

NATIONAL IMPLEMENTATION MEASURES

by Graham S. Pearson* & Nicholas A Sims†

Introduction

1. Article IV of the Biological and Toxin Weapons Convention sets out the obligation for States Parties to implement the BTWC through appropriate national measures. Although some States have enacted such legislation, others have not and the Aum Shinrikyo incident in Tokyo in March 1995 underlined the importance of appropriate penal legislation both to implement the BTWC (and the Chemical Weapons Convention) and to criminalise any development, production, stockpiling or acquisition of such weapons for terrorist or criminal purposes. This Briefing Paper reviews the development of the language relating to Article IV of the BTWC by the four Review Conferences, notes the requirements of the Chemical Weapons Convention and then addresses the opportunity provided by the Ad Hoc Group negotiations to strengthen the BTWC through stronger implementation measures.

Article IV of the Convention

2. The Biological and Toxin Weapons Convention (BTWC) requires States Parties to the Convention to implement this through the requirements of Article IV which are 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.

3. Article IV thus 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.

4. 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

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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 shore up 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.

Developments at successive Review Conferences

5. The four Review Conferences up to that held in November/December 1996 have reinforced Article IV with successive layers of consensually agreed language, as each Final Declaration built on its predecessor and added new material to the inherited paragraphs.

6. **First Review Conference.** 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.*¹

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.*² [The words emphasised were added in 1986.]

7. **Second Review Conference.** 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 with the provisions of the Convention with the territory under the jurisdiction or control of a State Party;*

¹United 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. The intrusive the was deleted when the invitation was repeated in 1986 (see note 3 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.

²United 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.

- *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.*³

8. In 1991 Goldblat and Bernauer reported in their UNIDIR Research Paper prepared for the Third Review Conference that “very few” States Parties had adopted national legislative or administrative measures to implement the Convention.⁴

9. It was impossible to ascertain just how few had taken up the invitation to send their legislative or other appropriate texts to the Department for Disarmament Affairs (DDA) - into which the UN Centre for Disarmament had been upgraded in 1983 - because the relevant file had been mislaid in New York.⁵ The United Kingdom proposal in 1980 had specified as the designated recipient of such texts, for purposes of consultation, the Research and Reference Collection in the Geneva Unit of the Centre for Disarmament (which could make copies for the Center's Treaties and Resolutions Section in New York so that duplicate collections could be maintained in both cities); but at the insistence of the Secretariat this provision had been dropped during the First Review Conference - regrettably, as it turned out.⁶

10. The Netherlands had reported at the Second Review Conference despatch of the text of implementing regulations to the UN at the time it ratified the Convention (June 1981).⁷ It was thought that only four other States Parties had shared their texts in this way, and Goldblat and Bernauer were able to gather four - the United Kingdom's *Biological Weapons Act 1974*, Australia's *Crimes (Biological Weapons) Act 1976*, New Zealand's *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987* and the United States' *Biological Weapons Anti-Terrorism Act of 1989*. They reproduced them in facsimile as annexes to their Research Paper⁸, together with France's pioneering law⁹ of 9 June 1972 which had

³ibid. 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.

⁴Jozef Goldblat & Thomas Bernauer, *The Third Review of the Biological Weapons Convention: Issues and Proposals*, UNIDIR Research Paper No. 9 (New York: United Nations, 1991), p.22.

⁵Personal communication, 4 June 1991.

⁶Nicholas A Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85*, (London: Macmillan; New York: St. Martin's Press, 1988) pp. 80-81, pp 136-137.

⁷BWC/CONF.II/SR.5 (10 September 1986), paragraph 56. Barend ter Haar (The Netherlands).

