

Strengthening the Biological Weapons Convention

Briefing Paper No 8 (Second Series)

Preparing for the First Meeting of the States Parties: I: National Implementing Legislation

October 2003

Series Editors

Graham S Pearson and Malcolm R Dando

Department of Peace Studies, University of Bradford

Strengthening the Biological Weapons Convention

Briefing Paper No 8 (Second Series)

Preparing for the First Meeting of the States Parties: I: National Implementing Legislation

Graham S. Pearson & Nicholas A. Sims

Series Editors

Graham S Pearson and Malcolm R Dando

Department of Peace Studies

University of Bradford

Bradford, UK

October 2003

PREPARING FOR THE FIRST MEETING OF THE STATES PARTIES:

I: NATIONAL IMPLEMENTING LEGISLATION

by Graham S. Pearson* and Nicholas A Sims†

Introduction

1. The Meeting of Experts of the States Parties to the Biological and Toxin Weapons Convention in Geneva on 18 to 29 August 2003 was held, in accordance with the decision taken by the Fifth Review Conference¹, to prepare for the annual meeting of the States Parties of one week duration to be held in 2003 *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;*

The first week of the Meeting of Experts addressed the first topic and the second week the second topic. 83 States Parties participated in the Meeting of Experts which heard national overview statements on national measures to implement the prohibitions of the Convention from 16 States Parties on Monday 18 August and then on subsequent days during the first week heard a total of 37 thematic presentations on this topic². During the two week period, 66 Working Papers were presented by States Parties on the two topics.

2. Although previous Briefing Papers^{3 4} had urged the States Parties in the report of the Meeting of Experts to start to identify the *common understandings and effective action* that had emerged as it was recognised that there would be little time to develop agreed language for such common understandings and effective action during the one week Meeting of the States Parties on 10 to 14 November 2003, the Meeting of Experts has produced only a factual report. This is in accordance with the requirement in the decision of the Fifth Review Conference that "*The meeting of experts will prepare factual reports describing their work.*" but it did not offer draft text for the Meeting of States Parties to work on, as had been hoped.

* Graham S. Pearson is a Visiting Professor of International Security in the Department of Peace Studies at the University of Bradford, Bradford, West Yorkshire BD7 1DP, UK.

† Nicholas A. Sims is a Reader in International Relations in the Department of International Relations at the London School of Economics and Political Science, University of London, Houghton Street, London WC2A 2AE, UK.

¹United Nations, *Fifth Review Conference of the 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, 2002. Available at <http://www.opbw.org>

²United 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, Meeting of Experts, Geneva, 18 - 29 August 2003*, Report of the Meeting of Experts (Part I), BWC/MSP.2003/MX/4 (Part I), 18 September 2003. Available at <http://www.opbw.org>

³Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No.6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁴Graham S. Pearson, *Maximizing the Benefits of the Inter Review Process: II: Security & Oversight of Pathogenic Microorganisms and Toxins*, University of Bradford, Department of Peace Studies, Briefing Paper No.7 (Second Series), August 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

3. The Report of the Meeting of Experts in August 2003 is in two parts. Part I⁵ provides a four page procedural report of the meeting to which is attached Annex I providing a list of the documents. Part II⁶ is a 172 page document prepared to meet the decision of the Meeting of Experts that "*all the statements, presentations and contributions made available to the Chairman by the States Parties would be attached to this Report, in the language of submission, as Annex II*". However, Annex II in Part II is preceded by a note from the Secretariat that:

"the statements, presentations and contributions included in this part of the report are presented in the languages of submission. In cases where the language of submission is not English, the text as submitted is followed by an informal transcript of the English interpretation, made from the tape recording of the meeting. These transcripts are not an official record, and are provided solely as a convenience to delegations. They may differ from the texts submitted. Statements, presentations and contributions which were submitted as working papers are not included in this Annex; please refer to the Annex I for the list of working papers."

It is not easy to analyse the information provided in Annex II as no indication is provided as to where *statements, presentations and contributions which were submitted as working papers* -- and thus are not included in Annex II -- were made during the Meeting of Experts, nor is there any indication in Annex II as to where the statements, presentations and contributions fit into the agreed detailed programme of work⁷ which broke down the two topics into subtopics and further detailed subelements.

