

ARTICLE IV: NATIONAL IMPLEMENTATION

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Consideration of Article IV at the Fourth Review Conference

1. Article IV of the Convention states that:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the States Parties underlined the importance of Article IV by giving considerably more attention in the Final Declaration¹ to Article IV with seven paragraphs compared to the six paragraphs in the Final Declaration of the Third Review Conference².

1. The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention. 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.

2. The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

3. The Conference notes the importance of:

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. Available at <http://www.opbw.org>

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. Available at <http://www.opbw.org>

- *Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;*

- *Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins;*

- *Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.*

4. *The Conference believes that such measures which States Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by the Second and Third Review Conferences.*

5. *The Conference notes that some States Parties, as requested by the Second Review Conference, have provided to the United Nations Department for Disarmament Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invites these States Parties, and encourages all States Parties, to provide such information and texts in the future. In this regard the Conference welcomes information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures". In addition, the Conference encourages all States Parties to provide any useful information on the implementation of such measures.*

6. *The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.*

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

3. The opening paragraph not only said that the Conference "*underlines the importance*" rather than "*notes the importance*" of Article IV but it went on, unlike the simple single sentence in the Third Review Conference, to set out what the "*necessary measures*" required under Article IV should be:

These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention.

and went on to stress the importance of national measures in a context that gave them added urgency. They were declared essential to the effective fulfillment of States Parties' obligations in order to exclude, among other things, the use of biological or toxin weapons in terrorist or criminal activity:

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.

4. The second paragraph used identical language to that of the Third Review Conference to note those measures already taken by some States in regard to the implementation of Article IV, such as the adoption of penal legislation, and reiterated its call to any State Party that had not yet taken any necessary measures to do so immediately. Such measures should apply within the territory of a State Party, under its jurisdiction or under its control anywhere. The Conference also invited each State Party to consider the application of such measures to actions taken anywhere by natural persons possessing its nationality.

5. The third and fourth paragraphs also used almost identical language to that in the Article IV section of the Final Declaration³ of the Third Review Conference which had noted the importance of:

- *Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;*
- *Legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of microbial or other biological agents, or toxins;*
- *Inclusion in textbooks and in medical, scientific and military educational programmes of information dealing with the prohibition of microbial or other biological agents or toxins and the provisions of the Geneva Protocol of 1925.*

and that such measures would strengthen the effectiveness of the Convention. The only change made by the Fourth Review Conference in 1996 was that the BTWC was named in the last of these three subparagraphs with its revised wording of “*dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.*”

6. The fifth paragraph also used identical language to that of the Third Review Conference in noting that some States Parties, as requested by the Second Review Conference (and before then by the First Review Conference), had provided to the United Nations Department for Disarmament Affairs information on and the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invited these States Parties, and encouraged all States Parties, to provide such information and texts in the future. The Conference also welcomed the information provided by States Parties in response to the agreement by States Parties participating in the Third Review Conference to implement a new confidence-building measure entitled “*Declaration of legislation, regulations and other measures.*” In addition the Conference invited all States Parties to provide any useful information on the implementation of such measures.

³ 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. Available at <http://www.opbw.org>

7. The sixth paragraph reflected a similar sense to the corresponding paragraph in the Third Review Conference but used different language referring to "*cooperation and initiatives*" in more general terms than the specific references to the Mendoza Declaration and other regional initiatives taken in 1991:

The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.

8. The final paragraph was new, having no parallel in the Third Review Conference, with language reaffirming that use is effectively prohibited by the Convention:

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

Evolution of the review process in respect of Article IV, 1980 to 1996

9. Article IV obliges each State Party to ensure national implementation in the broadest possible terms, as the scope clauses at the end of the Article spell out clearly. Although the word *legislation* does not appear in this Article, the commonest response to this obligation among those States Parties which have made known any response whatever (and they are all too few) has been either to legislate in such a way as to give domestic legal effect to the prohibitions contained in Article I, or to determine on examination of their existing laws that no further specific legislation is necessary. National implementation also embraces government decrees, regulations and administrative memoranda to law enforcement agencies, but little is yet known of what action, if any, States Parties have taken under those headings. It is understandable, therefore, that national implementation has come to be identified closely with the adoption of new legislation.

10. Such legislation ties the Convention into national legal systems in the clearest possible way. It contributes to the strengthening of compliance by expanding the constituency with an institutional interest in the success of the Convention. It also builds the treaty regime flowing from the Convention into normative structures at the national level, in the form of rules and expectations and procedures for upholding them. These rules, expectations and procedures in turn uphold their counterparts at the international level. They reinforce the international treaty regime and help, even if only marginally, to ensure its survival by constituting one more obstacle which would have to be overcome if the Convention were to come under attack.

11. The first four Review Conferences have reinforced Article IV with successive layers of consensually agreed language, as each Final Declaration has built on its predecessor and added new material to the inherited paragraphs.

12. In 1980 the United Kingdom, with Belgian and Finnish support, persuaded the First Review Conference to invite:

States Parties which have found it necessary to enact specific legislation or take other regulatory measures relevant to this Article to make available the appropriate

*texts to the United Nations Centre for Disarmament, for [the] purposes of consultation.*⁴

In 1986 this invitation was repeated, as was the 1980 call

*upon all States Parties which have not yet taken any necessary measures in accordance with their constitutional processes, **as required by the Article**, to do so immediately.*⁵ [The words emphasised were added in 1986.]

