

Sixth session
Geneva, 3-21 March 1997

**Working paper submitted by the
Friend of the Chair on
Article X**

This paper is without prejudice to the positions of delegations on the issues under consideration and does not imply agreement on the scope or content of the paper.

It is not a revised version of the Elements for a Structured Discussion of Article X even though many of the proposals draw upon that paper, as well as from other ideas advanced by individual delegations, and rather constitutes a preliminary attempt to reflect the trend of the discussion on Article X, with the aim of incorporating Article X-related measures within a future instrument of BTWC compliance Protocol.

[PREAMBLE ¹

[**Emphasizing** 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 to promote economic and social development, and scientific and technological progress, particularly in the developing countries, in conformity with their interests, needs and priorities,

Concerned with the increasing gap between the developed and

¹ In addition to the statements that the position of delegations is not prejudiced to this paper, some individual brackets have been introduced at this time to cover specific preliminary concerns of delegations, but it is recognized that further and detailed consideration of all elements will be required at the future sessions, especially of those elements which were not discussed in a sufficient way.

the developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas,

Recalling that, in accordance with the Declaration of Principles adopted at the United Nations Conference on Environment and Development, States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technical knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies,

Determined to promote international cooperation on all developments in the field of frontier science and high technology in areas relevant to the BTWC, and urging the developed countries possessing advanced biotechnology and knowledge in such fields as medicine, public health and agriculture to adopt positive measures and to continue to promote technology transfer and cooperation on an equal and non-discriminatory basis, in particular with the developing countries, for the benefit of all mankind.]

[SCOPE

[The objective of this Protocol, to be pursued in accordance with its relevant provisions, is to strengthen the BTWC, and to ensure compliance with all the provisions of the Convention, through appropriate measures, including measures for effective verification of compliance, and to provide a forum for consultation and cooperation, in matters including scientific and technological exchanges and transfers, among the States Parties to the Protocol.]

I

PROMOTION OF SCIENTIFIC AND TECHNOLOGICAL EXCHANGES

1. The States Parties to the Protocol 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, in accordance with Article X of the BTWC. To that end, the States Parties shall cooperate on a global basis, directly or through the institutional mechanisms provided for under this Protocol, in order to comply with the

provisions of Article X.

2. The States Parties to the Protocol undertake to fulfil all their obligations under the [Convention and its] Protocol in a manner designed to avoid hampering the economic and technological development of States Parties to the Protocol, in particular of developing countries who are States Parties, and to foster international cooperation in the field of peaceful bacteriological (biological) activities, including the exchange of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.
3. The States Parties to the Protocol undertake to implement specific measures in order to ensure that:
 - (a) the provisions of Article X of the BTWC on the peaceful use of transfers of materials, equipment and technology for peaceful purposes are fully and effectively implemented;
 - (b) transfers of materials, equipment and technology of concern should [only] take place in full compliance with all the provisions of the BTWC.

With the aim of increasing and widening such uses and transfers, for the benefit of all States Parties to the Protocol, and in particular the developing countries who are States Parties, the States Parties undertake to report periodically, through the institutional mechanisms provided for under this Protocol, on the specific measures they have taken to comply with the provisions of Article X.

4. The States Parties to the Protocol undertake, in addition to their mandatory obligations under the Protocol on the declaration of information relevant to the Convention, to participate in a wider exchange of information on all aspects concerning the peaceful use of the biosciences, biotechnology and genetic engineering.
5. The States Parties to this Protocol undertake, subject to the protection of commercial proprietary rights and national security concerns, to promote the

publication, exchange and dissemination of information concerning current research programmes in the biosciences, and on research centres, and other scientific and technological developments and activities of relevance to the BTWC.

6. The States Parties to the Protocol undertake to cooperate, individually or together with other States and international organizations, to the further development of programmes and measures in the field of bacteriology (biology) for purposes of public health and the prevention or control of disease, and other peaceful purposes. The States Parties shall, to the extent possible, coordinate national, regional and multilateral activities and programmes in the relevant fields using existing mechanisms and structures and including, where appropriate, the institutional mechanisms provided for under this Protocol.