⁸Goldblat & Bernauer, op.cit., pp 62-75.

anticipated the Article IV legislation of States Parties at a time when it appeared most unlikely that France would ever accede to the Convention then ready opened for signature. (It did in fact accede in 1984). Belgium's law of 10 July 1978 also deserves honourable mention as having been included *in extenso* in Belgium's national compliance report for the First Review Conference, the only text which was sent forward by the States Parties contributing to that 1979-80 compilation.¹⁰ The interesting process by which, over the years 1972-1978, this Belgian legislation came about has been recounted elsewhere;¹¹ as (by another author) has the even more protracted legislative process over the period 1973-1989 in the United States.¹²

11. Goldblat and Bernauer expressed themselves forcefully on the lack of attention paid by the overwhelming majority of States Parties to Article IV:

*Since each State Party must ensure the observance of the BW Convention on its territory and anywhere else under its jurisdiction and control, it is **imperative** that it take the necessary national measures of legislative, administrative or regulatory nature. Such measures must specify the prohibitions and obligations to be observed by the natural and legal persons of the country concerned, and provide for the prosecution, trial and punishment of offenders.*

*The Parties should **commit themselves** to send all pertinent information and documentation to the UN Secretariat, as recommended by the First and Second Review Conferences. This material, **to be distributed to all Parties**, might serve as an incentive as well as guidelines for those States which have not yet adopted the required national measures.¹³ [All emphases added.]*

12. **Third Review Conference.** 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, a new confidence-building measure entitled 'Declaration of legislation, regulations and other measures'.¹⁴ This in effect sought to put into effect the recommendations of Goldblat and Bernauer. 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?

⁹Law No 72-467, prohibiting the development, production, possession, stockpiling, acquisition and transfer of biological or toxin weapons (9 June 1972).

¹⁰BWC/CONF. I/4 (20 February 1980), paragraph 30, pp 17-18.

¹¹Sims, *op.cit.*, pp 81-85.

¹²John Isaacs, *Legislative Needs*, in Susan Wright (ed), *Preventing a Biological Arms Race* (Cambridge, Mass: The MIT Press, 1990) pp 291-299 and legislative texts appended at pp 406-11.

¹³Goldblat & Bernauer, *op.cit.*, pp 23-24.

¹⁴BWC/CONF. III/22/Add. 2 (27 September 1991) pp 4-5, p 7.

- 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.

13. The information-sharing ambitions 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 [now Center for] Disarmament Affairs or to an individual State Party.¹⁵

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.

14. **Fourth Review Conference.** In a book entitled *"Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference"*, the contribution¹⁶ on Article IV noted that future regime-building work in this area was likely to consist, at least initially, of the organization of a coherent international response to the responses elicited by Confidence-Building Measure E. How were defaulters (i.e. non-respondents) to be chased up? Will those States Parties which conscientiously file a nil return be asked why they have no legislation, regulations or other measures to report? Would the annual reminder (through the annual reporting requirement) serve to encourage more States Parties to legislate in this area? Would there be any concerted attempt at ‘quality control’ applied to national implementation measures? Had States Parties done enough to ‘criminalise’ BTW-related activities, whether undertaken by terrorists, ‘rogue’ agencies of governments or independent operators? Were they sufficiently vigilant in detecting and investigating suspects?

15. It was noted that there may also be a loophole to be closed, in ensuring the fullest possible legal extent to the penal legislation enacted or other measures taken by States Parties. The United States already asserts, in respect of an offence under its *Biological Weapons Anti-Terrorism Act of 1989*, “extraterritorial Federal jurisdiction over an offence under this section committed by or against a national of the United States.”¹⁷ In its Final Declaration the Third Review Conference, having repeated the Convention formula that any national implementation measures taken in accordance with Article IV

¹⁵BWC/CONF. III/22/Add. 3 (27 September 1991) pp 18-19.

¹⁶Nicholas A Sims, *Article IV: National Implementation* in Graham S Pearson & Malcolm R Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fourth Review Conference*, Quaker United Nations Office, Geneva, September 1996.

