, mechanisms, frameworks and bodies as far as possible; and

(c) tailoring adoption strategies according to the needs of each relevant sector.
22. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the States Parties agreed on the value of continuous efforts on promulgation through appropriate channels.

23. The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topic under discussion at the Meeting of Experts, as contained in Annex I of the Report of the Meeting of Experts (BWC/MSP/2005/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2005/L.1, which is attached to this report as Annex I. This annex was not discussed or agreed upon and consequently has no status.

24. States Parties are encouraged to inform the Sixth Review Conference of, inter alia, any actions, measures or other steps that they may have taken on the basis of the discussions at the 2005 Meeting of Experts and of the outcome of the 2005 Meeting of States Parties in order to facilitate the Sixth Review Conference’s consideration of the work undertaken at the meetings in 2005 and of a decision on any further action in accordance with paragraph 18 (e) of the decision adopted at the Fifth Review Conference (BWC/CONF.V/17).

26. At the Preparatory Committee meeting for the Sixth Review Conference, it was proposed\textsuperscript{131} that the Secretariat should prepare for the States Parties:

\begin{itemize}
  \item[(b)] A background information document on compliance by States Parties with all their obligations under the Convention. For the purpose of compiling this document the Secretariat would request States Parties to provide information regarding compliance with all the provisions of the Convention, including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005;
\end{itemize}

Although the agreed version omitted the final phrase \textit{including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005}, it is to be expected that States Parties will indeed include information on any actions that they have taken following the annual Meetings of Experts and Meetings of States Parties during 2003 to 2005. In many cases these actions are likely to relate to compliance with Article IV.

27. A further development was the adoption of Security Council Resolution 1540 (2004)\textsuperscript{132} on 28 April 2004. This records in its second paragraph that the Security Council:

\begin{itemize}
  \item[2.] Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical
\end{itemize}


or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

The resolution also makes the point in its fifth paragraph that the Security Council:

5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

28. This resolution thus places an obligation on all States, whether they are party to the BTWC or not, to adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery [emphasis added]. However, it needs to be recognized that the obligations under Article IV of the BTWC are more comprehensive in scope than those addressed in SCR 1540 (2004) in that Article IV requires that each State Party take necessary measures “to prohibit and prevent” [emphasis added] the whole range of activities prohibited by Article I whereas in SCR 1540 prevention is only applied to “illicit trafficking”. Nor is Article IV limited to non-State actors. Unlike paragraph 2 of SCR 1540, the BTWC is addressed as fully to States and individuals in the service of a State as to anyone else. Article IV does not differentiate between agents of the State and others. All must be prohibited and prevented from engaging in any of the activities encompassed by Article I of the Convention.

29. As pointed out in Bradford Briefing Paper No. 6 (Second Series)\(^\text{133}\) in July 2003, by definition, the national measures taken must do more than merely prohibit the forbidden activities; they must also prevent them. This prevention requirement sets a high standard of effectiveness. It is indeed a very stringent criterion to attach to national implementing measures, but it is explicitly included in Article IV of the Convention and thus constitutes one of the obligations flowing from the Convention. It can usefully be regarded as a test of the effectiveness of legislation and other measures of a prohibitory nature in each State Party. If a State Party's legislative and other prohibitions are not strong enough even when enforced to prevent all the activities involving biological weapons which are defined in Article I of the Convention, whether undertaken by agents of the State or by non-State actors, they may not meet the SCR 1540 standard of “appropriate effective laws which prohibit” but they will certainly not meet the high standard set by Article IV. Such a State Party accordingly risks falling short of full compliance with its international obligations under the Convention.

30. The States Parties to the BTWC at the Sixth Review Conference need therefore to address both elements of Article IV – to prohibit and prevent – and it would be desirable for the Review Conference in its Final Declaration to express a common understanding of the significance of the prevention criterion set by Article IV and to recommend that States Parties take effective action by reviewing the effectiveness of their national measures to implement the prohibitions of the Convention in meeting the prevention criterion.

31. A more recent development has been the adoption by the European Union of a Joint Action 2006/184/CFSP\textsuperscript{134}. This Joint Action to be carried out in 2006 and 2007 has as one of its objectives support for the implementation of the BTWC by the States Parties through the carrying out of a project aimed at assistance to States Parties for the national implementation of the BTWC, in order to ensure that States Parties transpose the international obligations of the BTWC into their national legislation and administrative measures. This sets out three common elements that must be achieved in the national implementing approach of the States Parties as being:

(i) adoption of national legislation, including penal legislation, which encompasses the full scope of the prohibitions of the Convention;

(ii) effective regulations or legislation to control and monitor transfers of relevant dual-use technologies;

(iii) effective implementation and enforcement to prevent violations and to sanction breaches.

32. A parallel development since the Fifth Review Conference has seen the adoption by the Chemical Weapons Convention of an Action Plan on national implementation measures undertaken by the States Parties to the CWC following their First Review Conference in 2003. At that Review Conference the States Parties agreed\textsuperscript{135}:

The First Review Conference called upon States Parties that have not already done so to inform the OPCW by the next regular session of the Conference of the status of their adoption of the legislative and administrative measures necessary for or taken by them to implement the Convention, of any problems they have encountered, and of any assistance they require. Having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties as well as the Secretariat, the First Review Conference...

(h) agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties. [Emphasis added] (RC-1/5, para.7.83).

33. Bradford Review Conference Paper No. 13\textsuperscript{136} described the action being taken by the OPCW and a further update was published\textsuperscript{137} in the CBW Conventions Bulletin of September/December 2005. The situation can be summarised as follows:

\begin{itemize}
  \item Scott Spence, Achieving Effective Action on Universality and National Implementation: The CWC Experience, University of Bradford, Department of Peace Studies, Review Conference Paper No. 13, April 2005. Available at http://www.brad.ac.uk/acad/sbtwc
\end{itemize}
<table>
<thead>
<tr>
<th>Status at</th>
<th>Number of States Parties</th>
<th>Number (and percentage) of States Parties that have submitted national implementation</th>
<th>Legislation covers area key to the enforcement of the CWC</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1997</td>
<td>87</td>
<td>0 (0%)</td>
<td>Not available</td>
</tr>
<tr>
<td>December 1997</td>
<td>103</td>
<td>24 (23%)</td>
<td>Not available</td>
</tr>
<tr>
<td>November 1998</td>
<td>120</td>
<td>40 (33%)</td>
<td>Not available</td>
</tr>
<tr>
<td>July 1999</td>
<td>125</td>
<td>43 (34%)</td>
<td>Not available</td>
</tr>
<tr>
<td>May 2000</td>
<td>133</td>
<td>48 (36%)</td>
<td>Not available</td>
</tr>
<tr>
<td>May 2001</td>
<td>143</td>
<td>53 (38%)</td>
<td>Not available</td>
</tr>
<tr>
<td>October 2002</td>
<td>145</td>
<td>70 (48%)</td>
<td>39 (27%)</td>
</tr>
<tr>
<td>October 2003</td>
<td>154</td>
<td>94 (61%)</td>
<td>51 (33%)</td>
</tr>
<tr>
<td>November 2004</td>
<td>166</td>
<td>96 (58%)</td>
<td>52 (31%)</td>
</tr>
<tr>
<td>November 2005</td>
<td>174</td>
<td>106 (61%)</td>
<td>59 (34%)</td>
</tr>
</tbody>
</table>

This shows that even after the Action Plan, although almost two thirds of the States Parties to the CWC had submitted information on their national implementation to the OPCW, only about one third of the States Parties had succeeded in adopting legislation that covered the areas key to the enforcement of the CWC.

34. It is therefore essential that legislation adopted under Article IV of the BTWC encompasses the full scope of the prohibitions contained in the Convention. It is recommended that this should extend to the control and monitoring of relevant dual-use materials and technologies.

35. At the Sixth Review Conference of the BTWC, it is recommended that there should be some consideration to whether to adopt an action plan. It would be wise for the BTWC States Parties to adopt different terminology as the resources provided by the OPCW to support the CWC Article VII national implementation action plan will not be available. It is suggested that an achievement timeline which sets an interim target for two thirds of the States Parties to the BTWC to have adopted national implementation legislation by the time of the Seventh Review Conference would be an effective and desirable outcome. It would be greatly aided by one or more States Parties undertaking to provide resources to facilitate the adoption of legislation by States Parties as well as to monitor and report to the States Parties annually on progress towards this target. Alternatively, a parallel approach for the provision of the necessary resources to that which has been taken by the EU Joint Action could be adopted by the States Parties to the BTWC. An annual progress report would be appropriate at future annual Meetings of the States Parties at which agreement could be reached on additional action should that be necessary.

### Issues for the Sixth Review Conference

36. The principal Article IV issue for the States Parties to consider at the Sixth Review Conference will be to encourage all States Parties to enact appropriate national legislation. This should have been given an added impetus by the consideration at the Review

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Conference of the Final Report\textsuperscript{138} of the annual Meeting of States Parties in 2003 and by the requirements of Security Council Resolution 1540 (2004)\textsuperscript{139}.

37. As there continues to be great concern about the dangers of terrorist attack and other criminal activity, including the use of biological agents as in the still unsolved case of the attacks in September/October 2001 in the United States in which anthrax was sent through the postal system, it can be expected that the States Parties will be keen to adopt even stronger language in their Final Declaration at the Sixth Review Conference urging all States Parties to adopt any necessary national measures, including penal legislation. It should be possible for the Conference to strengthen the reference to penal legislation, without seeking to constrain States Parties' discretion in how they choose to enact penal legislation in accordance with their respective legal systems and traditions. In this regard it is encouraging that the G8 at St. Petersburg on 16 July 2006 in their Statement on Non-Proliferation\textsuperscript{140} were able to move forward from the “\textit{for example, penal legislation}” of the 1991 and 1996 Review Conference Final Declarations to the stronger formulation “\textit{including penal legislation}.” It would also be desirable to make it clear that terrorist activity is a subset of criminal activity by adding the word ‘other’ before ‘criminal’ in the language carried forward from 1996.

38. The Conference might usefully also encourage States Parties to develop additional legal approaches to supplement national implementation measures under Article IV. There is much to be said for taking forward the ideas developed by the Harvard-Sussex Program who have developed a draft Convention\textsuperscript{141} to prohibit biological and chemical weapons under international criminal law. The proposed Convention would make it an offence for any person, regardless of official position, to order, direct, or knowingly to participate or render substantial assistance in the development, production, acquisition, stockpiling, retention, transfer or use of biological or chemical weapons or to threaten the use of such weapons or to create or retain facilities intended for the production of such weapons. Any person who commits any of the prohibited acts anywhere would face the risk of apprehension, prosecution and punishment, or of extradition should that person be found in a state that supports the proposed Convention. This proposed Convention would provide a valuable complement to the existing BTWC and CWC by ensuring that any jurisdictional loopholes are closed and that impunity for criminal acts involving these weapons is thereby abolished. It could usefully be negotiated in the Sixth Committee of the United Nations General Assembly.

39. It is recommended that a further paragraph be added to the Article IV section of the Final Declaration as follows:

\begin{quote}
The Conference encourages States Parties to explore the possibility of negotiating in an appropriate forum, such as the Sixth Committee of the United Nations General Assembly,
\end{quote}


\textsuperscript{140} G8, \emph{Statement on Non-Proliferation}, St. Petersburg, 16 July 2006. Available at http://en.g8russia.ru/docs/20.html

\textsuperscript{141} The CBW Conventions Bulletin, \emph{A Draft Convention to Prohibit Biological and Chemical Weapons Under International Criminal Law}, Issue No 42, December 1998, pp. 1 - 5. Available at http://www.sussex.ac.uk/Units/spru/hsp/pdbulletin.html See also \emph{The HSP Draft Convention} at http://lense.net.uk/Units/spru/hsp/Harvard-Sussex-Program-draft-convention.htm
Assembly, an international convention on the criminalisation of biological and chemical weapon activities which would emphasise individual criminal responsibility for acts stigmatised as international crimes. The Conference favours such international legal approaches to the criminalisation of all acts prohibited among States Parties as usefully supplementing national implementation measures under Article IV by ensuring that any jurisdictional loopholes are closed, and that impunity for criminal acts involving inter alia biological and toxin weapons is thereby abolished.

40. National implementation measures under Article IV should also include biosecurity regulations and codes of conduct for those engaged in the life sciences. The Conference could usefully build these expressions of national implementation even more firmly into the BTWC treaty regime by endorsing the principal findings of the 2003 Meeting of States Parties on topic ii and of the 2005 Meeting of States Parties on topic v and writing them into the cumulative text of its Final Declaration as extended understandings of the implications of Article IV.

41. In order for the Conference to endorse the principal findings of 2003 and 2005, and to show that it adopts them as its own, it is recommended that the propositions they contain be agreed by the Conference in the present tense but otherwise left almost unchanged from the texts of the reports of the respective Meetings of States Parties. For example, recognising the realities of the organisation of research and development activity in the life sciences, the 2005 Meeting of States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff. There would be great value in the Conference adopting this finding as its own. The same is true of other findings from the 2003 and 2005 Meetings of States Parties. It is therefore recommended that all of them be adopted by the Conference as they stand. The inclusion of the relevant paragraphs in the Article IV section of the Final Declaration would have a wider significance. It would show that the Sixth Review Conference had succeeded in integrating two bodies of text – one inherited from the cumulative Final Declaration text of 1980-1996 and the other from the intersessional work programme of 2003-2005. The Conference would thereby have achieved, at least in this area of the BTWC, the successful confluence of two important streams of development flowing towards the further evolution of the treaty regime.

42. As addressed in the chapter142 on Article IV: National Implementation: Education, Outreach and Codes of Conduct in this Briefing Book, it is also recommended that the States Parties in considering the value of education and outreach to aid the in-depth implementation of the Convention should incorporate the substance of the language relating to outreach and implementation in the eighth operative paragraph of Security Council resolution 1540 (2004) which states:

\[\text{To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;}\]

into the Article IV section of the Final Declaration of the Sixth Review Conference by using language along the following lines modified slightly so as to include academia as well as industry:

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The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.

It is also recommended that the States Parties should agree to hold an annual Meeting of States Parties prepared for by a Meeting of Experts during the intersessional period between the Sixth and Seventh Review Conferences to consider the topic:

*Education and outreach for all those concerned with the life sciences.*

**Language for the Sixth Review Conference**

43. The language to be adopted by the Sixth Review Conference in its Final Declaration might be similar to that adopted at the Fourth Review Conference but with stronger encouragement of States Parties to enact national measures and inclusion of an achievement timeline along the following lines:

1. *The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the 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. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or other criminal activity.*

2. *The Conference notes those measures already taken by a number of States Parties in this regard, including the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality. The Conference believes that such measures which States Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by previous Review Conferences.*

3. *The Conference having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties at and since the Meeting of States Parties in 2003, agrees to adopt an achievement timeline with the objective of achieving national legislation, including penal legislation, in two thirds of the States Parties by the time of the Seventh Review Conference. The Conference requests those States Parties in a position to do so to provide assistance and resources to the United Nations Department for Disarmament Affairs to facilitate the achievement of this*
objective. The Conference requests that an annual report of progress be provided to all States Parties.

4. The Conference, noting the stringency of the prevention criterion in Article IV and recognising the need for a common understanding of its implications, calls on each State Party to review thoroughly its measures of national implementation, in force or in prospect, including its penal legislation and administrative regulations, to ensure that they:

   a. encompass the full scope of the prohibitions contained in the Convention;

   b. extend to the control and monitoring of relevant dual-use materials and technologies;

   c. are subject to effective implementation and enforcement to prevent violations and to sanction breaches;

   d. apply fully to the organs of the State and its agents, as well as to non-State actors;

   e. are sufficiently stringent, in content and in enforcement, to prevent as well as to prohibit any of the activities encompassed in the Convention from being conducted within its territory, under its jurisdiction or under its control anywhere; and also, if constitutionally possible and in conformity with international law, from being conducted anywhere by natural persons possessing its nationality.

5. The Conference notes that notwithstanding the differing legal and constitutional arrangements among the States Parties to the Convention, States have adopted similar basic approaches and share common principles. The Conference stresses the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The Conference agrees, to that end, on the value of the following:

   a. To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibitions of the Convention, and which enhance effective security of pathogens and toxins.

   b. The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

   c. The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes recognising the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

6. The Conference notes the importance of:
- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

- Adoption of codes of conduct for those engaged in relevant areas of science and technology.

7. The Conference in regard to the content, promulgation and adoption of codes of conduct recognises that:

a. while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

b. codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

c. a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

d. codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

e. science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

8. In addition, the Conference recognises that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The Conference agrees on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.
9. On the content of codes of conduct, recognising the principles listed in paragraph 7 above, the Conference agrees on the importance of codes of conduct being:

   a. compatible with national legislation and regulatory controls and contributing to national implementation measures;

   b. simple, clear and easily understandable both to scientists and to wider civil society;

   c. relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

   d. sufficiently broad in scope;

   e. regularly reviewed, evaluated for effectiveness, and revised as necessary.

10. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the Conference agrees on the value of:

   a. demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

   b. using existing codes, mechanisms, frameworks and bodies as far as possible; and

   c. tailoring adoption strategies according to the needs of each relevant sector.

11. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the Conference agrees on the value of continuous efforts on promulgation through appropriate channels.

12. The Conference having reviewed the activities in regard to codes of conduct undertaken by the States Parties at and since the Meeting of States Parties in 2005, calls upon all States Parties to foster the adoption of such codes of conduct as appropriate and to provide an annual report of progress thereon to the United Nations Department for Disarmament Affairs to provide to all States Parties.

13. The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.

14. The Conference further agrees that the States Parties would hold an annual Meeting of States Parties prepared by a Meeting of Experts during the intersessional period prior to the Seventh Review Conference to consider education and outreach for all those concerned with the life sciences.

15. The Conference notes that some States Parties, as requested by previous Review Conferences, have provided to the United Nations Department for Disarmament
Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invites these States Parties, and encourages all States Parties, to provide such information and texts in the future. In this regard the Conference welcomes information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures". In addition, the Conference encourages all States Parties to provide any useful information on the implementation of such measures to the United Nations Department for Disarmament Affairs or on request to an individual State Party.

16. The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.

17. The Conference encourages States Parties to explore the possibility of negotiating in an appropriate forum, such as the Sixth Committee of the United Nations General Assembly, an international convention on the criminalisation of biological and chemical weapon activities which would emphasise individual criminal responsibility for acts stigmatised as international crimes. The Conference favours such international legal approaches to the criminalisation of all acts prohibited among States Parties as usefully supplementing national implementation measures under Article IV by ensuring that any jurisdictional loopholes are closed, and that impunity for criminal acts involving inter alia biological and toxin weapons is thereby abolished.

18. The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.

ARTICLE IV: NATIONAL IMPLEMENTATION:
EDUCATION, OUTREACH AND CODES OF CONDUCT

by Malcolm R. Dando

Considerations at the Fourth Review Conference

1. Article IV of the Convention states that:
Each state party to this Convention shall, in accordance with its constitutional processes, take any necessary measure to prohibit and prevent the development, production, stockpiling, acquisition or retention of agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such state, under its jurisdiction to under its control anywhere.

2. It is important to note that this Article requires States Parties to take any necessary measure "to protect and prevent". The requirement of prevention was reflected in paragraph 3 of the Final Declaration\textsuperscript{143} of the Fourth Review Conference in 1996 in regard to Article IV. This stated that:

3. The Conference notes the importance of:

....

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

4. The Conference believes that such measures which State Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by the Second and Third Review Conferences.

This language was closely similar to that in the Final Declaration of the Third Review Conference which had been similar to that in the Final Declaration of the Second Review Conference. The difference was that the Fourth Review Conference referred to with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention whilst the Third Review Conference\textsuperscript{144} referred to the prohibition of microbial or other biological agents or toxins and the Second Review Conference\textsuperscript{145} to the prohibition of bacteriological (biological) and toxin weapons.

3. It is thus clear that the States Parties had long recognised the importance of education about the prohibitions embodied in the Convention even though there has been little evidence that the prohibitions embodied in the Convention have been included in educational programmes.

Developments since the Fifth Review Conference


4. At the Fifth Review Conference\textsuperscript{146} the States Parties agreed that there should be a series of annual Meetings of States Parties prepared by Meetings of Experts during the intersessional period from 2003 to 2005 and that the topic to be considered in 2005 was:

\textit{The content, promulgation and adoption of codes of conduct for scientists.}

5. The Meeting of Experts in June 2005 involved a wide range of scientific organisations in a broad discussion of these issues and, as one reviewer noted\textsuperscript{147}, in addition to the recognition of the value of a layer of codes “There also appears to be widespread recognition that education and awareness-raising will be an essential part if any codes are to be effective.”

6. The Meeting of State Parties in December 2005 again featured a wide-ranging discussion and involvement of many scientific organisations in addition to the States Parties\textsuperscript{148}. The report\textsuperscript{149} of the annual Meeting of States Parties in 2005 included the following concluding paragraphs:

18. On the mandate to discuss, and promote common understanding and effective action on the content, promulgation and adoption of codes of conduct for scientists, the States Parties recognised that:

(a) while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

(b) codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

(c) a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;


(d) codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

(e) science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

19. The States Parties recognised that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

20. On the content of codes of conduct, recognising the principles listed in paragraph 18, the States Parties agreed on the importance of codes of conduct being:

(a) compatible with national legislation and regulatory controls and contributing to national implementation measures;

(b) simple, clear and easily understandable both to scientists and to wider civil society;

(c) relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

(d) sufficiently broad in scope;

(e) regularly reviewed, evaluated for effectiveness, and revised as necessary.

21. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the States Parties agreed on the value of:

(a) demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

(b) using existing codes, mechanisms, frameworks and bodies as far as possible; and

(c) tailoring adoption strategies according to the needs of each relevant sector.

22. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the States Parties agreed on the value of continuous efforts on promulgation through appropriate channels.
23. The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topic under discussion at the Meeting of Experts, as contained in Annex I of the Report of the Meeting of Experts (BWC/MSP/2005/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2005/L.1, which is attached to this report as Annex I. This annex was not discussed or agreed upon and consequently has no status.

It was again evident from reports of both the Meeting of Experts\(^{150}\) and the Meeting of States Parties\(^{151}\) that these had provided opportunities for States Parties to share information on the approaches being taken to address this topic. Although decisions on further action were left to the Sixth Review Conference, the annual meetings were effective in focusing the attention of the States Parties on the topic.

7. It was clear that the States Parties recognised that codes of conduct could have a significant and effective role in conjunction with national legislation and helping those engaged in the relevant scientific communities relevant to the Convention to fulfil their legal, regulatory and professional obligations and ethical principles. The report also pointed out the need for wide involvement of scientists in: the development of codes of conduct; the content of codes of conduct; the adoption of codes of conduct and the promulgation of codes of conduct. It was further stated that:

22. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the States Parties agreed on the value of continuous efforts on promulgation through appropriate channels.

The necessity of adequate education of the life science community in order that codes were effective at supporting the Convention was therefore clearly recognised and stated in the report.

8. A further development since the Fifth Review Conference has been the adoption by the United Nations Security Council of Resolution 1540 (2004)\(^{152}\). This includes as its eighth operative paragraph that the Security Council:

8. Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties,


whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

(c) To renew and fulfill their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws; [Emphasis added]

It is noted that the final clause call upon all States to develop ways to inform industry and the public regarding their obligations under such laws. This is, consequently, another recognition of the importance of education and outreach.

9. There has been a similar development regarding the importance of education, outreach and codes of conduct in regard to the States Parties to the Chemical Weapons Convention (CWC)\textsuperscript{153}. In 2002 in preparation for the First Review Conference of the CWC in April 2003, the International Union of Pure and Applied Chemistry (IUPAC) carried out an evaluation of scientific and technological advances in chemistry that could have an impact on the implementation of the CWC\textsuperscript{154}. In a section of the report of the evaluation titled “Education and Outreach” IUPAC stated:

1. Greater efforts on education and outreach to the worldwide scientific and technical community are needed in order to increase awareness of the CWC and its benefits. An informed scientific community within each country can be helpful in providing advice to the states Parties and in disseminating information to the public.

2. Education and outreach to Signatory States and non-signatory States could be helpful in increasing awareness of the importance of universal adherence to the Convention thereby enhancing safety and security for all states

The IUPAC evaluation was considered by the Scientific Advisory Board (SAB) of the Organisation for the Prohibition of Chemical Weapons (OPCW) and its report forwarded by the Director General to all States Parties for consideration at the First CWC Review Conference.

\textsuperscript{153} Graham S. Pearson, \textit{Education, Outreach and Codes of Conduct: OPCW and IUPAC Activity}. Briefing Paper No. 19 (Second Series), University of Bradford, Department of Peace Studies, November 2005. Available at http://www.brad.ac.uk/acad/sbtwc.