II

COOPERATIVE MEASURES

7. [Duly taking into account existing competences and mandates of the relevant international organizations and agreements and bearing in mind the need to avoid duplicating existing activities and mechanisms] the States Parties to the Protocol shall promote and implement cooperative measures, directly or through the institutional mechanisms provided for under this Protocol, *inter alia*, in the following fields:
 - (a) encouraging the dissemination of results in the field of biological research, frontier science and high technology in areas directly relevant to the objectives of the BTWC;
 - (b) assisting the establishment of national centres and research institutes for the examination of biological agents and toxins, and disseminating knowledge about examination and identification

techniques, laboratory safety and other research projects in the biosciences;

- (c) supporting the establishment, operation and updating of biological data bases, in the collection and dissemination of information relevant to the BTWC;
- (d) promoting cooperation among States Parties in diagnosis, prevention and control of outbreaks of diseases, including exploring means to improve international cooperation on the development and production of vaccines;
- (e) transfer of technology for peaceful use of genetic engineering and other scientific and technical developments in the field of frontier science and high technology relevant to the Convention;
- (f) programmes for the development of human resources in the biological field, including training expert personnel in bio-defence activities;
- (g) making available on request, subject to relevant IPR protection and under fair and equitable commercial terms, instruments, equipment and technologies in the field of bio-defence activities;
- [(h) collaborative research and development projects and joint ventures in bio-defence activities, particularly related to recombinant vaccine development and diagnostics systems.]

8. [The States Parties to the Protocol undertake, immediately after the entry into force of the Protocol, to consider ways and means to strengthen the States Parties' biological defence capabilities, including by the elaboration of guiding principles and possible scope of measures for States Parties to cooperate in useful exchanges intended to provide a sufficient degree of transparency and contribute to the effective functioning of the compliance regime established by this Protocol.]
9. The States Parties to the Protocol undertake to provide or support assistance, through appropriate measures, including a voluntary fund, to any State Party to this Protocol which has been exposed to danger as a result of a violation of the BTWC or of the provisions of this

Protocol. Pending consideration of a decision by the Security Council in conformity with Article VII of the Convention, timely emergency assistance could be provided by States Parties if requested, including assistance provided through the above-mentioned voluntary fund and in coordination with competent international organizations such as WHO.

10. The States Parties to the Protocol shall endeavour to conclude bilateral, regional and multiregional agreements on a [mutually advantageous], equal and non-discriminatory basis, for their participation in the development and application of biotechnology and the development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of diseases.
11. [The States Parties shall cooperate with the developing countries for the establishment of research institutes to carry out common projects for development of biology, biotechnology and vaccine production.]

III

[INSTITUTIONAL MECHANISMS AND] INTERNATIONAL COOPERATION

12. The BTWC Organization shall develop a framework for activities aimed at providing assistance to the States Parties to the Protocol, and in particular to the developing countries who are States Parties to the Protocol. Duly taking into account existing competences and mandates of the relevant international organizations and agreements, and bearing in mind the need to avoid duplicating existing activities and mechanisms, the following should *inter alia* be considered by the States Parties directly or through a future institutional mechanism:
 - (a) assistance to States Parties for the preparation of declarations [required as part of the compliance regime];
 - (b) assistance to States Parties in drawing up internal legislation [necessary to the compliance regime];

Reference to the "BTWC Organization" does not prejudice its eventual existence, structure or functions.

- (c) [inclusion of a cooperative dimension in (non-challenge/other on-site measures) visits to States Parties, with a view to:]
 - i. exchanging information and providing expert advice, assistance and appropriate recommendations on biological practices;
 - ii. sharing information concerning cooperative programmes in biosafety, identification of agents, diagnostics and the development of innovative vaccines, aimed at being low-cost products, safe and usable under difficult conditions;
 - (d) convening national or regional seminars with a view to optimizing cooperation and developing a long-term programme of exchanges on scientific developments, including the bio-defence activities for peaceful purposes, internships [and other (non-challenge) visits];
 - (e) creating [a framework for donor countries], [including a [voluntary fund]] to provide additional assistance for training of expert personnel and for the financing of scientific and technical cooperation and assistance projects.
13. The BTWCO shall establish a cooperative relationship, maintain working ties, negotiate agreements and develop joint programmes with relevant organizations, including WHO, FAO, IOE, UNIDO, ICGEB, UNEP and other agencies engaged in the implementation of Agenda 21 and the Convention on Biological Diversity (CDB) in order to:
- (a) derive the greatest possible synergy in such fields as:
 - i. the collection and dissemination of information on listed pathogens;
 - ii. sharing information on environmental release of genetically modified organisms;
 - iii. good manufacturing practices (GMP), safe laboratory procedures, biological containment and other

biosafety regulations and practices;