¹⁷Section 175(a), reproduced in Goldblat & Bernauer, *op.cit.*, p 71.

should apply within the territory of a State Party, under its jurisdiction or under its control, anywhere,

the word **anywhere** (echoing Article IV itself) in this extended formulation, compared with 1986, having been restored at Ukraine's request, went on to invite (on an initiative of the United States)

*each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures to actions taken anywhere by natural persons possessing its nationality.*¹⁸

16. This formulation corresponded closely to one drafted for (and now firmly embedded in) the national implementation provisions (Article VII) of the Chemical Weapons Convention (CWC). It is not just US legislation that enjoys this wider extra-territorial application; the German working paper, issued during the Third Review Conference, which describes the new *War Weapons Control Act* of 5 November 1990 emphasised *inter alia* that its

penal provisions not only apply in Germany, but also to acts committed abroad by natural persons possessing German nationality.

The German working paper was of particular interest for its comprehensive account, foreshadowing the new CBM, of national legislative and administrative measures against BTW and for its description of an entire regulatory framework, embracing export controls and the description of lists of pathogens as well as the new, tighter *War Weapons Control Act* and its supporting ordinances and schedules. This example of a full national report could well set a benchmark for other States Parties to emulate in setting out clearly the national implementation measures they have taken as a regulatory framework.¹⁹

17. The legislation reported under Confidence-Building **E** was not, however, at least initially very extensive or (save in one or two cases) particularly informative. Fewer than twenty States Parties had, by 1 June 1992, taken note of this new CBM even to the extent of ticking a 'Nothing to declare' box on the cover sheet; even fewer had completed Form E or made an equivalent declaration.²⁰

18. Several respondents were able to report that they had legislated or regulated, or both, in respect of all three matters with which this CBM was concerned (export controls and import controls, as well as Article IV domestication of the Article I obligations). These states included Australia, Finland, Germany, Hungary, Mongolia, The Netherlands, New Zealand, United Kingdom and United States.²¹ The level of detail varied greatly. Hungary, The

¹⁸BWC/CONF. III/22/Add. 2 (27 September 1991) p 4. The Ukrainian proposal is reproduced at p 20 and the US proposal at p 21 of BWC/CONF. III/17 (24 September 1991).

¹⁹Germany, *Working Paper: Legislation in the Federal Republic of Germany on the Prohibition of Biological Weapons*, BWC/CONF. III/7 (10 September 1991). The quotation is from p 3.

²⁰UN Document DDA/4-92/BWIII (30 April 1992) and Add.1 (12 June 1992)

Netherlands and New Zealand offered the titles of relevant laws and regulations, Australia a three-page description of seven different legal instruments (adding that it was currently considering the imposition of export controls on dual-use biological equipment as well, already the subject of non-statutory guidelines) and the United States thirty pages of texts and supporting documents reproduced *in extenso*. Finland, Germany (which had reported fully, as described above, in 1991), Mongolia and the United Kingdom simply ticked the appropriate **yes** boxes, with the UK adding a mention of its Biological Weapons Act 1974 under another CBM.²² Canada claimed that “Under current legislation, Canada regulates or has the capacity to regulate” all three matters, but did not expand on that delphic statement, in contrast to the detail it provided elsewhere in the 52 pages of its CBM declarations.²³

19. Other respondents reported that they had legislation under review and might have more information to provide later (Austria and Belarus) or reported legislation and regulations on the domestication of obligations but not on export or import controls (Sweden and Switzerland).²⁴ Norway reported that both legislation and regulations on export controls would probably be introduced by the end of 1992; for the other two matters, both legislation and regulations were already in place.²⁵ Japan, on the other hand, had legislated on everything except import controls.²⁶

20. Bulgaria offered a detailed narrative. This included long lists of pathogenic strains kept in its national microbial collection and those provided over 1989-1991 to foreign laboratories, as well as relevant provisions in its domestic legislation and penal code. It added that these provisions were currently under examination in the light of other countries’ legislation.²⁷

21. Although not included in a CBM return, it was the implementing decree issued by Boris Yeltsin as President of the Russian Federation on 11 April 1992 which attracted more attention²⁸ than the CBM returns proper. The *ukase* implemented the Convention in Russian law, and allocated oversight responsibility to the Committee on Chemical and Biological Weapons Convention Problems established on 19 February 1992 under the chairmanship of Anatoliy Demyanovich Kuntsevich. This committee had recommended opening secret military research centres to international inspection and converting them to civilian use. There were reports of “only half-hearted support” for the *ukase* from the head of the Directorate For Protection against Biological Weapons, General Valentin Yevstigeneyev.