10. In his covering note\textsuperscript{155} to the SAB report the Director General stated that:

\textit{2.20 In relation to the international co-operation and related matters, the SAB has concluded that the OPCW needs to clearly establish what it requires in the field of education outreach and international cooperation...}

The SAB report itself stated that:

\textit{9.2 Greater efforts in terms of education and outreach to the worldwide scientific and technological community are needed in order to increase awareness of the Convention and its benefits...}

\textit{9.3 The SAB noted that the Secretariat had developed certain projects that supported these goals, in particular the Associate Programme and the Ethics Project.}

\textit{9.4 The SAB was convinced that efforts in the area of education and outreach are important to further the objectives of the Convention: these efforts include raising awareness, assuring that the principles of the Convention become anchored in professional ethics and teaching, and promoting international cooperation in the field of chemistry...}

11. The report\textsuperscript{156} of the First Review Conference of the CWC subsequently included the conclusion that:

\textit{7.79 the First Review Conference noted that a valuable aspect of national implementation measures involves ensuring that the chemical industry, the scientific and technological communities, the armed forces of the States Parties, and the public at large are aware of and knowledgeable about the prohibitions and requirements of the Convention.}

And the First Review Conference report also stated in paragraph 7.83:

\textit{(d) encouraged State Parties to take measures to raise awareness about the prohibitions and requirements of the Convention, inter alia in their armed forces, in industry, and in their scientific and technological communities.}

12. Subsequent to the First Review Conference of the CWC, the Director General of the OPCW and the President of the IUPAC met and agreed that there should be a joint meeting to consider such issues. This OPCW and IUPAC joint meeting was held on 9 to 12 July, 2005 at St. Anne’s College, Oxford, UK under the title \textit{The Chemical Weapons Convention, chemistry education and the professional conduct of chemists}. There were 27 participants from 8 different countries and they met in six sessions concerning: Background and Context


of the Workshop; Codes of Conduct I and II; Education I and II; and International Law and the Role of the Chemistry Industry.  

13. In regard to the chemistry education and outreach a number of findings and observations could be drawn from the detailed discussions at the meeting including that:

1. Outreach to those engaged in science and technology using chemicals and efforts to ensure that the education of all chemists includes an awareness of the requirements and obligations of the CWC will contribute to achieving an in depth compliance within State Parties to the Convention…

2. Steps need to be taken in chemistry education both at secondary and post-secondary levels to enhance the awareness of both benefits that science and technology using chemicals can bring and of the potential for misuse in regard to illicit drugs, chemical and biological weapons, PIC, POPs, etc…

3. There needs to be recognition that these engaged in science and technology using chemicals have a role in ensuring sustainable development and the fact that compliance and implementation of international treaties such as CWC and the BTWC contribute to this.

4. From the point of view of the implementation of the CWC and achieving in-depth compliance, a concerted effort is needed involving both the OPCW and the National Authorities of States Parties and IUPAC.

14. In regard to Codes of Conduct the meeting similarly reached a series of clear findings and observations, that:

7. Codes of conduct are needed for all these engaged in science and technology using chemicals to protect public health and the environment and to ensure that activities in science and technology using chemicals are, and are perceived to be, in compliance, with international treaties national laws and regulations…

8. Such codes of conduct are complementary to national implementing legislation for the CWC and will help to achieve in depth compliance throughout academia, industry and government of those engaged in science and technologies using chemicals. They will extend awareness of the general purpose criteria of both the CWC and the BTWC and this will help to ensure its effective implementation.

9. More benefits are to be gained from a layered approach to such codes:

- Universal principles / declarations such as those being developed by UNESCO / COMEST;
- Society codes such as those of or being developed by professional and industrial associations
- Institutional / workplace codes such as those in of being developed by individual institutions / workplaces

The three layers are complementary and mutually reinforcing. The approach to be adopted throughout should be to extend existing codes rather than seeking to create new codes.

15. The meeting at Oxford was noted in the presentation by the OPCW at the BTWC Meeting of Experts in June 2005 and referred to by the IUPAC President in his address to the IUPAC Congress in Beijing in August 2005. Subsequently OPCW and IUPAC have continued to be involved in a joint project on educational initiatives for chemists.

Education, Outreach, Codes of Conduct and the BTWC

16. The need for awareness raising, education and outreach to those engaged in the life sciences is just as important in regard to the BTWC as it is for chemists in regard to the CWC. A series of 25 seminars with life scientists in the UK and one in Germany led to the conclusion\(^8\) that there was little evidence that the participants:

a. regarded bioterrorism was a substantial threat;

b. considered that developments in the life sciences research contributed to biothreats;

c. were aware of the current debates and concerns about dual use research; or

d. were familiar with the BTWC

It was thought that the UK might well be a ‘best-case scenario’ as practicing scientists there were familiar with strong legislation (for example in regard to animal experimentation) and, having English as a first, or working, language, would have access to the discussions of those issues in key journals such as *Science* and *Nature*.

17. Subsequently similar seminar series have been held in four different countries. Four seminars were held in the Netherlands, two in Finland, seven in South Africa and twelve in the United States\(^9\). In general terms the results of these seminars confirmed the earlier findings of a low level of awareness of the BTWC and of the problem of dual-use research in the life sciences. Carrying out these extended series of seminars also emphasised the need for the development of more effective methods of education and awareness raising. Whilst the seminars were found to be effective they had involved a great deal of work over a two year period and required specialist moderators to be present. Their audience was also limited to those who attended the seminars with no subsequent structured outreach.

18. It is clear that a number of attempts are being made, particularly in the United States, to develop educational modules related to the BTWC for life scientists\(^{10}\). Developing such


modules requires attention to a range of questions such as – Who is to do the educating if there is such widespread lack of awareness? Then it needs to be asked who is to be educated? What should the primary targets be – practicing life scientists as they could inadvertently be producing dangerous knowledge now or undergraduates as they are in their formative years? Furthermore, what should be the content of any educational module and does it matter if very different modules are developed and implemented in different places?

19. Two educational modules have been developed on the basis of the interactive seminars previously carried out so as to contribute to the further development of educational modules. The first module recognized the prevalence of the use of internet-based communications within the scientific community and has been explored by the development of a version of the seminar that has been made available on the internet. The second module recognized the widespread use of role-play exercises in educational courses and led to the exploration of how the seminar could be modified so that it could be widely used in regular educational courses for life scientists.

20. For the first module, a multimedia version of the seminar given at the New York Academy of Sciences has been developed in cooperation with the Academy. A video recording of the seminar is now available along with a write up of the seminar by a science journalist who attended and further material supplied by the original presenters. As in any seminar only a selection of the pertinent issues were covered, and therefore the additional material raises further questions and provides additional information about issues which had been more of a focus in other seminars.

21. For the second module, the presenters of the seminar series carried out in the UK and other countries (Rappert and Dando) invited a role play designer (Chevrier) to sit in on several seminars with a view to determining whether a role play exercise was possible. Three difficulties were found in the initial design of the pilot study. First, the seminars had involved a range of practicing life scientists in university departments. These scientists had a variety of background including very senior and experienced people – including heads of departments and above. The target audience for the role play exercise would be undergraduates who would not have the range of experience as such senior people. In order to ensure that the range of questions and opinions that needed to be covered, we therefore developed twelve different roles that participants could play in the exercise. A second difficulty concerned how the instructor (of the undergraduate class) was to take on the role of the two presenters in the original seminars. Over the period of developing and carrying out the original seminars it had been possible to minimise the material presented on a series of power point slides and for the presenters to amplify the material orally. The instructor could not be expected to do this so the power point slides were redesigned to convey more material and back up written information was developed for the instructor. Thirdly, in order that the issues were thoroughly discussed it was necessary to provide the instructor with some guidelines on the interactive techniques developed for the presenters in the original seminars.


163 The recording is available at <www.nyes.org/ebriefs/splash.asp?intEbriefID=2437>.
22. Using this material a pilot role play exercise was carried out with a diverse group of participants in a university in the United States. The participants found the exercise useful and interesting, but as a result of the pilot study significant changes were made to the original material: the role play descriptions were shortened to make it simpler for participants to absorb quickly; participants were provided with means by which they could add their own views even if these would not fit with the role they had been assigned (given that the object was to seek a wide range of opinion); and as it was clear that some of the power point slides were still too complex a number were broken down into simpler sequences. In order to encourage discussion we also added introductory questions such as “why” and “what are the implications” at some points in the overall slide sequence. This reworked role play exercise is being tested again and is being made available on the web for others to test.

23. It can be concluded that, whilst there is a widespread need for awareness raising about BTWC issues amongst those engaged in the life sciences, it is possible to develop a variety of different educational modules that can be used to increase awareness and which life scientists find useful and interesting.

**Issues for the Sixth Review Conference**

24. It is evident that for in depth implementation of the necessary measures required by Article IV to prohibit and prevent the development, production, stockpiling, acquisition or retention of agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention the States Parties need to take steps for education, outreach and codes of conduct. The seminars described above in the UK, US, Finland, Germany, Netherlands and South Africa have shown that there is little awareness of the BTWC amongst those engaged in the life sciences.

25. The paragraph in the Article IV section of the Final Declaration of the Fourth Review Conference which notes the importance of education might usefully be extended so as to include codes of conduct as shown in the bold text below:

*The Conference notes the importance of:*

- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

- Adoption of codes of conduct for those engaged in relevant areas of science and technology.
26. It is recalled that the mandate\textsuperscript{164} for the annual Meetings of States Parties held between 2003 and 2005 included the requirement:

The Sixth Review Conference will consider the work of the meetings and decide on any further action.

27. It is recommended that the outcome of the Meeting of States Parties in 2005 that considered the topic:

The content, promulgation and adoption of codes of conduct for scientists.

should be incorporated into the Article IV section of the Final Declaration of the Sixth Review Conference by using language along the following lines:

The Conference in regard to the content, promulgation and adoption of codes of conduct recognises that:

\begin{itemize}
\item[a.] while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;
\item[b.] codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;
\item[c.] a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;
\item[d.] codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;
\item[e.] science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.
\end{itemize}

In addition, the Conference recognises that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development,
promulgation and adoption. The Conference agrees on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

On the content of codes of conduct, recognising the principles listed in paragraph 7 above, the Conference agrees on the importance of codes of conduct being:

a. compatible with national legislation and regulatory controls and contributing to national implementation measures;

b. simple, clear and easily understandable both to scientists and to wider civil society;

c. relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

d. sufficiently broad in scope;

e. regularly reviewed, evaluated for effectiveness, and revised as necessary.

On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the Conference agrees on the value of:

a. demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

b. using existing codes, mechanisms, frameworks and bodies as far as possible; and

c. tailoring adoption strategies according to the needs of each relevant sector.

On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the Conference agrees on the value of continuous efforts on promulgation through appropriate channels.

28. In considering further action, it is recommended that the Sixth Review Conference should call upon all States Parties to foster the adoption of such codes of conduct and to provide an annual report thereon to the UN Department for Disarmament Affairs:

The Conference having reviewed the activities in regard to codes of conduct undertaken by the States Parties at and since the Meeting of States Parties in 2005, calls upon all States Parties to foster the adoption of such codes of conduct as appropriate and to provide an annual report of progress thereon to the United Nations Department for Disarmament Affairs to provide to all States Parties.

29. It is also recommended that the States Parties in considering the value of education and outreach to aid the in-depth implementation of the Convention should incorporate the substance of the language relating to outreach and implementation in the eighth operative paragraph of Security Council resolution 1540 (2004) which states:
To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

into the Article IV section of the Final Declaration of the Sixth Review Conference by using language along the following lines modified slightly so as to include academia as well as industry:

The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.

30. It is also recommended that the States Parties should agree to hold an annual Meeting of States Parties prepared for by a Meeting of Experts during the intersessional period between the Sixth and Seventh Review Conferences to consider the topic:

Education and outreach for all those concerned with the life sciences.

Language for the Sixth Review Conference

30. The language to be adopted by the Sixth Review Conference in its Article IV section in relation to education, outreach and codes of conduct might be along the following lines:

6. The Conference notes the importance of:

- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

- Adoption of codes of conduct for those engaged in relevant areas of science and technology.

7. The Conference in regard to the content, promulgation and adoption of codes of conduct recognises that:

a. while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by
raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

b. codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

c. a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

d. codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

e. science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

8. In addition, the Conference recognises that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The Conference agrees on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

9. On the content of codes of conduct, recognising the principles listed in paragraph 7 above, the Conference agrees on the importance of codes of conduct being:

a. compatible with national legislation and regulatory controls and contributing to national implementation measures;

b. simple, clear and easily understandable both to scientists and to wider civil society;

c. relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

d. sufficiently broad in scope;

e. regularly reviewed, evaluated for effectiveness, and revised as necessary.

10. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the Conference agrees on the value of:

a. demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

b. using existing codes, mechanisms, frameworks and bodies as far as possible; and
c. tailoring adoption strategies according to the needs of each relevant sector.

11. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the Conference agrees on the value of continuous efforts on promulgation through appropriate channels.

12. The Conference having reviewed the activities in regard to codes of conduct undertaken by the States Parties at and since the Meeting of States Parties in 2005, calls upon all States Parties to foster the adoption of such codes of conduct as appropriate and to provide an annual report of progress thereon to the United Nations Department for Disarmament Affairs to provide to all States Parties.

13. The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.

14. The Conference further agrees that the States Parties would hold an annual Meeting of States Parties prepared by a Meeting of Experts during the intersessional period prior to the Seventh Review Conference to consider education and outreach for all those concerned with the life sciences.
ARTICLE V: CONSULTATION AND COOPERATION

by Graham S Pearson

Consideration of Article V at the Fourth Review Conference

1. Article V of the Convention states that:

   The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. 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.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\(^\text{165}\) in respect of Article V stated that:

   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

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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 Review Conference to make all possible efforts 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. While noting that these procedures have
not yet been invoked, the Conference reaffirmed their present validity. The
Conference 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. In accordance with the decision of the Third Review Conference, the Conference
reviewed the effectiveness of the confidence-building measures as agreed in the Final
Declaration of the Third 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.

5. 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 Third 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 also recognizes the technical difficulties experienced by some States
Parties with respect to preparing CBM responses. In this regard, the Conference
urges all States Parties to complete full and timely declarations in the future. The
Conference notes that the Ad Hoc Group of States Parties established by the Special
Conference in 1994 is, as part of its continuing work, considering the incorporation
of existing and further enhanced confidence-building and transparency measures, as
appropriate, in a regime to strengthen the Convention.

6. The Conference stresses its determination to strengthen effectiveness and improve
the implementation of the Convention, and its recognition that effective verification
could reinforce the Convention.

7. In this regard, the Conference recalls that:
The Third Review Conference established the Ad Hoc Group of Governmental Experts open to all States Parties to identify and examine potential verification measures from a scientific and technical standpoint.


A Special Conference was held in September 1994 to consider the report, and decided to establish an Ad Hoc Group open to all States Parties. The Conference considered the work of the Ad Hoc Group under agenda item 12 and its conclusions are reflected in the section of this document entitled "Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994".

8. The Conference stresses the need for all States Parties to deal effectively with compliance issues. In this connection, the States Parties had agreed to provide a specific, timely response to any compliance concern alleging a breach of their obligations under the Convention. Such responses should be submitted in accordance with the procedures agreed upon by the Second Review Conference and further developed by the Third Review Conference. The Conference reiterates its request that information on such efforts be provided to the Review Conferences.

Developments since the Fourth Review Conference

3. The principal developments since the Fourth Review Conference have been:

a. The invoking by Cuba 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 upon the agreements reached at the Second Review Conference; and

b. The continued submission by some States Parties of the annual Confidence Building Measures agreed at the Second Review Conference and extended at the Third Review Conference.

4. Cuban invoking of Article V procedures. The invoking by Cuba of the procedures for the implementation of Article V followed the sending by Cuba on 28 April 1997 of a Note verbale to the Secretary-General of the United Nations (circulated as UN General Assembly A/52/128, 29 April 1997) which described the appearance in Cuba of an insect pest, *Thrips palmi karnyi*. Cuba reported its investigation and analysis which had led Cuba to conclude that the appearance of *Thrips palmi* was related to the observation on 21 October 1996 by the Cuban pilots of a Cuban aircraft of the dropping of an unknown substance from an aircraft operated by the United States State Department which was making an authorised

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overflight of Cuba whilst flying from Cocoa Beach, Florida to Colombia via Grand Cayman. This aircraft is one used by the State Department to destroy drug crops in the struggle against drug trafficking. The Note verbale concluded by saying "There is reliable evidence that Cuba has once again been the target of biological aggression." The United States Department of State on 6 May 1997 issued a statement that "the United States categorically denies the outrageous charges made by the Cuban Government regarding the alleged discharge of the Thrips palmi insect over Cuba to damage agriculture there." The statement also alleged that the accusations made by Cuba were "deliberate disinformation".

5. On 30 June 1997, Cuba submitted a request to the Russian Federation, as co-depositary of the BTWC, for the holding of a consultative meeting under the provisions adopted at the Second Review Conference in 1986 and reaffirmed and elaborated at the Third Review Conference to "consider any problems in relation to the objective of, or in the application of the provisions of, the Convention." Consequently an informal consultative meeting was held in Geneva on 31 July 1997 to discuss the arrangements for the formal consultative meeting. A Note issued by the depositaries on 8 August 1997 informed States Parties to the BTWC that the formal consultative meeting would be held in Geneva on 25 August 1997 and that the UK would chair this meeting as the UK had chaired the last Review Conference in November/December 1996. It also stated that the substantive meeting would have one substantive item: the concerns raised by Cuba in its request for the convening of the consultative meeting, which were available in papers circulated by Cuba as UN documents A/52/158 and A/52/213.

6. 74 States Parties, over half of the States Parties, to the BTWC and 3 Signatory States attended the formal consultative meeting held in Geneva on 25 - 27 August 1997. Statements were made by both Cuba and the United States. The report of the formal consultative meeting (BWC/CONS/1, 29 August 1997) records that "States Parties welcomed the fact that the delegations of Cuba and the United States had sought to clarify their positions with respect to the concerns raised by the Government of Cuba. States Parties noted that the consultation was fully in conformity with the conclusions of the final document of the Third Review Conference relevant to the application of Article V of the Convention." It was, however, clear that there was not consensus on whether, in the time available for the meeting, "all matters considered ambiguous or unresolved arising from the request of the Government of Cuba" had been fully resolved. It was therefore agreed that States Parties who wished to do so should provide to the Chairman by 27 September 1997 (ie one month later) "a submission containing their observations, including from national technical experts, on the information provided to the meeting by the Governments of Cuba and the United States." The Chairman and Vice Chairmen (from Brazil, Canada, the Islamic Republic of Iran, the Netherlands, Nigeria and the Russian Federation) agreed to consult on the basis of the information supplied at the 25 - 27 August meeting and in the light of any further observations (received by 27 September 1997) in order "to clarify and resolve any outstanding issues related to the concerns raised by Cuba." The Chairman would then report in writing by 31 December 1997 to all States Parties on the outcome of these consultations.

7. Some 12 additional observations were received by the Chairman from, in order of their receipt, New Zealand (1 page), Canada (4), Cuba (19), China (3), Japan (1), Australia (2), Germany (2), Denmark (2), Netherlands (2), Vietnam (2), Hungary (1) and the Democratic People's Republic of Korea (2). The Chairman's report issued on 15 December 1997 by Ambassador Ian Soutar of the UK outlined the process which had been followed and stated that 12 observations and comments had been received, that these were annexed to the report,
and that following a meeting on 7 October 1997 with the Vice Chairmen, copies had been provided to Cuba and the USA to enquire whether, in their view, the further submissions had assisted in clarifying or resolving the concerns raised by Cuba. Subsequent replies were received from the USA and from Cuba which were also annexed to the report.

8. The report states that a further meeting of the Bureau (the Chairman and Vice-Chairmen) was convened on 27 November 1997 during which the Chairman invited any reactions from the technical experts of the Bureau members to the information contained in the submissions received earlier. The report noted that "some members of the Bureau stated that further examination of the evidence in their capitals had confirmed their view that there was no causal link between the overflight of the US aircraft and the insect infestation in Cuba. Other members of the Bureau stated that the technical complexity of the issue and the lack of further detailed information made it impossible to draw any definitive conclusions."

9. The report then concluded that "due inter alia to the technical complexity of the subject and the passage of time, it has not proved possible to reach a definitive conclusion with regard to the concerns raised by the Government of Cuba."

10. It went on to emphasise that "there had been general agreement throughout the process that the requirements of Article V of the Convention and of the consultative process established by the Third Review Conference have been fulfilled in an impartial and transparent manner." Furthermore, "the Bureau agreed that the experience of conducting this process and consultation had shown the importance of establishing as soon as possible an effective Protocol to strengthen the Convention which is being negotiated in the Ad Hoc Group."

11. Although the consultative procedure worked well, it is to be regretted that although the report of the formal consultative meeting (BWC/CONS/1, 29 August 1997) was issued, there was no similar issue of the final report thus leaving the resolution of the allegation somewhat in limbo from the point of view of States not party to the BTWC and of the public at large. It would be beneficial if the final report were to be issued as a formal UN document as BWC/CONS/2 so that the record is complete.

12. Confidence Building Measures. The States Parties agreed at the Second Review Conference in 1986 to submit information annually under Confidence Building Measures (CBMs). The CBMs were reviewed and extended at the Third Review Conference in 1991.¹⁶⁸

In accordance with the decision of the Second Review Conference, and taking into account views expressed concerning the need to strengthen the implementation of the provisions of Article V, the Conference reviewed the effectiveness of the provisions in Article V for consultation and cooperation and of the cooperative measures agreed in the Final Declaration of the Second Review Conference, and considered whether or not further actions were called for to create further cooperative measures. The Conference came to the following conclusions and recommendations:

The Conference notes the importance of the confidence-building measures agreed upon at the Second Review Conference, as well as the modalities elaborated by the Ad Hoc Meeting of the Scientific and Technical Experts from States parties to the Convention held in 1987. The Conference recognizes the exchange of information that took place on this agreed basis between 1987 and 1991. The Conference urges all States parties to submit information to future rounds of information exchange.

With a view to promoting increased participation and strengthening further the exchange of information, the Conference agrees to reaffirm those measures established at the Second Review Conference with the following improvements: to add a declaration on "Nothing to declare" or "Nothing new to declare"; to amend and extend the exchange of data on research centres and laboratories; to amend the exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins; to amend the measure for the active promotion of contacts; and to add three new confidence-building measures entitled "Declaration of legislation, regulations and other measures"; "Declaration of past activities in offensive and/or defensive biological research development programmes"; and "Declaration of vaccine production facilities".

Accordingly, the Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States parties are to implement, on the basis of mutual cooperation, the following measures set out in the annex to this Final Declaration, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international cooperation in the field of peaceful bacteriological (biological) activities:

1. Declaration form on "Nothing to declare" or "Nothing new to declare"

2. Confidence-building measure "A":
   - Part 1: Exchange of data on research centres and laboratories;
   - Part 2: Exchange of information on national biological defence research and development programmes.

3. Confidence-building measure "B":
   - Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.

4. Confidence-building measure "C":
   - Encouragement of publication of results and promotion of use of knowledge.

5. Confidence-building measure "D":
   - Active promotion of contacts.

6. Confidence-building measure "E":

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- Declaration of legislation, regulations and other measures.

7. Confidence-building measure "F":

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

8. Confidence-building measure "G":

- Declaration of vaccine production facilities.

The Conference also agrees that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual basis and should cover the previous calendar year.

13. At the Fourth Review Conference\textsuperscript{169}, the States Parties did not carry out a detailed review of the CBMs as they were aware that the Ad Hoc Group was then engaged in considering the incorporation of existing and further enhanced CBMs into a regime of compliance measures to strengthen the Convention and the language in the Final Declaration in 1996 stated that:

5. 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 Third 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 also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future. The Conference notes that the Ad Hoc Group of States Parties established by the Special Conference in 1994 is, as part of its continuing work, considering the incorporation of existing and further enhanced confidence-building and transparency measures, as appropriate, in a regime to strengthen the Convention.

14. At the Fifth Review Conference, a number of useful proposals to strengthen the CBMs were submitted by South Africa\textsuperscript{170}: to extend CBM “A” to include facilities handling Group 4 animal pathogens, to extend CBM “G” to include human vaccines for the general public or the armed forces and animal vaccines, and a new CBM “H” for the declaration of plant inoculant and biocontrol agent production facilities. These are well worth further consideration, along with other ideas for improving the responses from the States Parties in


their annual submissions of CBM returns, at the forthcoming Sixth Review Conference in November/December 2006.

15. France issued a paper\(^\text{171}\) in February 2006 which provided an analysis of the CBM submissions during the period 2000 to 2005. This showed that the total number of submissions during the years from 2000 to 2005 ranged from 33 to 50 – less than a third of all States Parties – and was similar to the level of participation during the previous decade from 1990 to 2000 when the number of contributions ranged from 31 to 53. The French paper goes on to analyse the trends in participation by the regional groups with 16 to 26 of the 32 States Parties in the Western Group participating between 2000 and 2005, with 12 to 15 of the 24 States Parties in the Eastern group participating and with 4 to 10 of the 98 States Parties in the Non-Aligned and Other states group participating. The French paper goes on to make a short qualitative analysis pointing out that there are a wide range of interpretations by States Parties of the Declaration form on "Nothing to declare" or "Nothing new to declare" and that an agreed clarification would be helpful. Secondly, they note that there is a great variety in regard to the quality of the information submitted by the States Parties.

16. A further development in February 2006 was the adoption by the European Union of an Action Plan\(^\text{172}\) on biological and toxin weapons which includes as its first measure an item I. Efficient use of CBM having the purpose that The EU wishes to revitalise interest in and use of CBMs. Increased use of CBMs would increase transparency in implementation of the BTWC. The measure is described as follows:

To this end, all EU Member States will ensure the fulfilment of their obligation under the BTWC to file a CBM return each year, beginning with 2006 as a first step. Notably, the EU will ensure that the current nine topics, each of which has its own reporting form, are reported each year by every BTWC State Party of the EU. Submission of CBM's by all EU Member States on a yearly basis would allow the EU to take diplomatic action towards other States Parties to the BTWC to fulfil their obligations under the Convention. EU Member States will furthermore develop thoughts on how best to improve the effectiveness of CBM's in the context of the BTWC and discuss these with other BTWC States Parties.