4. This Briefing Paper starts from the material presented in Briefing Paper No. 6 and develops this in the light of the material presented by States Parties at the Meeting of Experts in order to propose language for the first topic -- national measures to implement the prohibitions in the Convention -- for the Report of the First Meeting of States Parties in November 2003. It is recognised that the time available at the Meeting of the States Parties will be extremely limited and consequently it would be unrealistic to expect the Report to consist of more than a couple of pages -- about a page on the first topic and another on the second topic. The aim here is thus to propose language for about a one page report on the first topic. As in Briefing Paper No. 6⁸ and the earlier Briefing Papers No. 2⁹ and No. 3¹⁰ the proposed language for the common understandings and possible effective action that could appear in the Report of the First Meeting of States Parties in the context of the forthcoming Sixth Review Conference is based on the extended understandings agreed at previous Review Conferences.

⁵United 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, Meeting of Experts, Geneva, 18 - 29 August 2003*, Report of the Meeting of Experts (Part I), BWC/MSP.2003/MX/4 (Part I), 18 September 2003. Available at <http://www.opbw.org>

⁶United 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, Meeting of Experts, Geneva, 18 - 29 August 2003*, Report of the Meeting of Experts (Part I), BWC/MSP.2003/MX/4 (Part II), 18 September 2003. Available at <http://www.opbw.org>

⁷United 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, Meeting of Experts, Geneva, 18 - 29 August 2003*, Provisional Programme of Work for the Meeting of Experts, BWC/MSP.2003/MX/2, 28 July 2003. Available at <http://www.opbw.org>

⁸Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No. 6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁹Nicholas A. Sims, *The New Multilateral Process For The BTWC: Ambiguities And Opportunities*, University of Bradford, Department of Peace Studies, Briefing Paper No. 2 (Second Series), January 2003, paragraph 19. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹⁰Graham S. Pearson & Nicholas A. Sims, *National Measures to Implement the Prohibitions in the BTWC*, University of Bradford, Department of Peace Studies, Briefing Paper No. 3 (Second Series), March 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

The Meeting of Experts in August 2003

5. The Meeting of Experts considered the national measures to implement the prohibitions in the Convention during the week of Monday 18 to Friday 22 August 2003. National overview statements were made on the first day by 16 States Parties and contributions and presentations were made by States Parties on their national implementing measures which included Argentina, Australia, Brazil, Bulgaria, China, Cuba, Czech Republic, Finland, Germany, India, Iran, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Netherlands, Poland, Russian Federation, South Africa, Thailand, Turkey, Ukraine, United Kingdom and the United States. In addition, 12 (Austria, Belgium, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the UK) of the 15 EU countries contributed detailed information on national implementing measures to a composite Working Paper¹¹. It was evident that most of the States Parties which made statements, contributions and presentations to the Meeting of Experts had enacted national legislation to implement the prohibitions of the Convention and had national export control legislation and regulations.

6. During the week, statements, presentations and contributions were made on successive days as the various subtopics of national implementing measures set out in the agenda were considered:

- A. *Legal, Regulatory and Administrative Systems.*
- B. *Prohibitions*
- C. *Restrictions*
- D. *Practical Implementation and Enforcement*
- E. *Criminalization and Law Enforcement.*

Although Annex II in Part II of the Final Report includes statements, presentations and contributions made on each day, the material available together with the Working Papers do not fall neatly into the various Agenda item headings and subelements. It is also evident, as noted above, that a detailed analysis leading to an extensive set of detailed common understandings and hence of possible effective action would not be feasible given the reality of the one week duration of the Meeting of States Parties and hence the impossibility of agreeing a report of more than a few pages.

7. The situation is assisted, however, by the fact that some of the contributions and Working Papers address the issues conceptually identifying core elements. It is also very clear that there are indeed common understandings among the States Parties of the need for national measures to implement the prohibitions of the Convention. Furthermore, such national measures need to be implemented effectively through appropriate national institutional mechanisms.

8. The central prohibitions of the Convention are in Article I and in Article III. Article I states that:

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;*
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

¹¹Austria, Belgium, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the UK, BTWC and Related Legislation, *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, Meeting of Experts, Geneva, 18 - 29 August 2003*, BWC/MSP.2003/MX/WP.62, 4 September 2003. Available at <http://www.opbw.org>

Article III states that:

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of this Convention.