²¹UN Document DDA/4-92/BWIII (30 April 1992) , pp 19-21 (Australia), p 124 (Germany), p 137 (Mongolia), p 148 (New Zealand), p 245 (UK), pp 364-394 (US); Add. 1, p 53 (Finland), p 65 (Hungary), p 94 (The Netherlands)

²²UN Document DDA/4-92/BWIII (30 April 1992) , p 246.

²³UN Document DDA/4-92/BWIII (30 April 1992) , p 77.

²⁴UN Document DDA/4-92/BWIII (30 April 1992) , p 25 (Austria), p 181 (Sweden), p 210 (Switzerland); Add. 1, p 23 (Belarus).

²⁵UN Document DDA/4-92/BWIII (30 April 1992) p 167 (Norway).

²⁶UN Document DDA/4-92/BWIII/Add. 1 (30 April 1992) p 70 (Japan).

²⁷UN Document DDA/4-92/BWIII/Add. 1 (30 April 1992) p 35-37 (Bulgaria).

²⁸Chemical Weapons Convention Bulletin, No. 16 (June 1992) p 9, pp 18-19; *Russia shuns Biological Weapons*, New Scientist (23 May 1992).

There were also signs of confusion in the Russian press over the extent, if any, to which the former Soviet Union had gone beyond the limits of BTW activity permitted by the Convention. At least in its headline, *Izvestiya* suggested that the Soviet Union had been violating the Convention and that President Yeltsin's *ukase* was intended to call a halt to such non-compliance. Other Russian commentary went further. According to *Komsomolskaya Pravda*, Soviet work on biological weapons had only started in earnest **after** the signature of the Convention.

22. Accordingly the Russian Federation's CBM returns were eagerly awaited. Their continued absence in UN documentation led to intensive negotiations on BTW compliance issues with London and Washington and eventually to the conclusion in September 1992 of the Moscow Joint Statement.

23. A quite different line of development, which was welcomed by the Third Review Conference under the Article IV section of its Final Declaration although it had little in common with other national implementation measures, is regional agreement. By means of such agreements, States Parties entrench their commitment to the Convention by tying it into a regional network, rather than (or in addition to) their domestic legal systems; this was what the conference was invited to recognise as relevant to Article IV.

24. The event which precipitated this recognition was the agreement reached on 5 September 1991, at Mendoza in western Argentina, by the Foreign Ministers of Argentina, Brazil and Chile. Uruguay shortly afterwards acceded to the Mendoza Agreement; and this noteworthy regional measure, embodying a Joint Declaration on the Complete Prohibition of Chemical and Biological Weapons, was formally submitted by the delegations of Argentina, Brazil, Chile and Uruguay to the Conference, as evidence of the reaffirmation of their renunciation of BTW (as well as of chemical weapons). They also circulated a message from the UN Secretary-General welcoming the Mendoza Agreement.²⁹ Point 7 of the Joint Declaration announced their "intention to make a decisive contribution to the success" of the conference and "their willingness to consider ways of strengthening [the Convention's] verification mechanisms." The same four delegations proposed an extra paragraph at the end of the Article IV section, which was agreed:

*The Conference welcomes regional measures such as the Mendoza Declaration as well as other initiatives dealing with the renunciation of weapons of mass destruction, including biological weapons, as concrete positive steps towards the strengthening of the BTWC regime.*³⁰

25. One of the "other initiatives" welcomed here was (in the words of a Venezuelan committee paper intended as an addendum to that of Argentina, Brazil, Chile and Uruguay):

*the initiative of the Government of Peru dealing with the renunciation by all members of the "Rio Group" of weapons of mass destruction, including biological weapons, with a view to encompassing all the countries of the region in the future.*³¹

²⁹BWC/CONF. III/14 (16 September 1991); Secretary-General's message in BWC/CONF. III/15 (16 September 1991).