13. The Second Review Conference took a modest step forward in regime-building for strengthening compliance with the Convention on the foundations of Article IV. It did so by widening, on the initiative of the then German Democratic Republic, the range of national implementation actions which were given international commendation. After repeating the invitations contained in the 1980 declaration as indicated above it added a new passage:

The Conference notes the importance of

- *legislative, administrative and other measures designed effectively to guarantee compliance with the provisions of the Convention within the territory under the jurisdiction or control of a State Party;*
- *legislation regarding the physical protection of laboratories and facilities to prevent unauthorised access to and removal of pathogenic or toxic material; and*
- *inclusion in textbooks and in medical, scientific and military educational programmes of information dealing with the prohibition of bacteriological (biological) and toxin weapons and the provisions of the Geneva Protocol*

*and believes that such measures which States might undertake in accordance with their constitutional process[es] would strengthen the effectiveness of the Convention.*⁶

14. The Third Review Conference continued the process of regime-building in this area, repeating the declarations of 1980 and 1986 and adding to them, notably, an explicit reference to penal legislation, as an example of national implementation; an invitation to each State Party to consider applying measures to actions taken anywhere by natural persons possessing its nationality; and a new confidence-building measure entitled 'Declaration of

⁴United Nations, *The First 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, 3–21 March 1980, BWC/CONF.I/9, 21 March 1980. Available at <http://www.opbw.org>

The intrusive the was deleted when the invitation was repeated in 1986 (see note 5 below) "for purposes of consultation," the Australian delegation, in editing the text for the Drafting Committee, having restored the original UK language at the request of its author.

⁵United Nations, *The Second 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, 8–26 September 1986, BWC/CONF.II/13/11, 26 September 1986. Available at <http://www.opbw.org>

⁶*ibid.* *Process* seems to have been a typographic error in the Final Declaration carried through to the Final Document (Geneva 1986). It was corrected to *processes* when the 1986 text was repeated in 1991. The GDR proposal of 1986 (which used the plural *processes*) is reproduced in BWC/CONF.II/9 (22 September 1986), Annex, pp.16-17. Available at <http://www.opbw.org>

legislation, regulations and other measures'.⁷ The new CBM, labelled **E**, went beyond simply addressing those State Parties which **had** legislated or taken other implementing action in this area. It asked every State Party to complete a straightforward annual questionnaire answering four questions yes/no:

- do you have legislation?
- do you have regulations?
- do you have other measures?
- has there been any amendment since last year to your legislation, regulations or other measures?

These four questions were applied to three areas of policy, requiring twelve yes/no answers altogether. The first area of policy was the direct concern of Article IV with domesticating the prohibitions in Article I. The second and third were export and import control respectively, specified as "the export and import of micro-organisms pathogenic to man, animals or plants, or of toxins, in accordance with the Convention." These export and import controls were of particular concern to the United Kingdom, which successfully proposed their addition to a CBM which would otherwise have been limited to making more universal and systematic the invitations issued in 1980 and 1986.

15. The information-sharing commitments of the Third Review Conference in this area went further still. From 15 April 1992 States Parties, under Confidence-Building Measure **E**,

*shall be prepared to submit copies of the legislation or regulations or written details of other measures on request to the United Nations Department for Disarmament Affairs or to an individual State Party.*⁸

Each State Party has accordingly been able since 1992 to request these details bilaterally under the authority of the Third Review Conference, instead of depending solely upon the circulation of texts made available to the United Nations. States Parties have in effect accepted the principle of mutual accountability for their national legislation, regulations and other measures. This constitutes a further stage in the evolution of the review process in respect of Article IV.

16. The main contribution of the Fourth Review Conference to this process was the strengthening of language in the Final Declaration, to underline the importance of Article IV, as analysed in detail in paragraphs 2 to 8 above.

Developments after the Fourth Review Conference

Biological Terrorism

⁷United Nations, *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/22/Add. 2 (27 September 1991) pp 4-5, p 7. Available at <http://www.opbw.org>

⁸ United Nations, *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/22/Add. 3 (27 September 1991) pp 18-19. Available at <http://www.opbw.org>

17. Increased attention is being paid to the possibility that biological materials may become attractive to sub-State actors, splinter groups or terrorists. The incidents in the Tokyo subway in March 1995 in which the Aum Shinrikyo sect planned to place some eleven small containers of the nerve gas, sarin (GB), on baggage racks or on the floor of subway trains and for these to then be punctured by Aum members to release the sarin, has heightened international awareness that sub-State actors might seek to use chemicals to further their aims. Subsequent reports⁹ make it clear that the Aum Shinrikyo sect had also been working on developing biological weapons and was close to completing this by March 1995; it is reported that they had been working on botulinum toxin and anthrax and had devices that might be used to disseminate such agents. The Aum sect also sent a team to Zaire in 1992 to assist in the treatment of Ebola victims - and it is claimed that their aim was to find a sample of Ebola virus to take back to Japan for culturing purposes. The Tokyo incidents show all too clearly the impact of quite limited chemical contamination and the need to take steps to counter possible use of chemical or biological materials.

18. One important counter to such possibilities is the enactment of national legislation to make the misuse of biological materials a criminal act. Some States, such as the UK, have enacted such legislation: the Biological Weapons Act¹⁰ of 1974 makes it a criminal offence within the UK to develop, produce, stockpile, acquire or retain any biological agent or toxin or means of delivery; any person shall on conviction be liable to life imprisonment. The United States has enacted an "*Antiterrorism and Effective Death Penalty Act of 1996*"¹¹ which strengthens the provisions of its *Biological Weapons Anti-Terrorism Act of 1989* and provides for both the regulatory control of biological agents and the regulation of transfers of listed biological agents. Insofar as the regulatory control of biological agents is concerned this provides for:

(1) List of biological agents -

(A) In General - The Secretary [of Health and Human Services] shall, through regulations promulgated ..., establish and maintain a list of each biological agent that has the potential to pose a severe threat to public health and safety.

(B) Criteria - In determining whether to include an agent on the list under Subparagraph (A), the Secretary shall -

(i) consider-

- (I) the effect on human health of exposure to the agent;*
(II) the degree of contagiousness of the agent and the method
by which the agent is transferred to humans;
III) the availability and effectiveness of immunizations to prevent and treatments for any illness resulting from the infection by the agent; and

⁹United States Senate Permanent Sub-Committee on Investigations (Minority Staff), *Hearings on Global Proliferation of Weapons of Mass Destruction: A Case Study on Aum Shinrikyo*, Staff Statement, 31 October 1995. David E Kaplan & Andrew Marshall, *The Cult at the End of the World: The Incredible Story of Aum*, Hutchinson, London, 1996.