It follows that the core elements for national implementing and penal legislation should include:

- a. Prohibitions of the development, production, stockpiling, acquisition, retention, use and transfer of microbial and other biological agents, or toxins whatever their origin or methods of production, of types and quantities that have no justification for prophylactic, protective or other peaceful purposes.
- b. Prohibitions of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- c. Penal provisions specifying the penalties for any persons breaching such prohibitions.
- d. Extraterritorial application of these prohibitions if undertaken by a State Party or by a State Party person, whether individual or corporate.
- e. Provisions for offences by corporate bodies as well as individuals.
- f. Powers of search and for obtaining evidence in cases of suspected breaches of the legislation.
- g. Corresponding changes in military law so as to ensure that these prohibitions apply without exception to members of the armed forces.
- h. Prohibition of the provision of assistance to others, whether within the State Party or elsewhere, to breach any of the prohibitions in the Convention.

9. Insofar as the prohibitions in Article III of the Convention are concerned which prohibit the transfer to any recipient whatsoever or in any way to assist, encourage, or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins or weapons, equipment or means of delivery specified in Article I of the Convention, provisions need to be made nationally for a mandatory licensing system which can track the movement of specified materials, such as agents and toxins and certain items of equipment. Such transfer monitoring and export control regulations should include:

- a. A list of biological agents and toxins, and of related genetic material, and equipment for which a license is required prior to export and internal transfer.
- b. A "catch all" clause that would require any person transferring such items to another to seek a license where that person suspected or had been informed by the national government that the item concerned may be for use in breach of the prohibitions in the Convention.
- c. Controls on the transfer of sensitive technology by intangible means such as by e-mail or facsimile.
- d. Penal provisions specifying the penalties for any persons breaching such prohibitions.
- e. Provision for changes to be made to the lists of agents and toxins and equipment in the light of changing circumstances.

10. The common understandings relating to national measures to implement the prohibitions in the Convention are thus that these national measures should include provisions such as those outlined in the above two paragraphs and the effective action would be to encourage all States Parties to review their existing national measures in the light of the information provided by the other States Parties and amend their national measures as necessary to strengthen them. It will be recalled that the States Parties have already agreed at previous Review Conferences to provide

information on national legislation or other measures to implement the Convention -- see, for example, the language agreed at the Fourth Review Conference¹² in 1996:

... 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. These States Parties are invited, and all States Parties are encouraged, to provide such information and texts in the future. In this regard the 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" is welcomed. In addition, all States Parties are encouraged to provide any useful information on the implementation of such measures.

Moreover, as stated in Briefing Paper No. 6¹³, it should be recognised that, as agreed at the Third Review Conference, 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.*¹⁴ [Emphasis added]

Each State Party can now, therefore, 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. Although this extension to provide for bilateral requests has not been recorded explicitly in any Final Declaration, it is still one part of the politically binding requirement of CBM 'E'. It therefore represents one of the common understandings which have evolved out of Article IV. This bilateral approach should become more important as States Parties take a greater interest in the status and effectiveness of their own legislation as well as other States Parties' legislation, and whether it is sufficiently strong and comprehensive to contribute to security overall. They can check one another's legislative performance individually, and make their own assessment of its adequacy. The possibility of requesting these details bilaterally could be used to bring diplomatic pressure to bear on any State Party which was thought, by reason of the inadequacy of its national measures, to be leaving open loopholes which bioterrorists or others might exploit to the detriment of everyone's security. To "*be prepared to submit copies of the legislation or regulations or written details of other measures on request*" is to accept that these texts are of legitimate interest to individual States Parties and that their requests are in accord with the common understanding of what Article IV implies for each State Party.

11. Consequently, these existing agreed understandings should be used by the States Parties to provide information on the outcome of national reviews of their national implementing measures during 2004 and successive years. This would provide information that should enable the Sixth Review Conference in 2006 to review how effective had been the action agreed on national implementing measures as the outcome of the Meeting of Experts in 2003, and in particular of the opportunity it provided for the

¹²United 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. p. 18. Available at <http://www.opbw.org>

¹³Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No. 6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹⁴United 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, Final Document, BWC/CONF.III/23/Part II, 1992, pp.12-13. Available at <http://www.opbw.org>

comparison of measures among States Parties, thereby contributing an international dimension to the reviews undertaken nationally.