³⁰BWC/CONF. III/22/Add. 2 (27 September 1991) p 5, based on the Argentinean-Brazilian-Chilean-Uruguayan proposal of 13 September 1991 reproduced in BWC/CONF. III/17 (24 September 1991) p 22.

The Rio Group comprised all four Parties to the Mendoza Agreement, plus Bolivia, Colombia, Ecuador, Mexico, Paraguay, Peru and Venezuela. Peru had made its proposal in July.³²

26. A paper on regional CBMs was also submitted to the conference by the six states of the central European *Hexagonale* (Poland having joined the original *Pentagonale* of Austria, the Czech and Slovak Federal Republic, Hungary, Italy and Yugoslavia since the Venice Summit of July 1990).³³ The Italian delegation, reflecting the relatively greater enthusiasm in Italy for *Hexagonale* diplomacy, took the lead in securing an extra paragraph at the end of the Article V section:

*Taking into account the specific characteristics of each region, neighbouring States or States belonging to the same region may also adopt measures that are consistent with the aims and objectives of the Convention in order to facilitate or complement the implementation of the decisions of the Third Review Conference with respect to Article V.*³⁴

27. Regionalism could thus be seen emerging as a new line of development, bridging Articles IV and V. It was championed in equal measure by the states of two overlapping groupings in Latin America and by those of a central Europe newly re-established in a regional consciousness and self-confidence arising out of the collapse of the East-West divide in 1989. It is, however, unlikely that this will ever (in comparison with the main areas of reinforcement and regime-building under Articles IV and V) be more than a subsidiary line of development in the overall evolution of the BWC treaty regime.

28. An analysis of the 41 CBM returns circulated by the Centre for Disarmament Affairs on 22 May 1996³⁵ shows that of those States providing more than a single page response to the CBMs, most States are now using the "Nothing to declare" or "Nothing new to declare" proforma and are also completing the proforma for CBM E. There is, however, clearly some confusion as to how to complete the "Nothing to declare" or "Nothing new to declare" proforma as some States complete this, ticking one or other of the boxes for CBM E, then include as well the CBM E Proforma marking in the affirmative that something has been amended since last year. There is in general little if any information provided by any of the States on the name, title or nature of the legislation or regulations.

³¹BWC/CONF. III/17 (24 September 1991) p 20.

³²CD/PV. 599 (25 July 1991). Peru proposed to invite the Foreign Ministers of the other ten Rio Group member states to a conference in Lima in November 1991. Chemical Weapons Convention Bulletin, No 13 (September 1991) p 16.

³³BWC/CONF.III/15 (16 September 1991).

³⁴BWC/CONF.III/22/Add. 2 (27 September 1991) p 12, based on the Italian proposal of 16 September 1991 reproduced in BWC/CONF. III/17 (24 September 1991) p 44.

³⁵UN Document CDA/11-96/BW-III (22 May 1996)

Analysis of 41 CBM Returns in 1996
<p>States making a short generally one page return 13</p> <p>(Belgium, Cyprus, Ecuador, Estonia, Fiji, Jordan, Kuwait, Malta, Papua New Guinea, Portugal, San Marino, Saudi Arabia, Uganda)</p>
<p>States using the "Nothing to declare" proforma and checking a CBM E box 20 of these those not completing a CBM E proforma 11</p> <p>(Bulgaria, China, Cuba, Denmark, Germany, Hungary, Italy, Luxembourg, New Zealand, Slovak Republic, Switzerland)</p> <p>of these those completing the CBM E proforma 9</p> <p>on which indicated no change since last year 7</p> <p>(Belarus, Chile, Czech republic, Norway, Poland, South Africa, Turkey)</p> <p>on which indicated amended since last year 2</p> <p>(Republic of Korea, USA)</p>
<p>States using the "Nothing to declare" proforma, not checking a CBM E box and completing the CBM E proforma 4</p> <p>(Australia, Finland, Netherlands, Sweden)</p>
<p>States not using the "Nothing to declare" proforma but completing a CBM E proforma 2</p> <p>(Argentina, Canada)</p>

29. Increased attention has been 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 planned³⁶ to place some eleven small containers of the nerve gas, sarin (GB), on baggage racks or on the floor of subway

³⁶United 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.

