

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 Declaration¹ 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 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

¹United 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 Destruction*, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva 1996.

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.

- The Group held four sessions in 1992-1993 and circulated its report to all States Parties in September 1993.

- 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 Declaration² of the Third Review Conference and which built upon the agreements reached at the Second Review Conference; and
 - b. The continued negotiation of a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention. This is likely, as at the Fourth Review Conference, to be considered at the Fifth Review Conference under *Agenda item 12. Work done to strengthen the Convention in accordance with the decision of the 1994 Special Conference.*
4. The invoking by Cuba of the procedures for the implementation of Article V³ 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 karny*. 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 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*".

²United Nations, *The Third 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, 9–27 September 1991, BWC/CONF.III/23, Geneva 1992.

³An account of the Cuban allegation and the procedures followed under Article V of the Convention is provided in Graham S. Pearson, *Cuban Allegation of BW Attack*, ASA Newsletter No 97-5, 17 October 1997, pp. 1, 12-13 and Graham S. Pearson, *Cuban Allegation of BW Attack: The Final Report*, ASA Newsletter No 98-2, 30 April 1998, p. 28.

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.

Issues for the Fifth Review Conference

12. The Review Conference will wish to take note that the consultative process had been invoked by a State Party and had been successfully used. 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 will no doubt continue to note their importance and will 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 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, including its programme of confidence-building measures established by the Second and Third Review Conferences, in the interests of the States Parties as a collectivity;

(c) to assist States Parties in fulfilling their obligations under the Convention and their politically binding commitments, including the programme of

confidence-building measures, under the Final Declarations of successive Review Conferences;

13. Insofar as the work carried out by the Ad Hoc Group is concerned, it is recommended that, as in 1996, the substantive issues relating to the Ad Hoc Group be addressed in the section of the Final Declaration headed *Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994*.

Language for the Fifth Review Conference

29. It is recommended that language be adopted by the Fifth 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.

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