Outcome of the First Meeting of States Parties

12. In Briefing Paper No. 6, it was recognized that the common understandings and effective action emerging from the Meeting of Experts should be seen essentially as drafts for the First Meeting of the States Parties to be held in November 2003 and consequently the language proposed in Briefing Paper No. 6 for the common understandings and effective action was framed in terms of language that might be adopted by the First Meeting. In the consolidated text reproduced below, cross references are provided in parentheses at the end of each paragraph to the relevant paragraph in Briefing Paper No. 6¹⁵. Insofar as the outcome of the Meeting of States Parties in November 2003 is concerned, the starting point is the language agreed by the Fourth Review Conference¹⁶, modified so as to refer to the First Meeting instead of to the Conference and transposed into the past tense since the outcome of the First Meeting is to be a *report* not a *Final Declaration*.

13. In this Briefing Paper, the consolidated text from Briefing Paper No. 6 is reproduced and each paragraph is then considered in the light of the information provided at the Meeting of Experts to see whether modification is appropriate.

OUTCOME OF THE FIRST MEETING: NATIONAL IMPLEMENTING LEGISLATION

1. The First Meeting underlined the importance of Article IV. It reaffirmed 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 recognized 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. (paras 12 and 58 of BP No. 6)

2. The First Meeting noted those measures already taken by a number of States Parties in this regard, including the adoption of penal legislation, and urged 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 First Meeting invited 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. (paras 20, 33 and 58 of BP No. 6)

3. The First Meeting recognized that there is a wide diversity in legal systems, and hence of constitutional processes, among States Parties; and that, as required by Article IV of the Convention, it is for each State Party to the Convention *in accordance with its constitutional processes to take any necessary measures to **prohibit** and **prevent*** the activities involving

¹⁵Graham S. Pearson & Nicholas A. Sims, *Maximizing the Benefits of the Inter Review Process: I: National Implementing Legislation*, University of Bradford, Department of Peace Studies, Briefing Paper No. 6 (Second Series), July 2003. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹⁶United 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*, Final Document, Geneva, 25 November - 6 December 1996, BWC/CONF.IV/9, 1996, Part II. p. 17-18. Available at <http://www.opbw.org>

biological weapons which are defined in Article I. The First Meeting noted that the national measures to be taken by States Parties must do more than merely prohibit the forbidden activities; they must also prevent them. Furthermore, it was noted that if a State Party's legislative and other prohibitions are not strong enough to **prevent** the activities involving biological weapons which are defined in Article I of the Convention, they do not meet the high standard set by Article IV and that State Party accordingly risks falling short of full compliance with its international obligations under the Convention. The First Meeting recommended that States Parties should take effective action by reviewing the effectiveness of their national measures to implement the prohibitions of the Convention in meeting the prevention criterion. (para 14 of BP No. 6)

4. The First Meeting encouraged each State Party that is in a position to do so upon request to afford the appropriate form of legal assistance to other States Parties to facilitate the implementation of the obligations in Article IV of the Convention. (para 17 of BP No. 6)

5. The First Meeting recognised that national measures to implement the prohibitions in the Convention need to utilize essentially identical language to that of Article I of the Convention and also to embrace the extended understandings that have emerged from the successive Review Conferences. The First Meeting recommended that States Parties should take effective action by reviewing their national measures to ensure that they do indeed prohibit the activities defined in Article I and embrace the extended understandings regarding Article I emerging from successive Review Conferences. (para 18, 25 and 26 of BP No. 6)

6. The First Meeting recognised that national measures to implement the obligations of Article III of the Convention need to utilize essentially identical language to that of Article III of the Convention and also to embrace the extended understandings that have emerged from the successive Review Conferences. These understandings require measures that are effective internationally, nationally and subnationally. The First Meeting recommended that States Parties should take effective action by reviewing their national measures to ensure that they do indeed implement the obligations of Article III and embrace the extended understandings regarding Article III emerging from successive Review Conferences. (para 19, 25, 26 and 35 of BP No. 6)

7. The First Meeting noted 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 First Meeting invited these States Parties, and encouraged all States Parties, to provide such information and texts in the future both to the United Nations Department for Disarmament Affairs and, upon request, to an individual State Party. In this regard the First Meeting welcomed 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 First Meeting encouraged all States Parties to provide any useful information on the implementation of such measures. (para 15, 16 and 59 of BP No. 6)