¹⁰Biological Weapons Act 1974, HMSO, 1974 Chapter 6. Available at <http://www.opbw.org>

¹¹U S Congress, 104th Congress, 2nd Session, House of Representatives, *Terrorism Prevention Act*, Conference Report, Report 104-518, 15 April 1996.

(IV) any other criteria that the Secretary considers appropriate; and

(ii) consult with scientific experts representing appropriate professional groups.

On transfers, the Secretary of Health and Human Services is required to enact regulations for:

(1) the establishment and enforcement of safety procedures for the transfer of biological agents listed including measures to ensure -

(A) proper training and appropriate skills to handle such agents; and

(B) proper laboratory facilities to contain and dispose of such agents;

(2) safeguards to prevent access to such agents for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

(4) appropriate availability of biological agents for research, education and other legitimate purposes.

The final rule was published in the Federal Register of 24 October 1996¹² with an effective date of 15 April 1997.

19. Following the events of 11 September 2001, the United Kingdom introduced a new Anti-Terrorism, Crime and Security Act 2001¹³ which strengthens the UK law, the Biological Weapons Act of 1974, prohibiting work on biological weapons and introduces new national security controls on pathogens and toxins. The extension of the law on biological weapons includes language making it an offence to transfer biological agents or toxins outside the United Kingdom or to assist another person to do so:

(1A) A person shall not—

(a) transfer any biological agent or toxin to another person or enter into an agreement to do so, or

(b) make arrangements under which another person transfers any biological agent or toxin or enters into an agreement with a third person to do so,

¹²United States, Federal Register, Department of Health and Human Services, *Additional Requirements for Facilities Transferring or Receiving Select Agents*, Rules and Regulations, Volume 61, No. 207, Thursday 24 October 1996, 55190 - 55200.

¹³House of Commons, *Anti-Terrorism, Crime and Security Act 2001*. Available at <http://www.opsi.gov.uk/ACTS/acts2001/20010024.htm>

if the biological agent or toxin is likely to be kept or used (whether by the transferee or any other person) otherwise than for prophylactic, protective or other peaceful purposes and he knows or has reason to believe that that is the case.”

In addition, language is included to extend UK jurisdiction to offences under the Biological Weapons Act carried out overseas by a UK person:

1A Extraterritorial application of section 1

(1) Section 1 applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(2) Proceedings for an offence committed under section 1 outside the United Kingdom may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

(3) Her Majesty may by Order in Council extend the application of section 1, so far as it applies to acts done outside the United Kingdom, to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

(4) In this section “United Kingdom person” means a United Kingdom national, a Scottish partnership or a body incorporated under the law of a part of the United Kingdom.

Language is also included to make it an offence for a UK person outside the UK to assist a foreigner to do an act which would, for a UK person, be contrary to the Biological Weapons Act of 1974. Such offences carry a sentence of up to life imprisonment:

Assisting or inducing weapons-related acts overseas

50 Assisting or inducing certain weapons-related acts overseas

(1) A person who aids, abets, counsels or procures, or incites, a person who is not a United Kingdom person to do a relevant act outside the United Kingdom is guilty of an offence.

(2) For this purpose a relevant act is an act that, if done by a United Kingdom person, would contravene any of the following provisions—

(a) section 1 of the Biological Weapons Act 1974 (offences relating to biological agents and toxins);

(b) section 2 of the Chemical Weapons Act 1996 (offences relating to chemical weapons); or

(c) section 47 above (offences relating to nuclear weapons).

(3) Nothing in this section applies to an act mentioned in subsection (1) which—

(a) relates to a relevant act which would contravene section 47; and

(b) is authorised by the Secretary of State; and section 48(2) applies for the purpose of authorising acts that would otherwise constitute an offence under this section.

(4) A person accused of an offence under this section in relation to a relevant act which would contravene a provision mentioned in subsection (2) may raise any defence which would be open to a person accused of the corresponding offence ancillary to an offence under that provision.

(5) A person convicted of an offence under this section is liable on conviction on indictment to imprisonment for life.

(6) This section applies to acts done outside the United Kingdom, but only if they are done by a United Kingdom person.

(7) Nothing in this section prejudices any criminal liability existing apart from this section.

20. The 2001 security controls identify a list of pathogens and toxins and define a dangerous substance as being one of these pathogens or toxins or anything infected by or a carrier of such pathogens. Notification is required prior to keeping or using any dangerous substance and information can be sought about the security of dangerous substances and the premises in which these are held as well as about persons with access to such dangerous substances. The definition of dangerous substance is as follows:

(4) In this Part “dangerous substance” means—

(a) anything which consists of or includes a substance for the time being mentioned in Schedule 5; or

(b) anything which is infected with or otherwise carries any such substance.

