

AGENDA ITEM 11: CONSIDERATION OF ISSUES IDENTIFIED IN THE REVIEW OF THE OPERATION OF THE CONVENTION AS PROVIDED FOR IN ITS ARTICLE XII AND ANY POSSIBLE CONSENSUS FOLLOW-UP ACTION

by Graham S. Pearson & Nicholas A. Sims

Introduction

1. At the Preparatory Committee Meeting held on 26 to 28 April 2006 for the Sixth Review Conference of the BTWC, the Provisional Agenda agreed for the Sixth Review Conference included as Agenda Item 11 *Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action*. This agenda item replaced the two Agenda Items 11 and 12 in the Agenda for the Fourth Review Conference and for the Fifth Review Conference:

11. Consideration of issues identified in the review of Article XII contained in the Final Declaration of the Third Review Conference, and possible follow-up action

12. Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994

At the Fourth Review Conference the Final Declaration included a section entitled *Consideration of the work of the Ad Hoc Group established by the Special Conference in 1994* which enabled language relating to Agenda Item 12 to be recorded.

2. It is thus apparent that Agenda Item 11 for the Sixth Review Conference is deliberately expressed so as to be more open-ended and to provide the opportunity for the States Parties at the Sixth Review Conference to include a section in the Final Declaration which could be entitled *Consideration of issues identified in the review of the operation of the Convention as provided for in its Article XII and any possible consensus follow-up action*. As the words *as provided for in its Article XII* are nugatory, the section in the Final Declaration could with advantage be simplified to *Consideration of issues identified in the review of the operation of the Convention and any possible consensus follow-up action*.

3. This section in the Final Declaration enables the various issues and consensus follow-up action identified and elaborated in the individual sections addressing individual Articles of the Convention in the Final Declaration to be brought together in this final section on Agenda Item 11 thereby summarizing what needs to be addressed during the intersessional period between the Sixth and Seventh Review Conferences. This section does not attempt to be exhaustive: in particular States Parties are also called upon as appropriate (in relation to Article VIII) to ratify or accede to the Geneva Protocol, or to withdraw reservations to the Geneva Protocol, and (in relation to Article IX) to ratify or accede to the Chemical Weapons Convention, if they have not already done so. These and other politically binding commitments, agreed by consensus in the Final Declarations of earlier Review Conferences and reaffirmed by this Conference, are not repeated in this Agenda Item 11 section of the Final Declaration only because they are not envisaged as requiring possible consensus follow-up action in the form of specific meetings during the intersessional period.

Issues and Follow-up Action agreed at the Sixth Review Conference

4. The issues recommended in this Briefing Book to form the basis of consensus follow-up action are the following:

a. **Article IV.** The adoption of an achievement timeline as recommended in paragraph 3 of the Article IV section of the Final Declaration:

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.

b. **Article IV.** Education and Outreach. The recognition that education and outreach will aid the in-depth implementation of the Convention and the holding of an annual Meeting of States Parties prepared by a Meeting of Experts as recommended in paragraph 14 of the Article IV section of the Final Declaration:

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.

c. **Article V.** Confidence-Building Measures. The holding of an annual Meeting of States Parties in 2007 prepared for by a Meeting of Experts as recommended in paragraph 6 of the Article V section of the Final Declaration:

6. The Conference, mindful of the provisions of Article V and Article X, and determined to strengthen the authority of the Convention and to enhance confidence in the implementation of its provisions, agrees that the States Parties are to implement, on the basis on mutual co-operation, the following measures, in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities:

1. The exchange of information in the Confidence-Building Measures agreed at the Second Review Conference and extended at the Third Review Conference.

2. The further extension of these Confidence-Building Measures to include the provision of data on facilities handling category 4 animal pathogens and plant inoculants and biocontrol production facilities as well as facilities producing animal vaccines.