17. A recent analysis\(^\text{173}\) of the situation regarding the CBMs submitted under the BTWC has noted that:

Clearly, improvements need to be discussed at the sixth review conference or later during a focused meeting on the future of CBMs. The declarations need to be altered to make their topics more relevant and to provide better data for analysis. Other steps

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should include ensuring CBMs are submitted on time; improving the accessibility, verifiability, and the ease of use of submitted data; and ensuring that the CBMs remain relevant in a changing technological and political environment.

Some states-parties have argued that before revising the CBMs, more efforts should be made to increase participation in the current CBM system. Clearly, however, a vicious cycle is currently in place in which limited participation diminishes confidence in the CBM mechanism and impairs the quality of submissions. Therefore, participation in the CBM process and the quality of submissions are only likely to improve in unison.

This analysis concluded that:

As the only source of relevant information exchange, it is vital that the CBMs work as efficiently as possible. Their importance needs to be reaffirmed at this year’s review conference, and the necessary reforms have to be agreed on and implemented. Only then can CBMs play a more efficient role as part of a larger system for preventing the proliferation, development, and use of biological weapons.

18. Consideration therefore needs to be given at the Sixth Review Conference to a review of the existing CBMs and their format; proposals for new CBMs; provision for electronic submission and circulation; collation, translation and elaboration procedures; and the provision of assistance, where requested. It needs, however, to be considered whether there will be sufficient time at the Sixth Review Conference to consider the details of the existing CBMs and how they might be improved. It should be recalled that at the Second Review Conference in 1986 the States Parties agreed to hold an ad hoc meeting in 1987 of scientific and technical experts from States Parties to finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure.

19. There would be merit in the States Parties at the Sixth Review Conference agreeing that a Meeting of States Parties should be held in 2007 to consider and decide how to improve the effectiveness of the CBM process with this Meeting being prepared for by an earlier two week Meeting of Experts. The Meeting of Experts on CBMs to prepare for the annual Meeting would provide an opportunity for States Parties to share best practice in compiling annual CBM returns and identifying how the effectiveness of the CBM process might best be improved. It is evident from the experience gained during the period from 2003 to 2005 that the process of annual one week Meetings of States Parties prepared by an earlier two week Meeting of Experts has worked well and been effective in achieving a good exchange of information. It is recognised that one option would be for the meeting in 2007 to be effectively a follow-on meeting from the Sixth Review Conference in the same way that the 1987 was a follow-on meeting from the Second Review Conference. However, it is probable that there will be a series of annual Meetings of States Parties prepared for by Meetings of Experts during the intersessional period between the Sixth Review Conference in 2006 and the Seventh Review Conference in 2011 and consequently it would be better to have the meeting in 2007 on CBMs as part of this intersessional process.

20. The language to be adopted in the Final Declaration could be developed from that agreed at the Second Review Conference in 1986 at which the Article V section included:
The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis on mutual co-operation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:

1. 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 individual and community risk or specialise in permitted biological activities directly related to the Convention.

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

3. 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.

4. Active promotion of contacts between scientists engaged in biological research directly related to the Convention, including exchanges for joint research on a mutual agreed basis.

The Conference decides to hold an ad hoc meeting of scientific and technical experts from States Parties to finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The group shall meet in Geneva for the period 31 March-15 April 1987 and shall communicate the results of the work to the States Parties immediately thereafter.

21. The Sixth Review Conference in regard to CBMs might usefully adopt language along the following lines modeled upon the language of the Second Review Conference:

The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis on mutual co-operation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:

1. The exchange of information in the Confidence-Building Measures agreed at the Second Review Conference and extended at the Third Review Conference.
2. The further extension of these Confidence-Building Measures to include the provision of data on facilities handling category 4 animal pathogens and plant inoculants and biocontrol production facilities as well as facilities producing animal vaccines.

3. The exchange of information in a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

The Conference decides to hold an ad hoc meeting of scientific and technical experts from States Parties to review, improve and finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The group shall meet in Geneva for the period [two week period] 2007 and shall communicate the results of the work to the States Parties immediately thereafter.

In order to fit the 2007 meeting on CBMs into the pattern of annual Meetings of States Parties prepared for by Meetings of Experts, the final paragraph would be amended to read as follows:

The Conference decides to hold a Meeting of Experts from States Parties to review, improve and finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The Meeting of Experts shall be held in Geneva for the period [two week period] 2007 and shall make recommendations to a subsequent Meeting of States Parties for decision.

This amended paragraph is recommended in the subsequent section on language for the Sixth Review Conference.

22. Strengthening the effectiveness and improving the implementation of the Convention. Although this has recently been a contentious issue, it is not one that can be ignored. There is little doubt that the majority, if not all, of the States Parties would indeed support, in principle if not in specific terms, the requirement to strengthen the effectiveness and improve the implementation of the Convention. Within the agenda for the Sixth Review Conference, this could be taken under the heading of “possible consensus follow-up action” in Agenda item 11, or under the review of Article V in Agenda item 10(b).

23. It needs to be recalled that at the Third Review Conference in 1991, the States Parties agreed in the Article V section of the Final Declaration as follows:

The Conference, determined to strengthen the effectiveness and improve the implementation of the Convention and recognizing that effective verification could reinforce the Convention, decides to establish an Ad Hoc Group of Governmental Experts open to all States parties to identify and examine potential verification measures from a scientific and technical standpoint.

The Group shall meet in Geneva for the period 30 March to 10 April 1992. The Group will hold additional meetings as appropriate to complete its work as soon as
possible, preferably before the end of 1993. In accordance with the agreement reached in the Preparatory Committee, the Group shall be chaired by Ambassador Tibor Tóth (Hungary), who shall be assisted by two Vice-Chairmen to be elected by the States Parties participating in the first meeting.

The Group shall seek to identify measures which could determine:

- Whether a State party is developing, producing, stockpiling, acquiring or retaining microbial or other biological agents or toxins, of types and in quantities that have no justification for prophylactic, protective or peaceful purposes;

- Whether a State party is developing, producing, stockpiling, acquiring or retaining weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Such measures could be addressed singly or in combination. Specifically, the Group shall seek to evaluate potential verification measures, taking into account the broad range of types and quantities of microbial and other biological agents and toxins, whether naturally occurring or altered, which are capable of being used as means of warfare.

To these ends the Group could examine potential verification measures in terms of the following main criteria:

- Their strengths and weaknesses based on, but not limited to, the amount and quality of information they provide, and fail to provide;

- Their ability to differentiate between prohibited and permitted activities;

- Their ability to resolve ambiguities about compliance;

- Their technology, material, manpower and equipment requirements;

- Their financial, legal, safety and other organizational implications;

- Their impact on scientific research, scientific cooperation, industrial development and other permitted activities, and their implication for the confidentiality of commercial proprietary information.

In examining potential verification measures, the Group should take into account data and other information relevant to the Convention provided by the States parties.

The Group shall adopt by consensus a report taking into account views expressed in the course of its work. The report of the Group shall be a description of its work on the identification and examination of potential verification measures from a scientific and technical standpoint, according to this mandate.

The report of the Group shall be circulated to all States Parties for their consideration. If a majority of States Parties ask for the convening of a conference to examine the report, by submitting a proposal to this effect to the Depositary Governments, such a conference will be convened. In such a case the conference shall
decide on any further action. The conference shall be preceded by a preparatory committee.

This Ad Hoc Group of Governmental Experts open to all States Parties, which became known as VEREX, met in 1992 and 1993 producing a report which was considered by a Special Conference of States Parties in 1994. The Special Conference decided to establish an Ad Hoc Group to negotiate a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention.

24. As noted in Review Conference Paper No. 14, there is no value in continuing recriminations about why the negotiations of the Ad Hoc Group came to an end in July 2001. Rather, a fresh start needs to be made. It needs to be recognized that there have been significant developments both politically and technically since the meetings of VEREX in 1992 & 1993, almost 15 years ago. It is recommended that a fresh start be made by considering all developments since the Third Review Conference in 1991 and its decision to strengthen the effectiveness and improve the implementation of the Convention – an aim which must surely still command consensus amongst all States Parties. It is hard to imagine that any State Party would object to such an objective and it is argued that all States Parties would indeed agree to this.

25. Work on how to strengthen the effectiveness and improve the implementation of the Convention could be taken forward as a part of the modular approach by the States Parties at the Sixth Review Conference agreeing to hold an ‘ad hoc’ meeting of experts from States Parties to consider how to strengthen the effectiveness and improve the implementation of the Convention in 2007, or later in the intersessional period between the Sixth and Seventh Review Conferences, as an appendix to the Conference to consider and recommend future action to strengthen the Convention, as recommended in Review Conference Paper No. 14.

26. Having agreed this objective, the next step is to consider how best the States Parties can achieve this objective starting from the Sixth Review Conference in 2006. By recognizing the common agreement to the objective, the onus is put onto all States Parties to address how best to move forward to achieve this. It also needs to be recognized that the Sixth Review Conference is not the occasion on which to address the details of how best to achieve this objective as there is a great deal of substantive business that needs to be accomplished during the three weeks of the Review Conference. The Final Declaration of the Sixth Review Conference should include in its Article V section or in an Agenda item 11 section at the end language along the lines of:

The Conference reaffirms the importance of strengthening the effectiveness and improving the implementation of the Convention and decides that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

It would be up to these ‘ad hoc’ meetings of experts in 2007 to recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness

and improving the implementation of the Convention. Language as suggested above would be effective in moving the process forward in 2006.

27. It is important to note that this meeting proposed in 2007 would have no preconditions but simply require the experts from the States Parties to consider collectively how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention taking into account all the developments over the past fifteen years.

Issues for the Sixth Review Conference

28. The Review Conference should take note that the agreed consultative procedures have been invoked by a State Party and have been satisfactorily utilized. Insofar as the effectiveness of the confidence-building measures agreed at the Second Review Conference and extended at the Third Review Conference are concerned, the Conference should continue to note their importance, decide that there should be an ‘ad hoc’ meeting of experts in 2007 to consider how the effectiveness of CBMs might be improved and again exhort States Parties to submit complete full and timely declarations in the future. In this context, it should be noted that the interim supportive institutions recommended in the chapter on Article XII in this Briefing Book would have a role to play in improving the implementation of the confidence-building measures as the language recommended for the Final Declaration in paragraph 4 of the Article XII section includes the following as two of the roles to be carried out by the interim supportive institution:

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

29. In addition, the States Parties should reaffirm the importance of strengthening the effectiveness and improving the implementation of the Convention and decide that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007, or in a later year in the intersessional period between the Sixth and Seventh Review Conferences, to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

Language for the Sixth Review Conference

30. It is recommended that language be adopted by the Sixth Review Conference for its section on Article V in its Final Declaration that is developed from that in the Final Declaration of the Fourth Review Conference. Changes from the Fourth Review Conference are highlighted:

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 Review Conference to make all possible efforts 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 noted that these procedures had been invoked since the Fourth Review Conference and that the procedures had been satisfactorily utilized thereby demonstrating their utility. The Conference 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 reviewed the effectiveness of the confidence-building measures as agreed in the Final Declaration of the Third 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.

5. 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 Fifth 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 also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future.

6. The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis on mutual co-operation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:
1. The exchange of information in the Confidence-Building Measures agreed at the Second Review Conference and extended at the Third Review Conference.

2. The further extension of these Confidence-Building Measures to include the provision of data on facilities handling category 4 animal pathogens and plant inoculants and biocontrol production facilities as well as facilities producing animal vaccines.

3. The exchange of information in a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

The Conference decides to hold a Meeting of Experts from States Parties to review, improve and finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The Meeting of Experts shall be held in Geneva for the period [two week period] 2007 and shall make recommendations to a subsequent Meeting of States Parties for decision.

7. The Conference reaffirms the importance of strengthening the effectiveness and improving the implementation of the Convention and decides that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

8. The Conference stresses the need for all States Parties to deal effectively with compliance issues. In this connection, the States Parties had agreed to provide a specific, timely response to any compliance concern alleging a breach of their obligations under the Convention. Such responses should be submitted in accordance with the procedures agreed upon by the Second Review Conference and further developed by the Third Review Conference. The Conference reiterates its request that information on such efforts be provided to the Review Conferences.

ARTICLE VI: LODGING OF COMPLAINTS WITH AND
THEIR INVESTIGATION BY THE SECURITY COUNCIL
by Graham S Pearson

Consideration of Article VI at the Fourth Review Conference

1. Article VI of the Convention states that:

(1) Any State Party to this Convention which finds that any other State Party is
acting in breach of obligations deriving from the provisions of the Convention may
lodge a complaint with the Security Council of the United Nations. Such a complaint
should include all possible evidence confirming its validity, as well as a request for its
consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any
investigation which the Security Council may initiate, in accordance with the
provisions of the Charter of the United Nations, on the basis of the complaint
received by the Council. The Security Council shall inform the States Parties to the
Convention of the results of the investigation.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December
1996, the Final Declaration\textsuperscript{175} in respect of Article II stated that:

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 notes
that the provisions of Article VI will be taken into account, as appropriate, for any
future verification regime resulting from the consideration by the Ad Hoc Group of a
system of measures to promote compliance with the Convention. 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.

\textsuperscript{175}United Nations, The Fourth 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
http://www.opbw.org
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.

7. The Conference notes that provisions for investigating alleged breaches of the Convention, including measures for the investigation of alleged use of biological and toxin weapons, continue to be considered by the Ad Hoc Group of States Parties, in accordance with its mandate.

3. The Fourth Review Conference Final Declaration for Article VI was based on the five paragraphs of the Third Review Conference Final Declaration together with two new paragraphs. The first paragraph was the same as at the Third Review Conference, the second paragraph contained a new second sentence referring to the taking of the provisions of Article VI into account in the verification regime emerging from the Ad Hoc Group considerations and the final two sentences were the same as at the Third Review Conference although the verbs were changed from the past to the present tense. The third paragraph was also the same as at the Third Review Conference apart from the addition of the words "in accordance with the Charter" at the end of the first sentence. The first sentence of the fourth paragraph is identical apart from the addition at the end of the words "that could entail a violation of the 1925 Geneva Protocol or of any other applicable rule of international treaty or customary law." The rest of the fourth paragraph is new. The fifth paragraph is identical to that in the Third Review Conference Final Declaration. The sixth and seventh paragraphs are new.

Developments since the Fourth Review Conference

4. The provisions of this Article have not been invoked during the ten years since the Fourth Review Conference. Although, as discussed in the Article V chapter of this Briefing Book, Cuba raised a compliance concern under the procedures elaborated in the Article V section of the Fourth Review Conference Final Declaration, there have been no specific allegations of the use of bacteriological (biological) weapons brought to the attention of the Secretary-General.

5. Insofar as the procedures for the investigation of allegations of chemical weapons are concerned, these have been developed further in the Chemical Weapons Convention\textsuperscript{177} which entered into force on 29 April 1997. The Chemical Weapons Convention prohibits the development, production, acquisition, stockpiling or retention of chemical weapons which are defined in Article II of that Convention as being:

Toxic chemicals and their precursors, except where intended for purpose not prohibited under this Convention, as long as the types and quantities are consistent with such purposes

with toxic chemicals being defined in the same Article as:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of manufacture, and regardless of whether they are produced in facilities, in munitions or elsewhere.

The prohibition thus applies to all chemicals, however produced, and therefore applies to toxins. Consequently, there is an overlap between the scope of the Chemical Weapons Convention and that of the Biological and Toxin Weapons Convention. Under the Chemical Weapons Convention, investigations of the alleged use of chemical weapons may be initiated under either Article IX (Consultations, Cooperation and Fact-Finding) or Article X (Assistance and Protection) and carried out in accordance with the procedures in Part XI (Investigations in Cases of Alleged Use of Chemical Weapons) of the Verification Annex. Provision is also made in respect of alleged use of chemical weapons involving a State not Party to the Chemical Weapons Convention or in territory not controlled by a State Party for the Organization for the Prohibition of Chemical Weapons to closely cooperate with the Secretary-General of the United Nations and, if so requested, for the resources of the Organization to be put at the disposal of the Secretary-General of the United Nations. No investigations of the alleged use of chemical weapons have yet been requested under the Chemical Weapons Convention.

6. In November 2001, one of the proposals\textsuperscript{178} made by President Bush was to "Establish an effective United Nations procedure for investigating suspicious outbreaks or allegations of biological weapons use". At the resumed Fifth Review Conference in November 2002,


\textsuperscript{178} The White House, Statement by the President: Strengthening the International Regime against Biological Weapons, 1 November 2001, Available at http://www.whitehouse.gov/news/releases/2001/11/print/20011101.htm
agreement was reached that one of the five topics to be considered by a Meeting of States Parties in 2004 would be:

iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

7. The Meeting of States Parties at their meeting in December 2004 agreed the following:

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

   a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

   b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

   c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

   a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

   b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

8. However, as reported at the time, the draft outcome paper for the December 2004 Meeting of States Parties had initially contained the following:

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(b) that consideration should be given to reviewing the Secretary-General’s mechanism for investigation of cases of alleged use of biological and toxin weapons and to invite the Secretary-General to report to the Sixth Review Conference on any actions that may be taken in this regard on the basis of consideration by the United Nations General Assembly.

However, consensus could not be found on this language or on a development thereof.

9. Consideration of the outcome of the 2004 Meeting of States Parties is a matter for the Sixth Review Conference as the mandate for the annual Meetings of the States Parties agreed at the resumed Fifth Review Conference had stated that:

(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.

10. At the Sixth Review Conference, it is recommended that the substance of the language agreed by the States Parties in regard to investigations at their meeting in 2004 be incorporated into the Final Declaration as follows – amendments are shown in bold:

In regard to the promotion of common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the Conference recognises that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

The Conference consequently agrees on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

The second subparagraph, 21 b. of the outcome of the 2004 Meeting of States Parties which stated:
b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

is not suggested for inclusion in the Article VI section as it has been addressed in the chapter on Article VII Assistance.

11. In addition, consideration should be given to two further aspects relating to Article VI Investigations. The first is that the States Parties should consider developing the modalities of the procedure implicit in the first paragraph of Article VI of the Convention which states that:

(1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

12. The modalities of the procedure implicit in the first paragraph might be elaborated along the following lines:

1. The State Party lodging a complaint should identify which obligation under the Convention it considers has been breached and in what manner the breach has occurred.

2. The State Party lodging the complaint should compile a report containing all possible evidence relating to the alleged breach of obligations and the evidence therein should be validated to the extent possible.

3. The State Party lodging a complaint should implement the procedure as soon as possible after the alleged breach of the obligations under the Convention has taken place.

13. Secondly, the States Parties should recognise that it is in the interests of all States Parties to the BTWC to ensure that any investigation that may be carried out is both effective and credible. Consequently, the States Parties should consider what steps are needed to ensure that the Secretary-General’s mechanism for the investigation of cases of alleged use of biological and toxin weapons would indeed be effective and credible. There has been significant developments since the Secretary-General’s mechanism was first set up – for example, the OPCW has set up its mechanism for investigation of alleged use of chemical weapons and UNMOVIC has developed its procedures for investigations\textsuperscript{181}. In both cases, the importance of trained experts and of accredited laboratories that have validated

procedures for the analysis of samples have been recognised. The Secretary-General’s mechanism has neither and is therefore seriously lagging in regard to the current internationally expected standard. It is therefore recommended that the Sixth Review Conference should call upon the Secretary-General to review the existing mechanism using language along the following lines:

The Conference calls upon the United Nations Secretary-General to review the mechanisms for investigation of cases of alleged use of biological and toxin weapons bearing in mind the importance of using trained investigators and accredited laboratories and invites the Secretary-General to report to the Seventh Review Conference on any actions that may be taken in this regard on the basis of consideration by the United Nations General Assembly.

Language for the Sixth Review Conference

14. As at the Third and Fourth Review Conferences, the matter of investigations of allegations of use is likely to be considered both under Article V and under Article VI. It is suggested that the Final Declaration might be developed from the language in the Article VI section of the Fourth Review Conference Final Declaration. Modifications to the Fourth Review Conference Final Declaration language are shown in bold below:

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 in the interests of improving the effectiveness of Article VI agrees that the procedures foreseen in Article VI should be implemented as follows:

   1. The State Party lodging a complaint should identify which obligation under the Convention it considers has been breached and in what manner the breach has occurred.

   2. The State Party lodging the complaint should compile a report containing all possible evidence relating to the alleged breach of obligations and the evidence therein should be validated to the extent possible.

   3. The State Party lodging a complaint should implement the procedure as soon as possible after the alleged breach of the obligations under the Convention has taken place.

4. 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.

5. 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.

6. In regard to the promotion of common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the Conference recognises that:

   a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

   b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

   c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

7. The Conference consequently agrees on the value of:

   a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

8. 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.
9. 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.

10. The Conference calls upon the United Nations Secretary-General to review the mechanisms for investigation of cases of alleged use of biological and toxin weapons bearing in mind the importance of using trained investigators and accredited laboratories and invites the Secretary-General to report to the Seventh Review Conference on any actions that may be taken in this regard on the basis of consideration by the United Nations General Assembly.
ARTICLE VII: ASSISTANCE TO STATE PARTIES
by Graham S Pearson

Consideration of Article VII at the Fourth Review Conference

1. Article VII of the Convention states that:

   Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, 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.
2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\footnote{182} in respect of Article VII stated that:

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 desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested.

4. The Conference takes note of the proposal that the Ad Hoc Group might need to discuss the detailed procedure for assistance in order to ensure that timely emergency assistance would be provided by States Parties if requested.

5. The Conference considers that in the event that this Article might be invoked, the United Nations, with the help of appropriate intergovernmental organizations such as the World Health Organization (WHO), could play a coordinating role.

3. Four of these paragraphs (paragraphs 1, 2, 3 and 5) were the same as those in the Final Declaration\footnote{183} of the Third Review Conference. The new fourth paragraph simply noted that the Ad Hoc Group might discuss the detailed procedures for assistance.

Developments since the Fourth Review Conference

4. At a Workshop held in Prague, Czech Republic in May 2001 entitled "New Scientific and Technological Developments of Relevance to the Biological and Toxin Weapons Convention", it was recognized\footnote{184} that the benefits that are becoming available from biotechnology could with advantage be addressed in the Final Declaration of the Fifth Review Conference in the context of several Articles of the Convention including Article VII by language along the following lines:

The Conference notes with satisfaction that relevant advances in the fields of microbiology and biotechnology have significantly increased the ability of States Parties to come to the assistance of a State Party should the Security Council decide that such State Party has been exposed to danger as a result of violation of the Convention.


\footnote{184} Graham S. Pearson, New Scientific and Technological Developments of Relevance to the Fifth Review Conference, University of Bradford, Department of Peace Studies, Review Conference Paper No. 3, July 2001. Available at http://www.brad.ac.uk/acad/sbtwc
5. During the intersessional period between the Fifth and the Sixth Review Conferences, the Meeting of States Parties in 2004 considered the two topics:

iii. enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

iv. strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants;

The two topics are relevant to Article VII of the Convention in that topic iii. addresses mitigating the effects of cases of alleged use and topic iv. addresses the combating of infectious diseases. It is recognized that assistance is likely to be required in combating an outbreak of infectious disease long before it is clear whether it was a deliberate or natural outbreak.

6. The report\textsuperscript{185} of the annual Meeting of States Parties in 2004 that considered these two topics included the following concluding paragraphs:

18. On the mandate to discuss, and promote common understanding and effective action on strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants, the States Parties recognised that:

a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

19. The States Parties consequently agreed on the value of:

a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

20. On the mandate to discuss, and promote common understanding and effective action on enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the States Parties recognised that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

21. The States Parties consequently agreed on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

b) the Sixth Review Conference considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease.

22. The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topics under discussion at the Meeting of
Experts, as contained in the Annex II of the Report of the Meeting of Experts (BWC/MSP/2004/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2004/L.1, which are attached to this report as Annexes II and III. These annexes were not discussed or agreed upon and consequently have no status.

It was evident from the reports of both the Meeting of Experts\(^\text{186}\) and the Meeting of States Parties\(^\text{187}\) that these had provided opportunities for States Parties to share information on the approaches being taken to address these two topics. Although decisions on further action were left to the Sixth Review Conference, the annual meetings were effective in focussing the attention of the States Parties on these two topics.

7. Examination of the above paragraphs shows that the combating of infectious disease is explicitly addressed in subparagraphs b, c of paragraph 18 as well as in subparagraph a of paragraph 19. It is also noted that the point made above in paragraph 4 of this chapter is reflected in subparagraph d of paragraph 18. In regard to mitigating the effects of cases of alleged use this is explicitly addressed in subparagraphs a and b of paragraph 20 and in both subparagraphs of paragraph 21. In accordance with the mandate for the annual Meetings of States Parties, The Sixth Review Conference will consider the work of these meetings and decide on any further action.

8. It is recommended that a further action that could be agreed by the Sixth Review Conference would be that the States Parties should agree as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

\[
\text{To develop a procedure for the provision of timely emergency assistance to States Parties on request.}
\]

This topic would be broader than the narrowly drawn conditions under which Article VII applies. It would, for example, include assistance to States Parties attacked by a non-party or by a non-State actor, or from an unknown source. Such an annual Meeting should clearly involve participation by the WHO, FAO and OIE.