Schedule 5 lists the pathogens and toxins that potentially pose the greatest risk to human life if misused by terrorists -- it will be observed that the Notes extend the Schedule to include genetic modifications:

SCHEDULE 5

PATHOGENS AND TOXINS

VIRUSES

Chikungunya virus
Congo-crimean haemorrhagic fever virus
Dengue fever virus
Eastern equine encephalitis virus
Ebola virus
Hantaan virus
Japanese encephalitis virus
Junin virus
Lassa fever virus
Lymphocytic choriomeningitis virus
Machupo virus
Marburg virus
Monkey pox virus

Rift Valley fever virus
Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus)
Variola virus
Venezuelan equine encephalitis virus
Western equine encephalitis virus
White pox
Yellow fever virus

RICKETTSIAE

Coxiella burnetii
Bartonella quintana (Rochalimea quintana, Rickettsia quintana)
Rickettsia prowazeki
Rickettsia rickettsii

BACTERIA

Bacillus anthracis
Brucella abortus
Brucella melitensis
Brucella suis
Chlamydia psittaci
Clostridium botulinum
Francisella tularensis
Burkholderia mallei (Pseudomonas mallei)
Burkholderia pseudomallei (Pseudomonas pseudomallei)
Salmonella typhi
Shigella dysenteriae
Vibrio cholerae
Yersinia pestis

TOXINS

Botulinum toxins
Clostridium perfringens toxins
Conotoxin
Ricin
Saxitoxin
Shiga toxin
Staphylococcus aureus toxins
Tetrodotoxin
Verotoxin
Microcystin (Cyanginosin)
Aflatoxins

Notes

1 Any reference in this Schedule to a micro-organism includes—

(a) any genetic material containing any nucleic acid sequence associated with the pathogenicity of the micro-organism; and

(b) any genetically modified organism containing any such sequence.

2 Any reference in this Schedule to—

- (a) a biological agent does not include an agent in the form of a vaccine;*
- (b) a toxin does not include any immunotoxin (but does include subunits of a toxin); and*
- (c) a botulinum toxin does not include a botulinum toxin which satisfies prescribed conditions.*

Provision is also included for extension of these provisions to include animal and plant pathogens, pests or toxic chemicals:

75 Power to extend Part 7 to animal or plant pathogens, pests or toxic chemicals

(1) The Secretary of State may, in relation to anything to which this section applies, make an order applying, or making provision corresponding to, any provision of this Part, with or without modifications.

(2) This section applies to—

- (a) toxic chemicals (within the meaning of the Chemical Weapons Act 1996 (c. 6));*
- (b) animal pathogens;*
- (c) plant pathogens; and*
- (d) pests.*

(3) The power under this section may be exercised in relation to any chemical only if the Secretary of State is satisfied that the chemical is capable of endangering life or causing serious harm to human health.

(4) The power under this section may be exercised in relation to any pathogen or pest only if the Secretary of State is satisfied that there is a risk that the pathogen or pest is of a description that could be used to cause—

- (a) widespread damage to property;*
- (b) significant disruption to the public; or*
- (c) significant alarm to the public.*

21. This 2001 UK legislation provides a good example of the way in which States Parties can and should review, following the anthrax attacks in the United States, their existing national provisions to implement Article III and Article IV of the Convention. Other States are to be encouraged to take similar action to criminalize BW and attention should be given to seeking international agreement that using or knowingly aiding in the production, acquisition or use of biological weapons is a crime under international law¹⁴. Other counters are the preparation of response plans for such incidents as well as more widespread recognition of the need to control biological materials to facilitate the safety of the community and the environment.

¹⁴Chemical Weapons Convention Bulletin, *Criminalizing BW*, CWCB Issue No 31, 1, March 1996. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

Developments at and since the Fifth Review Conference

22. At the Fifth Review Conference the States Parties in their Final Document¹⁵ agreed:

(a) *To hold three annual meetings of the States Parties of one week duration each year commencing in 2003 until the Sixth Review Conference, to be held not later than the end of 2006, to discuss, and promote common understanding and effective action on:*

- i. *the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation;*
- ii. *national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins;*
- iii. *enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease;*
- iv. *strengthening and broadening national and international institutional efforts and existing mechanisms for the surveillance, detection, diagnosis and combating of infectious diseases affecting humans, animals, and plants;*
- v. *the content, promulgation, and adoption of codes of conduct for scientists.*

It was also agreed that:

(d) *The meetings of experts will prepare factual reports describing their work.*

(e) *The Sixth Review Conference will consider the work of these meetings and decide on any further action.*

23. Three of these topics – topics i, ii and v – are relevant to Article IV of the Convention. Consequently, the outcome of the annual Meetings of States Parties at which these topics were considered is directly relevant to the consideration of Article IV at the Sixth Review Conference and, furthermore, the Sixth Review Conference is mandated to *consider the work of these meetings and decide on any further action*. As a starting point in deciding on any further action, the Conference could usefully endorse the principal findings of the relevant Meetings of States Parties and write them into the cumulative text of its Final Declaration as extended understandings of the implications of Article IV.

24. The first two topics were considered in 2003 and the report¹⁶ of the Meeting of States Parties in 2003 included the following:

¹⁵ United Nations, *Fifth 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, 19 November – 7 December 2001 and 11 – 22 November 2002, Final Document, BWC/CONF.V/17, Geneva, 2002. Available at <http://www.opbw.org>

At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The 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 prohibition of the Convention, and which enhance effective security of pathogens and toxins.

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.

The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes. There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.

In addition, the Meeting of States Parties agreed that all the statements, presentations and contributions made available to the Chairman by States Parties would be attached to this Report, in the languages of submission, as Annex II. Consequently, Annex II provides a valuable resource of information on the two topics considered in 2003 that is available to the States Parties in preparation for the Sixth Review Conference.

25. The fifth topic was considered in 2005 and the report¹⁷ of the Meeting of States Parties in 2005 included the following:

¹⁶ United Nations, *Meeting 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*, First Meeting, Geneva, 10-14 November 2003, Report of the Meeting of States Parties, BWC/MSP/2003/4, 24 November 2003. Available at <http://www.opbw.org>

¹⁷ United Nations, *Meeting 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*, Third Meeting, Geneva, 5-9 December 2005, Report of the Meeting of States Parties, BWC/MSP/2005/3, 14 December 2005. Available at <http://www.opbw.org>

On the mandate to discuss, and promote common understanding and effective action on the content, promulgation and adoption of codes of conduct for scientists, the States Parties recognised that:

(a) while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

(b) codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

(c) a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

(d) codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

(e) science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

19. The States Parties recognised that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

20. On the content of codes of conduct, recognising the principles listed in paragraph 18, the States Parties agreed on the importance of codes of conduct being:

(a) compatible with national legislation and regulatory controls and contributing to national implementation measures;

(b) simple, clear and easily understandable both to scientists and to wider civil society;

(c) relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

(d) sufficiently broad in scope;

(e) regularly reviewed, evaluated for effectiveness, and revised as necessary.

