

ARTICLE VI: LODGING OF COMPLAINTS WITH AND THEIR INVESTIGATION BY THE SECURITY COUNCIL

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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 Declaration¹ in respect of Article VI 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

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.

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.

3. The Fourth Review Conference Final Declaration for Article VI was based on the five paragraphs of the Third Review Conference Final Declaration² 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

² United 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.

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 five 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. Nevertheless, there has been useful progress made in the negotiations of the Ad Hoc Group of a legally-binding instrument into the procedures for investigations of such allegations. It is also noted that the recent proposals made by President Bush in his statement³ of 1 November 2001 includes "*Establish an effective United Nations procedure for investigating suspicious outbreaks or allegations of biological weapons use*". It is suggested that further elaboration and development of the recent United States proposals will need to be conducted in an appropriate forum following the Fifth Review Conference at which these and other proposals can be taken forward to develop a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention. This is considered further in the chapter in this Briefing Book on Agenda item 12.

6. In respect of the procedures for the investigation of allegations of chemical weapons, these have been developed further in the Chemical Weapons Convention⁴ 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

³The 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>

⁴ United Nations, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, United Nations 93-05070, 1993.

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.

Key Points for the Fifth Review Conference

11. As at the Third Review Conference, the matter of investigations of allegations of use is likely to be considered both under Article V (where it is now part of the work of the Ad Hoc group which is being considered by the Review Conference as Agenda item 12) 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 notes that the provisions of Article VI will be taken into account, as appropriate, for any future **legally-binding instrument to strengthen the effectiveness and improve the implementation of 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 **in regard to the negotiations of a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention**, in accordance with its mandate.*