9. It should, however, be recognised that the provision of timely assistance to States Parties is wider than solely being concerned with emergency assistance. For example, it is widely recognised that States Parties may require assistance with national implementation and with the preparation of annual CBM returns as well as in areas such as surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants. There would therefore be advantage in further broadening the scope of the topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts to:

\[
\text{To develop a procedure for the provision of timely assistance to States Parties on request.}
\]


10. There would be advantage in the States Parties at the Review Conference incorporating the substance of the language in paragraphs 18, 19, 20 and 21 into the Article VII section of the Final Declaration. This could be done as follows:

In regard to the combating of infectious diseases affecting humans, animals, and plants, the Conference recognises that:

a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

The Conference consequently agrees on the value of:

a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

In regard to mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the Conference recognises that:

a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and
mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;

c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

The Conference consequently agrees on the value of:

a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

The Conference considered the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease and agreed that the States Parties would meet during the intersessional period prior to the Seventh Review Conference to develop and agree a procedure for the provision of timely emergency assistance to States Parties on request.

11. It is also evident from the outcome of the 2004 Meeting of States Parties that there would also be advantage in extending the reference in the final paragraph of the Article VII section of the Fourth Review Conference Final Declaration to the possible coordinating role of the World Health Organization to include similar mention of the corresponding organizations for animals and plants; namely the, Office International des Epizooties and the Food and Agriculture Organization.

Language for the Sixth Review Conference

12. As Article VII has not been invoked during the ten years since the Fourth Review Conference, it is suggested that the Sixth Review Conference should adopt similar language to that in the Final Declaration of the Fourth Review Conference with the inclusion of the proposed additional language relating to the advantages in microbiology and biotechnology, the omission of the paragraph relating to the Ad Hoc Group, and the inclusion of paragraphs containing the substance of the outcome of the 2004 Meeting of States Parties as follows:

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 notes of desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested.
4. In regard to the combating of infectious diseases affecting humans, animals, and plants, the Conference recognises that:

   a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

   b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

   c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

   d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

5. The Conference consequently agrees on the value of:

   a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

   b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

   c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

6. In regard to mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, the Conference recognises that:

   a) capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention;

   b) States Parties’ national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;
c) the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution A/Res/45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons.

7. The Conference consequently agrees on the value of:

   a) continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

8. The Conference considered the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease and agrees that a Meeting of States Parties prepared by a Meeting of Experts would be held during the intersessional period prior to the Seventh Review Conference to develop and agree a procedure for the provision of timely assistance to States Parties on request.

9. The Conference notes with satisfaction that relevant advances in the fields of microbiology and biotechnology have significantly increased the ability of States Parties to come to the assistance of a State Party should the Security Council decide that such State Party has been exposed to danger as a result of violation of the Convention.

10. The Conference considers that in the event that this Article might be invoked, the United Nations, with the help of appropriate intergovernmental organizations such as the World Health Organization (WHO), Office International des Epizooties (OIE) and the Food and Agriculture Organization (FAO) could play a coordinating role.
ARTICLE VIII: GENEVA PROTOCOL OBLIGATIONS

by Nicholas A Sims & Graham S Pearson

Consideration of Article VIII at the Fourth Review Conference

1. Article VIII of the Convention states that:

   Nothing in this 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, signed at Geneva on June 17, 1925.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\textsuperscript{188} in respect of Article VIII stated that:

   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 and 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.


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 the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals 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.

3. The Final Declaration\(^{189}\) of the Third Review Conference had already appealed to all States Parties to the Geneva Protocol of 1925 to fulfil their obligations assumed under the Protocol and urged all States not yet Parties to the Geneva Protocol to accede to it without delay. The Conference had acknowledged that the Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, and the Biological and Toxin Weapons Convention complement each other.

4. The Third Review Conference had also stressed the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention. The Fourth Review Conference repeated these points, but also noted in new language, that had not been in the Final Declaration of the Third Review Conference in 1991, that:

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 the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals 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.

**Developments up to the Fourth Review Conference, 1980 – 1996**

5. In considering the developments at the Fourth Review Conference, it is useful first to recall the outcome of the First, Second and Third Review Conferences. In 1980 the Final Declaration of the First Review Conference simply reaffirmed Article VIII and called on those States Parties to the Convention which were Parties to the Protocol to comply strictly with its provisions and those States not yet Parties to the said Protocol to ratify or accede to it at the earliest possible date.

6. In 1986 the Final Declaration of the Second Review Conference ran into difficulty over the equivalent sentence. After last-minute delays over Iran's wish to have the Conference condemn Iraq for using chemical warfare against Iran in breach of the Protocol, a reference to the most relevant Security Council document (S/17911) was inserted. Other changes were minor: "comply strictly with its provisions", for example, was replaced by "fulfil their obligations assumed under that Protocol" and non-Parties were now "urged to adhere to it" at the earliest possible date.

7. The Second Review Conference prefaced the substantially repeated paragraph from 1980 with a new one of the most general character, which added little. The two paragraphs now read, in full:

*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.*

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The Conference reaffirms that nothing contained in the 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, signed at Geneva on 17 June 1925. Noting the report of the Security Council (S/17911), the Conference appeals to all States Parties to the Geneva Protocol of 1925 to fulfil their obligations assumed under that Protocol and urges all States not yet Parties to the said Protocol to adhere to it at the earliest possible date.

8. At the Third Review Conference, these two paragraphs, save only for the reference to S/17911 which had been necessary in 1986 to carry Iran with the consensus, were reproduced almost word for word in 1991 as the first two paragraphs of the section dealing with Article VIII in the Final Declaration of the Third Review Conference. (The last nine words were slightly altered to "to accede to it without delay.")

9. They were, however, in 1991 only the first two paragraphs of six. The third paragraph referred obliquely to the removal of an explicit ban on BTW use during the 1971 negotiation of the Convention. The Geneva Protocol had then (although significantly not in the subsequent negotiation of the Chemical Weapons Convention signed in 1993 with an explicit ban on use included) been invoked as the reason for leaving use out of the list of biological and toxin weapon activities expressly prohibited by the Convention (a "gap" in the Convention which was criticised at the time). Now, in 1991,

The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, forms an essential complement to the Biological and Toxin Weapons Convention.

10. The fourth paragraph stressed the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention. This was the first time the issue had been recognized in a Final Declaration, although it had long received attention from commentators on the Convention and in 1991 nine BTWC States Parties had completed the withdrawal of their reservations, with several more in progress.

11. The fifth paragraph noted UN resolutions in support of the Geneva Protocol which had been adopted between 1986 and 1990, and the sixth paragraph recalled that the Paris

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193 The United Kingdom, in its 1968 initiative in the Eighteen Nation Disarmament Committee, had targeted BW use for prohibition in ENDC/231 (Working Paper on Microbiological Warfare), and ENDC/255/Rev. 1, the UK Draft Convention developed from it in 1969, had given pride of place to a prohibition on BW use, expressly in order to reinforce the 1925 Geneva Protocol, before proceeding to list the prohibitions on BW production and acquisition which survived 1971 and now form part of Article I of the Convention.

194 Article I.(b) of the 1993 Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) reads: "Each State Party to this Convention undertakes never under any circumstances.....to use chemical weapons."


Conference of 1989 had solemnly reaffirmed the prohibition as established in the Protocol and urged all States which had not done so to accede to it.

12. At the Fourth Review Conference, the Final Declaration text on Article VIII was extended to become seven paragraphs. The first paragraph reaffirming the importance of Article VIII was identical to that at the Third Review Conference apart from the inclusion of a comma.

13. The second paragraph was similar to the third paragraph of the Third Review Conference with a rewording that changed from stating that the Geneva Protocol forms an essential complement to one in which the Protocol and the Convention complement each other. This was probably a consequential change that would have been introduced because the Fourth Review Conference strengthened the language in its Final Declaration in several places\textsuperscript{197} to make it clear that use is effectively a violation of Article I of the Convention.

14. The third paragraph reaffirming that nothing in the obligations under the Convention shall be interpreted as in any way limiting or detracting from the obligations under the Protocol was identical to the first sentence of the second paragraph of the Third Review Conference.

15. The fourth paragraph referring to the relevant UN resolutions, the Paris Conference of 1989 and urging all States not yet Parties to the Protocol to accede to it without delay combined the fifth and sixth paragraphs together with the final sentence of the second paragraph of the Third Review Conference.

16. The fifth paragraph stressing the importance of the withdrawal of all reservations was identical to the fourth paragraph of the Third Review Conference whilst, as already noted above, the sixth and seventh paragraphs provided new language concerning reservations. This new language marked a step forward and as a major achievement of the Fourth Review Conference has been given particular attention in this chapter.

Developments since 1996

Adherence to the Geneva Protocol

17. Universal adherence to the Geneva Protocol by all States, including all States Parties to the BTWC, has been an agreed politically binding commitment since 1980, reaffirmed by every subsequent Review Conference. It should be noted that the original statement, in the Final Declaration which the First Review Conference agreed on 21 March 1980, called on all States not yet parties to the Geneva Protocol to ratify or accede to it at the earliest possible date; the Second Review Conference on 26 September 1986 urged them to adhere to it at the earliest possible date; the Third Review Conference on 27 September 1991 urged them to accede to it without delay, as did the Fourth Review Conference on 6 December 1996.

\textsuperscript{197}The third paragraph of the Solemn Declaration which forms the first part of the Final Declaration of the Fourth Review Conference; the third paragraph of the Article I section; the seventh paragraph of the Article IV section; and, by implication, the fourth paragraph of the Article VI section (\textit{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...}) all express the extended understanding of the States Parties that use is effectively a violation of Article I of the Convention (The quotation is from the third paragraph of the Article I section).
18. However, both the proportion and the total number of BTWC States Parties which are not parties to the Geneva Protocol have increased since 1980, from 15 out of 87 (17%) to 35 out of 155 (23%). This makes it all the more necessary that the Sixth Review Conference should urge universal adherence to the Protocol and lay a special responsibility on BTWC States Parties, not yet parties to the Geneva Protocol, to take the necessary action without delay.

19. Since the Fourth Review Conference, two BTWC States Parties have taken steps to confirm their adherence to the Geneva Protocol:

   Slovakia 1997  (confirmation on 1 July 1997 of its indication on 22 September 1993 that it considered itself bound by succession to the Czechoslovak ratification of 16 August 1938)

   Saint Vincent and the Grenadines 1999  (accession)

20. Thirty-four BTWC States Parties have yet to accede or succeed to the Geneva Protocol:

   Armenia
   Azerbaijan
   Bahamas
   Belarus
   Belize
   Bosnia and Herzegovina
   Botswana
   Brunei Darussalam
   Colombia
   Congo, Republic of
   Costa Rica
   Croatia
   Democratic Republic of Congo
   Dominica
   Georgia
   Honduras
   Kyrgyzstan
Mali
Oman
Palau
Republic of Moldova
San Marino
Sao Tome and Principe
Seychelles
Singapore
Slovenia
Suriname
Tajikistan
The Former Yugoslav Republic of Macedonia
Timor-Leste
Turkmenistan
Uzbekistan
Vanuatu
Zimbabwe

21. One BTWC State Party has yet to ratify its Geneva Protocol signature of 17 June 1925:

El Salvador

22. These lists have been compiled with care but discrepancies are not unknown in Geneva Protocol listings, and some aspects of state succession in particular give rise to uncertainties over treaty status in international law.

23. For example, it is possible that some states in this list of non-parties may have supposed themselves to have adhered by virtue of general declarations of succession to obligations, made at the time of gaining independence: general declarations which are, however, not recognised by the Depositary for the Geneva Protocol because they are insufficiently specific. Such states may be reluctant to deposit instruments of accession or succession because of the possible implication that they are doing so as non-parties from outside the Geneva Protocol. One solution in such cases might be a regularisation of notification. There is a precedent in the case of Paraguay, which transmitted its instrument of accession on 26
October 1933 but was not counted as a State Party by the Depositary until regularisation of
the notification on 13 January 1969. Alternatively the route of confirmation of an earlier
indication of succession to obligations might be followed, as by Slovakia on 1 July 1997.

24. All delegations to the Sixth Review Conference of BTWC States Parties which appear to
be non-parties to the Geneva Protocol are recommended to check with the legal department
of their Ministry of Foreign Affairs what action has been taken or might be taken in
conjunction with the Depositary (France). It is possible in some cases that formal effect has
not yet been given to political decisions: that the necessary international legal procedures,
including formal communication to the Depositary and notification of the communication by
the Depositary, have still to be completed. Delegations are recommended to clarify the
position and if possible to announce, or to confirm, their government's adherence to the
Geneva Protocol during the Sixth Review Conference.

Withdrawal of Geneva Protocol Reservations

25. At the time the Fourth Review Conference adopted its uncompromising appeal to BTWC
States Parties for the withdrawal of the remaining reservations to the Geneva Protocol, the
most recent such withdrawals were those of

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>12 July 1996</td>
</tr>
<tr>
<td>France</td>
<td>25 November 1996</td>
</tr>
</tbody>
</table>

They have since been joined by four other BTWC States Parties, which withdrew their
reservations to the Geneva Protocol on the following dates:

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>Belgium</td>
<td>17 February 1997</td>
</tr>
<tr>
<td>Estonia</td>
<td>28 May 1999</td>
</tr>
<tr>
<td>Russia</td>
<td>18 January 2001</td>
</tr>
<tr>
<td>Portugal</td>
<td>23 December 2002</td>
</tr>
</tbody>
</table>

26. In addition, two BTWC States Parties which had already, in 1991, modified their
reservations so as to exclude bacteriological methods of warfare (Canada) or the use in war of
the objects prohibited by Article I of the BTWC (United Kingdom) from the scope of their
reservations, so as to render their Geneva Protocol and BTWC obligations fully consistent
with one another, completed the withdrawal of the remaining parts of their reservations on
the following dates:

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>28 October 1999</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>20 December 2002</td>
</tr>
</tbody>
</table>

the latter giving legal effect to the withdrawal announced at the political level by Tony Lloyd
MP, Minister of State at the UK Foreign and Commonwealth Office, at the opening
Conference of the States Parties of the OPCW held 6-24 May 1997 at The Hague upon the
entry into force of the Chemical Weapons Convention.
27. One BTWC State Party modified its reservation, so as to exclude the use of biological and toxin weapons, on the following date:

Republic of Korea 19 September 2002

This modification, by which the scope of the South Korean reservation was limited to retaliation with chemical methods of warfare only, assimilated the Republic of Korea to the position occupied by the United States ever since it ratified the Protocol in 1975, and previously occupied by the Netherlands 1930-1995, Canada 1991-1999 and the United Kingdom 1991-2002 until they completed the withdrawal of the remaining parts of their reservations.

28. It is surprising that there are no actions reported, either of withdrawal or of modification prior to withdrawal, since the end of 2002. Nineteen BTWC States Parties appear still to have explicit reservations, attached upon ratification or accession to the Geneva Protocol, which in the absence of any statement to the contrary purport to maintain a right of retaliation with bacteriological, as well as chemical, methods of warfare.

Algeria
Bahrain
Bangladesh
Cambodia
China
Fiji Islands
India
Iraq
Jordan
Korea, People’s Democratic Republic of
Kuwait
Libya
Nigeria
Pakistan
Papua New Guinea
Serbia
Solomon Islands
Vietnam

Yemen

Even though some of these States Parties may regard their BTWC obligations as having effectively superseded their Geneva Protocol reservations insofar as biological and toxin weapons are concerned, and may regard their reservations as obsolete, it is strongly recommended nevertheless that they act to put the matter beyond doubt by formally withdrawing those reservations. This action, when communicated to the French government as Depositary and notified by the latter to all States Parties, would render their treaty status under the Geneva Protocol fully consistent with their BTWC obligations.

29. They would thereby be giving effect to the politically binding commitment agreed by the Third Review Conference and in more absolute terms by the Fourth Review Conference. They would also be complying with the more recent appeals for withdrawal of the remaining reservations which were issued jointly by France and Switzerland—respectively the Depositary Government and the Host Government for the Geneva Protocol—on the occasion of its eightieth anniversary, and subsequently by the Secretary-General of the United Nations in his message to the BTWC Meeting of States Parties when it opened on 5 December 2005.

30. The Sixth Review Conference is recommended to reaffirm the call for withdrawal of reservations in terms at least as strong and uncompromising as in 1996.

Recent Appeals for the Withdrawal of Reservations

31. In December 2004, the General Assembly adopted resolution 59/70 on measures to uphold the authority of the 1925 Geneva Protocol which included:

 Welcoming the recent initiatives by three more States Parties to withdraw their reservations to the 1925 Geneva Protocol,

 1. Takes note of the note by the Secretary-General;

 2. Renews its previous call to all States to observe strictly the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, and reaffirms the vital necessity of upholding its provisions;

 3. Calls upon those States that continue to maintain reservations to the 1925 Geneva Protocol to withdraw them;

It is disappointing to have to record that on 28 June 2006, the next report by the Secretary-General states that Since the adoption of resolution 59/70, no withdrawals of reservations by States parties have been reported by the depositary of the 1925 Geneva Protocol.

32. In June 2005, France and Switzerland initiated an international seminar on the occasion of the 80th anniversary of the signing of the 1925 Geneva Protocol. The report\textsuperscript{200} noted that:

\begin{quote}
The seminar was lively with a rich debate following the presentations that covered much ground and led to the recognition of a number of conclusions and points for further consideration:
\end{quote}

\begin{itemize}
\item[a.] The 1925 Geneva Protocol was clearly the cornerstone of the multilateral regime that now through the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention totally prohibits both chemical and biological weapons.
\item[b.] There would be advantages in an enhanced campaign to encourage those States Parties to the 1925 Geneva Protocol who still maintain reservations to lift these.
\item[c.] The Action plans adopted by the Organisation for the Prohibition of Chemical Weapons (OPCW) for the universality and the national implementation of the Chemical Weapons Convention had proved to be very effective tools. There is much to be said for considering the adoption of similar action plans for universality and for national implementation of the Biological Weapons Convention.
\item[d.] In regard to the Biological Weapons Convention, the Sixth Review Conference in 2006 would provide an opportunity to carry out a comprehensive review and strengthen the regime further. In respect of the existing Confidence Building Measures (CBMs) agreed by the States Parties, consideration should be given by all States Parties to make them better known in order to promote transparency and build confidence.
\item[e.] It was evident that all possible efforts should be made to strengthen the effectiveness and improve the implementation of the multilateral treaty regime comprising the 1925 Geneva Protocol, the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention, through all the instruments available to us such as norms, verification mechanisms and confidence building measures as these are mutually complementary.
\item[f.] At the closure of the seminar, France and Switzerland issued a joint final declaration.
\end{itemize}

33. The joint Final Declaration issued by France and Switzerland stated that:

\begin{quote}
On the occasion of the 80th anniversary of the signing in Geneva of the Protocol for the prohibition of the use of chemical and bacteriological weapons, France, Depositary of the 1925 Geneva Protocol, and Switzerland, Host Country, launch an appeal for the pursuit of international efforts towards the universalization of the Protocol.
\end{quote}

France and Switzerland also call on those States which have made reservations upon accession to the Protocol to consider constructively the withdrawal of such reservations.

France and Switzerland consider that, in the present international situation, the path opened by the 1925 Protocol, at the crossroad of humanitarian imperatives and non-proliferation and disarmament objectives, appears as a priority, still pertinent and topical.

Our two countries call for the continuation, with the greatest energy, of the efforts initiated eighty years ago in order to ensure the total prohibition of chemical and biological weapons. More than ever, we must make the best appropriate use of the multilateral instruments at our disposal: norms, verification mechanisms, confidence-building measures, which are mutually complementary and intrinsically linked for this purpose.

With all the participants to the Geneva International Seminar, States Parties to the Protocol, international organisations, non-governmental organisations and international research institutions, our two countries are determined to spare no effort to continue to promote, in all the relevant fora, the objectives of the signatories of the 1925 Protocol, which remain those of all humankind today.

34. Later the same year, the Secretary-General of the United Nations in his message to the Meeting of the States Parties to the BTWC on 5 December 2005 included the following call:

*The Geneva Protocol was the first truly international agreement to seek the prohibition of the use of chemical and biological weapons as a method of warfare. It is therefore appropriate to call on the countries that still maintain reservations to the Protocol to withdraw them, since other conventions agreed to since then have rendered them obsolete.*

**Issues for the Sixth Review Conference**

35. The Sixth Review Conference has again the opportunity to emphasise the absolute character and permanent status of the Convention by making a solemn declaration of the necessity for all States Parties to ensure that their treaty status under the Geneva Protocol is henceforth consistent with their obligations under the Convention, and to "regularise" that status, if there is any asymmetry remaining, by taking appropriate legal action.

36. The Final Declaration in 2006 will naturally draw upon language which proved its acceptability in 1996, and thereby confirm the cumulative development of the text through the recording of extended understandings of the implications of Articles of the Convention. In addition, it is recommended that the Conference authorise its General Committee or other continuing representative body (International Committee of Oversight or Annual Meeting of States Parties) to follow up the "calls upon" requests which are addressed in the fourth paragraph to BTWC States Parties still outside the Geneva Protocol and in the second part of the sixth paragraph of the Article VIII section to those States Parties which continue to maintain pertinent reservations to the Protocol even after the Sixth Review Conference. This would be consistent with the authorisation of the same continuing representative body to

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undertake demarches proposed\textsuperscript{202} under paragraph 2 of the Article XIV section of the Final Declaration.

**Suggested language for the Final Declaration**

37. The Conference is recommended to repeat the seven paragraphs of the Article VIII section in the 1996 Final Declaration (possibly updating the UN Resolutions cited in paragraph 4) with the addition of a second sentence to paragraph 6 reading as follows: "The Conference authorises its [International Committee of Oversight]/[Annual Meeting of States Parties] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations." and similar wording at the end of paragraph 4 in respect of adherence to the Geneva Protocol. In addition, in paragraph 4 it is recommended that the broader term "adhere to" is used – as it was in the Final Declaration\textsuperscript{203} of the Second Review Conference in 1986 – rather than "accede to" as "adhere to" encompasses not only accession by non-signatories but also ratification by a State Signatory and the possibility of a state adhering to the Geneva Protocol by regularisation of a prior notification or by a specific declaration of succession to obligations. In paragraph 6 the 2005 appeals, noted above, from the governments of France and Switzerland, and from the UN Secretary-General, should be recalled. The proposed language would thus read as follows:

**Article VIII**

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 and 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,

\textsuperscript{202}See Graham S. Pearson & Nicholas A. Sims, Article XIV: Universal Adherence to the Convention, in Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando (eds), Strengthening the Biological Weapons Convention: Key Points for the Sixth Review Conference, University of Bradford, Department of Peace Studies, September 2006. Available at http://www.brad.ac.uk/acad/sbtwc

Conference appeals to all States Parties to the Geneva Protocol to fulfil their obligations assumed under the Protocol and urges all States not yet Parties to the 1925 Geneva Protocol to adhere to it without delay. In particular the Conference calls upon those States Parties to the Convention that are not yet Parties to the Protocol to adhere to it without delay and authorises its [International Committee of Oversight][Annual Meeting of States Parties] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties.

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, recalling the Final Declaration in June 2005 of the Depositary Government, France and the Host Government, Switzerland on the occasion of the eightieth anniversary of the 1925 Geneva Protocol and the appeal by the UN Secretary-General in December 2005, welcomes the actions which States Parties have taken to withdraw their reservations related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay. The Conference authorises its [International Committee of Oversight][Annual Meeting of States Parties] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations.

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: PROHIBITION OF CHEMICAL WEAPONS

by Graham S Pearson

Consideration of Article IX at the Fourth Review Conference

1. Article IX of the Convention states that:

   Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production and use of chemical agents for weapons purposes.
2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\textsuperscript{204} in respect of Article IX stated that:

1. The Conference reaffirms that Article IX identifies the recognized objective of effective prohibition of chemical weapons. The Conference welcomes conclusion of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, which was opened for signature on 13-15 January 1993 in Paris.

2. The Conference welcomes the fact that sixty-five instruments of ratification have now been deposited, and that the Convention will therefore enter into force on 29 April 1997.

3. The Conference stresses the importance to the Convention that all possessors of chemical weapons, chemical weapons production facilities or chemical weapons development facilities should be among the original parties to the Convention and, in this context, the importance of the United States of America and the Russian Federation, having declared possession of chemical weapons, being among the original States Parties to the Convention.

4. The Conference calls upon all States that have not yet done so to sign and/or ratify the Convention without delay.

5. The Conference notes that the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons, at its fourteenth session (22-26 July 1996) entrusted the Chairman of the Commission, in close consultation with its member States, with the task of convening, as necessitated by circumstances in connection with the occurrence of the trigger point, a meeting of the Commission to provide appropriate guidance.

3. As the Fourth Review Conference in November/December 1996 had taken place just after the lodging of the 65th instrument of ratification of the CWC, the Final Declaration was considerably developed from that\textsuperscript{205} of the Third Review Conference which had said that all States Parties participating in the Conference reiterated their strong commitment to this important goal and noted with satisfaction the substantial progress made in the negotiations on the Convention on Chemical Weapons in the Conference on Disarmament during the period under review. Note was also taken of the bilateral agreement, signed in June 1990, between the Union of Soviet Socialist Republics and the United States of America on destruction and non-production of chemical weapons. Finally the Third Review Conference had urged the Conference on Disarmament to exert all possible efforts to implement the mandate for the chemical weapons negotiations as amended on 20 June 1991, and to achieve final agreement by 1992 on the convention on the complete and effective prohibition of chemical weapons.


4. It is also relevant to note that the Fourth Review Conference in its consideration of Article XII of the Convention, dealing the review conferences, had agreed language in its Final Declaration on Article XII which recognized the relevance of the CWC to the BTWC as follows:

2. The Conference decides that the Fifth Review Conference shall consider, inter alia, ...

- 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 Fifth Review Conference;

Developments since the Fourth Review Conference

5. The principal development in the context of Article IX has been the entry into force of the CWC on 29 April 1997 and its successful implementation over the past four years. The Fifth Review Conference has agreed to consider the relevance of the provisions of, and the implementation of the CWC on the effective implementation of the BTWC duly taking into account the degree of universality attained by such conventions.