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 reports³⁶ 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.

30. One important counter to such possibilities is the enactment of national legislation to make the mis-use of biological materials a criminal act. Some States, such as the UK, have enacted such legislation: the *Biological Weapons Act* ³⁷ 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 had in 1996 enacted an *Antiterrorism and Effective Death Penalty Act of 1996* ³⁸ 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 provided 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
(IV) any other criteria that the Secretary considers
appropriate; and

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

³⁷Biological Weapons Act 1974, HMSO, 1974 Chapter 6.

³⁸U S Congress, 104th Congress, 2nd Session, House of Representatives, *Terrorism Prevention Act*, Conference Report, Report 104-518, 15 April 1996.

On transfers, the Secretary of Health and Human Services was 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.

31. The proposed³⁹ and final⁴⁰ rule published in the Federal Register are comprehensive. Other States are to be encouraged to take similar action to criminalize BW and for the longer term, thought 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 law⁴¹. 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.

32. An additional impetus to encourage all States Parties to enact appropriate national legislation was provided prior the Fourth Review Conference by the Declaration on Terrorism⁴² agreed by the G7/8 on 27 June 1996:

We proclaim our common resolve to unite our efforts and our determination to fight terrorism by all legal means. In keeping with the guidelines for action adopted by the Eight in Ottawa, we strongly urge all States to deny all support to terrorists. We rededicate ourselves and invite others to associate our efforts in order to thwart the activities of terrorists and their supporters, including fund raising, the planning of

³⁹U S Federal Register, Additional Requirements for Facilities Transferring or Receiving Select Infectious Agents, Proposed Rules for Section 511 of Public Law 104-132, Vol. 61, No. 112, 10 June 1996, 29327-29333.

⁴⁰U S Federal Register, Additional Requirements for Facilities Transferring or Receiving Select Agents, Final Rule for Section 511 of Public Law 104-132, Vol. 61, No. 207, 24 October 1996, 55190-55200. U S Federal Register, Site Registration Fee Schedule and Related Matters for Facilities Transferring or Receiving Select Agents, Vol. 62, No. 71, 14 April 1997, 18134-18135.

⁴¹Chemical Weapons Convention Bulletin, *Criminalizing BW*, CWCB Issue No 31, 1, March 1996.

⁴²G7/8 Lyon Summit, Declaration on Terrorism, 27 June 1996

*terrorist acts, procurement of weapons, calling for violence, and incitement to commit terrorist acts. **Special attention should be paid to the threat of utilization of nuclear, biological and chemical materials, as well as toxic substances, for terrorist purposes.***

[Emphasis added]

33. The G7/8 also decided that a ministerial meeting to consider and recommend further actions would be held in Paris in July 1996. The Final Declaration⁴³ of that Ministerial Conference on Terrorism on 30 July 1996 included as one measure:

18) We recommend to States Parties to the Biological Weapons Convention to confirm at the forthcoming Review Conference their commitment to ensure, through the adoption of national measures, the effective fulfilment of their obligations under the convention to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of such weapons within their territory, under their jurisdiction or under their control anywhere, in order, inter alia, to exclude use of those weapons for terrorist purposes.

34. This international determination to combat terrorism was also shown by the final communiqué and resolutions adopted by the twenty-third Islamic Conference of Foreign Ministers⁴⁴ of the member countries of the Organization of Islamic Conference held at Conakry, Republic of Guinea from 9 to 12 December 1995 which included a resolution on combating international terrorism which stated *inter alia* that:

Expressing concern over the continuation of terrorist acts in all their forms and manifestations, including those where States are involved directly or indirectly, and which spread violence and terror and constitute a serious threat to international peace, stability and security;

Proceeding from the conviction that there is an international consensus on combating terrorism in all its forms and manifestations, eliminating the evils and causes of terrorism directed against the life and property of innocent people and sovereignty and territorial integrity of States;

Emphasizing the importance of international and regional cooperation, especially among Member States, in combating effectively all forms of terrorism;

35. The first paragraph of the Final Declaration of the Fourth Review Conference used stronger language about Article IV including specific reference to the need to ensure through national measures the effective exclusion of any use of biological or toxin weapons for terrorist or criminal purposes by stating that:

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

⁴³Ministerial Conference on Terrorism, Paris, 30 July 1996: Final Declaration.