21. *On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the States Parties agreed on the value of:*

(a) demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

(b) using existing codes, mechanisms, frameworks and bodies as far as possible; and

(c) tailoring adoption strategies according to the needs of each relevant sector.

22. *On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the States Parties agreed on the value of continuous efforts on promulgation through appropriate channels.*

23. *The States Parties further considered that in pursuing the above understandings and actions, States Parties could, according to their respective circumstances, consider the considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions made by delegations on the topic under discussion at the Meeting of Experts, as contained in Annex I of the Report of the Meeting of Experts (BWC/MSP/2005/MX/3), as well as the synthesis of these considerations, lessons, perspectives, recommendations, conclusions and proposals contained in BWC/MSP/2005/L.1, which is attached to this report as Annex I. This annex was not discussed or agreed upon and consequently has no status.*

24. *States Parties are encouraged to inform the Sixth Review Conference of, inter alia, any actions, measures or other steps that they may have taken on the basis of the discussions at the 2005 Meeting of Experts and of the outcome of the 2005 Meeting of States Parties in order to facilitate the Sixth Review Conference's consideration of the work undertaken at the meetings in 2005 and of a decision on any further action in accordance with paragraph 18 (e) of the decision adopted at the Fifth Review Conference (BWC/CONF.V/17).*

26. At the Preparatory Committee meeting for the Sixth Review Conference, it was proposed¹⁸ that the Secretariat should prepare for the States Parties:

(b) A background information document on compliance by States Parties with all their obligations under the Convention. For the purpose of compiling this document the Secretariat would request States Parties to provide information regarding compliance with all the provisions of the Convention, including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005;

¹⁸ Graham S. Pearson, *The Preparatory Committee for the Sixth BWC Review Conference*, Report from Geneva, Review no 25, The CBW Conventions Bulletin, Issue No. 71, May 2006. Available at <http://www.sussex.ac.uk/Units/spru/hsp/cbwcb71.pdf>

Although the agreed version omitted the final phrase *including any actions taken following the Meetings of Experts and Meetings of States Parties held from 2003-2005*, it is to be expected that States Parties will indeed include information on any actions that they have taken following the annual Meetings of Experts and Meetings of States Parties during 2003 to 2005. In many cases these actions are likely to relate to compliance with Article IV.

27. A further development was the adoption of Security Council Resolution 1540 (2004)¹⁹ on 28 April 2004. This records in its second paragraph that the Security Council:

2. Decides also *that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;*

The resolution also makes the point in its fifth paragraph that the Security Council:

5. Decides *that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;*

28. This resolution thus places an obligation on **all** States, whether they are party to the BTWC or not, to *adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery* [Emphasis added]. However, it needs to be recognized that the obligations under Article IV of the BTWC are more comprehensive in scope than those addressed in SCR 1540 (2004) in that Article IV requires that each State Party take necessary measures “*to prohibit and prevent*” [Emphasis added] the whole range of activities prohibited by Article I whereas in SCR 1540 **prevention** is only applied to “*illicit trafficking*”. Nor is Article IV limited to non-State actors. Unlike paragraph 2 of SCR 1540, the BTWC is addressed as fully to States and individuals in the service of a State as to anyone else. Article IV does not differentiate between agents of the State and others. **All** must be prohibited **and** prevented from engaging in any of the activities encompassed by Article I of the Convention.

29. As pointed out in Bradford Briefing Paper No. 6 (Second Series)²⁰ in July 2003, by definition, the national measures taken must do more than merely prohibit the forbidden activities; they must also prevent them. This **prevention** requirement sets a high standard of effectiveness. It is indeed a very stringent criterion to attach to national implementing measures, but it is explicitly included in Article IV of the Convention and thus constitutes one of the obligations flowing from the Convention. It can usefully be regarded as a test of the effectiveness of legislation and other measures of a prohibitory nature in each State Party.

¹⁹ United Nations, *Resolution 1540 (2004) Adopted by the Security Council at its 4956th meeting, on 28 April 2004*, S/RES/1540 (2004), 28 April 2004.

²⁰ Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Conference Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No. 6 (Second Series), July 2003, para 14. Available at <http://www.brad.ac.uk/acad/sbtwc>

If a State Party's legislative and other prohibitions are not strong enough even when enforced to **prevent** all the activities involving biological weapons which are defined in Article I of the Convention, whether undertaken by agents of the State or by non-State actors, they may not meet the SCR 1540 standard of “*appropriate effective laws which prohibit*” but they will certainly not meet the high standard set by Article IV. Such a State Party accordingly risks falling short of full compliance with its international obligations under the Convention.

30. The States Parties to the BTWC at the Sixth Review Conference need therefore to address both elements of Article IV – *to prohibit and prevent* – and it would be desirable for the Review Conference in its Final Declaration to express a common understanding of the significance of the prevention criterion set by Article IV and to recommend that States Parties take effective action by reviewing the effectiveness of their national measures to implement the prohibitions of the Convention in meeting the prevention criterion.

31. A more recent development has been the adoption by the European Union of a Joint Action 2006/184/CFSP²¹. This Joint Action to be carried out in 2006 and 2007 has as one of its objectives *support for the implementation of the BTWC by the States Parties* through the carrying out of a project aimed at *assistance to States Parties for the national implementation of the BTWC, in order to ensure that States Parties transpose the international obligations of the BTWC into their national legislation and administrative measures*. This sets out three common elements that must be achieved in the national implementing approach of the States Parties as being:

(i) adoption of national legislation, including penal legislation, which encompasses the full scope of the prohibitions of the Convention;

(ii) effective regulations or legislation to control and monitor transfers of relevant dual-use technologies;

(iii) effective implementation and enforcement to prevent violations and to sanction breaches.