6. Insofar as universality is concerned, as of 1 November 2001, the number of States Parties to the CWC was 143, the same number as that for the BTWC on the same date. The CWC had 31 Signatory States which had signed, but had not yet ratified the CWC, whilst the BTWC had 18 Signatory States which had signed, but had not yet ratified the BTWC.

7. Analysis of this November 2001 information showed that 112 States were Party to both the BTWC and the CWC and 5 States were signatory to both Conventions. The other States who were Party or signatory to one or other Convention or to neither was as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>BTWC</th>
<th>CWC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Party</td>
<td>Signatory</td>
</tr>
<tr>
<td>Algeria</td>
<td>Party</td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td></td>
<td>Party</td>
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<tr>
<td>Azerbaijan</td>
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<td>Syrian Arab Republic</td>
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<td>Thailand</td>
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8. The situation has changed considerably over the past five years with in **August 2006** the BTWC having 155 States Parties and 16 Signatory States and the CWC having 178 States Parties and 8 Signatory States.

9. Analysis of this August 2006 information showed that 147 States were Party to both the BTWC and the CWC and 2 States were signatory to both Conventions. The other States who were Party or signatory to one or other Convention or to neither was as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>BTWC</th>
<th>CWC</th>
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<tr>
<td>Angola</td>
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<td>Party</td>
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<td>Bahamas</td>
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The only State that has not signed or acceded to either the BTWC or the CWC is Angola. All the other non-Parties to the BTWC have at least signed the CWC, and all the other non-parties to the CWC have at least signed the BTWC.

10. The principal points that relate to the relevance of the provisions of, and the implementation of the CWC on the effective implementation of the BTWC are first, the overlap -- and rightly so -- of the provisions of the two Conventions, and second, the implementation of the verification regime of the CWC.

11. The overlap of the two Conventions is evident from consideration of their basic prohibitions. The basic prohibition of the Chemical Weapons Convention is set out in Article I in which:

   Each State Party to this Convention undertakes never under any circumstances:

   (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

   (b) to use chemical weapons

Chemical weapons are defined in Article II of the Convention as being the following, together or separately:

   (a) Toxic chemicals and their precursors, except where intended for purpose not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;

   (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;

   (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

with toxic chemicals being defined in the same Article as:
Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of manufacture, and regardless of whether they are produced in facilities, in munitions or elsewhere.

12. The prohibition thus applies to all chemicals, however produced, and therefore applies to toxins. Quite correctly there is an overlap between the scope of the Chemical Weapons Convention and that of the Biological and Toxin Weapons Convention in which the basic prohibition is that in Article I where

Each State Party to the Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.

At the Fourth Review Conference in 1996 the States Parties in their Final Declaration had stated that:

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.

It is clear that both Conventions cover toxins. Two toxins – ricin and saxitoxin – are specifically included in Schedule I of the Chemical Weapons Convention.

13. The overlap of the two Conventions can be shown graphically as a chemical and biological weapons spectrum:

<table>
<thead>
<tr>
<th>Classical CW</th>
<th>Industrial Pharmaceutical Chemicals</th>
<th>Bioregulators Peptides</th>
<th>Toxins</th>
<th>Genetically Modified BW</th>
<th>Traditional BW</th>
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<tr>
<td>Cyanide</td>
<td>Aerosols</td>
<td>Substance P Neurokinin A</td>
<td>Saxitoxin</td>
<td>Modified/ Tailored Bacteria</td>
<td>Bacteria</td>
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<td>Phosgene</td>
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<td>Ricin</td>
<td>Viruses</td>
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<td>Mustard</td>
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<td>Botulinum Toxin</td>
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<td>Nerve Agents</td>
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It is thus evident that the materials in the mid-spectrum such as toxins as well as bioregulators and peptides are covered by the prohibitions of both the BTWC and the CWC.
14. The implementation of the verification regime under the CWC that requires mandatory declarations and routine inspections together with challenge inspections and investigations of alleged use underlines the absence of a parallel regime under the BTWC -- and consequently emphasises the importance of the States Parties to the BTWC to continue to examine ways to strengthen the effectiveness and improve the implementation of the Convention.

**Issues for the Sixth Review Conference**

15. It is suggested that the Sixth Review Conference might in its Final Declaration welcome with approbation the entry into force and implementation of the CWC. It might also urge all States Parties to the Biological and Toxin Weapons Convention to sign and ratify the Chemical Weapons Convention.

**Language for the Sixth Review Conference**

14. The Sixth Review Conference might adopt language, developed from that agreed at the Fourth Review Conference, along the following lines:

1. *The Conference reaffirms that Article IX identifies the recognized objective of effective prohibition of chemical weapons. The Conference welcomes the entry into force on 29 April 1997 and the subsequent implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.*

2. *The Conference welcomes the fact that one hundred and seventy-eight instruments of ratification or accession to the Chemical Weapons Convention have now been deposited.*

3. *The Conference calls upon all States that have not yet done so to ratify or accede to the Chemical Weapons Convention without delay.*
ARTICLE X: EXCHANGE OF EQUIPMENT, MATERIALS AND SCIENTIFIC AND TECHNOLOGICAL INFORMATION: INTERNATIONAL COOPERATION AND DEVELOPMENT

by Graham S. Pearson

Consideration of Article X at the Fourth Review Conference

1. Article X of the Convention states that:

"(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials, and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organisations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention."

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\textsuperscript{206} in respect of Article X stated that:

\textsuperscript{206}United Nations, \textit{The Fourth 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
1. The Conference once more emphasizes the increasing importance of the provisions of Article X, especially in the light of recent scientific and technological developments in the field of biotechnology, bacteriological (biological) agents and toxins with peaceful applications, which have vastly increased the potential for cooperation between States to help promote economic and social development, and scientific and technological progress, particularly in the developing countries, in conformity with their interests, needs and priorities.

2. The Conference, while acknowledging what has already been done towards this end, notes with concern the increasing gap between the developed and the developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas. The Conference urges all States Parties actively to continue to promote international cooperation and exchange with States Parties in the peaceful uses of biotechnology, and urges all States Parties possessing advanced biotechnology to adopt positive measures to promote technology transfer and international cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind. At the same time, the Conference stresses that measures to implement Article X need to be consistent with the objectives and provisions of the Convention.

3. The Conference recalls that the States Parties have a legal obligation to facilitate and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and not to hamper the economic and technological development of States Parties.

4. The Conference emphasizes that States Parties should not use the provisions of the Convention to impose restrictions and/or limitations on transfers for purposes consistent with the objectives and provisions of the Convention of scientific knowledge, technology, equipment and materials.

5. The Conference notes that existing institutional ways and means of ensuring multilateral cooperation between the developed and developing countries would need to be developed further in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture.

6. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of bacteriological (biological) agents and toxins for peaceful purposes.

7. The Conference recommends that invitations to participate in this discussion and examination should be extended to all States Parties, whether or not they are members of the United Nations or concerned specialized agencies.

8. The Conference, at the same time, notes that the Ad Hoc Group of States Parties was mandated by the Special Conference in September 1994 to consider specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, emphasizing that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

10. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring of disease and encourages States Parties to support the World Health Organization, including its relevant newly established division, the FAO and the OIE, in these efforts directed at assisting Member States to strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

11. The Conference urges the use of existing institutional means within the United Nations system and the full utilization of the possibilities provided by the specialized agencies and other international organizations, and considers that the implementation of Article X could be enhanced through greater coordination among international cooperation programmes in the biological field for peaceful purposes conducted by States Parties, specialized agencies and other international organizations.

12. The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:

1. Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;

2. Wider transfer and exchange of information, materials and equipment among States on a systematic and long-term basis;

3. Active promotion of contacts between scientists and technical personnel on a reciprocal basis, in relevant fields;

4. Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic...
engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);

5. Facilitating the conclusion of bilateral, regional and multiregional agreements providing, on a mutually advantageous, equal and non-discriminatory basis, for their participation in the development and application of biotechnology;

6. Encouraging the coordination of national and regional programmes and working out in an appropriate manner the ways and means of cooperation in this field;

7. Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;

8. The promotion of programmes for the exchange and training of scientists and experts, and the exchange of scientific and technical information in the biological field between developed and developing countries.

13. The Conference considers that a worldwide data bank might be a suitable way of facilitating the flow of information in the field of genetic engineering, biotechnology and other scientific developments. In this context, the Conference underlines the importance of monitoring all related developments in the field of frontier science and high technology in the areas relevant to the Convention.

14. The Conference requests the Secretary-General to collate on an annual basis, and for the information of States Parties, reports on how this article is being implemented.

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information.

16. The Conference welcomes efforts to elaborate an international programme of vaccine development for the prevention of diseases which would involve the scientific and technical personnel from developing countries that are States Parties to the Convention. The Conference recognizes that such a programme will not only enhance peaceful international cooperation in biotechnology but also contribute to improving health care in developing countries, assist in establishing systems for worldwide monitoring of communicable diseases, and provide transparency in accordance with the Convention.

17. The Conference calls upon all States Parties in a position to do so to fully cooperate with the developing States Parties to the Convention in the area of promotion and financing the establishment of vaccine production facilities. The Conference recommends further that the relevant multilateral organizations and
world financial institutions provide assistance for establishment and promotion of vaccine production projects in these countries.

3. The Article X section of the Fourth Review Conference Final Declaration was longer than any other section continuing the trend that was apparent with the Final Declaration of the Third Review Conference207 which contained some 12 paragraphs on Article X which was longer than any other Article apart from Article V which had the longest section.

4. The language in the Article V section of the Fourth Review Conference Final Declaration was developed from the 12 paragraphs in the Third Review Conference Final Declaration. The first paragraph had the words "once more" inserted before the word "emphasizes" in the first line but was otherwise identical to the previous first paragraph. The second paragraph was identical to the previous second paragraph but had an additional sentence added in the Fourth Review Conference Final Declaration reading "At the same time, the Conference stresses that measures to implement Article X need to be consistent with the objectives and provisions of the Convention." The third and fourth paragraphs were new. The fifth paragraph was identical to a paragraph in the Third Review Conference Final Declaration. The sixth paragraph was similar to the previous version although "reiterates its call" replaced "calls" in the first line and "before the next Review Conference" replaced "not later than 1993" in the second line. The seventh paragraph was also identical to the corresponding one in the Third Review Conference apart from the change of the word "and" to "or" in the last line.

5. The eighth, ninth and tenth paragraphs were all new. The eleventh paragraph is developed from an identical paragraph in the previous Final Declaration by the addition of the words "and considers that the implementation of Article X could be enhanced through greater coordination among international cooperation programmes in the biological field for peaceful purposes conducted by States Parties, specialized agencies and other international organizations." The twelfth paragraph was developed and extended from the third paragraph of the Third Review Conference Final Declaration with the preambular language being modified as highlighted in the following:

12. The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:

The first six of the measures listed are identical to those in the previous Final Declaration. The seventh is developed from the previous version in that "WHO, FAO and OIE" replace "WHO" alone and the words "and epizootical" are added after "epidemiological". The eighth measure was new. The thirteenth paragraph was new whilst the fourteenth paragraph was the same as one in the previous Final Declaration. The fifteenth paragraph was new whilst the sixteenth paragraph was closely similar to one in the previous Final Declaration although a new additional clause "assist in establishing systems for worldwide monitoring of

communicable diseases," had been added in the penultimate line. The final seventeenth paragraph was also new.

Article X in the Final Declarations of successive Review Conferences.

6. In 2000 a valuable analysis\textsuperscript{208} was made which examined the statements made at successive Review Conferences in regard to what are known as the promotional aspects of Article X -- paragraph (1) of the Article. The following is based on and developed from this analysis.

7. At each successive Review Conference the Final Declaration related to Article X of the Convention has become longer and longer. Only Article V of the Convention has had a greater amount of text devoted to it in each Final Declaration and at the Fourth Review Conference Article X had a greater amount of text than did Article V. In approaching the Sixth Review Conference and bearing in mind the requirement in Article XII of the Convention requiring that \textit{Such review shall take into account any new scientific and technological developments relevant to the Convention} it is clear that the consideration of the wider context of relevant developments in science and technology since 1996 including issues such as the expansion of biotechnology, related developments such as the Human Genome Project, and the continued emergence and re-emergence of infectious diseases strongly suggest that international cooperation under Article X of the Convention will again be an important issue at the Sixth Review Conference.

8. It is useful therefore to examine those parts of the final declarations of preceding Review Conferences related to Article X. There has been a strong element of continuity in the text of the Final Declarations and it both timely and appropriate to examine the continued relevance of those elements of the Final Declarations and to identify issues which are yet to be implemented.

9. Examination of the Article X sections of the Final Declarations shows that the text is generally divided into three groups:

- Statements of intention and/or principles;
- General statements noting the importance of developments related to the area;
- Proposed specific measures that States Parties could undertake to implement Article X of the Convention.

There is to some extent a degree of overlap between these groups and in the Third and Fourth Review Conference Final Declarations, a number of the earlier general statements have been transformed into proposed specific measures. A summary list of the general statements and principles related to Article X made in the Final Declarations of successive Review Conferences is provided in Table I.

### Table I: General Statements and Principles relating to Cooperation made in Article X Final Declarations

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<tr>
<td>1. Disarmament should promote economic and technological development</td>
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<td>2. Implementation has not hampered economic and technological development</td>
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<td>3. Increasing importance of Article</td>
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<td>4. Scientific developments have increased potential for cooperation</td>
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<td>5. Recognition of measures undertaken by States Parties</td>
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<td>6. UN specialized agencies, e.g. WHO should be participate in discussions to improve institutional co-operation</td>
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<td>7. All States Parties urged to promote international cooperation / exchange</td>
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<td>8. States Parties urged to undertake specific measures</td>
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<td>9. States Parties should use existing institutional means in UN system</td>
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<td>10. Welcomes efforts to establish international programme of vaccine development</td>
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<td>11. Implementation needs to be consistent with obligations of the Convention</td>
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<td>12. Legal obligation to facilitate, and have the right to participate in, exchanges and not hamper development</td>
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<td>13. Provisions should not be used to impose restrictions / limitations</td>
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<td>14. Notes mandate of the AHG</td>
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<tr>
<td>15. Notes steps taken at 1992 Rio conference / Agenda 21 / Convention on Biodiversity</td>
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<tr>
<td>16. Concern over emerging / re-emerging diseases</td>
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<tr>
<td>17. Multilateral organizations /financial institutions should support vaccine production projects.</td>
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10. A list of measures proposed at successive Review Conferences is provided in Table II. It should be noted that these tables are intended to serve only as a general guide to assist in identifying issues and topics discussed at successive Conferences; they are not intended to be a definitive record of the text from each Review Conference.
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<tbody>
<tr>
<td>1. Increase scientific and technical co-operation</td>
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<tr>
<td>2. Transfer / exchange of information</td>
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<tr>
<td>3. Training of personnel</td>
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<td>4. Transfer of equipment / materials</td>
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<td>5. Information on implementation</td>
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<tr>
<td>6. Transfer / exchange information on research programmes</td>
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<td>7. Promotion of contacts between scientists and technologists</td>
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<td>8. Technical co-operation to include training programmes</td>
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<td>9. Facilitate conclusion of bilateral, regional and multi-regional agreements</td>
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<td>10. Co-ordinate national and regional programmes</td>
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<tr>
<td>11. Increase co-operation in international public health and disease control</td>
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<tr>
<td>12. Use institutional means in UN system</td>
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<tr>
<td>13. UN body to assess means of improving co-operation</td>
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<tr>
<td>14. Provide information on epidemiological and data reporting systems to improve disease reporting</td>
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<td>15. Establish world data bank</td>
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<td>16. Further develop institutional mechanisms</td>
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<tr>
<td>17. Study of enhanced radioactivity on micro-organisms</td>
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<tr>
<td>18. Support system for global monitoring of disease</td>
<td>+</td>
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<td>+</td>
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<tr>
<td>19. Exchange and training programmes for scientists</td>
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<tr>
<td>20. Support and promote vaccine production projects in developing countries</td>
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11. The way in which the Final Declarations have progressively developed is clearly shown by these tables. Additionally, it is evident at successive Review Conferences that certain principles have been reaffirmed and repeated together with certain proposed measures. The repetition of principles and general statements can be beneficial as it will be recalled that the reaffirmation of the principles, intentions and obligations of the Convention is an important part of the review process which serves to strengthen the norms established by the Convention.
12. The analysis\(^{209}\) made in 2000 also examined the extent to which the negotiations of a legally binding instrument had transformed the proposals for specific measures made at previous Review Conferences into a specific obligation within the draft of the instrument. It concluded that of the twenty identified proposals for specific measures at previous Review Conferences, only one had not been transformed into a specific obligation within the draft, nor is it implicit in the obligations undertaken; namely a study of the enhanced radioactivity on micro-organisms.

13. However, an examination of the draft showed that a further nine areas of cooperation had been proposed in the draft relating to:

- Designation of laboratories;
- Biosafety;
- Environmental protection;
- Occupational health;
- Good Laboratory Practice / Good Manufacturing Practice;
- Diagnostics;
- International Regulations;
- Information sharing on genetically-modified organisms;
- Regulations governing handling and transportation, use and release of agents;

As there had been detailed consideration given to these areas of cooperation, these are all areas that should be candidates for addition to the Article X section of the Final Declaration of the Sixth Review Conference.

**Developments since the Fifth Review Conference**

14. At the Fifth Review Conference, the States Parties agreed that there should be an annual Meeting of States Parties prepared for by a two week Meeting of Experts on five topics. One of the topics addressed in 2004:

\[\text{iv. Strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animal, and plants;}\]

was closely related to the seventh topic listed in the twelfth paragraph of the Final Declaration of the Fourth Review Conference:

\[\text{7. Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;}\]

The mandate for the annual Meetings of the States Parties is the intersessional period between the Fifth and Sixth Review Conferences requires that:

(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.

15. The report\textsuperscript{210} of the annual Meeting of States Parties in 2004 included the following concluding paragraphs:

18. On the mandate to discuss, and promote common understanding and effective action on strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants, the States Parties recognised that:

\begin{itemize}
  \item[a)] infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;
  \item[b)] strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;
  \item[c)] the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;
  \item[d)] scientific and technological developments have the potential to significantly improve disease surveillance and response.
\end{itemize}

19. The States Parties consequently agreed on the value of:

\begin{itemize}
  \item[a)] supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;
  \item[b)] improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;
\end{itemize}

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

16. It is recommended that the substance of the outcome of the 2004 Meeting of States Parties should be incorporated into the Article X section of the Final Declaration of the Sixth Review Conference by using language along the following lines:

The Conference in considering the promotion of common understanding and the taking of effective action on strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants, recognises that:

a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

The Conference consequently agrees on the value of:

a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

17. The two topics considered by the Meeting of States Parties in 2003 were:

i. The adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;
ii. National mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;

Whilst these were primarily addressing topics related to Articles III and IV of the Convention, the report\textsuperscript{211} of the Meeting of States Parties in 2003 concluded:

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:

To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibitions of the Convention, and which enhance effective security of pathogens and toxins.

The positive effect of cooperation between States Parties with differing legal and constitutional arrangements. States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

It is also evident from the statements, presentations and contributions made available to the Chairman by States Parties which were attached to the report, in the languages of submission, as Annex II\textsuperscript{212} that the topic of biosafety was very closely related to that of biosecurity. Consequently, there is much information on biosafety relevant to Article X of the Convention contained in the report of the Meeting of States Parties and preceding the Meeting of Experts


in 2003.

18. There have also been numerous international developments in the areas that have been addressed in Article X sections of the Final Declarations of previous Review Conferences. A brief indication of these developments is indicated by considering a few activities of three international organizations referred to in the Final Declaration of the Fourth Review Conference.

19. The Convention on Biological Diversity referred to in paragraph 9 of the Final Declaration of the Fourth Review Conference:

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

saw the adoption of the Cartagena Protocol on Biosafety on 29 January 2000. This entered into force on 11 September 2003 when the fiftieth instrument of ratification was deposited. By September 2006, the number of States Parties to the Cartagena Protocol on Biosafety has increased to 134\(^\text{213}\). The Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to a precautionary approach and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The Protocol also establishes a Biosafety Clearing-House to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol.

20. The World Health Organization referred to in paragraph 10 of the Final Declaration of the Fourth Review Conference:

10. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring of disease and encourages States Parties to support the World Health Organization, including its relevant newly established division, the FAO and the OIE, in these efforts directed at assisting Member States to strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

has in 2002 seen the adoption of a World Health Assembly resolution\(^\text{214}\) entitled Global public health response to natural occurrence, accidental release or deliberate use of


\(^{214}\) World Health Assembly, Global public health response to natural occurrence, accidental release or deliberate use of biological and chemical agents or radionuclear material that affect health, resolution WHA 55.16, 18 May 2002. Available at http://www.who.int/gho/e/e_wha55.html
biological and chemical agents or radionuclear material that affect health. This led two years later to the publication by the WHO of *Public health response to biological and chemical weapons: WHO guidance*\(^{215}\). In a further important development, the World Health Assembly unanimously adopted on 23 May 2005 a revision of the International Health Regulations, known as IHR (2005)\(^{216}\). The broadened purpose and scope of the IHR(2005) are to "prevent, protect against, control and provide a public health response to the international spread of disease and which avoid unnecessary interference with international traffic and trade." The IHR (2005) are scheduled to enter into force in July 2007. It is noted that all Member States of WHO will become States Parties to the IHR(2005) except for any that reject the Regulations before 15 December 2006. In other words, Member States to the WHO have to take action not to become States Parties to IHR (2005) if they do not wish to accept the revised regulations.

21. *The International Centre for Genetic Engineering and Biotechnology (ICGEB)* referred to in subparagraph 4 of paragraph 12 of the Final Declaration of the Fourth Review Conference:

4. Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);

currently has 54 Member States with a further 16 countries seeking to ratify or accede tot the Statutes of the ICGEB\(^{217}\). The Centre is active in enhancing the safe and peaceful use of biotechnology and is promoting the adoption of ethical codes for researchers working in life sciences. In addition, technical advice is provided to Member States on request for the formulation of national bioscience policy; definition of research goals; development of national bioindustries, and the establishment of national biotechnology laboratories.

22. It is also recalled that the Final Declaration of the Fourth Review Conference also called for the Secretary-General to collate annually reports on how Article X is being implemented:

14. The Conference requests the Secretary-General to collate on an annual basis, and for the information of States Parties, reports on how this article [X] is being implemented.

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information.

23. Thus far, there has been no such annual report by the Secretary-General and the information provided by a number of States Parties has largely been limited to working papers provided to Review Conferences. It is recommended that at the Sixth Review


\(^{217}\) International Centre for Genetic Engineering and Biotechnology. Available at http://www.icgeb.org/GENERAL/centrint.htm
Conference the States Parties should include as a topic for a future annual Meeting of States Parties prepared for by a Meeting of Experts the topic:

To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

The proposed development of a CBM to provide transparency of Article X cooperation would help to focus attention on the actual situation rather than the rhetoric so often expressed in this area. Information on actual cooperation under Article X would make it easier for States Parties to recognise what cooperation is already taking place – and, through transparency, to be aware of what is achievable bringing benefits to all States Parties.

24. It would also be for consideration at the Sixth Review Conference whether a future annual Meeting of States Parties prepared for by a Meeting of Experts should be asked to consider a specific topic relating to Article X. However, care needs to be taken in selecting such a topic that its consideration by a future Meeting of States Parties would bring benefits to the BTWC through improved implementation of the Convention and not simply duplicate an activity already being addressed effectively elsewhere such as by the Convention on Biological Diversity or the World Health Organization. It is therefore necessary for the States Parties to consider carefully which topic relating to Article X is of particular relevance to the Convention. One possible subject might be biosafety especially if this were to be considered together with biosecurity as these two topics are closely related – and are relevant to the Convention. Another possible topics would be to consider how transparency might be enhanced about ongoing activities in the life sciences so that confidence could be built between the States Parties that such activities are indeed in compliance with the Convention.

Language for the Sixth Review Conference

25. It is recommended that the Sixth Review Conference should adopt language developed from that in the Final Declaration of the Fourth Review Conference. The twelfth paragraph proposing specific measures could with advantage be extended so as to incorporate additional measures which had gained general support in the negotiations prior to 2001. The fourteenth paragraph could usefully call upon the interim supportive structures recommended in the Article XII chapter to carry out this task. The following language is proposed with changes highlighted:

1. The Conference once more emphasizes the increasing importance of the provisions of Article X, especially in the light of recent scientific and technological developments in the field of biotechnology, bacteriological (biological) agents and toxins with peaceful applications, which have vastly increased the potential for cooperation between States to help promote economic and social development, and scientific and technological progress, particularly in the developing countries, in conformity with their interests, needs and priorities.

2. The Conference, while acknowledging what has already been done towards this end, notes with concern the increasing gap between the developed and the developing countries in the field of life sciences, biotechnology, genetic engineering, microbiology and other related areas. The Conference urges all States Parties actively to continue to promote international cooperation and exchange with States Parties in the peaceful uses of biotechnology, and urges all States Parties possessing
advanced biotechnology to adopt positive measures to promote technology transfer and international cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind. At the same time, the Conference stresses that measures to implement Article X need to be consistent with the objectives and provisions of the Convention.

3. The Conference recalls that the States Parties have a legal obligation to facilitate and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and not to hamper the economic and technological development of States Parties.

4. The Conference emphasizes that States Parties should not use the provisions of the Convention to impose restrictions and/or limitations on transfers for purposes consistent with the objectives and provisions of the Convention of scientific knowledge, technology, equipment and materials.