⁴⁴United Nations General Assembly/ Security Council, *Letter dated 17 April 1996 from the Permanent Representative of Guinea to the United Nations addressed to the Secretary-General*, A/50/953, S/1996/344, 10 May 1996.

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.

36. In addition, arising largely from the proposal made by Iran that the Convention should be amended to specifically include "use", the Fourth Review Conference agreed in the section of Article IV an additional specific paragraph reaffirming that use is prohibited:

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

Chemical Weapons Convention

37. Article VII of the Chemical Weapons Convention (CWC) sets out the National Implementation Measures. The first three paragraphs detail the general undertakings which include the requirement for the enactment of penal legislation:

1. Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention. In particular, it shall:

(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;

(b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and

(c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.

38. The Article then goes on in its next four paragraphs to address the relationship between the State Party and the Organization:

4. *In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.*

5. *Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Convention.*

6. *Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention. It shall treat such information and data exclusively in connection with its rights and obligations under this Convention and in accordance with the provisions set forth in the Confidentiality Annex.*

7. *Each State Party undertakes to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.*

Ad Hoc Group

39. The mandate for the Ad Hoc Group was determined by the Special Conference of States Parties to the BTWC held⁴⁵ on 19 - 30 September 1994 which agreed that:

"The objective of this Ad Hoc Group shall be to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties."

The Ad Hoc Group (AHG) has met during 1995, 1996 and 1997. In July 1997 the AHG successfully transitioned to negotiation of a rolling text for the legally binding instrument. This rolling text was developed further during the September/October 1997 meeting which saw the appointment of Mr Ajit Kumar of India as Friend of the Chair on National Implementation & Assistance as well as the introduction of language on National Implementation Measures into the draft text⁴⁶. This draft language in Article X is as follows:

[1. Each State Party [to the Protocol] shall, in accordance with its constitutional processes, take any necessary measures to implement its obligations under [the Convention and][this Protocol]. In particular, it shall:

[(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from

⁴⁵ United Nations, *Special 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 Report, BWC/SPCONF/1 Geneva, 19-30 September 1994.

⁴⁶ United Nations, *Ad Hoc Group 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*, BWC/AD HOC GROUP/38, Geneva, 6 October 1997.

undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;]

[(b) Prohibit natural and legal persons from undertaking any such activity anywhere under its control; and]

[(c) Prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.]]

[2. Each State Party may, where requested, cooperate with other States Parties and afford [the appropriate form of] legal assistance to facilitate the implementation of the obligations under paragraph 1.]

[3. In order to fulfil its obligations under this Protocol [the Convention], each State Party shall designate or establish a National Authority and shall so inform the [Organization] upon entry into force of this Protocol for it. The National Authority shall serve as the national focal point for liaison with the [Organization] and with other States Parties.]

4. Each State Party shall inform the [Organization] of the legislative and administrative measures taken to implement this Convention.

5. Each State Party, during the implementation of its obligations under this Protocol, shall take all necessary steps to ensure the safety of people and to protect the environment, and may cooperate as appropriate with other States Parties in this regard.

6. Each State Party undertakes to cooperate with the [Organization] in the exercise of all its functions and in particular to provide assistance to the [Technical Secretariat].

40. The October 1997 draft rolling text in Article X draws upon Article VII of the CWC. It follows the content of the CWC provisions quite closely, although the order of the paragraphs is different; for example, safety and environmental protection which appear in para 3 of CWC Article VII appear in the rolling text as para 5. There is no counterpart in Article X of the rolling text to para 6 of the CWC Art VII on confidentiality; instead, this appears as para 2 of Article IV Confidentiality Provisions of the rolling text.