32. A parallel development since the Fifth Review Conference has seen the adoption by the Chemical Weapons Convention of an Action Plan on national implementation measures undertaken by the States Parties to the CWC following their First Review Conference in 2003. At that Review Conference the States Parties agreed²²:

The First Review Conference called upon States Parties that have not already done so to inform the OPCW by the next regular session of the Conference of the status of their adoption of the legislative and administrative measures necessary for or taken by them to implement the Convention, of any problems they have encountered, and of any assistance they require. Having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties as well as the Secretariat, the First Review Conference...

²¹ European Union, *Council Joint Action 2006/184/CFSP of 27 February 2006 in support of the Biological and Toxin Weapons Convention, in the framework of the EU Strategy against the Proliferation of Weapons of Mass Destruction*, Official Journal of the European Union, L 65/51, 7.3.2006.

²² Organisation for the Prohibition of Chemical Weapons (OPCW), *Report of the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference) 28 April – 9 May 2003, RC-1/5, 9 May 2003*. Available at <http://www.opcw.org>.

(h) agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties. [Emphasis added] (RC-1/5, para.7.83).

33. Bradford Review Conference Paper No. 13²³ described the action being taken by the OPCW and a further update was published²⁴ in the *CBW Conventions Bulletin* of September/December 2005. The situation can be summarised as follows:

Status at	Number of States Parties	Number (and percentage) of States Parties that have submitted national implementation	Legislation covers area key to the enforcement of the CWC
May 1997	87	0 (0%)	Not available
December 1997	103	24 (23%)	Not available
November 1998	120	40 (33%)	Not available
July 1999	125	43 (34%)	Not available
May 2000	133	48 (36%)	Not available
May 2001	143	53 (38%)	Not available
October 2002	145	70 (48%)	39 (27%)
October 2003	154	94 (61%)	51 (33%)
November 2004	166	96 (58%)	52 (31%)
November 2005	174	106 (61%)	59 (34%)

This shows that even after the Action Plan, although almost two thirds of the States Parties to the CWC had submitted information on their national implementation to the OPCW, only about one third of the States Parties had succeeded in adopting legislation that covered the areas key to the enforcement of the CWC.

34. It is therefore essential that legislation adopted under Article IV of the BTWC encompasses the full scope of the prohibitions contained in the Convention. It is recommended that this should extend to the control and monitoring of relevant dual-use materials and technologies.

35. At the Sixth Review Conference of the BTWC, it is recommended that there should be some consideration to whether to adopt an action plan. It would be wise for the BTWC States Parties to adopt different terminology as the resources provided by the OPCW to support the CWC Article VII national implementation action plan will not be available. It is suggested that an achievement timeline which sets an interim target for two thirds of the States Parties to the BTWC to have adopted national implementation legislation by the time of the Seventh Review Conference would be an effective and desirable outcome. It would be greatly aided by one or more States Parties undertaking to provide resources to facilitate the adoption of

²³ Scott Spence, *Achieving Effective Action on Universality and National Implementation: The CWC Experience*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 13, April 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

²⁴ Santiago Oñate, Ralf Trapp and Lisa Tabassi, Decision on the Follow-up to the OPCW Action Plan on Article VII: Ensuring the Effective Implementation of the Chemical Weapons Convention, *CBW Conventions Bulletin*, Issue No 69 + 70, September/December 2005, pp. 5-10. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

legislation by States Parties as well as to monitor and report to the States Parties annually on progress towards this target. Alternatively, a parallel approach for the provision of the necessary resources to that which has been taken by the EU Joint Action could be adopted by the States Parties to the BTWC. An annual progress report would be appropriate at future annual Meetings of the States Parties at which agreement could be reached on additional action should that be necessary.

Issues for the Sixth Review Conference

36. The principal Article IV issue for the States Parties to consider at the Sixth Review Conference will be to encourage all States Parties to enact appropriate national legislation. This should have been given an added impetus by the consideration at the Review Conference of the Final Report²⁵ of the annual Meeting of States Parties in 2003 and by the requirements of Security Council Resolution 1540 (2004)²⁶.

37. As there continues to be great concern about the dangers of terrorist attack and other criminal activity, including the use of biological agents as in the still unsolved case of the attacks in September/October 2001 in the United States in which anthrax was sent through the postal system, it can be expected that the States Parties will be keen to adopt even stronger language in their Final Declaration at the Sixth Review Conference urging all States Parties to adopt any necessary national measures, including penal legislation. It should be possible for the Conference to strengthen the reference to penal legislation, without seeking to constrain States Parties' discretion in how they choose to enact penal legislation in accordance with their respective legal systems and traditions. In this regard it is encouraging that the G8 at St. Petersburg on 16 July 2006 in their Statement on Non-Proliferation²⁷ were able to move forward from the “*for example, penal legislation*” of the 1991 and 1996 Review Conference Final Declarations to the stronger formulation “*including penal legislation.*” It would also be desirable to make it clear that terrorist activity is a subset of criminal activity by adding the word ‘other’ before ‘criminal’ in the language carried forward from 1996.

38. The Conference might usefully also encourage States Parties to develop additional legal approaches to supplement national implementation measures under Article IV. There is much to be said for taking forward the ideas developed by the Harvard-Sussex Program who have developed a draft Convention²⁸ to prohibit biological and chemical weapons under international criminal law. The proposed Convention would make it an offence for any person, regardless of official position, to order, direct, or knowingly to participate or render substantial assistance in the development, production, acquisition, stockpiling, retention, transfer or use of biological or chemical weapons or to threaten the use of such weapons or to create or retain facilities intended for the production of such weapons. Any person who

²⁵ United Nations, *Meeting 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*, First Meeting, Geneva, 10-14 November 2003, Report of the Meeting of States Parties, BWC/MSP/2003/4, 24 November 2003. Available at <http://www.opbw.org>

²⁶ United Nations, *Resolution 1540 (2004) Adopted by the Security Council at its 4956th meeting, on 28 April 2004*, S/RES/1540 (2004), 28 April 2004.

