

**Fourth Meeting  
Geneva, 10-14 December 2007**

**Meeting of Experts  
Geneva, 20-24 August 2007**

Item 5 of the provisional agenda

**Consideration of ways and means to enhance  
national implementation, including enforcement  
of national legislation, strengthening of  
national institutions and coordination among  
national law enforcement institutions**

**PREVIOUS AGREEMENTS, UNDERSTANDINGS AND  
PROPOSALS ON ENHANCING NATIONAL IMPLEMENTATION**

Submitted by the Implementation Support Unit

**I. Introduction**

1. This background document summarises previous statements and proposals from States Parties related to enhancing national implementation. It draws on three sources:

- (i) the additional understandings and agreements that the successive review conferences of the Convention have reached relating to Article IV of the Convention (the article which deals with national implementation);
- (ii) the Report of the Meeting of States Parties in 2003 (BWC/MSP/2003/4 Vol. I), which also considered topics related to national implementation;
- (iii) proposals made by individual States Parties during the Meeting of Experts and Meeting of States Parties in 2003 (these proposals were included in a conference room paper prepared by the then Chairman, dated 14 November 2003; they were not formally considered or adopted by the meeting and thus have no formal status).

2. These understandings, agreements and proposals fall under various themes, not all of which are relevant to the 2007 topics. This paper lists those which can be classified under the following headings: implementing Article IV; scope of national implementation measures; enhancing domestic cooperation; international and regional cooperation and assistance; and transfers and export controls. The other understandings, agreements and proposals relate to biosecurity and biosafety, education and awareness-raising, and disease surveillance, detection

and response. These are topics which will be considered in 2008 and 2009. They are therefore not covered here, but will be included in background papers prepared for the relevant meetings.

## **II. Implementing Article IV**

### Additional understandings and agreements

3. The Fourth Review Conference recognised “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”<sup>1</sup>.
4. The Sixth Review Conference “reaffirmed the commitment of States Parties to take the necessary national measures under this Article and reaffirmed that the enactment and implementation of necessary national measures under this Article would strengthen the effectiveness of the Convention”<sup>2</sup>.
5. The 2003 Meeting of 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”.<sup>3</sup>

### 2003 Proposals

6. The proposals were to:
  - (i) Take the necessary steps to translate the obligations of the Convention into effective action through appropriate legislative, administrative and regulatory means.
  - (ii) Review legislation, related regulations and complementary measures for implementing the prohibitions of the Convention;
  - (iii) Instigate additional measures, as appropriate;
  - (iv) Establish national reviews, on a continuing basis, of the efficacy and efficiency of their respective domestic systems.

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<sup>1</sup> Final Document of the Fourth Review Conference, BWC/CONF.IV/9, Art. IV, Para. 1

<sup>2</sup> Final Document of the Sixth Review Conference, BWC/CONF.VI/6, Art. IV, Para. 11(i)

<sup>3</sup> Report of the Meeting of States Parties, BWC/MSP/2003/4 Vol. I, Part II.

### III. Scope of national implementation measures

#### Additional understandings and agreements

7. The Third and Fourth Review Conferences “invited each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures to actions taken anywhere by natural persons possessing its nationality”<sup>4</sup>.

8. The Sixth Review Conference called “upon States Parties to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation, designed to... apply within their territory, under their jurisdiction or under their control anywhere and apply, if constitutionally possible and in conformity with international law, to actions taken anywhere by natural or legal persons possessing their nationality”<sup>5</sup>.

#### 2003 Proposals

9. Ensure that national penal legislation and/or other provisions:
- (i) cover all the prohibitions of the Convention, including the development, production, stockpiling, acquisition, retention, or transfer of agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention;
  - (ii) criminalize the use of agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention;
  - (iii) prohibit assisting or inducing others to breach any of the Conventions prohibitions.
  - (iv) include provision for extraterritorial application of these prohibitions;
  - (v) are adequate for prosecuting unauthorised activities;
  - (vi) include provisions for offences by corporate bodies as well as individuals;
  - (vii) specify penalties on conviction of breaching these prohibitions;
  - (viii) authorize the government of the State Party to halt suspect activity;
  - (ix) include powers of search for obtaining evidence in cases of suspected breaches of the legislation;
  - (x) require registration of activities involving certain agents;
  - (xi) include measures to ensure enforcement of controls by customs authorities.

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<sup>4</sup> Final Document of the Third Review Conference, BWC/CONF.III/23, art. IV, para. 2, and Final Document of the Fourth Review Conference, BWC/CONF.IV/9, art. IV, para. 2.

<sup>5</sup> Final Document of the Fourth Review Conference, BWC/CONF.IV/9, art. IV, para. 11(ii).

#### **IV. Enhancing domestic cooperation**

##### Additional understandings and agreements

10. The Second<sup>6</sup>, Third and Fourth Review Conferences noted “the importance of... legislative, administrative and other measures designed to enhance domestic compliance with the Convention... and believed that such measures which States might undertake in accordance with their constitutional process would strengthen the effectiveness of the Convention”<sup>7</sup>.

11. The Sixth Review Conference called “upon States Parties to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation, designed to... enhance domestic implementation of the Convention and ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipments and means of delivery as specified in Article I of the Convention”<sup>8</sup>.

12. The Sixth Review Conference encouraged “States Parties to designate a national focal point for coordinating national implementation of the Convention and communicating with other States Parties and relevant international organizations”<sup>9</sup>.