5. The Conference notes that existing institutional ways and means of ensuring multilateral cooperation between the developed and developing countries would need to be developed further in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture.

6. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of bacteriological (biological) agents and toxins for peaceful purposes.

7. The Conference recommends that invitations to participate in this discussion and examination should be extended to all States Parties, whether or not they are members of the United Nations or concerned specialized agencies.

8. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, and underlines their importance in the context of Article X implementation.

9. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring of disease and encourages States Parties to support the World Health Organization, including its relevant division, the FAO and the OIE, in these efforts directed at assisting Member States to strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

10. The Conference in considering the promotion of common understanding and the taking of effective action on strengthening and broadening national and
international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants, recognises that:

a) infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national and international level;

b) strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention;

c) the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard. The respective structures, planning and activities of States Parties and the WHO, FAO and OIE should be co-ordinated with and complement one another;

d) scientific and technological developments have the potential to significantly improve disease surveillance and response.

11. The Conference consequently agrees on the value of:

a) supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern;

b) improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same;

c) working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties.

12. The Conference urges the use of existing institutional means within the United Nations system and the full utilization of the possibilities provided by the specialized agencies and other international organizations, and considers that the implementation of Article X could be enhanced through greater coordination among international cooperation programmes in the biological field for peaceful purposes conducted by States Parties, specialized agencies and other international organizations.

13. The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins
for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:

1. Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;

2. Wider transfer and exchange of information, materials and equipment among States on a systematic and long-term basis;

3. Active promotion of contacts between scientists and technical personnel on a reciprocal basis, in relevant fields;

4. Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);

5. Facilitating the conclusion of bilateral, regional and multiregional agreements providing, on a mutually advantageous, equal and non-discriminatory basis, for their participation in the development and application of biotechnology;

6. Encouraging the coordination of national and regional programmes and working out in an appropriate manner the ways and means of cooperation in this field;

7. Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;

8. The promotion of programmes for the exchange and training of scientists and experts, and the exchange of scientific and technical information in the biological field between developed and developing countries.

9. Cooperation in the sharing of information on environmental release of genetically-modified organisms;

10. The promotion of programmes to implement Good Manufacturing Practice (GMP), Good Laboratory Practice (GLP), biological containment and other biosafety regulations and practices;

11. Cooperation in the application and harmonisation of regulations governing the handling, transportation, use and release of biological agents and toxins.

12. Facilitation of access to databases containing information on the peaceful uses of biological agents and toxins, biosafety and results of
scientific research in the life sciences in areas of particular relevance to the Convention.

14. The Conference considers that a worldwide data bank might be a suitable way of facilitating the flow of information in the field of genetic engineering, biotechnology and other scientific developments. In this context, the Conference underlines the importance of monitoring all related developments in the field of frontier science and high technology in the areas relevant to the Convention.

15. The Conference requests the [Intersessional Committee of Oversight][annual Meeting of States Parties] to collate on an annual basis, and for the information of States Parties, reports on how this article is being implemented.

16. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information. The Conference further decides that a future annual Meeting of States Parties prepared by a Meeting of Experts shall be held during the intersessional period between the Sixth and Seventh Review Conferences to consider and take action on the topic:

- To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

17. The Conference welcomes efforts to elaborate an international programme of vaccine development for the prevention of diseases which would involve the scientific and technical personnel from developing countries that are States Parties to the Convention. The Conference recognizes that such a programme will not only enhance peaceful international cooperation in biotechnology but also contribute to improving health care in developing countries, assist in establishing systems for worldwide monitoring of communicable diseases, and provide transparency in accordance with the Convention.

18. The Conference calls upon all States Parties in a position to do so to fully cooperate with the developing States Parties to the Convention in the area of promotion and financing the establishment of vaccine production facilities. The Conference recommends further that the relevant multilateral organizations and world financial institutions provide assistance for establishment and promotion of vaccine production projects in these countries.
ARTICLE XI: AMENDMENTS TO THE CONVENTION

by Graham S Pearson & Nicholas A. Sims

Consideration of Article XI at the Fourth Review Conference

1. Article XI of the Convention states that:

   Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\(^{218}\) in respect of Article XI stated that:

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1. The Conference notes that the Islamic Republic of Iran has formally presented a proposal to amend Article I and the title of the Convention to include explicitly the prohibition of use of biological weapons.

2. The Conference notes that the Depositaries are notifying all States Parties of the proposal. The Conference encourages all States Parties to convey their views to the Depositaries on whether the Convention needs to be amended to make clear explicitly that the use of biological weapons is effectively prohibited.

3. The Conference requests the Depositaries to take such measures as may be requested by a majority of States Parties, including the option of convening a conference open to all States Parties to the Convention at the earliest appropriate opportunity to take a decision on the proposal, should a majority of the States Parties so decide.

4. The Conference meanwhile reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

3. This was a considerable development -- because of the formal proposal by Iran to amend the Convention -- from the single paragraph on Article XI in the Final Declaration of the Third Review Conference of the BTWC held on 9-27 September 1991 which stated that:

> The Conference notes the importance of Article XI and that since the entry into force of the Convention the provisions of the article have not been invoked. In this context the Conference underlined that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

**Developments since the Fourth Review Conference**

4. After Iran formally presented its proposal to amend the Convention at the Fourth Review Conference, it was agreed by that Review Conference that the Depositaries should notify all States Parties of the proposal submitted by Iran, that all States Parties should be encouraged to convey their views, and that the Depositaries should then take such measures as might be requested by a majority of States Parties, including the option of convening a conference to take a decision on the proposal. In the event, no such conference was convened. One reason may be that in addition the Final Declaration of the Fourth Review Conference included agreed language, in its Solemn Declaration and in a number of sections on Articles, reaffirming that use is effectively prohibited by the Convention. In so doing, this may well have caused several States Parties to regard the amendment proposal by Iran as unnecessary.

5. The agreed language relating to use in the Solemn Declaration paragraphs included:

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- Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.

- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.

6. The language relating to use in the Article I section included:

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.

and the Article IV section included:

... The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

as well as

7. The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.

whilst the Article VIII section included:

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.

**Issues for the Sixth Review Conference**

7. The first, second and third paragraphs of the Article XI section in the 1996 Final Declaration are no longer directly applicable in 2006, as there is no current proposal for amendment of the Convention. However, it should be noted that parts of the second and third paragraphs provide elements of an agreed procedure to be followed by States Parties and by the Depositaries in the event of Article XI being invoked on a future occasion. They amplify the provisions of Article XI by filling in the gap between an amendment being proposed and its entry into force upon acceptance. There would be value in reaffirming these elements of an agreed procedure, in terms which are sufficiently general to disconnect it from any specific proposal for amendment, past or future. A single paragraph should suffice, along the following lines:
The Conference reaffirms that, in the event of a proposal being made under Article XI, the Depositaries shall notify all States Parties of the proposal and encourage all States Parties to convey their views to the Depositaries on whether the Convention needs to be amended; and that the Depositaries shall then take such measures as may be requested by a majority of States Parties, including the option of convening a conference open to all States Parties to the Convention at the earliest appropriate opportunity to take a decision on the proposal, should a majority of the States Parties so decide.

8. It is recommended that this new paragraph, reaffirming elements of an agreed procedure, should be added after pride of place has been given to the general principle expressed in the fourth paragraph of the 1996 text, which stated that:

4. The Conference meanwhile reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

The significance of this general principle that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention is that States Parties have historically been reluctant to contemplate the eventuality of amendments which some would accept and others reject, because of the risk of multiple tiers of obligation which might result. If some States Parties were bound by the Convention as amended, and others by the Convention unamended, there would be a weakening of reciprocity. For that reason there had been inconclusive discussion at the Third Review Conference over whether a two-thirds qualified majority requirement might reduce the risk of divisive amendments. The language above was agreed as a statement of general principle without committing States Parties to the requirement of a qualified majority. In 1991 and 1996 the Review Conferences were in effect saying that in principle the only amendments which would be admissible would be those commanding universal assent, having been judged both necessary and desirable, because only then would they be likely to be accepted by all States Parties. Under those conditions all States Parties would continue to be bound by identical obligations, and reciprocity would be undiminished.

Language for the Sixth Review Conference

9. It is therefore suggested that the Sixth Review Conference should adopt similar language to that in the fourth paragraph of the Article XI section of the Final Declaration of the Fourth Review Conference followed by the new paragraph recommended in paragraph 7 above:

1. The Conference reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

2. The Conference reaffirms that, in the event of a proposal being made under Article XI, the Depositaries shall notify all States Parties of the proposal and encourage all States Parties to convey their views to the Depositaries on whether the Convention needs to be amended; and that the Depositaries shall then take such measures as may be requested by a majority of States Parties, including the option of convening a conference open to all States Parties to the Convention at the earliest appropriate
opportunity to take a decision on the proposal, should a majority of the States Parties so decide.

ARTICLE XII: REVIEW CONFERENCES

by Nicholas A. Sims & Graham S. Pearson

Consideration of Article XII at the Fourth Review Conference

1. Article XII of the Convention states that:

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and provisions of the Convention, including the provisions concerning negotiations on chemical weapons are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.
2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration in respect of Article XII stated that:

1. The Conference decides that a Fifth Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2001.

2. The Conference decides that the Fifth Review Conference shall consider, inter alia,

- The impact of scientific and technological developments relating to 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 Fifth Review Conference;

- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;

- The conclusions of a Special Conference, to which the Ad Hoc Group shall submit its report, including a legally-binding instrument to strengthen the Biological and Toxin Weapons Convention, which shall be adopted by consensus, to be held as soon as possible before the commencement of the Fifth Review Conference; and further action as appropriate;

- The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;

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

**Developments since the Fourth Review Conference**

3. The Fifth Review Conference was held no later than 2001 as requested in the Final Declaration of the Fourth Review Conference. The various items that the Fourth Review Conference decided should be considered were all included in the Provisional Agenda as Agenda items 10, 11 and 12:

10. Review of the operation of the Convention as provided for in its Article XII

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11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Fourth Review Conference and possible follow-up action

12. Work done to strengthen the Convention in accordance with the decision of the 1994 Special Conference

4. The Fifth Review Conference failed to agree a Final Declaration and consequently the Sixth Review Conference is, in essence, also following on from the language agreed in the Final Declaration for the Fourth Review Conference. The Provisional Agenda agreed by the Preparatory Committee for the Sixth Review Conference has included the following as Agenda items 10 and 11:

10. Review of the operation of the Convention as provided for in its Article XII

(a) General debate
(b) Articles I - XV
(c) Preambular paragraphs and purposes of the Convention

11. Consideration of issues identified in the review of the operation of the Convention as provided for in Article XII contained in the Final Declaration of the Fourth Review Conference and possible consensus follow-up action

The new Agenda item 11 is to be noted as a constructive replacement for the previous items 11 and 12, which had been seen as needing particular attention from the Preparatory Committee in 2006.

Issues for the Sixth Review Conference

5. The Conference is recommended to extend its review of Article XII and the corresponding section of the Final Declaration so as to ensure

(a) the continuation, and if possible the perpetuation, of the review process, and

(b) the authorisation of its President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences. The principal strengthening structure might take the form of a representative Intersessional Committee of Oversight or of an Annual Meeting of States Parties. In either case, it might be empowered to take decisions, supported by Advisory Panels and a dedicated standing secretariat.

It is recommended that the Article XII section of the Final Declaration be drafted in two parts, to reflect this cumulative extension of the review.

Part One

6. It is recommended that Part One be based on the three paragraphs concerning Article XII which were agreed in 1996, appropriately updated and, in the case of the third paragraph, strengthened.

7. Paragraph 1 would simply replace 'Fifth' by 'Seventh' and '2001' by '2011'. The possibility would thereby be retained of a majority of States Parties choosing a date earlier than 2011. If they did not exercise this power of 'requisition', the Sixth Review Conference would accordingly take place in 2011. Paragraph 1 would therefore read as follows:

1. The Conference decides that a Seventh Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2011.

8. In paragraph 2, the first two mandatory agenda items, which are derived from Article XII itself, should continue to take pride of place. The third and fifth agenda items from 1996 should also be repeated; it is, however, recommended that at the end of the third agenda item the words "and of possible consensus follow-up action as agreed at the Sixth Review Conference" be added, using the formulation agreed by the Preparatory Committee for the new Agenda item 11 of the Sixth Review Conference as noted in paragraph 4 of this chapter; and that at the end of the fifth agenda item the words "the Fourth Review Conference" be replaced by the words "this and earlier Review Conferences" because there are still outstanding requests from the Review Conferences of 1986 and 1991 as well as 1996 which await action by the Secretary-General of the United Nations such as those in connection with the implementation of Article X.

9. Still in paragraph 2, as the fourth agenda item from 1996 may present problems and would in any case require much re-wording to make it relevant to the Seventh Review Conference, it is recommended that this item should be omitted.

10. Paragraph 2 would thus read as follows:

2. The Conference decides that the Seventh Review Conference shall consider, inter alia,

- The impact of scientific and technological developments relating to 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 Seventh Review Conference;

- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences and of possible consensus follow-up action as agreed at the Sixth Review Conference;

- The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements
to assist the effective implementation of the relevant decisions of this and earlier Review Conferences;

11. Paragraph 2 will need an extra agenda item added at the end, as its fifth agenda item, if the recommendation in Part Two below is adopted:

"- The report of the President and General Committee of the Sixth Review Conference on the provision of interim supportive structures under paragraph 4 below, including the report of the Inter-sessional Committee of Oversight/Annual Meeting of States Parties and any recommendation that its mandate be extended, with or without amendment, to bridge the interval between the Seventh and Eighth Review Conferences."

12. Paragraph 3 should move from recommendation to decision, in order to confirm the permanence of the Convention and to emphasise the importance of placing its quinquennial review process on an established and continuing basis:

"3. The Conference decides that conferences of States Parties to review the operation of the Convention shall be held at least every five years."

Part Two

13. Paragraphs 4 to 6 of the Article XII section of the Final Declaration, as proposed below, would break new ground. The following background analysis sets out the argument for these new paragraphs.

Interim supportive structures

14. The BTWC needs support. It has long suffered from an institutional deficit lamentable in a multilateral treaty of such importance. The Sixth Review Conference can begin to remedy this institutional deficit, by choosing among a set of options which have been proposed for its consideration223.

15. In the long run, an Organization for the Prohibition of Bacteriological (Biological) and Toxin Weapons (OPBW) is needed, to strengthen the effectiveness and improve the implementation of the Convention. But until there is an OPBW with the capacity to match the requirements of the BTWC, the Convention needs a modest set of interim supportive structures to nurture its treaty regime and help it flourish as, with careful steering, it starts to overcome its long-recognised fragility.

16. Almost every useful advance one could imagine coming out of the Sixth Review Conference would benefit from continuing institutional capacity. By creating interim supportive structures, the Conference would be providing such capacity for the period between the Sixth and Seventh Review Conferences in the first instance, without prejudice to the diverse positions of States Parties on the desirability of an OPBW in the long run.

17. Two alternatives are offered in the paragraphs that follow.

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First Alternative

18. A representative Intersessional Committee of Oversight would do much to remedy the BTWC's institutional deficit. It should be served by a small standing secretariat dedicated to the service of the BTWC.

19. That opportunity was narrowly missed in 1991, when the Third Review Conference gave serious consideration to setting up an intersessional representative body or at least a secretariat unit to help States Parties maximise the value of their newly enhanced and expanded programme of confidence-building measures. Now the opportunity has re-emerged with new urgency. The Sixth Review Conference can address the problem of the continued dearth of institutional capacity by authorising such interim supportive structures.

20. The simplest way to create an Intersessional Committee of Oversight is to give the General Committee of the Conference – its office-holders and regionally representative vice-presidents – a continuing identity and a mandate, to act on behalf of the Sixth Review Conference until its successor takes over in 2011. Then the Seventh Review Conference could decide whether this mandate might be extended, with or without amendment, for its General Committee in turn to cover the interval between the Seventh and Eighth Review Conferences.

21. Advantages of simplicity argue in favour of creating an Intersessional Committee of Oversight by effectively extending the life of the General Committee from 2006 to 2011 in the first instance. Its chairmanship would be straightforward – the Presidency of the Conference – and its funding, as an appendix of the Conference, would be pro rata as for the Conference itself, thereby avoiding argument over two issues which vitiated comparable proposals at the Third Review Conference.

22. The variant of a smaller Intersessional Committee of Oversight, elected by the General Committee from among its membership, is also a possibility. It might, for example, retain the principal office-holders of the Conference and the regional group coordinators, but not the other vice-presidents of the Conference or the vice-chairmen of its committees.

23. In the recommended Final Declaration text under the heading Part Two (First Alternative) which is offered at paragraph 35 below, and which sets out the proposed functions and method of working of the representative body, both variants are shown. The General Committee might constitute itself as a continuing representative body, or it might elect a certain number of its members to constitute a continuing representative body. A range of possible titles is also suggested for the representative body, whether larger – the full membership of the General Committee of the Sixth Review Conference – or smaller – elected from among its membership. If the title Intersessional Committee of Oversight did not find favour, it might be called the Continuing Committee or the Interim Committee or the Representative Committee.

Second Alternative

24. More recently a second alternative has come to the fore as the principal strengthening structure which might act between Review Conferences in support of the Convention. This is the Annual Meeting of States Parties.
25. Since 2003 disarmament delegations have become accustomed to spending a total of three weeks each year in Geneva on BTWC business. They have met annually as States Parties, albeit on specific topics. It is just one more step to formalise the practice as an Annual Meeting. This strengthening structure could carry forward the best aspects of the Meetings of States Parties which conducted the work programme of 2003-2005 under the Decision of the Fifth Review Conference, but with the 2003-2005 constraints on agenda topics removed so that momentum could be built up and continuity assured. The Annual Meeting of States Parties would be able henceforth to take a synoptic view of the state of the BTWC and its treaty regime as a whole.

26. A work programme for the intersessional period 2007-2010, if agreed by the Sixth Review Conference, could if the Conference wished be combined with the Annual Meetings. This possibility is accordingly square-bracketed with the proposed mandate in the recommended Final Declaration text below.

27. The Annual Meeting of States Parties has the advantage of every plenary body that its representative character can never be called into question. It might also be more readily authorised to take decisions by reason of its all-inclusive membership. That would be for the Sixth Review Conference to decide, in determining how far the mandate of the Annual Meeting should extend.

28. However, the creation of an Annual Meeting of States Parties depends upon the readiness of the Conference to allow the topic-limited Meetings of States Parties of 2003-2005 to be formalised and adapted into this wider-agenda body. It is just one more step; but, if the Conference proves unwilling to take this further step, then the Second Alternative for Part Two of the Article XII section falls away.

Common ground

29. It should be emphasised that there is much common ground between these two alternatives. What they have in common is their central purpose and range of functions, as expressed in the mandates proposed for them in the recommended Final Declaration text below.

30. Whichever might be chosen, whether the Intersessional Committee of Oversight or the Annual Meeting of States Parties, as envisaged here it would give pride of place to:
   – following up the Final Declaration and decisions of the Sixth Review Conference;
   – exercising a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;
   – ensuring an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;
   – assisting States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding
commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

– promoting universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

and would also engage, as the principal interim supportive structure for the Convention, in

– representing the States Parties to the Convention as a collectivity in their relations with the United Nations, and with other organizations as appropriate;

– establishing, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

– establishing, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention;

– reporting to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

31. The only differences in the proposed mandates are that the First Alternative contains an extra element, giving the Intersessional Committee of Oversight the power to convene a Special Meeting of States Parties in case of need, while the Second Alternative contains an extra element, providing that the Annual Meeting of States Parties shall meet with experts, or preceded by experts, and with the assistance of working groups, as needed. Moreover, as noted in paragraph 26 above, the Second Alternative preserves in square-bracketed text the possibility if agreed by the Sixth Review Conference of a further work programme, consisting of topics or themes allocated for collective consideration by States Parties in each of the years 2007 to 2010, being combined with the synoptic oversight of the BTWC and its treaty regime as a whole.

Language for Part Two of the Article XII section of the Final Declaration

32. Two things must be re-emphasised. First, the case for a modest set of BTWC structures is a long-established one, developed and articulated since the 1980s. Second, they must be seen as interim arrangements, pending eventual establishment, in the long term, of a permanent OPBW.

33. Deliberately, this text has been developed for the Article XII section of the Final Declaration, because any interim structures agreed would take their authority from the Review Conference, which is the subject of Article XII.

34. The Sixth Review Conference can put in place the structural means to steer the BTWC treaty regime into constructive channels and nurture its evolution, pending the arrival of an Organization (the OPBW) which remains vital to its strengthening.
35. It is recommended that the following additional language, for which two alternatives are offered – the first based on an Intersessional Committee of Oversight and the second based on an Annual Meeting of States Parties, be adopted in the Article XII section of the Final Declaration as paragraphs 4 to 6:

**Part Two (First Alternative)**

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, requests its General Committee [to constitute itself as a continuing representative body until the Seventh Review Conference] [to elect a certain number of its members to constitute a continuing representative body until the Seventh Review Conference] under the name [Intersessional Committee of Oversight] [Continuing Committee] [Interim Committee] [Representative Committee] and in that capacity, under the authority of this Conference:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;

(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Committee and its Panels;
(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Committee:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;

(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall have the power to convene a Special Meeting of States Parties in case of need;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Intersessional Committee of Oversight to be made under paragraph 4(i).

Part Two (Second Alternative)

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, decides that the States Parties shall hold an Annual Meeting:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding
commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;

(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Annual Meeting and its Panels;

(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Annual Meeting of States Parties:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;

(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall meet with experts, or preceded by meetings with experts, and with the assistance of working groups, as needed;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Annual Meeting of States Parties to be made under paragraph 4(i).
Language for the Sixth Review Conference

36. It is recommended that the following language be adopted by the Sixth Review Conference for its section on Article XII in its Final Declaration:

Part One

1. The Conference decides that a Seventh Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2011.

2. The Conference decides that the Seventh Review Conference shall consider, inter alia,

   - The impact of scientific and technological developments relating to 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 Seventh Review Conference;

   - The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences and of possible consensus follow-up action as agreed at the Sixth Review Conference;

   - The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of this and earlier Review Conferences;

   - The report of the General Committee of the Sixth Review Conference, or other continuing representative body, constituted as a [Committee of Oversight] under paragraph 4 below, including any recommendation that its mandate be extended, with or without amendment, to bridge the interval between the Seventh and Eighth Review Conferences.

   - The report of the President and General Committee of the Sixth Review Conference on the provision of interim supportive structures under paragraph 4 below, including the report of the [Intersessional Committee of Oversight][Annual Meeting of States Parties] and any recommendation that its mandate be extended, with or without amendment, to bridge the interval between the Seventh and Eighth Review Conferences.

3. The Conference decides that conferences of States Parties to review the operation of the Convention shall be held at least every five years.

Part Two (First Alternative)

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, requests its General Committee to constitute itself as a
continuing representative body until the Seventh Review Conference] to elect a certain number of its members to constitute a continuing representative body until the Seventh Review Conference] under the name [Intersessional Committee of Oversight] [Continuing Committee] [Interim Committee] [Representative Committee] and in that capacity, under the authority of this Conference:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;

(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Committee and its Panels;

(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Committee:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;
(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall have the power to convene a Special Meeting of States Parties in case of need;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Intersessional Committee of Oversight to be made under paragraph 4(i).

Part Two (Second Alternative)

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, decides that the States Parties shall hold an Annual Meeting:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;
(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Annual Meeting and its Panels;

(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Annual Meeting of States Parties:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;

(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall meet with experts, or preceded by meetings with experts, and with the assistance of working groups, as needed;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Annual Meeting of States Parties to be made under paragraph 4(i).
ARTICLE XIII: DURATION AND WITHDRAWAL

by Graham S Pearson & Nicholas A. Sims

Consideration of Article XIII at the Fourth Review Conference

1. Article XIII of the Convention states that:

   (1) This Convention shall be of unlimited duration.

   (2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.
2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration\(^\text{224}\) in respect of Article XIII stated that:

1. The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.

This represented a slight extension of the language adopted at the Third Review Conference of the BTWC held on 9-27 September 1991, when the Final Declaration\(^\text{225}\) stated that:

The Conference notes the provisions of Article XIII and expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.

### Developments since the Fourth Review Conference

3. Although the provisions of Article XIII have not been invoked since the Fourth Review Conference, attention was given by the UN Secretary-General’s High Level Panel\(^\text{226}\) to the topic of withdrawal from the Nuclear Non-Proliferation Treaty in para. 134:

134. While the Treaty on the Non-Proliferation of Nuclear Weapons provides the right of withdrawal from the Treaty, States should be urged not to do so. Those who withdraw should be held responsible for violations committed while still a party to the Treaty. A State’s notice of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons should prompt immediate verification of its compliance with the Treaty, if necessary mandated by the Security Council. The IAEA Board of Governors should resolve that, in the event of violations, all assistance provided by IAEA should be withdrawn. [Emphasis in original]

4. In Bradford Review Conference Paper No. 14\(^\text{227}\), it was observed that both the BTWC and the CWC include Articles which provide a right of withdrawal from them and it was regretted that the High Level Panel has not used parallel language urging the States not to withdraw from the BTWC and the CWC and has not recommended that a State’s notice of withdrawal from the BTWC or from the CWC should prompt immediate verification of its compliance with these Conventions, if necessary mandated by the Security Council.

5. There are three extended understandings in relation to Article XIII which could usefully be agreed at the Sixth Review Conference, and included in its Final Declaration, to

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\(^{227}\) Graham S. Pearson, *The UN Secretary-General’s High Level Panel: Biological Weapons Related Issues*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 14, May 2005. Available at http://www.brad.ac.uk/acad/sbtwc

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discourage withdrawal from the Convention and to protect the interests of the other States Parties.

