

**AGENDA ITEM 10c: PREAMBULAR PARAGRAPHS AND
PURPOSES OF THE CONVENTION**

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Solemn Declaration and Preamble at the Fourth Review Conference

1. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration¹ contained a Solemn Declaration followed by a paragraph on the Preamble to the Convention:

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, WHICH MET IN GENEVA FROM 25 NOVEMBER TO 6 DECEMBER 1996 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- *Their conviction that the Convention is essential to international peace and security;*

- *Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;*

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

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

- *Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;*

- *Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and agreed procedures for consultations*

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>

agreed by the Second and Third Review Conferences, and through the fulfilment of the mandate entrusted to the Ad Hoc Group established by the Special Conference in 1994;

- Their recognition that effective verification could reinforce the Convention;*
- Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;*
- Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*

The States Parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

Preamble

The Conference reaffirms the importance of the elements in review of the Preamble to the Convention contained in the Final Declaration of 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.

2. The Solemn Declaration and the paragraph on the Preamble were developed from those in the Final Declaration² of the Third Review Conference which were as follows:

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, HAVING MET IN GENEVA FROM 9 TO 27 SEPTEMBER 1991 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- Their conviction that the Convention is essential to international peace and security;*
- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;*
- Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and*

² United Nations, *The Third Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Geneva, 9–27 September 1991, BWC/CONF.III/23, Geneva 1992. Available at <http://www.opbw.org>

toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

- Their reaffirmation of their firm commitment to the purposes of the preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;

- Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and organizational arrangements set out below;

- Their recognition that effective verification could reinforce the Convention;

- Their conviction that the full implementation of the provisions of the Convention should not hamper economic and technological development and international cooperation in the field of peaceful biological activities.

The State parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

Preamble

The Conference reaffirms the importance of the elements in the review of the Preamble to the Convention contained in the Final Declaration of 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.

3. The Solemn Declaration at the Fourth Review Conference contained an additional two points whilst the paragraph on the Preamble was essentially identical to that at the Third Review Conference with the omission of the word "the" from the phrase "in the review" in the first line.

4. The changes in the Solemn Declaration at the Fourth Review Conference were as follows. The first two points are identical to those in the Third Review Conference. The third point, reaffirming that *under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention*, is new. The fourth and fifth points are identical to those in the Third Review Conference. The sixth point is developed from that at the Third Review Conference by the replacement of the words at the end "*and the organizational arrangements set out below;*" by the words "*and agreed procedures for consultations agreed by the Second and Third Review Conferences, and through the fulfilment of the mandate entrusted to the Ad Hoc Group established by the Special Conference in 1994;*" The seventh point is identical as is the eighth apart from the replacement in the second line of the words "*not hamper*" by the word "*facilitate*". The ninth point recording "*Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*" is new. Both of the new points -- the third and the ninth -- provide valuable extended understandings that use is prohibited under any circumstances.

5. The reference in the paragraph under the heading of *Preamble* is to the elements in the review of 1986 and refers back to the language agreed at the Second Review Conference³ in which there was no Solemn Declaration but instead similar language under the single heading of *Preamble* as follows:

PREAMBLE

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, having met in Geneva 8-26 September 1986 in accordance with a decision by the First Review Conference 1980 and at the request of a majority of States Parties to the Convention with a view to assuring that the purposes of the Preamble and the provisions of the Convention are being realised.

Reaffirming their determination to act with a view to achieving effective progress towards general and complete disarmament, including the Prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognising the continuing importance of the Convention and its objectives and the common interest of mankind in the elimination of bacteriological (biological) and toxin weapons,

Affirming their belief that universal adherence to the Convention would enhance international peace and security, would not hamper economic or technological development and, further, would facilitate the wider exchange of information for the use of bacteriological (biological) agents for peaceful purposes,

Confirming the common interest in strengthening the authority and the effectiveness of the Convention, to promote confidence and co-operation among State Parties,

Affirming the importance of strengthening international co-operation in the field of biotechnology, genetic engineering, microbiology and other related areas,

Reaffirming their adherence to the principles and objectives of the Geneva Protocol of 17 June 1925 and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the said principles and objectives,

Recognising the importance of achieving as a matter of high priority an international convention on the complete and effective prohibition of the development, production and stockpiling of chemical weapons and on their destruction,

³ United 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/II, Geneva 1986. Available at <http://www.opbw.org>

Noting the relevant provisions of the Final Document of the first special session of the General Assembly devoted to disarmament,

Appealing to all States to refrain from any action which might place the Convention or any of its provisions in jeopardy,

Declare their strong determination, for the sake of all mankind, to, exclude completely the possibility of microbial, or other biological agents, or toxins being used as weapons and reaffirm their strong support for the Convention, their continued dedication to its principles and objectives and their legal obligation under international law to implement and strictly comply with its provisions.