- iv. the elaboration of a comprehensive data resource, to supplement and facilitate access to existing databanks (e.g. BINAS, ICGBNET, etc.) and various tools of electronic communication (NEED).
- (b) Maintain a record of cooperative activities promoted by international organizations in areas considered relevant to the BTWC, to provide awareness and facilitate access to those activities by States Parties to the Protocol, and coordinate with those organizations its own promotional activities, avoiding duplication and rationalising the use of the resources.
 - (c) Create a framework for multilateral cooperation, including a forum of exchange of information among scientists and technologists from States Parties to the Protocol, with the aim to:
 - i. utilize the scientific and technological capabilities, experience and know-how of developed and developing countries;
 - ii. facilitate regulatory harmonization by allowing cross-correlation of existing national regulations and administrative procedures;
 - iii. assist developing countries who are States Parties to the Protocol in strengthening their scientific and technological capabilities in the biosciences, genetic engineering and biotechnology.
14. The BTWCO, in its analysis of information provided to it by relevant international organizations should be required to make assessment and recommendations as to how the objectives of Article X of the BTWC might be fostered by actions taken by those organizations directly or in cooperation with the BTWCO.
15. [In order to perform its duties, the future Organization shall be accorded the necessary personnel and resources.]

IV

MEASURES TO AVOID HAMPERING THE ECONOMIC AND TECHNOLOGICAL

DEVELOPMENT OF STATES PARTIES

16. The economic and social development of all States Parties include the requirement for multilaterally negotiated, universal, comprehensive and non-discriminatory sensitive technology transfer agreements.
17. [The States Parties to the Protocol shall not use the provisions of the Convention or of this Protocol to impose restrictions and/or limitations on transfers consistent with the objectives and provisions of the Convention on scientific knowledge, technology, equipment and materials.]
[The States Parties shall only establish among themselves guidelines to regulate the free flow of equipment, materials and scientific and technological information in the biological field as provided under Part of this Protocol.]

[The States Parties shall only maintain among themselves restrictions of the free flow of equipment, materials, and scientific and technological information in the biological field that are consistent with the BTWC and subject to the relevant provisions of this Protocol.]
18. [The States Parties to this Protocol shall continuously review, in the light of the implementation of the objectives of the BTWC and the provisions of this Protocol, the measures that they take to prevent the spread of bacteriological (biological) agents and toxins, and equipment for purposes contrary to the Convention, with the aim of removing any restrictions incompatible with the obligations undertaken under the Convention.]
19. [The States Parties to this Protocol undertake not to impose or maintain any discriminatory measure, incompatible with the obligations undertaken under the Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge, in particular in the fields of biological research, including microbiological, biotechnology, genetic engineering, and their industrial, agricultural, medical, pharmaceutical, public health applications, and other peaceful uses.]
20. [The States Parties to the Protocol shall cooperate to ensure that, based on equal rights and obligations, and a

mutuality of interests, appropriate measures designed to promote transparency and compliance with the objectives of the BTWC, also provide incentives and benefits for all States Parties.]

21. [The States Parties to this Convention shall:

- (a) have the right, individually or collectively, to conduct research with, to develop, produce, acquire, retain, transfer and use biological agents and toxins for peaceful purposes;
- (b) 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;
- (c) not maintain among themselves any restrictions, including those in any international agreements, which would restrict or impede trade and development and promotion of scientific and technological knowledge in the field of biology, genetic engineering, microbiology and other related areas for peaceful purposes;
- (d) not use this convention as grounds for applying any measures other than those provided or permitted, under this Convention nor use any other international agreement for pursuing an objective inconsistent with this Convention;
- (e) undertake to review their existing national trade regulations in the field of biology, genetic engineering, microbiology and other related areas for peaceful purposes in order to render them consistent with the object and purpose of this Convention.]

22. [The States Parties shall report periodically through the institutional mechanisms, provided for in this Protocol, on specific measures they have taken in order to comply with the provisions of Article X. These reports shall be examined by those institutional mechanisms with the aim of making recommendations to States Parties for the effective implementation of Article X.]

[SAFEGUARDS AND LIMITATIONS

23. The States Parties to the Protocol are encouraged, to the extent possible and in line with the provisions of the Convention, to promote transparency and openness in their research activities.
24. The States Parties to the Protocol should take all practicable measures to prevent that the application of scientific and technological research in areas associated with the Convention may benefit or induce any kind of qualitative improvement in the field of biological weapons.
25. In adopting cooperative measures within the context of Article X, the States Parties to the Protocol should duly take into account national security concerns and intellectual property rights (IPRs) as well as their commercial implications.
26. The States Parties to the Protocol, aware of the vast knowledge arising from new discoveries, *inter alia*, in microbiology, genetic engineering and biotechnology, should take all practicable safety precautions, including the bioethical dimension in those precautions, to protect populations and the environment in relation to activities not prohibited by the Convention.
27. The States Parties to this Protocol shall comply with safety and immunization measures, and with legislative and administrative measures established by other States for the security and physical protection of research centres, laboratories and facilities intended to be used for scientific and technical exchanges.]