8. The First Meeting noted that the need for national legislation implementing the prohibitions of the Convention may be covered to a limited extent in some States Parties by national legislation implementing the Chemical Weapons Convention as weapons containing toxins are prohibited under both Conventions. The First Meeting urged States Parties to review their national implementing legislation for the Biological and Toxin Weapons Convention **and** for the Chemical Weapons Convention to ensure that the prohibitions in respect of toxins are both all embracing and consistent. (para 27 of BP No. 6)

9. The First Meeting emphasized that national implementing legislation needs to include prohibition of development, production, stockpiling, retention, acquisition and use of biological weapons with language that applies to both biological and toxin agents and to the weapons, equipment and means of delivery. It was recommended that language used in the national legislation should be identical to or closely similar to that in the Convention so as to avoid any loopholes. (para 30 of BP No. 6)
10. The First Meeting noted that national legislation implementing the obligations of the Convention is likely to be complemented by other national legislation addressing topics such as anti-terrorism, public, animal and plant health, and hazardous materials. The First Meeting recommended that States Parties consider establishing oversight committees involving all the different implementing and enforcement agencies together with those who are affected by the legislation in government, industry and academia in order to review the consistency and continuing adequacy of the current legislation and regulations. (para 32 of BP No. 6)
11. The First Meeting recognized the importance of ensuring that national measures are applicable to all natural persons and furthermore apply to activities carried out not only within but also outside the territory of the State Party. The First Meeting recommended that States Parties review their national measures to ensure that they apply to all natural persons and that there are no exclusions and also to ensure that they are applicable to natural persons anywhere. (para 33 and 58 of BP No. 6)
12. The First Meeting recognized the benefits arising from cooperation and initiatives, including regional ones, towards the strengthening and implementation of the Biological and Toxin Weapons Convention regime. The First Meeting encouraged regional initiatives to ensure that all States Parties within the region have effectively implemented the prohibitions of the Convention and have adopted measures that are effective in prevention of the activities defined in Article I of the Convention. (para 45 and 61 of BP No. 6)
13. The First Meeting recognized that effective national implementation of the prohibitions of the Convention requires the mounting of an effective and continuing campaign to ensure that all those working with biological agents and toxins both now and in the future are aware of the prohibitions of the Convention and of the national legislative, administrative and other measures to implement these prohibitions. (para 47 and 60 of BP No. 6)
14. The First Meeting noted that the effectiveness of drawing up national measures to implement the prohibitions of the Convention can be enhanced through making draft national measures available for consultation by seeking proposals for amendment from the public in general and the community that will be affected by and implement the measures in particular. Advisory committees including representatives of the community that are affected by the measures can enhance the implementation of the national measures. (para 49 of BP No. 6)
15. The First Meeting recognized that the national measures to implement the prohibitions of the Convention need to be enforced effectively, in order to ensure the prevention of all the prohibited activities, and recommended that each State Party should review the effectiveness of its enforcement of the prohibitions. (para 51 of BP No. 6)
16. The First Meeting encouraged the States Parties to explore the possibility of negotiating in an appropriate forum, or asking the Sixth Committee of the United Nations General Assembly to negotiate, an international convention on the criminalisation of biological and chemical weapon activities which would emphasise individual criminal responsibility for acts stigmatized as international crimes. In addition, the First Meeting encouraged States Parties to seek the addition

of biological and toxin weapons to the existing Rome Statute references to chemical weapons as falling within the jurisdiction of the International Criminal Court. The First Meeting favoured such international legal approaches to the criminalisation of all acts prohibited among States Parties as usefully supplementing national implementation measures under Article IV of the BTWC by ensuring that any jurisdictional loopholes are closed, and that immunity from prosecution for criminal acts involving biological and toxin weapons is thereby abolished. (para 54 of BP No. 6)

14. As the Meeting of Experts did not include any language in its Report which lends itself to the drafting of language for the outcome of the Meeting of States Parties, the development of such language and its agreement will need to be achieved during the one week Meeting of the States Parties from 10 to 14 November 2003. Two points are immediately clear. First, the outcome cannot realistically be more than a few pages focussing on the central elements and second, the language should be developed from that agreed by States Parties at the Fourth Review Conference as the Meeting of States Parties in November 2003 is part of the **inter** Review Conference process between the Fifth and Sixth Review Conferences. Language developed from that of the Fourth Review Conference offers the prospect of easy assimilation and further development by the Sixth Review Conference as the cumulative review process resumes.