6. Simple reaffirmation of the **language** of 1986 as it stood would have been impossible in 1996 because the Chemical Weapons Convention had been concluded in the meantime and was about to enter into force, thereby rendering the eighth preambular paragraph redundant. The reaffirmation instead of **the importance of the elements** – a formulation introduced in 1991 – avoided the need to reopen and update the 1986 language paragraph by paragraph. It enabled the Third and Fourth Review Conferences to concentrate instead on the Solemn Declaration. The latter drew on the 1986 language but included new language in a new structure, no longer following the arrangement of preambular paragraphs which the Second Review Conference had inherited, and slightly expanded, from the First Review Conference.

Developments since the Fourth Review Conference

7. Since the Fourth Review Conference there have been a number of significant developments relevant to the Biological and Toxin Weapons Convention:

a. The entry into force on 29 April 1997 and subsequent implementation of the Chemical Weapons Convention (CWC);

b. The scientific and technological developments relevant to the Convention. There have been major developments – indeed the 21st Century has been declared as the age of biotechnology and genomics. These developments are of particular relevance not only to Article I – the basic prohibition – but also to Article VII – assistance – and to Article X – technical cooperation.

c. The lack of unanimity in the Security Council which led to the termination at the end of 1998 of the operations of the United Nations Special Commission (UNSCOM) in Iraq and its replacement by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC).

d. The continued stalemate in the trilateral process involving the UK, the USA and Russia addressing the dismantlement of the offensive biological weapons programme of the former Soviet Union, which cast doubt on the credibility of the commitment to fulfil their arms control and disarmament obligations and to prevent proliferation made on 31 January 1992 by the Security Council meeting at Heads of State and Government level.

e. The ending in July 2001 of the negotiations in the Ad Hoc Group that had been addressing a legally binding instrument to strengthen the effectiveness and improve

the implementation of the Convention and the subsequent holding of the Fifth Review Conference without agreement on a Final Declaration.

f. The increased concern world-wide and especially in the United States following the anthrax attacks in September/October 2001 about the use of biological agents and toxins by non-State actors which underlines the importance of taking further the steps that were taken at the Fourth Review Conference to ensure that individuals or subnational groups are effectively prevented from acquiring or using such agents for other than peaceful purposes.

g. The successful annual Meetings of the States Parties to the BTWC in 2003, 2004 and 2005 prepared for by two week Meetings of Experts to consider five specific topics as agreed by the Fifth Review Conference.

h. The adoption by the Security Council of Resolution 1540 (2004) with its key operating paragraphs in which the Security Council:

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

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;

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall

Consequently, every State – whether or not a State Party to the BTWC – is required to *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,* [Emphasis added]

i. The G8 statement on non-proliferation in St. Petersburg on 16 July 2006 which stated:

*We call on all states not Party to the Treaty on the Non-proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), the **Biological and Toxin Weapons Convention (BTWC)** and the 1925 Geneva Protocol to accede to them without delay and those states that have not yet done so to subscribe to the Hague Code of Conduct Against Ballistic Missile Proliferation.* [Emphasis added]

This statement went on to specifically address the BTWC stating that:

We look forward to a successful 6th BTWC Review Conference dedicated to the effective review of the operation of the Convention. We will facilitate adoption by the Review Conference of decisions aimed at strengthening and enhancing the implementation of the BTWC.

