

Geneva, 20 November – 8 December 2006

Item 10 of the agenda

**Review of the operation of the Convention
as provided for in its Article XII**

PROHIBITION OF USE OF BIOLOGICAL WEAPONS

Submitted by the Islamic Republic of Iran

1. The BWC, as one of the significant instruments in the field of disarmament and non-proliferation, has a major loophole, namely, not to prohibit the use of biological weapons expressly and categorically. The Islamic Republic of Iran believes in a total ban on the use of biological weapons, which is explicit and devoid of judgmental interpretations and emphasizes on the urgent need for the States Parties to remove this loophole.
2. Reviewing the preparatory work of the Convention reveals that the exigencies of the Cold War and prevalence of hostile military doctrines prevented, in the early years of 1970's, the Convention from explicitly banning the use. That era has ended now and particularly following extensive and elaborate experience of the Chemical Weapons Convention the States Parties should proceed towards a comprehensive ban on the use of biological weapons.
3. It goes without saying that the use of biological weapons is already in contradiction to the provisions and the spirit of the 1925 Geneva Protocol and the 1972 Convention. Yet, lack of explicit reference in the Convention on the one hand, and persistence of reservations on the Geneva Protocol on the other can leave the door open for those who have held a different opinion in the past or may perhaps continue to do so in future. Therefore in order to end any inconsistency in interpretations, the Islamic Republic of Iran has formally proposed, during the Fourth Review Conference of the Convention, specific amendments on the title and Article I of the Convention.
4. Commencement of the negotiations on Additional Protocol to the Convention and consequently the inclusion of prohibition of use of biological weapons within Article I of the negotiating draft text gave rise to the hope that the loophole in the Convention would be removed. Nevertheless, the current stalemate prevailing on the negotiations of the above mentioned Protocol that originated from the opposition of a single State Party, has left no choice

but to further follow the issue. In this line, the Islamic Republic of Iran has requested the Depositories of the Convention to start the amendment process and inform the States Parties of Iran's proposal based on amending the Article I of the Convention to include the word "use".

5. The question on the necessity of amending the BWC while the 1925 Geneva Protocol does ban the use may be raised by some. The answer to this question is that each Convention should, as a legal instrument, be able to stand on its own. There is no reason that would justify default in a significant legal document such as the BWC through reliance on another instrument. The Convention should otherwise always be considered in conjunction with the Geneva Protocol to cover its essential delinquency.

6. Furthermore, reservations on the Geneva Protocol have emanated from or lead to an interpretation that the Protocol does not imply a complete ban on use and it only bans the first use. Article VIII of the Convention, on the other hand, rejects interpretations of the Convention that may detract the commitments that the States Parties have undertaken under the Protocol. Thus, states that have joined the Protocol with reservation may consider the possibility of use as open under certain circumstances.

7. There may be a view that the BWC, through prohibition of production, development and stockpiling has eliminated the possibility of use of BW in practice since without production and stockpiling use cannot be envisaged. It should nevertheless be noted that due to the lack of a verification mechanism for the Convention, such notion would lead to a security concern amongst the States Parties that can eventually undermine the Convention.

8. One may argue that some states may hesitate to ratify the amendments following its adoption and this may imply a lack of unanimity on the enjoinder and illegality of use and consequently this amendment may appear counterproductive. In responding to this apprehension, the following points should be mentioned:

- (i) All States Parties are apparently willing to see the Convention being strengthened and any risk of using the biological weapons being removed. In this line, in the Fourth Review Conference of the Convention, they recognized that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention. They also reaffirmed 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. Therefore, any argument based on the reluctance of States Parties to amend Article I of the Convention to include the explicit prohibition of the use of aforementioned weapons may not appear convincing.
 - (ii) One of the reasons why the Convention is not currently enjoying the universality may be the security concern of States that remain outside of the Convention due to the lack of prohibition of use of biological weapons being explicitly stipulated in the Convention.
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