15. Consequently, the outcome language proposed at the end of Briefing Paper No. 6 has been reviewed and shortened to reflect the reality of what is achievable in a one week Meeting of the States Parties. The proposed language for the outcome of the November 2003 Meeting of States Parties in regard to the first topic -- national measures to implement the prohibitions of the Convention -- is as follows:

OUTCOME OF THE FIRST MEETING: NATIONAL IMPLEMENTING LEGISLATION

1. The First Meeting reaffirmed the commitment of States Parties to take the necessary national measures under Article IV in accordance with their constitutional processes. These measures must 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.

2. The First Meeting noted those measures already taken by a number of States Parties in this regard, including the adoption of penal legislation, and urged any State Party that has not yet taken any necessary measures to do so immediately. Such measures should apply within its territory, under its jurisdiction or under its control anywhere. The First Meeting invited each State Party to consider the application of such measures also to actions taken anywhere by natural persons possessing its nationality.

3. The First Meeting encouraged each State Party that is in a position to do so upon request to afford the appropriate form of legal assistance to other States Parties to facilitate the implementation of the obligations in Article IV of the Convention.

4. The First Meeting recognised that national measures to implement the prohibitions in the Convention need to utilize identical language to that of Article I of the Convention and also to embrace the extended understandings that have emerged from the successive Review Conferences. The First Meeting recommended that States Parties should take effective action by reviewing their national measures to ensure that they do indeed prohibit and prevent the activities defined in Article I.

5. The First Meeting recognised that national measures to implement the obligations of Article III of the Convention need to utilize essentially identical language to that of Article III of the Convention. These measures require to be effective internationally, nationally and subnationally. The First Meeting recommended that States Parties should take effective action by reviewing their national measures to ensure that they do indeed implement the obligations of Article III.
6. The First Meeting noted 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 First Meeting invited these States Parties, and encouraged all States Parties, to provide such information and texts in the future both to the United Nations Department for Disarmament Affairs and, upon request, to an individual State Party. In this regard the First Meeting welcomed 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".
7. The First Meeting emphasized that national implementing legislation needs to include prohibition of development, production, stockpiling, retention, acquisition and use of biological weapons with language that applies to both biological and toxin agents and to the weapons, equipment and means of delivery. It was recommended that language used in the national legislation should be identical to that in the Convention so as to avoid any loopholes.
8. The First Meeting recognized the importance of ensuring that national measures are applicable to all natural persons and furthermore apply to activities carried out not only within but also outside the territory of the State Party. The First Meeting recommended that States Parties review their national measures to ensure that they apply to all natural persons and that there are no exclusions and also to ensure that they are applicable to natural persons anywhere.
9. The First Meeting recognized that effective national implementation of the prohibitions of the Convention requires the mounting of an effective and continuing campaign to ensure that all those working with biological agents and toxins both now and in the future are aware of the prohibitions of the Convention and of the national legislative, administrative and other measures to implement these prohibitions.
10. The First Meeting noted that the effectiveness of drawing up national measures to implement the prohibitions of the Convention can be enhanced through making draft national measures available for consultation by seeking proposals for amendment from the public in general and the community that will be affected by and implement the measures in particular. Advisory committees including representatives of the community that are affected by the measures can enhance the implementation of the national measures.
11. The First Meeting recognized that the national measures to implement the prohibitions of the Convention need to be enforced effectively, in order to ensure the prevention of all the prohibited activities, and recommended that each State Party should review the effectiveness of its enforcement of the prohibitions.
16. The First Meeting of States Parties on 10 to 14 November 2003 needs to seize the opportunity to agree in its report a coherent and comprehensive set of common understandings and effective action. Beyond November, the significance of the report of the First Meeting is to add value to the Inter Review Conference process and to set the pattern of the meetings scheduled for 2004 and 2005 on the remaining topics identified by the Fifth Review Conference. The process should therefore contribute, within the limits of the agenda topics and the mandate for the meetings agreed by the Fifth Review Conference, to

the recovery and strengthening of the BTWC through a return to the cumulative development of extended understandings leading to effective action at the Sixth Review Conference.