6. A first understanding which could usefully be agreed and recorded is that any invocation of Article XIII paragraph 2 would trigger a concerted response by the other States Parties, upon receiving notice of withdrawal. They should agree in advance that in the event of such notice being received, they would promptly come together as a Special Conference of the States Parties to the BTWC. Notice of withdrawal has to be given to the Security Council at the same time as to the States Parties, and as the Council would almost certainly meet urgently to consider this notification as a threat to the maintenance of international peace and security, it would probably be more convenient for the States Parties to convene in New York in the margins of the United Nations than to meet at Geneva. Both the Security Council and the States Parties would have the same interest in using the three months' notice of the intention to withdraw "either to try to convince the State Party in question not to insist on its decision...or to prepare individually or collectively for measures adequate to cope with an adverse situation resulting from such a withdrawal." These words of Krutzsch and Trapp apply as fully to Article XIII of the BTWC, where the notice period is expressed as three months, as to Article XVI of the CWC, where it is 90 days.

7. Close cooperation between the Security Council and the BTWC States Parties would be essential for the effective conduct of the intensive diplomacy, and coordination of contingency precautions, which would almost certainly occupy the three months prior to withdrawal taking effect. They might find themselves challenging the state which had given notice of withdrawal to justify its claim that its supreme interests had been jeopardized by extraordinary events, and that these extraordinary events were indeed related to the subject matter of the Convention, since both criteria need to be fulfilled for withdrawal to be permissible.

8. Language that might be adopted in the Article XIII section of the Final Declaration to cover this understanding could be as follows:

The Conference decides that, in the event of any State Party giving notice of its intention to withdraw from the Convention, a Special Conference shall be convened without delay in order to enable the States Parties:

(a) to consider the statement submitted by the State Party of the extraordinary events it regards as having jeopardized its supreme national interests, noting that in accordance with Article XIII such events must not only be extraordinary, and must have jeopardized its supreme national interests, but must also be related to the subject matter of the Convention, and that withdrawal on three months' notice is only permissible if all these conditions are fulfilled;

(b) to address collectively the implications of the intended withdrawal for the Convention and for States Parties;

(c) to coordinate their diplomacy to the extent possible with the United Nations Security Council throughout the period of notice;

(d) to agree recommendations to States Parties, individually and collectively, on actions necessary to safeguard their interests and the integrity of the Convention during the period of notice and following its expiration if withdrawal is effected.

9. A second understanding could usefully discourage withdrawal by affirming that BTWC processes already in train will not be terminated. For example, if the complaint procedure under Article VI has been invoked, the State Party against which a breach of the Convention has been alleged cannot escape the resulting Security Council investigation by withdrawing from the BTWC. If the contingency mechanism for handling compliance concerns multilaterally under Article V has been activated, leading (as in 1997) to the holding of Informal and Formal Consultative Meetings open to all States Parties at expert level, then that process would continue. Both procedures, under Article VI and Article V, will by their very nature be dealing with events, situations, ambiguities or other compliance concerns which logically antedate the withdrawal of the State Party. They should accordingly proceed to their conclusion.

10. One difference between the two Articles is that Article VI only requires States Parties to cooperate with the Security Council in the investigation, because it is the Council which is taking the lead, whereas action under Article V is entirely in the hands of the States Parties themselves, and so is dependent upon their decision. The Security Council is unlikely to discontinue an investigation because of a change in the treaty status of the state whose activities are under investigation. The BTWC States Parties need to make evident the same resolve. That is why it is all the more desirable that an agreed understanding under Article XIII should affirm the principle that BTWC processes already in train will proceed to their conclusion in respect of procedures under Article V, and not just Article VI.

11. This second understanding comes as near as possible, in the different context of the BTWC, to finding an equivalent to the concerted international response when faced with a state's withdrawal from the NPT which the High Level Panel advocated in the third sentence of its paragraph 134: "A State's notice of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons should prompt immediate verification of its compliance with the Treaty, if necessary mandated by the Security Council." The phrase "immediate verification of its compliance with the Treaty" cannot be used in the BTWC context; but the purpose of recording this understanding would be similar, in that it would be warning any State Party which might be contemplating withdrawal that its withdrawal would not enable it to escape the consequences of investigations or other procedures already in train, because they would proceed to their conclusion. In both cases, it could expect its compliance or non-compliance while still a treaty Party to be established irrespective of its subsequent withdrawal.

12. Language that might be adopted in the Article XIII section of the Final Declaration to cover this understanding could be as follows:

*The Conference further decides that in the event of a State Party withdrawing from the Convention:

(a) any multilateral processes already in train under Article V or Article VI of the Convention in which the State Party is implicated shall continue, and proceed to their conclusion, notwithstanding the withdrawal of the State Party from the Convention at any stage;*
(b) the United Nations Security Council shall be invited to use the powers at its disposal to ensure that the facts regarding the compliance of such a State with its obligations under the Convention while still party to it are established irrespective of its subsequent withdrawal from the Convention.

13. A third understanding could be based on the statement found in the equivalent article of the CWC (Article XVI Duration and Withdrawal) where it constitutes an extra, third, paragraph after the first two which correspond to Article XIII of the BTWC. Paragraph 3 of CWC Article XVI reads:

"The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925."

Krutzsch and Trapp in their commentary on the CWC note that "While phrased in a more general nature, paragraph 3 reaffirms the provision of [CWC] Article XIII which makes it clear that the Convention does not detract from the obligation assumed under the Geneva Protocol."

14. In the BTWC, Article VIII fulfils the same function of upholding the authority of the Geneva Protocol. A third understanding under the review of Article XIII would reinforce the provision of Article VIII and remind any state contemplating withdrawal from the BTWC of its continuing legal obligations independent of the BTWC. This could be stated by using the following language in the Final Declaration:

The Conference, noting also the provisions of Article VIII of this Convention and of Articles XIII and XVI, paragraph 3, of the Chemical Weapons Convention, declares that the withdrawal of a State Party from the Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925.

Language for the Sixth Review Conference

15. The Sixth Review Conference should adopt language developed and strengthened from that in the Final Declaration of the Fourth Review Conference as follows:

1 The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.

2 The Conference decides that, in the event of any State Party giving notice of its intention to withdraw from the Convention, a Special Conference shall be convened without delay in order to enable the States Parties:

(a) to consider the statement submitted by the State Party of the extraordinary events it regards as having jeopardized its supreme national interests, noting that in accordance with Article XIII such events must not only be extraordinary, and must have jeopardized its supreme national interests, but must also be related to the subject matter of the Convention, and that withdrawal on three months' notice is only permissible if all these conditions are fulfilled;

(b) to address collectively the implications of the intended withdrawal for the Convention and for States Parties;

(c) to coordinate their diplomacy to the extent possible with the United Nations Security Council throughout the period of notice;

(d) to agree recommendations to States Parties, individually and collectively, on actions necessary to safeguard their interests and the integrity of the Convention during the period of notice and following its expiration if withdrawal is effected.

3 The Conference further decides that in the event of a State Party withdrawing from the Convention:

(a) any multilateral processes already in train under Article V or Article VI of the Convention in which the State Party is implicated shall continue, and proceed to their conclusion, notwithstanding the withdrawal of the State Party from the Convention at any stage;

(b) the United Nations Security Council shall be invited to use the powers at its disposal to ensure that the facts regarding the compliance of such a State with its obligations under the Convention while still party to it are established irrespective of its subsequent withdrawal from the Convention.

4 The Conference, noting also the provisions of Article VIII of this Convention and Articles XIII and XVI, paragraph 3, of the Chemical Weapons Convention, declares that the withdrawal of a State Party from the Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925.
ARTICLE XIV: UNIVERSAL ADHERENCE TO THE CONVENTION

by Graham S Pearson & Nicholas A. Sims

Consideration of Article XIV at the Fourth Review Conference

1. Article XIV states that:

   (1) *This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph (3) of this Article may accede to it at any time.*

The other paragraphs of this Article set out the procedures for the depositing of instruments of ratification and instruments of accession with the Depositary Governments and for the notification of all signatory and acceding States of the date of each signature, of deposit of each instrument of ratification or of accession, etc.
2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration in respect of Article XIV stated that:

1. The Conference notes with satisfaction that a number of States have acceded to the Convention since the Third Review Conference.

2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention.

3. In this connection, the Conference requests States Parties to encourage wider adherence to the Convention.

4. The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.

5. The Fourth 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. The Conference also appeals to all States Parties to participate actively in the Ad Hoc Group of States Parties, with a view to the early completion of its work to strengthen the Convention.

3. This was closely similar to the language in the Final Declaration of the Third Review Conference -- differences between this Final Declaration and that of the Fourth Review Conference are shown in bold -- which stated that:

The Conference notes with satisfaction that a significant number of States have ratified or acceded to the Convention since the Second Review Conference and the 1989 Paris Conference of States Parties to the 1925 Geneva Protocol and Other Interested Parties to the Convention, and that there are now more than 115 States Parties to the Convention, including all the permanent members of the Security Council of the United Nations.

The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto thus contributing to the achievement of universal adherence to the Convention.

In this connection, the Conference encourages States Parties to take action to persuade non-parties to accede to the Convention without delay.

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The Conference particularly welcomes regional initiatives that would lead to wider access to the Convention.

The Third Review Conference appeals to those States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons which have not taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration of this Conference, and in particular to implement the agreed confidence-building measures.

4. Attention needs to be drawn to the omission of the word "not" in the third line of the final paragraph of the Final Declaration of the Third Review Conference from the final paragraph of the Final Declaration of the Fourth Review Conference. This is clearly an error which appears not to have been noticed during the Fourth Review Conference as the same error appears in the text for Article XIV put before the Committee of the Whole and proposed by the United States.232

Developments since the Fourth Review Conference

5. As the number of States Parties has increased to 155233, there is cause for further satisfaction whilst still encouraging all States which have not ratified or acceded to the Convention to do so without delay. This was noted in the resolution adopted234 by the General Assembly without a vote on 8 December 2005 as A/RES/60/96 which included as its first operative paragraph:

1. Notes with satisfaction the increase in the number of States parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, reaffirms the call upon all signatory States that have not yet ratified the Convention to do so without delay, and calls upon those States that have not yet signed the Convention to become parties thereto at an early date, thus contributing to the achievement of universal adherence to the Convention.

6. There is therefore a widespread and continuing recognition by all States Parties of the importance of achievement of universal adherence to the Convention. However, the rate at which States have become Parties to the Convention has been very slow during recent years:

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<th>Date</th>
<th>States Parties</th>
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<tr>
<td>October 2001</td>
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7. This slow rate of approaching universality is all the more pronounced when a comparison is made with the Chemical Weapons Convention which entered into force on 29 April 1997. At its First Review Conference\textsuperscript{235} in April/May 2003, the States Parties in regard to universality of the CWC agreed that:

The First Review Conference recommended that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it [Emphasis added] (RC-1/5, para.7.18).

The background paper\textsuperscript{236} provided by the OPCW on adherence to the CWC for the First Review Conference provided a summary of the participation in the Convention:

\begin{table}[h]
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\hline
\textbf{Date} & \textbf{Number of States Parties} & \textbf{Number of States Parties for which Entry into Force was pending} & \textbf{Signatory States not Party} & \textbf{Non-Signatory States not Party} \\
\hline
29 April 1997 & 87 & 0 & 78 & 28 \\
29 April 1998 & 107 & 1 & 60 & 25 \\
29 April 1999 & 121 & 0 & 48 & 24 \\
29 April 2000 & 132 & 3 & 37 & 21 \\
29 April 2001 & 143 & 0 & 31 & 19 \\
29 April 2002 & 143 & 0 & 31 & 19 \\
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8. Since adoption of the Action Plan on Universality following the CWC Review Conference, the number of States Parties has increased significantly:

\begin{tabular}{|c|c|c|c|c|}
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\textbf{Date} & \textbf{May 2003} & \textbf{October} & \textbf{June} & \textbf{February} \\
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<th>Number of States Parties</th>
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<th>Signatory States not Party</th>
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2003  2004  2005  2006
151  154  164  167  178
2  3  0  0  0

The experience of this Action Plan on Universality demonstrates the importance of its being organised and sustained by a secretariat under the direction of a representative body of the States Parties, in the case of the CWC the OPCW Technical Secretariat under the direction of the Executive Council.

9. It is thus evident that in March 2006, the States Parties to the CWC were some 178, over twenty more than the number of States Parties to the BTWC. There is consequently a window of opportunity at the forthcoming Sixth Review Conference in November/December 2006 for the States Parties to the BTWC to mount an initiative to encourage all those States which have ratified or acceded to the CWC also to ratify or accede to the BTWC. Rather than just adopting an exhortation, as at previous Review Conferences, it would be timely to agree on concrete decisions to promote and achieve the objective of universality. Whilst this might be called an Action Plan there might be advantage in adopting some different terminology such as an achievement timeline with, it is suggested, the interim objective of reaching 180 States Parties to the BTWC no later than the Seventh Review Conference in 2011. The States Parties at the Sixth Review Conference in agreeing this achievement timeline need to decide how the initiative is to be taken forward, by an Intersessional Committee of Oversight or a small standing dedicated secretariat, on their behalf and how the progress towards this interim objective will be reported regularly to the States Parties. Such a progress report would be appropriate at future annual Meetings of the States Parties at which agreement could be reached and decisions taken on additional action should that be necessary.

10. It is therefore suggested that the Sixth Review Conference should adopt more concrete language for Article XIV than that in the Final Declaration of the Fourth Review Conference but taking care not to perpetuate the error in the final paragraph of that Declaration.

11. Consequently, the Conference is recommended to repeat the five paragraphs of the Article XIV section of the 1996 Final Declaration, with six changes apart from the simple updating of Review Conference titles in paragraphs 1 and 5. In paragraph 1, the two ratifications (by Mali and Morocco) which have occurred since 1996 need to be noted with satisfaction as well as the accessions. It is recommended that the words “ratified or acceded” be restored from the Final Declaration in 1991 of the Third Review Conference.

12. In paragraph 2, it is recommended that the Conference authorise its Intersessional Committee of Oversight or standing dedicated secretariat to follow up the "calls upon" request which is addressed – in effect – to signatory-only and non-signatory states. This would be consistent with the authorisation of the same continuing representative body or secretariat to undertake demarches under paragraph 6 of the Article VIII section of the Final Declaration. A sentence is added requiring the Intersessional Committee of Oversight or standing secretariat to make annual reports to the States Parties on the outcome of efforts to increase adherence. Finally, the redundant words “and upon those States which have not signed the Convention to join the States Parties thereto.” are removed. Signatories ratify and non-signatories accede: both ratification and accession are already covered, so nothing more is needed.

13. In paragraph 3, it is recommended that the Conference should agree to an interim target of 180 States Parties by the time of the Seventh Review Conference and call upon all States Parties to cooperate in seeking to achieve it. This could include cooperation in demarches with the Intersessional Committee of Oversight, or with a standing secretariat, as appropriate.

14. In paragraph 4, it is recommended that "wider adherence" as used in paragraph 3 be repeated. "Accession", which was the word used by the Third Review Conference in both paragraphs 3 and 4, is a narrower term than "adherence" and should be avoided here. Regional initiatives have always encouraged ratification of the Convention by signatory-only states as much as accession to the Convention by other states.

15. In paragraph 5, it is recommended that the appeal in the first sentence be addressed to those States Parties which have not taken part in the Conference. This would return to the 1986 formulation by the Second Review Conference and the 1991 formulation by the Third Review Conference, from which the 1996 formulation was a seemingly accidental deviation. In addition, in paragraph 5 it is recommended that the second sentence introduced in the Declaration of the Fourth Review Conference should be omitted and the first sentence extended as in the Declaration of the Third Review Conference by including the clause and in particular to implement the agreed confidence-building measures.

Suggested Language for the Final Declaration

16. The following text is therefore recommended for the Article XIV section of the Final Declaration:

1. The Conference notes with satisfaction that a number of States have ratified or acceded to 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. The Conference authorises its [Intersessional Committee of Oversight][standing secretariat] to follow up this request from the
Conference by undertaking demarches as appropriate to such States and making annual reports on the outcome of efforts to increase adherence.

3. In this connection, the Conference calls upon all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention.

4. The Conference particularly welcomes regional initiatives that would lead to wider adherence to the Convention.

5. The Sixth Review Conference appeals to those States Parties to the Biological and Toxin Weapons Convention which have not taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration of this Conference, and in particular to implement the agreed confidence-building measures.

ARTICLE XV: DEPOSITS OF THE CONVENTION

by Graham S Pearson

Consideration of Article XV at the Fourth Review Conference

1. Article XV of the Convention states that:

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.
2. At the Fourth Review Conference of the BTWC held on 25 November to December 1996, the Final Declaration in respect of Article XV stated that:

   The Conference notes the importance of this Article as well as the importance of the legal status of the languages of the Convention and United Nations system in the work of the Ad Hoc Group established by the Special Conference in 1994.

which had been a further development from the Final Declaration of the Third Review Conference which had simply noted the provisions of Article XV:

   The Conference notes the provisions of Article XV.

   Developments since the Fourth Review Conference

3. As there have been no developments in respect of Article XV since the Fourth Review Conference and the work of the Ad Hoc Group has ended, it is suggested that the Sixth Review Conference should adopt similar language to that in the first clause only on Article XV in the Final Declaration of the Fourth Review Conference:

   The Conference notes the importance of this Article.

Language for the Sixth Review Conference

4. It is recommended that the following language be adopted in the Article XV section of the Final Declaration of the Sixth Review Conference:

   The Conference notes the importance of this Article.

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AGENDA ITEM 10c: PREAMBULAR PARAGRAPHS AND PURPOSES OF THE CONVENTION

by Graham S Pearson & Nicholas A. Sims

Solemn Declaration and Preamble at the Fourth Review Conference
1. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration contained a Solemn Declaration followed by a paragraph on the Preamble to the Convention:

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, WHICH MET IN GENEVA FROM 25 NOVEMBER TO 6 DECEMBER 1996 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- Their conviction that the Convention is essential to international peace and security;

- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;

- Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.

- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;

- Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and agreed procedures for consultations agreed by the Second and Third Review Conferences, and through the fulfilment of the mandate entrusted to the Ad Hoc Group established by the Special Conference in 1994;

- Their recognition that effective verification could reinforce the Convention;

- Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;

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- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.

The States Parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

**Preamble**

The Conference reaffirms the importance of the elements in review of the Preamble to the Convention contained in the Final Declaration of the Second 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.

2. The Solemn Declaration and the paragraph on the Preamble were developed from those in the Final Declaration\(^{241}\) of the Third Review Conference which were as follows:

**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, HAVING MET IN GENEVA FROM 9 TO 27 SEPTEMBER 1991 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:**

- Their conviction that the Convention is essential to international peace and security;

- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;

- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their reaffirmation of their firm commitment to the purposes of the preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;

- Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and organizational arrangements set out below;

- Their recognition that effective verification could reinforce the Convention;

- Their conviction that the full implementation of the provisions of the Convention should not hamper economic and technological development and international cooperation in the field of peaceful biological activities.

The State parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

**Preamble**

The Conference reaffirms the importance of the elements in the review of the Preamble to the Convention contained in the Final Declaration of the Second 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.

3. The Solemn Declaration at the Fourth Review Conference contained an additional two points whilst the paragraph on the Preamble was essentially identical to that at the Third Review Conference with the omission of the word "the" from the phrase "in the review" in the first line.

4. The changes in the Solemn Declaration at the Fourth Review Conference were as follows. The first two points are identical to those in the Third Review Conference. The third point, reaffirming that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention, is new. The fourth and fifth points are identical to those in the Third Review Conference. The sixth point is developed from that at the Third Review Conference by the replacement of the words at the end "and the organizational arrangements set out below;" by the words "and agreed procedures for consultations agreed by the Second and Third Review Conferences, and through the fulfillment of the mandate entrusted to the Ad Hoc Group established by the Special Conference in 1994;" The seventh point is identical as is the eighth apart from the replacement in the second line of the words "not hamper" by the word "facilitate". The ninth point recording "Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention." is new. Both of the new points -- the third and the ninth -- provide valuable extended understandings that use is prohibited under any circumstances.

5. The reference in the paragraph under the heading of Preamble is to the elements in the review of 1986 and refers back to the language agreed at the Second Review Conference in which there was no Solemn Declaration but instead similar language under the single heading of Preamble as follows:

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PREAMBLE

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, having met in Geneva 8-26 September 1986 in accordance with a decision by the First Review Conference 1980 and at the request of a majority of States Parties to the Convention with a view to assuring that the purposes of the Preamble and the provisions of the Convention are being realised.

Reaffirming their determination to act with a view to achieving effective progress towards general and complete disarmament, including the Prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognising the continuing importance of the Convention and its objectives and the common interest of mankind in the elimination of bacteriological (biological) and toxin weapons,

Affirming their belief that universal adherence to the Convention would enhance international peace and security, would not hamper economic or technological development and, further, would facilitate the wider exchange of information for the use of bacteriological (biological) agents for peaceful purposes,

Confirming the common interest in strengthening the authority and the effectiveness of the Convention, to promote confidence and co-operation among State Parties,

Affirming the importance of strengthening international co-operation in the field of biotechnology, genetic engineering, microbiology and other related areas,

Reaffirming their adherence to the principles and objectives of the Geneva Protocol of 17 June 1925 and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the said principles and objectives,

Recognising the importance of achieving as a matter of high priority an international convention on the complete and effective prohibition of the development, production and stockpiling of chemical weapons and on their destruction,

Noting the relevant provisions of the Final Document of the first special session of the General Assembly devoted to disarmament,

Appealing to all States to refrain from any action which might place the Convention or any of its provisions in jeopardy,

Declare their strong determination, for the sake of all mankind, to exclude completely the possibility of microbial, or other biological agents, or toxins being used as weapons and reaffirm their strong support for the Convention, their
continued dedication to its principles and objectives and their legal obligation under international law to implement and strictly comply with its provisions.

6. Simple reaffirmation of the language of 1986 as it stood would have been impossible in 1996 because the Chemical Weapons Convention had been concluded in the meantime and was about to enter into force, thereby rendering the eighth preambular paragraph redundant. The reaffirmation instead of the importance of the elements – a formulation introduced in 1991 – avoided the need to reopen and update the 1986 language paragraph by paragraph. It enabled the Third and Fourth Review Conferences to concentrate instead on the Solemn Declaration. The latter drew on the 1986 language but included new language in a new structure, no longer following the arrangement of preambular paragraphs which the Second Review Conference had inherited, and slightly expanded, from the First Review Conference.

Developments since the Fourth Review Conference

7. Since the Fourth Review Conference there have been a number of significant developments relevant to the Biological and Toxin Weapons Convention:

a. The entry into force on 29 April 1997 and subsequent implementation of the Chemical Weapons Convention (CWC);

b. The scientific and technological developments relevant to the Convention. There have been major developments – indeed the 21st Century has been declared as the age of biotechnology and genomics. These developments are of particular relevance not only to Article I – the basic prohibition – but also to Article VII – assistance – and to Article X – technical cooperation.


d. The continued stalemate in the trilateral process involving the UK, the USA and Russia addressing the dismantlement of the offensive biological weapons programme of the former Soviet Union, which cast doubt on the credibility of the commitment to fulfil their arms control and disarmament obligations and to prevent proliferation made on 31 January 1992 by the Security Council meeting at Heads of State and Government level.

e. The ending in July 2001 of the negotiations in the Ad Hoc Group that had been addressing a legally binding instrument to strengthen the effectiveness and improve the implementation of the Convention and the subsequent holding of the Fifth Review Conference without agreement on a Final Declaration.

f. The increased concern world-wide and especially in the United States following the anthrax attacks in September/October 2001 about the use of biological agents and toxins by non-State actors which underlines the importance of taking further the steps that were taken at the Fourth Review Conference to ensure that individuals or subnational groups are effectively prevented from acquiring or using such agents for other than peaceful purposes.
g. The successful annual Meetings of the States Parties to the BTWC in 2003, 2004 and 2005 prepared for by two week Meetings of Experts to consider five specific topics as agreed by the Fifth Review Conference.

h. The adoption by the Security Council of Resolution 1540 (2004) with its key operating paragraphs in which the Security Council:

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall ….

Consequently, every State – whether or not a State Party to the BTWC – is required to shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes. [Emphasis added]

i. The G8 statement on non-proliferation in St. Petersburg on 16 July 2006 which stated:

We call on all states not Party to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BTWC) and the 1925 Geneva Protocol to accede to them without delay and those states that have not yet done so to subscribe to the Hague Code of Conduct Against Ballistic Missile Proliferation. [Emphasis added]

This statement went on to specifically address the BTWC stating that:

We look forward to a successful 6th BTWC Review Conference dedicated to the effective review of the operation of the Convention. We will facilitate adoption by the Review Conference of decisions aimed at strengthening and enhancing the implementation of the BTWC.

We call upon all States Parties to take necessary measures, including as appropriate the adoption of and implementation of national legislation, including penal legislation, in the framework of the BTWC, in order to
prohibit and prevent the proliferation of biological and toxin weapons and to ensure control over pathogenic micro organisms and toxins. We invite the States Parties that have not yet done so to take such measures at the earliest opportunity and stand ready to consider appropriate assistance. In this regard, we welcome initiatives such as the 2006 EU Joint Action in support of the BTWC.

j. The continuing absence of any organisation or institution or dedicated standing secretariat to steer the regime to totally prohibit biological weapons has become all the more glaring by comparison with the Organization for the Prohibition of Chemical Weapons and its implementation of the Chemical Weapons Convention. When coupled with the rate in which major developments are occurring in biotechnology and microbiology, there is a compelling argument for interim supportive institutions to nurture and sustain the regime against biological weapons.