##### 2003 Proposals

13. The proposals were to:

- (i) Enhance coordination and cooperation between domestic agencies and/or bodies, possibly through a central authority to improve implementation of national legislation, regulations and other measures;
- (ii) Ensure whole-of-state uniformity and integration of implementation and enforcement (particularly important for federated states);
- (iii) Harmonise and reinforce national arrangements, preventing duplication or loopholes;
- (iv) Strengthen law enforcement through capacity-building, including collecting evidence, identifying suspect personnel and facilities, developing early-warning systems and coordinating between relevant agencies (such as police, prosecution, health and security fields).
- (v) Improve dialogue and communication between national authorities (or their functional equivalents) and science and industry.

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<sup>6</sup> Slightly different wording.

<sup>7</sup> Final Document of the Second Review Conference, BWC/CONF.II/13, art. IV, para. 4, Final Document of the Third Review Conference, BWC/CONF.III/23, art. IV, para. 3, and Final Document of the Fourth Review Conference, BWC/CONF.IV/9, art. IV, paras. 3-4.

<sup>8</sup> Final Document of the Sixth Review Conference, BWC/CONF.VI/6, art. IV, para. 11(i).

<sup>9</sup> Final Document of the Sixth Review Conference, BWC/CONF.VI/6, art. IV, para. 18.

## V. International and regional cooperation and assistance

### Additional understandings and agreements

14. The Fourth Review Conference encouraged “cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention”<sup>10</sup>.

15. The Sixth Review Conference urged “States Parties with relevant experience in legal and administrative measures for the implementation of the provisions of the Convention, to provide assistance on request to other States Parties. The Sixth Review Conference also encouraged such initiatives on a regional basis”<sup>11</sup>.

16. The 2003 Meeting of 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:

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”<sup>12</sup>.

### 2003 Proposals

17. The proposals were to:

- (i) Develop a common understanding on a mechanism to harmonize the implementation of the Convention through increased international cooperation and exchanges between national authorities (or their functional equivalents) for sharing successful experiences, offsetting national weaknesses and promoting mutual trust;
- (ii) Ensure that national controls guarantee similar degrees of protection and security in all States Parties;
- (iii) Coordinate regional activities, including awareness-raising, education, and training for national implementation and enforcement;
- (iv) Maintain the impartiality of international organizations, such as the WHO and ICRC, and ensure they are not invited to engage in activities outside of their mandates;
- (v) Determine a best-practice approach to be implemented through international cooperation and assistance;
- (vi) Consider how best to help States Parties that need technical assistance;

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<sup>10</sup> Final Document of the Fourth Review Conference, BWC/CONF.IV/6, art. IV, para. 6.

<sup>11</sup> Final Document of the Sixth Review Conference, BWC/CONF.VI/6, art. IV, para. 16.

<sup>12</sup> Report of the Meeting of States Parties, BWC/MSP/2003/4 Vol. I, Part II.

- (vii) Offer sustained technical support to assist in the enactment of national implementation measures and the adoption of administrative measures;
- (viii) Tailor solutions for states with small or less developed infrastructures.

## **VI. Transfers and export controls<sup>13</sup>**

### Additional understandings and agreements

18. The Second<sup>14</sup>, Third and Fourth Review Conferences noted “the importance of... legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of microbial or other biological agents, or toxins”<sup>15</sup>.

19. The Sixth Review Conference called “upon States Parties to adopt, in accordance with their constitutional processes, legislative, administrative, judicial and other measures, including penal legislation, designed to... ensure the safety and security of microbial or other biological agents or toxins in laboratories, facilities, and during transportation, to prevent unauthorized access to and removal of such agents or toxins”<sup>16</sup>.

### 2003 Proposals

20. The proposals were to:
- (i) Develop controls on transfers, internal and external to the state, which would ensure a robust and secure chain of custody between approved or authorised people;
  - (ii) Establish effective national export and/or import control mechanisms;
  - (iii) Define lists of agents and toxins, related genetic material, and equipment subject to licensing prior to export (lists should be flexible and regularly updated);
  - (iv) Create procedures for obtaining licenses to export such resources;
  - (v) Require exporters (if authorised) to provide appropriate end-use certification for each transfer;
  - (vi) Include "catch-all" clauses in transfer monitoring and export control measures, requiring persons transferring items to another to seek a license where they suspect or have been informed by government that the item concerned could be used in contravention of the Convention;

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<sup>13</sup> This area overlaps with biosafety/biosecurity: only the administrative and legal aspects are listed here.

<sup>14</sup> Slightly different wording.

<sup>15</sup> Final Document of the Second Review Conference, BWC/CONF.II/13, art. IV, para. 4, Final Document of the Third Review Conference, BWC/CONF.III/23, art. IV, para. 3, and Final Document of the Fourth Review Conference, BWC/CONF.IV/9, art. IV, paras. 3-4.

<sup>16</sup> Final Document of the Sixth Review Conference, BWC/CONF.VI/6, art. IV, para. 11.

- (vii) Institute requirements, or a notification system, to ensure receipt of transferred material;
  - (viii) Develop data repositories of critical buyers and users to monitor for suspect procurement activities and to facilitate the implementation of "catch-all" clauses;
  - (ix) Require national (and international, where appropriate) registration of facilities involved in the transfer of pathogenic microorganisms and toxins as well as tangible and intangible critical items;
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