

## ARTICLE XI: AMENDMENTS TO THE CONVENTION

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### Consideration of Article XI at the Fourth Review Conference

1. Article XI of the Convention states that:

*Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.*

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration<sup>1</sup> in respect of Article XI stated that:

*1. The Conference notes that the Islamic Republic of Iran has formally presented a proposal to amend Article I and the title of the Convention to include explicitly the prohibition of use of biological weapons.*

*2. The Conference notes that the Depositaries are notifying all States Parties of the proposal. The Conference encourages all States Parties to convey their views to the Depositaries on whether the Convention needs to be amended to make clear explicitly that the use of biological weapons is effectively prohibited.*

*3. The Conference requests the Depositaries to take such measures as may be requested by a majority of States Parties, including the option of convening a conference open to all States Parties to the Convention at the earliest appropriate opportunity to take a decision on the proposal, should a majority of the States Parties so decide.*

*4. The Conference meanwhile reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.*

3. This was a considerable development -- because of the formal proposal by Iran to amend the Convention -- from the single paragraph on Article XI in the Final Declaration<sup>2</sup> of the Third Review Conference of the BTWC held on 9-27 September 1991 which stated that:

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<sup>1</sup>United 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.

<sup>2</sup> 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.

*The Conference notes the importance of Article XI and that since the entry into force of the Convention the provisions of the article have not been invoked. In this context the Conference underlined that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.*

#### **Developments since the Fourth Review Conference**

4. Although Iran submitted a formal proposal to amend the Convention at the Fourth Review Conference, it was agreed by that Review Conference that the Depositaries should notify all States Parties of the proposal submitted by Iran and for the Depositaries to then take such measures as may be requested by a majority of States Parties. In addition, the Final Declaration of the Fourth Review Conference agreed language in its preambular paragraphs and in a number of sections on Articles that reaffirmed that use is effectively prohibited by the Convention. In so doing, this may well have caused several States Parties to regard the amendment proposal by Iran as nugatory.

5. The agreed language relating to use in the preambular paragraphs included:

*- Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.*

*- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;*

*- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*

6. The language relating to use in the Article I section included:

*3. The Conference reaffirms 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.*

and the Article IV section included:

*... The States Parties recognize 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.*

as well as

*7. The Conference reaffirms that under all circumstances the use of bacteriological (biological) and toxin weapons is effectively prohibited by the Convention.*

whilst the Article VIII section included:

*7. The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

7. It is therefore suggested that the Fifth Review Conference should adopt similar language to that in the fourth paragraph of the Article XI section in the Final Declaration of the Fourth Review Conference:

*The Conference reaffirms the importance of Article XI. In this context the Conference underlined that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.*