²⁷ G8, *Statement on Non-Proliferation*, St. Petersburg, 16 July 2006. Available at <http://en.g8russia.ru/docs/20.html>

²⁸The CBW Conventions Bulletin, *A Draft Convention to Prohibit Biological and Chemical Weapons Under International Criminal Law*, Issue No 42, December 1998, pp. 1- 5. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html> See also *The HSP Draft Convention* at <http://lense.net.uk/Units/spru/hsp/Harvard-Sussex-Program-draft-convention.htm>

commits any of the prohibited acts anywhere would face the risk of apprehension, prosecution and punishment, or of extradition should that person be found in a state that supports the proposed Convention. This proposed Convention would provide a valuable complement to the existing BTWC and CWC by ensuring that any jurisdictional loopholes are closed and that impunity for criminal acts involving these weapons is thereby abolished. It could usefully be negotiated in the Sixth Committee of the United Nations General Assembly.

39. It is recommended that a further paragraph be added to the Article IV section of the Final Declaration as follows:

The Conference encourages States Parties to explore the possibility of negotiating in an appropriate forum, such as the Sixth Committee of the United Nations General Assembly, an international convention on the criminalisation of biological and chemical weapon activities which would emphasise individual criminal responsibility for acts stigmatized as international crimes. The Conference favours such international legal approaches to the criminalisation of all acts prohibited among States Parties as usefully supplementing national implementation measures under Article IV by ensuring that any jurisdictional loopholes are closed, and that impunity for criminal acts involving inter alia biological and toxin weapons is thereby abolished.

40. National implementation measures under Article IV should also include biosecurity regulations and codes of conduct for those engaged in the life sciences. The Conference could usefully build these expressions of national implementation even more firmly into the BTWC treaty regime by endorsing the principal findings of the 2003 Meeting of States Parties on topic ii and of the 2005 Meeting of States Parties on topic v and writing them into the cumulative text of its Final Declaration as extended understandings of the implications of Article IV.

41. In order for the Conference to endorse the principal findings of 2003 and 2005, and to show that it adopts them as its own, it is recommended that the propositions they contain be agreed by the Conference in the present tense but otherwise left almost unchanged from the texts of the reports of the respective Meetings of States Parties. For example, recognising the realities of the organisation of research and development activity in the life sciences, the 2005 Meeting of States Parties agreed on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff. There would be great value in the Conference adopting this finding as its own. The same is true of other findings from the 2003 and 2005 Meetings of States Parties. It is therefore recommended that all of them be adopted by the Conference as they stand. The inclusion of the relevant paragraphs in the Article IV section of the Final Declaration would have a wider significance. It would show that the Sixth Review Conference had succeeded in integrating two bodies of text – one inherited from the cumulative Final Declaration text of 1980-1996 and the other from the intersessional work programme of 2003-2005. The Conference would thereby have achieved, at least in this area of the BTWC, the successful confluence of two important streams of development flowing towards the further evolution of the treaty regime.

42. As addressed in the chapter²⁹ on Article IV: National Implementation: Education, Outreach and Codes of Conduct in this Briefing Book, it is also recommended that the States Parties in considering the value of education and outreach to aid the in-depth implementation of the Convention should incorporate the substance of the language relating to outreach and implementation in the eighth operative paragraph of Security Council resolution 1540 (2004) which states:

To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

into the Article IV section of the Final Declaration of the Sixth Review Conference by using language along the following lines modified slightly so as to include academia as well as industry:

The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.

It is also recommended that the States Parties should agree to hold an annual Meeting of States Parties prepared for by a Meeting of Experts during the intersessional period between the Sixth and Seventh Review Conferences to consider the topic:

Education and outreach for all those concerned with the life sciences.

Language for the Sixth Review Conference

43. The language to be adopted by the Sixth Review Conference in its Final Declaration might be similar to that adopted at the Fourth Review Conference but with stronger encouragement of States Parties to enact national measures and inclusion of an achievement timeline along the following lines:

*1. The Conference underlines the importance of Article IV. It reaffirms the commitment of States Parties to take the necessary national measures under this Article, in accordance with their constitutional processes. These measures are to ensure the prohibition and prevention of the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention anywhere within their territory, under their jurisdiction or under their control, in order to prevent their use for purposes contrary to the Convention. 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 other criminal activity.*

2. The Conference notes those measures already taken by a number of States Parties in this regard, including the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within

²⁹ Malcolm R. Dando, *Article IV: National Implementation: Education, Outreach and Codes of Conduct*, in Graham S. Pearson, Nicholas A. Sims & Malcolm R. Dando, *Key Points for the Sixth Review Conference*, University of Bradford, Department of Peace Studies, September 2006.

its territory, under its jurisdiction or under its control anywhere. The Conference invites each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures also to actions taken anywhere by natural persons possessing its nationality. The Conference believes that such measures which States Parties might undertake in accordance with their constitutional processes would strengthen the effectiveness of the Convention, as requested by previous Review Conferences.

3. The Conference having considered the importance of national implementation measures for the proper functioning of the Convention, and having reviewed the activities undertaken by the States Parties at and since the Meeting of States Parties in 2003, agrees to adopt an achievement timeline with the objective of achieving national legislation, including penal legislation, in two thirds of the States Parties by the time of the Seventh Review Conference. The Conference requests those States Parties in a position to do so to provide assistance and resources to the United Nations Department for Disarmament Affairs to facilitate the achievement of this objective. The Conference requests that an annual report of progress be provided to all States Parties.