8. The Sixth Review Conference is of particular importance to all States Parties as it is taking place at a time of particular challenge and opportunity. The events of 11 September 2001 and subsequent developments including the anthrax attacks in the United States underline the importance of totally preventing the development, production, acquisition or use of biological weapons by anyone or any State whatsoever. The successful annual Meetings of the States Parties in 2003-2005 have raised expectations that the Sixth Review Conference will achieve successful outcomes including an agreed Final Declaration and agreed follow-up action in a number of areas to strengthen the Convention regime and improve its implementation.

**Issues for the Sixth Review Conference**

9. There would be particular advantage in the Solemn Declaration including language that reaffirms the value of the Convention, particularly in respect of Articles III and IV, in preventing any person whatsoever acquiring, developing, producing, retaining, stockpiling, transferring, or using biological or toxin weapons for purposes prohibited under the Convention.

10. In the language recommended below for the Solemn Declaration, a new sixth point is added addressing the prevention of the use of biological and toxin weapons, and all the prior activities prohibited by the Convention, by any person whatsoever, including in terrorist or other criminal activity. It is also recommended that as the Final Declarations of successive Review Conferences have accumulated a valuable body of extended understandings and agreements, there would be benefit in the Solemn Declaration adopting language which recognizes that the Convention has been enhanced and strengthened through the extended understandings agreed by successive Review Conferences by consensus and recorded in their Final Declarations.

11. In the eighth point, language has been reintroduced – drawn from the Solemn Declaration of the Third Review Conference – referring to organizational arrangements, as there is a compelling need for interim supportive structures as addressed in the chapter on Article XII of this Briefing Book. In the same point, language has been modified, in anticipation of further possible consensus follow-up action, so as to refer to other measures agreed by the Review Conferences without specifying the nature of such measures.
12. It is suggested that the Sixth Review Conference should adopt similar language to that in the Final Declaration of the Fourth Review Conference for its paragraph on the Preamble. This refers back to the importance of the elements in the review of the Preamble to the Convention contained in the Final Declaration of the Second Review Conference. Also, in the paragraph on the Preamble, the word "the" has been reinserted, as in the Final Declaration of the Third Review Conference.

Language for the Sixth Review Conference

13. The language to be adopted by the Sixth Review Conference might therefore be along the following lines, in which changes from the Fourth Review Conference are highlighted:

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, WHICH MET IN GENEVA FROM 20 NOVEMBER TO 8 DECEMBER 2006 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- Their conviction that the Convention is essential to international peace and security;

- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;

- Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.

- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;

- Their reaffirmation of their firm commitment through the adoption of national measures to prevent the acquisition, development, production, retention, stockpiling, transfer or use of biological and toxin weapons by any person whatsoever, including in terrorist or other criminal activity;

- Their recognition that the Convention has been enhanced and strengthened through the extended understandings agreed by successive Review Conferences by consensus and recorded in their Final Declarations;
- Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and agreed procedures for consultations agreed by the Second and Third Review Conferences, the organizational arrangements set out below, and through other measures agreed by the Review Conferences.

- Their recognition that effective verification could reinforce the Convention;

- Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;

- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.

The States Parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

**Preamble**

The Conference reaffirms the importance of the elements in the review of the Preamble to the Convention contained in the Final Declaration of the Second 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.
AGENDA ITEM 11: CONSIDERATION OF ISSUES IDENTIFIED IN THE REVIEW OF THE OPERATION OF THE CONVENTION AS PROVIDED FOR IN ITS ARTICLE XII AND ANY POSSIBLE CONSENSUS FOLLOW-UP ACTION

by Graham S. Pearson & Nicholas A. Sims

Introduction

1. At the Preparatory Committee Meeting held on 26 to 28 April 2006 for the Sixth Review Conference of the BTWC, the Provisional Agenda agreed for the Sixth Review Conference included as Agenda Item 11 Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action. This agenda item replaced the two Agenda Items 11 and 12 in the Agenda for the Fourth Review Conference and for the Fifth Review Conference:

11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Third Review Conference, and possible follow-up action

12. Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994
At the Fourth Review Conference the Final Declaration included a section entitled
*Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994* which enabled language relating to Agenda Item 12 to be recorded.

2. It is thus apparent that Agenda Item 11 for the Sixth Review Conference is deliberately expressed so as to be more open-ended and to provide the opportunity for the States Parties at the Sixth Review Conference to include a section in the Final Declaration which could be entitled *Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action*. As the words *as provided for in its Article XII* are nugatory, the section in the Final Declaration could with advantage be simplified to *Consideration of issues identified in the review of the operation of the Convention and any possible consensus follow-up action*.

3. This section in the Final Declaration enables the various issues and consensus follow-up action identified and elaborated in the individual sections addressing individual Articles of the Convention in the Final Declaration to be brought together in this final section on Agenda Item 11 thereby summarizing what needs to be addressed during the intersessional period between the Sixth and Seventh Review Conferences. This section does not attempt to be exhaustive: in particular States Parties are also called upon as appropriate (in relation to Article VIII) to ratify or accede to the Geneva Protocol, or to withdraw reservations to the Geneva Protocol, and (in relation to Article IX) to ratify or accede to the Chemical Weapons Convention, if they have not already done so. These and other politically binding commitments, agreed by consensus in the Final Declarations of earlier Review Conferences and reaffirmed by this Conference, are not repeated in this Agenda Item 11 section of the Final Declaration only because they are not envisaged as requiring possible consensus follow-up action in the form of specific meetings during the intersessional period.

**Issues and Follow-up Action agreed at the Sixth Review Conference**

4. The issues recommended in this Briefing Book to form the basis of consensus follow-up action are the following:

   a. **Article IV.** The adoption of an achievement timeline as recommended in paragraph 3 of the Article IV section of the Final Declaration:

   3. *The Conference having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties at and since the Meeting of States Parties in 2003, agrees to adopt an achievement timeline with the objective of achieving national legislation, including penal legislation, in two thirds of the States Parties by the time of the Seventh Review Conference. The Conference requests those States Parties in a position to do so to provide assistance and resources to the United Nations Department for Disarmament Affairs to facilitate the achievement of this objective. The Conference requests that an annual report of progress be provided to all States Parties.*
b. **Article IV.** Education and Outreach. The recognition that education and outreach will aid the in-depth implementation of the Convention and the holding of an annual Meeting of States Parties prepared by a Meeting of Experts as recommended in paragraph 14 of the Article IV section of the Final Declaration:

14. *The Conference further agrees that the States Parties would hold an annual Meeting of States Parties prepared by a Meeting of Experts during the intersessional period prior to the Seventh Review Conference to consider education and outreach for all those concerned with the life sciences.*

c. **Article V.** Confidence-Building Measures. The holding of an annual Meeting of States Parties in 2007 prepared for by a Meeting of Experts as recommended in paragraph 6 of the Article V section of the Final Declaration:

6. *The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis on mutual co-operation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:*


2. *The further extension of these Confidence-Building Measures to include the provision of data on facilities handling category 4 animal pathogens and plant inoculants and biocontrol production facilities as well as facilities producing animal vaccines.*

3. *The exchange of information in a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.*

*The Conference decides to hold a Meeting of Experts from States Parties to review, improve and finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The Meeting of Experts shall be held in Geneva for the period [two week period] 2007 and shall make recommendations to a subsequent Meeting of States Parties for decision.*

d. **Article V.** Strengthening the effectiveness and improving the implementation of the Convention. The holding of an ad hoc meeting (s) of governmental experts in 2007 (or in a later year in the intersessional period between the Sixth and Seventh Review Conferences) to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective as recommended in paragraph 7 of the Article V section of the Final Declaration:
7. The Conference reaffirms the importance of strengthening the effectiveness and improving the implementation of the Convention and decides that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

e. Article VII. Assistance. The holding of a Meeting of States Parties to develop and agree a procedure for the provision of assistance as recommended in paragraph 8 of the Article VII section of the Final Declaration:

8. The Conference considered the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease and agreed that a Meeting of States Parties prepared by a Meeting of Experts would be held during the intersessional period prior to the Seventh Review Conference to develop and agree a procedure for the provision of timely assistance to States Parties on request.

f. Article X. International Cooperation. The holding of a Meeting of States Parties to develop and agree a procedure to facilitate international cooperation as recommended in paragraph 15 of the Article X section of the Final Declaration:

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information. The Conference further decides that a future annual Meeting of States Parties prepared by a Meeting of Experts shall be held during the intersessional period between the Sixth and Seventh Review Conferences to consider and take action on the topic:

- To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

g. Article XIV. Universality. The mounting of an initiative to encourage universality through ratification or accession to the Convention, including the Conference's call to all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention as recommended in paragraphs 2 and 3 of the Article XIV section of the Final Declaration:

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. The Conference authorises its [Intersessional Committee of Oversight][standing secretariat] to follow up this request from the Conference by undertaking demarches as appropriate to such States and making annual reports on the outcome of efforts to increase adherence.
3. In this connection, the Conference calls upon all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention.

h. Article XII. Interim supporting structures. The recommendation that the Sixth Review Conference should authorise its President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences. The principal strengthening structure might take the form of a representative Intersessional Committee of Oversight or of an Annual Meeting of States Parties as recommended in the two alternative versions of paragraph 4 of the Article XII section of the Final Declaration. The alternative based on an Annual Meeting of States Parties is reproduced here:

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, decides that the States Parties shall hold an Annual Meeting:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;

(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;
(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Annual Meeting and its Panels;

(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Annual Meeting of States Parties:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;

(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall meet with experts, or preceded by meetings with experts, and with the assistance of working groups, as needed;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Annual Meeting of States Parties to be made under paragraph 4(i).

5. There are therefore proposals for consensus follow-up action in the areas of national implementation and of universality for which the interim supporting structures recommended in Article XII section will be essential together with annual Meetings of the States Parties prepared for by Meetings of Experts during the intersessional period before the Seventh Review Conference on the following topics:

a. In 2007 to review, improve and finalise the modalities for the exchange of information and data in the annual Confidence-Building Measures by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration.

b. To consider education and outreach for all those concerned with the life sciences.
c. To develop and agree a procedure for the provision of timely assistance to States Parties on request.

d. To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

In addition, there is the proposal that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention.

**Language for the Sixth Review Conference**

6. It is recommended that the following language be adopted by the Sixth Review Conference for inclusion in a final section on Agenda Item 11 in its Final Declaration:

**Consideration of Issues considered at the Sixth Review Conference and possible consensus follow-up action**

*The Conference notes the issues identified in its review of the operation of the Convention and possible follow-up action and in particular the following:*

– The adoption of an achievement timeline with the objective of achieving national legislation, including penal legislation, in two thirds of the States Parties by the time of the Seventh Review Conference.

– Its call to all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention.

– Its decision to hold further annual Meetings of States Parties prepared by Meetings of Experts during the intersessional period prior to the Seventh Review Conference to consider and take action on such topics as shall be decided by the annual Meeting of States Parties and which shall include:

  * In 2007 to review, improve and finalise the modalities for the exchange of information and data in the annual Confidence-Building Measures by working out, *inter alia*, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration.

  * To consider education and outreach for all those concerned with the life sciences.

  * To develop and agree a procedure for the provision of timely assistance to States Parties on request.*
• To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

– Its decision to hold an ‘ad hoc’ meeting(s) of a group of governmental experts open to all States Parties in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention.

– Its decision to authorise its President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences by means of [a representative Intersessional Committee of Oversight] [an Annual Meeting of States Parties].
APPENDIX I

THE BIOLOGICAL AND TOXIN WEAPONS CONVENTION

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Entered into force on 26 March 1975

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological(biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognizing the important significance 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 June 17, 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

*Reaffirming* their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

*Recalling* that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of June 17, 1925,

*Desiring* to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

*Desiring also* to contribute to the realization of the purposes and principles of the United Nations,

*Convinced* of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

*Recognizing* that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

*Determined* for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

*Convinced* that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

*Have agreed* as follows:

**Article I**

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

**Article II**

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing
the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

Article III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of this Convention.

Article IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

Article V

The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. 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.

Article VI

(1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

(2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, 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.

Article VIII
Nothing in this 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, signed at Geneva on June 17, 1925.

Article IX

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

Article X

(1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological(biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology(biology) for prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) and toxins and equipment for the processing, use or production of bacteriological(biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

Article XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

Article XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention.
**Article XIII**

(1) This Convention shall be of unlimited duration.

(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

**Article XIV**

(1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph (3) of this Article may accede to it at any time.

(2) This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, which are hereby designated the Depositary Governments.

(3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Convention.

(4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

(5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit or each instrument of ratification or of accession and the date of entry into force of this Convention, and of the receipt of other notices.

(6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

**Article XV**

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding states.
APPENDIX II

FINAL DECLARATION OF THE FOURTH REVIEW CONFERENCE, 1996

Final Document BWC/CONF.IV/9

PART II

II. FINAL DECLARATION

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, WHICH MET IN GENEVA FROM 25 NOVEMBER TO 6 DECEMBER 1996 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- Their conviction that the Convention is essential to international peace and security;

- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;

- Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.

- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;

- Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and agreed procedures for consultations agreed by the Second and Third Review Conferences, and through the fulfilment of the mandate entrusted to the Ad Hoc Group established by the Special Conference in 1994;

- Their recognition that effective verification could reinforce the Convention;
- Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;

- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.

The States Parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

**Preamble**

The Conference reaffirms the importance of the elements in review of the Preamble to the Convention contained in the Final Declaration of the Second 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.

**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 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 their use.

5. 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.

6. 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.

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

8. 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.

9. 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 agrees that the application by States Parties of positive approaches in accordance with the provisions 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. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

**Article II**

1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.

2. The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Third Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.

3. The Conference notes that the submission to the Centre for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.

4. The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

**Article III**

1. The Conference notes the 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.
2. The Conference notes that a number of States Parties stated that they have already 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 Third 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.

3. The Conference discussed the question whether multilaterally-agreed guidelines or multilateral guidelines negotiated by all States Parties to the Convention concerning the transfer of biological agents, materials and technology for peaceful purposes to any recipient whatsoever might strengthen the Convention. In the development of implementation of Article III, the Conference notes that States Parties should also consider ways and means to ensure that individuals or subnational groups are effectively prevented from acquiring, through transfers, biological agents and toxins for other than peaceful purposes. The Conference notes that these issues are being considered as part of the ongoing process of strengthening the Convention.

4. 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.

**Article IV**

1. The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the 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. The States Parties recognize the need to ensure, through the review and/or adoption of national measures, the effective fulfilment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

2. The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

3. The Conference notes the importance of:

   - Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

   - Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:
- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

4. The Conference believes that such measures which States Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by the Second and Third Review Conferences.

5. The Conference notes that some States Parties, as requested by the Second Review Conference, have provided to the United Nations Department for Disarmament Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invites these States Parties, and encourages all States Parties, to provide such information and texts in the future. In this regard the Conference welcomes information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures". In addition, the Conference encourages all States Parties to provide any useful information on the implementation of such measures.

6. The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.

7. The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.

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 Review Conference to make all possible efforts 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. While noting that these procedures have not yet been invoked, the Conference reaffirmed their present validity. The Conference 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. In accordance with the decision of the Third Review Conference, the Conference reviewed the effectiveness of the confidence-building measures as agreed in the Final Declaration of the Third 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.

5. 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 Third 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 also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses. In this regard, the Conference urges all States Parties to complete full and timely declarations in the future. The Conference notes that the Ad Hoc Group of States Parties established by the Special Conference in 1994 is, as part of its continuing work, considering the incorporation of existing and further enhanced confidence-building and transparency measures, as appropriate, in a regime to strengthen the Convention.

6. The Conference stresses its determination to strengthen effectiveness and improve the implementation of the Convention, and its recognition that effective verification could reinforce the Convention.

7. In this regard, the Conference recalls that:

   - The Third Review Conference established the Ad Hoc Group of Governmental Experts open to all States Parties to identify and examine potential verification measures from a scientific and technical standpoint.


   - A Special Conference was held in September 1994 to consider the report, and decided to establish an Ad Hoc Group open to all States Parties. The Conference considered the work of the Ad Hoc Group under agenda item 12 and its conclusions are reflected in the section of this document entitled "Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994".

8. The Conference stresses the need for all States Parties to deal effectively with compliance issues. In this connection, the States Parties had agreed to provide a specific, timely response to any compliance concern alleging a breach of their obligations under the Convention. Such responses should be submitted in accordance with the procedures agreed upon by the Second Review Conference and further developed by the Third Review Conference. The Conference reiterates its request that information on such efforts be provided to the Review Conferences.

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 notes that the provisions of Article VI will be taken into account, as appropriate, for any future verification regime resulting from the consideration by the Ad Hoc Group of a system of measures to promote compliance with the Convention. 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.

7. The Conference notes that provisions for investigating alleged breaches of the Convention, including measures for the investigation of alleged use of biological and toxin weapons, continue to be considered by the Ad Hoc Group of States Parties, in accordance with its mandate.

**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 desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested.

4. The Conference takes note of the proposal that the Ad Hoc Group might need to discuss the detailed procedure for assistance in order to ensure that timely emergency assistance would be provided by States Parties if requested.

5. The Conference considers that in the event that this Article might be invoked, the United Nations, with the help of appropriate intergovernmental organizations such as the World Health Organization (WHO), could play a coordinating role.

**Article VIII**

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 and 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.


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 the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals 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. The Conference welcomes conclusion of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, which was opened for signature on 13-15 January 1993 in Paris.

2. The Conference welcomes the fact that sixty-five instruments of ratification have now been deposited, and that the Convention will therefore enter into force on 29 April 1997.

3. The Conference stresses the importance to the Convention that all possessors of chemical weapons, chemical weapons production facilities or chemical weapons development facilities should be among the original parties to the Convention and, in this context, the importance of the United States of America and the Russian Federation, having declared possession of chemical weapons, being among the original States Parties to the Convention.

4. The Conference calls upon all States that have not yet done so to sign and/or ratify the Convention without delay.

5. The Conference notes that the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons, at its fourteenth session (22-26 July 1996) entrusted the Chairman of the Commission, in close consultation with its member States, with the task of convening, as necessitated by circumstances in connection with the occurrence of the trigger point, a meeting of the Commission to provide appropriate guidance.

Article X

1. The Conference once more emphasizes the increasing importance of the provisions of Article X, especially in the light of recent scientific and technological developments in the field of biotechnology, bacteriological (biological) agents and toxins with peaceful applications, which have vastly increased the potential for cooperation between States to help promote economic and social development, and scientific and technological progress, particularly in the developing countries, in conformity with their interests, needs and priorities.

2. The Conference, while acknowledging what has already been done towards this end, notes with concern the increasing gap between the developed and the developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas. The Conference urges all States Parties actively to continue to promote international cooperation and exchange with States Parties in the peaceful uses of biotechnology, and urges all States
Parties possessing advanced biotechnology to adopt positive measures to promote technology transfer and international cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind. At the same time, the Conference stresses that measures to implement Article X need to be consistent with the objectives and provisions of the Convention.

3. The Conference recalls that the States Parties have a legal obligation to facilitate and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and not to hamper the economic and technological development of States Parties.

4. The Conference emphasizes that States Parties should not use the provisions of the Convention to impose restrictions and/or limitations on transfers for purposes consistent with the objectives and provisions of the Convention of scientific knowledge, technology, equipment and materials.

5. The Conference notes that existing institutional ways and means of ensuring multilateral cooperation between the developed and developing countries would need to be developed further in order to promote international cooperation in peaceful activities in such areas as medicine, public health and agriculture.

6. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of bacteriological (biological) agents and toxins for peaceful purposes.

7. The Conference recommends that invitations to participate in this discussion and examination should be extended to all States Parties, whether or not they are members of the United Nations or concerned specialized agencies.

8. The Conference, at the same time, notes that the Ad Hoc Group of States Parties was mandated by the Special Conference in September 1994 to consider specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, emphasizing that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

10. The Conference shares the worldwide concern about new, emerging and re-emerging infectious diseases and considers that the international response to them offers opportunities for increased cooperation in the context of Article X application and of strengthening the Convention. The Conference welcomes the efforts to establish a system of global monitoring
of disease and encourages States Parties to support the World Health Organization, including its relevant newly established division, the FAO and the OIE, in these efforts directed at assisting Member States to strengthen national and local programmes of surveillance for infectious diseases and improve early notification, surveillance, control and response capabilities.

11. The Conference urges the use of existing institutional means within the United Nations system and the full utilization of the possibilities provided by the specialized agencies and other international organizations, and considers that the implementation of Article X could be enhanced through greater coordination among international cooperation programmes in the biological field for peaceful purposes conducted by States Parties, specialized agencies and other international organizations.

12. The Conference urges States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include, inter alia:

1. Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;

2. Wider transfer and exchange of information, materials and equipment among States on a systematic and long-term basis;

3. Active promotion of contacts between scientists and technical personnel on a reciprocal basis, in relevant fields;

4. Increased technical cooperation and assistance, including training programmes to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB);

5. Facilitating the conclusion of bilateral, regional and multiregional agreements providing, on a mutually advantageous, equal and non-discriminatory basis, for their participation in the development and application of biotechnology;

6. Encouraging the coordination of national and regional programmes and working out in an appropriate manner the ways and means of cooperation in this field;

7. Cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, FAO and OIE regarding epidemiological and epizootical surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases;

8. The promotion of programmes for the exchange and training of scientists and experts, and the exchange of scientific and technical information in the biological field between developed and developing countries.
13. The Conference considers that a worldwide data bank might be a suitable way of facilitating the flow of information in the field of genetic engineering, biotechnology and other scientific developments. In this context, the Conference underlines the importance of monitoring all related developments in the field of frontier science and high technology in the areas relevant to the Convention.

14. The Conference requests the Secretary-General to collate on an annual basis, and for the information of States Parties, reports on how this article is being implemented.

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information.

16. The Conference welcomes efforts to elaborate an international programme of vaccine development for the prevention of diseases which would involve the scientific and technical personnel from developing countries that are States Parties to the Convention. The Conference recognizes that such a programme will not only enhance peaceful international cooperation in biotechnology but also contribute to improving health care in developing countries, assist in establishing systems for worldwide monitoring of communicable diseases, and provide transparency in accordance with the Convention.

17. The Conference calls upon all States Parties in a position to do so to fully cooperate with the developing States Parties to the Convention in the area of promotion and financing the establishment of vaccine production facilities. The Conference recommends further that the relevant multilateral organizations and world financial institutions provide assistance for establishment and promotion of vaccine production projects in these countries.

Article XI

1. The Conference notes that the Islamic Republic of Iran has formally presented a proposal to amend Article I and the title of the Convention to include explicitly the prohibition of use of biological weapons.

2. The Conference notes that the Depositaries are notifying all States Parties of the proposal. The Conference encourages all States Parties to convey their views to the Depositaries on whether the Convention needs to be amended to make clear explicitly that the use of biological weapons is effectively prohibited.

3. The Conference requests the Depositaries to take such measures as may be requested by a majority of States Parties, including the option of convening a conference open to all States Parties to the Convention at the earliest appropriate opportunity to take a decision on the proposal, should a majority of the States Parties so decide.

4. The Conference meanwhile reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

Article XII
1. The Conference decides that a Fifth Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2001.

2. The Conference decides that the Fifth Review Conference shall consider, inter alia,

   - The impact of scientific and technological developments relating to 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 Fifth Review Conference;
   - The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;
   - The conclusions of a Special Conference, to which the Ad Hoc Group shall submit its report, including a legally-binding instrument to strengthen the Biological and Toxin Weapons Convention, which shall be adopted by consensus, to be held as soon as possible before the commencement of the Fifth Review Conference; and further action as appropriate;
   - The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;

3. 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 XIII**

1. The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.

**Article XIV**

1. The Conference notes with satisfaction that a number of States have acceded to the Convention since the Third Review Conference.

2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention.

3. In this connection, the Conference requests States Parties to encourage wider adherence to the Convention.

4. The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.
5. The Fourth 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. The Conference also appeals to all States Parties to participate actively in the Ad Hoc Group of States Parties, with a view to the early completion of its work to strengthen the Convention.

**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 United Nations system in the work of the Ad Hoc Group established by the Special Conference in 1994.

**Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994**

The Conference welcomes the report on the progress of the Ad Hoc Group as contained in BWC/AD HOC GROUP/32 and notes in particular the following:

- The Special 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 (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.

- Since its establishment, the Ad Hoc Group has held one short organizational session and four substantive sessions of a duration of two weeks each.

- In accordance with its mandate, as contained in the Final Report of the Special Conference (BBC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.

- The Ad Hoc Group has made significant progress towards fulfilling the mandate given by the Special Conference, including by identifying a preliminary framework and elaborating potential basic elements of a legally-binding instrument to strengthen the Convention.

- Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the Fourth Review Conference. In this context it is noted that the cumulative period allocated to substantive negotiations in the Ad Hoc Group has been eight weeks.

The Conference welcomes the decision of the Ad Hoc Group, in order to fulfil its mandate, to intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference and submit its report, which shall be adopted by consensus,
to the States Parties, to be considered at a Special Conference. The Conference encourages
the Ad Hoc Group to review its method of work and to move to a negotiating format in order
to fulfil its mandate.

The Conference notes that the Ad Hoc Group is considering, as part of its continuing work,
definitions of terms and objective criteria, such as lists of bacteriological (biological) agents
and toxins, their threshold quantities, as well as equipment and types of activities, where
relevant for specific measures designed to strengthen the Convention.