We call upon all States Parties to take necessary measures, including as appropriate the adoption of and implementation of national legislation, including penal legislation, in the framework of the BTWC, in order to prohibit and prevent the proliferation of biological and toxin weapons and to ensure control over pathogenic micro organisms and toxins. We invite the States Parties that have not yet done so to take such measures at the earliest opportunity and stand ready to consider appropriate assistance. In this regard, we welcome initiatives such as the 2006 EU Joint Action in support of the BTWC.

j. The continuing absence of any organisation or institution or dedicated standing secretariat to steer the regime to totally prohibit biological weapons has become all the more glaring by comparison with the Organization for the Prohibition of Chemical Weapons and its implementation of the Chemical Weapons Convention. When coupled with the rate in which major developments are occurring in biotechnology and microbiology, there is a compelling argument for interim supportive institutions to nurture and sustain the regime against biological weapons.

8. The Sixth Review Conference is of particular importance to **all** States Parties as it is taking place at a time of particular challenge and opportunity. The events of 11 September 2001 and subsequent developments including the anthrax attacks in the United States underline the importance of **totally** preventing the development, production, acquisition or use of biological weapons by anyone or any State whatsoever. The successful annual Meetings of the States Parties in 2003-2005 have raised expectations that the Sixth Review Conference will achieve successful outcomes including an agreed Final Declaration and agreed follow-up action in a number of areas to strengthen the Convention regime and improve its implementation.

Issues for the Sixth Review Conference

9. There would be particular advantage in the Solemn Declaration including language that reaffirms the value of the Convention, particularly in respect of Articles III and IV, in preventing any person whatsoever acquiring, developing, producing, retaining, stockpiling, transferring, or using biological or toxin weapons for purposes prohibited under the Convention.

10. In the language recommended below for the Solemn Declaration, a new sixth point is added addressing the prevention of the use of biological and toxin weapons, and all the prior activities prohibited by the Convention, by any person whatsoever, including in terrorist or other criminal activity. It is also recommended that as the Final Declarations of successive Review Conferences have accumulated a valuable body of extended understandings and agreements, there would be benefit in the Solemn Declaration adopting language which recognizes that the Convention has been enhanced and strengthened through the extended

understandings agreed by successive Review Conferences by consensus and recorded in their Final Declarations.

11. In the eighth point, language has been reintroduced – drawn from the Solemn Declaration of the Third Review Conference – referring to *organizational arrangements*, as there is a compelling need for interim supportive structures as addressed in the chapter on Article XII of this Briefing Book. In the same point, language has been modified, in anticipation of further possible consensus follow-up action, so as to refer to *other measures agreed by the Review Conferences* without specifying the nature of such measures.

12. It is suggested that the Sixth Review Conference should adopt similar language to that in the Final Declaration of the Fourth Review Conference for its paragraph on the Preamble. This refers back to the importance of the elements in the review of the Preamble to the Convention contained in the Final Declaration of the **Second** Review Conference. Also, in the paragraph on the Preamble, the word "*the*" has been reinserted, as in the Final Declaration of the Third Review Conference.

Language for the Sixth Review Conference

13. The language to be adopted by the Sixth Review Conference might therefore be along the following lines, in which changes from the Fourth Review Conference are highlighted:

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, WHICH MET IN GENEVA FROM 20 NOVEMBER TO 8 DECEMBER 2006 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- Their conviction that the Convention is essential to international peace and security;

- Their reaffirmation of their determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and their conviction that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control;

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

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

- *Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention, and of their belief that universal adherence to the Convention would enhance international peace and security;*
- *Their reaffirmation of their firm commitment through the adoption of national measures to prevent the acquisition, development, production, retention, stockpiling, transfer or use of biological and toxin weapons by any person whatsoever, including in terrorist or other criminal activity;*
- *Their recognition that the Convention has been enhanced and strengthened through the extended understandings agreed by successive Review Conferences by consensus and recorded in their Final Declarations;*
- *Their determination to enhance the implementation and effectiveness of the Convention and to further strengthen its authority, including through the confidence-building measures and agreed procedures for consultations agreed by the Second and Third Review Conferences, **the organizational arrangements set out below**, and through other measures agreed by the Review Conferences.*
- *Their recognition that effective verification could reinforce the Convention;*
- *Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;*
- *Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*

The States Parties recognize that the important principles contained in this Solemn Declaration can also serve as a basis for further strengthening of the Convention.

Preamble

*The Conference reaffirms the importance of the elements in **the** review of the Preamble to the Convention contained in the Final Declaration of 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.*