3. *The exchange of information in a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.*

The Conference decides to hold a Meeting of Experts from States Parties to review, improve and finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The Meeting of Experts shall be held in Geneva for the period [two week period] 2007 and shall make recommendations to a subsequent Meeting of States Parties for decision.

d. **Article V.** Strengthening the effectiveness and improving the implementation of the Convention. The holding of an ad hoc meeting (s) of governmental experts in 2007 (or in a later year in the intersessional period between the Sixth and Seventh Review Conferences) to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective as recommended in paragraph 7 of the Article V section of the Final Declaration:

7. The Conference reaffirms the importance of strengthening the effectiveness and improving the implementation of the Convention and decides that a group of governmental experts open to all States Parties shall hold an ‘ad hoc’ meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve this objective.

e. **Article VII.** Assistance. The holding of a Meeting of States Parties to develop and agree a procedure for the provision of assistance as recommended in paragraph 8 of the Article VII section of the Final Declaration:

8. The Conference considered the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease and agreed that a Meeting of States Parties prepared by a Meeting of Experts would be held during the intersessional period prior to the Seventh Review Conference to develop and agree a procedure for the provision of timely assistance to States Parties on request.

f. **Article X.** International Cooperation. The holding of a Meeting of States Parties to develop and agree a procedure to facilitate international cooperation as recommended in paragraph 15 of the Article X section of the Final Declaration:

15. The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages States Parties in a position to do so to provide such information. The Conference further decides that a future annual Meeting of States Parties prepared by a Meeting of Experts shall be held during the intersessional period between the Sixth and Seventh Review Conferences to consider and take action on the topic:

- *To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.*

g. **Article XIV.** Universality. The mounting of an initiative to encourage universality through ratification or accession to the Convention, including the Conference's call to all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention as recommended in paragraphs 2 and 3 of the Article XIV section of the Final Declaration:

2. The Conference calls upon States which have not yet ratified or acceded to the Convention to do so without delay, thus contributing to the achievement of universal adherence to the Convention. The Conference authorises its [Intersessional Committee of Oversight][standing secretariat] to follow up this request from the Conference by undertaking demarches as appropriate to such States and making annual reports on the outcome of efforts to increase adherence.

3. In this connection, the Conference calls upon all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention.

h. **Article XII.** Interim supporting structures. The recommendation that the Sixth Review Conference should authorise its President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences. The principal strengthening structure might take the form of a representative Intersessional Committee of Oversight or of an Annual Meeting of States Parties as recommended in the two alternative versions of paragraph 4 of the Article XII section of the Final Declaration. The alternative based on an Annual Meeting of States Parties is reproduced here:

4. The Conference, conscious of the need for interim strengthening structures in support of the Convention to bridge the five years' interval between the Sixth and Seventh Review Conferences, decides that the States Parties shall hold an Annual Meeting:

(a) to follow up the Final Declaration and decisions of this Conference;

(b) to exercise a general oversight over the effective application of the provisions of, and the balanced operation of, the Convention as a whole, including its programme of confidence-building measures established by the Second and Third Review Conferences and possible consensus follow-up action as agreed by the Sixth Review Conference, in the interests of the States Parties as a collectivity;

(c) to ensure an opportunity for States Parties to undertake collective scrutiny of new scientific and technological developments relevant to the Convention at least once a year;

(d) to assist States Parties in fulfilling their obligations under the Convention, including national implementation measures, and their politically binding commitments, including confidence-building measures, under the Final Declarations of successive Review Conferences;

(e) to promote universal adherence to the Convention, including the organisation of demarches on its behalf to States Signatories which have yet to ratify their signatures, to encourage their ratification, and to non-signatories, to encourage their accession to the Convention;

(f) to represent the States Parties to the Convention as a collectivity in relations with the United Nations, and with other organizations as appropriate;

(g) to establish, as it finds necessary for the exercise of its functions, subsidiary organs such as a Legal Advisory Panel and a Scientific Advisory Panel with appropriate terms of reference;

(h) to establish, in consultation with the Secretary-General of the United Nations, a small standing secretariat dedicated exclusively to the service of the Convention including this Annual Meeting and its Panels;

(i) to report to the Seventh Review Conference, including a recommendation on whether this mandate should be extended, with or without amendment, under the authority of the Seventh Review Conference to bridge the interval between the Seventh and Eighth Review Conferences.