4. The Conference, noting the stringency of the prevention criterion in Article IV and recognising the need for a common understanding of its implications, calls on each State Party to review thoroughly its measures of national implementation, in force or in prospect, including its penal legislation and administrative regulations, to ensure that they:

- a. encompass the full scope of the prohibitions contained in the Convention;*
- b. extend to the control and monitoring of relevant dual-use materials and technologies;*
- c. are subject to effective implementation and enforcement to prevent violations and to sanction breaches;*
- d. apply fully to the organs of the State and its agents, as well as to non-State actors;*
- e. are sufficiently stringent, in content and in enforcement, to prevent as well as to prohibit any of the activities encompassed in the Convention from being conducted within its territory, under its jurisdiction or under its control anywhere; and also, if constitutionally possible and in conformity with international law, from being conducted anywhere by natural persons possessing its nationality.*

5. The Conference notes that notwithstanding the differing legal and constitutional arrangements among the States Parties to the Convention, States have adopted similar basic approaches and share common principles. The Conference stresses the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The Conference agrees, to that end, on the value of the following:

- a. 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.

b. 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.

c. The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes recognising the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.

6. The Conference notes the importance of:

- Legislative, administrative and other measures designed to enhance domestic compliance with the Convention;

- Legislation regarding the physical protection of laboratories and facilities to prevent unauthorized access to and removal of microbial or other biological agents, or toxins:

- Inclusion in textbooks and in medical, scientific and military education programmes of information dealing with the prohibitions and provisions contained in the Biological and Toxin Weapons Convention and the Geneva Protocol of 1925.

- Adoption of codes of conduct for those engaged in relevant areas of science and technology.

7. The Conference in regard to the content, promulgation and adoption of codes of conduct recognises that:

a. while the primary responsibility for implementing the Convention rests with States Parties, codes of conduct, voluntarily adopted, for scientists in the fields relevant to the Convention can support the object and purpose of the Convention by making a significant and effective contribution, in conjunction with other measures including national legislation, to combating the present and future threats posed by biological and toxin weapons, as well as by raising awareness of the Convention, and by helping relevant actors to fulfil their legal, regulatory and professional obligations and ethical principles;

b. codes of conduct should reflect the provisions of the Convention and contribute to national implementation measures;

c. a range of different approaches exist to develop codes of conduct in view of differences in national requirements and circumstances;

d. codes of conduct should avoid impeding scientific discovery, placing undue constraints on research or international cooperation and exchange for peaceful purposes;

e. science should be used for peaceful purposes only but has the potential to be misused in ways that are prohibited by the Convention, and therefore codes of conduct should require and enable relevant actors to have a clear understanding of the content, purpose and reasonably foreseeable consequences of their activities, and of the need to abide by the obligations contained in the Convention.

8. In addition, the Conference recognises that all those with a responsibility for, or legitimate interest in, codes of conduct should be involved in their development, promulgation and adoption. The Conference agrees on the value of codes of conduct applying not just to scientists, but to all those involved in scientific activity, including managers and technical and ancillary staff.

9. On the content of codes of conduct, recognising the principles listed in paragraph 7 above, the Conference agrees on the importance of codes of conduct being:

a. compatible with national legislation and regulatory controls and contributing to national implementation measures;

b. simple, clear and easily understandable both to scientists and to wider civil society;

c. relevant, helpful and effective for guiding relevant actors in making decisions and taking action in accordance with the purposes and objectives of the Convention;

d. sufficiently broad in scope;

e. regularly reviewed, evaluated for effectiveness, and revised as necessary.

10. On the adoption of codes of conduct, recognising that it is important to build on and coordinate with existing efforts, and avoid imposing burdensome and duplicative measures, the Conference agrees on the value of:

a. demonstrating the benefits of codes and encouraging relevant actors to develop codes themselves;

b. using existing codes, mechanisms, frameworks and bodies as far as possible; and

c. tailoring adoption strategies according to the needs of each relevant sector.

11. On the promulgation of codes of conduct, recognising that codes of conduct will be most effective if they, and the principles underlying them, are widely known and understood, the Conference agrees on the value of continuous efforts on promulgation through appropriate channels.

12. *The Conference having reviewed the activities in regard to codes of conduct undertaken by the States Parties at and since the Meeting of States Parties in 2005, calls upon all States Parties to foster the adoption of such codes of conduct as appropriate and to provide an annual report of progress thereon to the United Nations Department for Disarmament Affairs to provide to all States Parties*

13. *The Conference recognizing the benefits of promoting effective national implementation of Article IV of the Convention calls upon all States Parties to develop appropriate ways to work with and inform industry, academia and the public regarding their obligations under such laws.*

14. *The Conference further agrees that the States Parties would hold an annual Meeting of States Parties prepared by a Meeting of Experts during the intersessional period prior to the Seventh Review Conference to consider education and outreach for all those concerned with the life sciences.*

15. *The Conference notes that some States Parties, as requested by previous Review Conferences, have provided to the United Nations Department for Disarmament Affairs information on the texts of specific legislation enacted or other measures taken to assure domestic compliance with the Convention. The Conference invites these States Parties, and encourages all States Parties, to provide such information and texts in the future. In this regard the Conference welcomes information provided by States Parties in response to the confidence-building measure agreed to at the Third Review Conference entitled "Declaration of legislation, regulations and other measures". In addition, the Conference encourages all States Parties to provide any useful information on the implementation of such measures to the United Nations Department for Disarmament Affairs or on request to an individual State Party.*

16. *The Conference encourages cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime.*

17. *The Conference encourages States Parties to explore the possibility of negotiating in an appropriate forum, such as the Sixth Committee of the United Nations General Assembly, an international convention on the criminalisation of biological and chemical weapon activities which would emphasise individual criminal responsibility for acts stigmatized as international crimes. The Conference favours such international legal approaches to the criminalisation of all acts prohibited among States Parties as usefully supplementing national implementation measures under Article IV by ensuring that any jurisdictional loopholes are closed, and that impunity for criminal acts involving inter alia biological and toxin weapons is thereby abolished.*

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