5. The Conference decides that the Annual Meeting of States Parties:

(a) shall meet no less often than once a year between the Sixth and Seventh Review Conferences;

(b) shall operate by consensus;

(c) shall be chaired by the President of the Sixth Review Conference;

(d) shall be financed pro rata as an appendix to the Sixth Review Conference;

(e) shall meet with experts, or preceded by meetings with experts, and with the assistance of working groups, as needed;

(f) shall issue interim reports at least annually on its work, in addition to the report to the Seventh Review Conference required

under paragraph 4(i). Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate.

6. The Conference authorises its President and General Committee to take the necessary steps to implement the provisions of paragraphs 4 and 5 and requests them to report thereon to the Seventh Review Conference, including the report of the Annual Meeting of States Parties to be made under paragraph 4(i).

5. There are therefore proposals for consensus follow-up action in the areas of national implementation and of universality for which the interim supporting structures recommended in Article XII section will be essential together with annual Meetings of the States Parties prepared for by Meetings of Experts during the intersessional period before the Seventh Review Conference on the following topics:

a. In 2007 to review, improve and finalise the modalities for the exchange of information and data in the annual Confidence-Building Measures by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration.

b. To consider education and outreach for all those concerned with the life sciences.

c. To develop and agree a procedure for the provision of timely assistance to States Parties on request.

d. To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.

In addition, there is the proposal that a group of governmental experts open to all States Parties shall hold an 'ad hoc' meeting(s) in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention.

Language for the Sixth Review Conference

6. It is recommended that the following language be adopted by the Sixth Review Conference for inclusion in a final section on Agenda Item 11 in its Final Declaration:

Consideration of Issues considered at the Sixth Review Conference and possible consensus follow-up action

The Conference notes the issues identified in its review of the operation of the Convention and possible follow-up action and in particular the following:

– The adoption of 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.

– *Its call to all States Parties to cooperate in seeking to achieve an interim target of 180 States Parties by the time of the Seventh Review Conference in 2011 as a further step towards the achievement of universal adherence to the Convention.*

– *Its decision to hold further annual Meetings of States Parties prepared by Meetings of Experts during the intersessional period prior to the Seventh Review Conference to consider and take action on such topics as shall be decided by the annual Meeting of States Parties and which shall include:*

- *In 2007 to review, improve and finalise the modalities for the exchange of information and data in the annual Confidence-Building Measures by working out, inter alia, appropriate forms to be used by States Parties for the exchange of information agreed to in this Final Declaration.*

- *To consider education and outreach for all those concerned with the life sciences.*

- *To develop and agree a procedure for the provision of timely assistance to States Parties on request.*

- *To develop a procedure to facilitate international cooperation between States Parties and as part thereof to develop and adopt a Confidence-Building Measure to enhance transparency of cooperation between States Parties under Article X.*

– *Its decision to hold an ‘ad hoc’ meeting(s) of a group of governmental experts open to all States Parties in 2007 [or in a later year in the intersessional period between the Sixth and Seventh Review Conferences] to consider and recommend to a subsequent Meeting of States Parties how best to achieve the objective of strengthening the effectiveness and improving the implementation of the Convention.*

– *Its decision to authorise its President and General Committee to undertake continuing tasks after the end of the Conference in order to provide interim strengthening structures in support of the Convention, designed to bridge the interval between the Sixth and Seventh Review Conferences by means of [a representative Intersessional Committee of Oversight] [an Annual Meeting of States Parties].*