41. It will be apparent from the square brackets in the language in the rolling text for Article X (reproduced above in paragraph 39) that there are differing views as to whether the AHG should limit itself to implementation measures for the Protocol or should take the opportunity to strengthen the undertakings in the Convention. Although this opportunity to strengthen the implementation measures of the Convention would add to the negotiating burden of the AHG, it is evident that despite the efforts of successive Review Conferences there is far from universal enactment of penal legislation to implement the BTWC. It is our view that as the mandate of the AHG is "to consider appropriate measures, including possible verification measures, ...to strengthen the Convention", this opportunity should be taken to strengthen the undertakings in Article IV of the Convention.

Strengthening Article X of the Rolling Text

41. It would be useful, as a first step, if the AHG were to strengthen the language of the rolling text in certain places so that this part of the BTWC Protocol is in every respect as strong as Article VII of the CWC. The next four paragraphs show how this might be done.

42. Paragraph 1 (c) of Article X does not, as it stands, make explicit the extended reach of penal legislation. The rolling text includes the words "*including enacting penal legislation with regard to such activity*" in paragraph 1 (a) but does not extend it to paragraph 1 (c). It would be advisable to follow the wording of paragraph 1 (c) of the CWC Article VII which reads:

(c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

43. Such a provision in Article X would accord with the Final Declaration of the Third Review Conference (see para 15 above). In 1991 the invitation to "*each State Party to consider, if constitutionally possible and in conformity with international law, the application of such measures to actions taken anywhere by natural persons possessing its nationality*" was new to the BTWC review process. Hence, perhaps, the qualifying phrase "*if constitutionally possible*" and the use of the relatively weak "*consider*". Since 1991, however, any reason to be tentative has disappeared. The equivalent CWC obligation has been approved through the successive stages of the Conference on Disarmament (CD) and UN General Assembly commendation (1992), opening for signature (1993) and entry into force (1997). Consequently the BTWC Protocol should have no difficulty in using comparable language. Indeed it has every reason to use it, in order to include the roving BW terrorist of any nationality. For this and other purposes, States Parties should be encouraged to review the adequacy of their existing anti-BW legislation, which they should update and strengthen wherever necessary.

44. The next five paragraphs of Article X (paras 2, 3, 4, 5, and 6) would be rendered as strong as the equivalent paragraphs of CWC Article VII (paras 2, 4, 5, 3 and 7 respectively) if two small changes were to be made. In para 2 of Article X, "*Each State Party may, where requested, cooperate with other States Parties*" would be strengthened by the replacement of **may** by **shall**. Although the words "*where requested*" are additional to the CWC-derived language, they neither strengthen or weaken this provision. In para 5 of Article X, the use of **shall** in place of **may** in "*may cooperate as appropriate with other States Parties in this regard.*" would also be advisable.

45. It can be argued that para 5 of Article X also needs strengthening at an earlier point by changing "*shall take all necessary steps*" to language comparable to that in the CWC "*to assign the highest priority*". The strengthened para 5 would then read:

"5. Each State Party, during the implementation of its obligations under this Protocol, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard."

46. If the rolling text were amended as proposed in the above four paragraphs, and the square brackets removed, Article X would equate in strength with CWC Article VII. There is, however, a strong case for going further and making the national implementation article of

the BTWC Protocol deliberately stronger than that of the CWC. There are three arguments for this.

47. The first argument follows from the interpretation of BTWC Article IV agreed by the Fourth Review Conference. Its Final Declaration (as noted in para 35 above) reaffirmed the commitment of States Parties to take the necessary measures under Article IV. Most significantly, it went on to declare that:

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. [Emphasis added]

It further defined the national implementation measures to be undertaken under Article IV as those which would:

...ensure... the effective fulfilment of their obligations under the Convention [Emphasis added].

48. The term *prevention* is absent from CWC Art VII but is coupled with *prohibition* in Article IV of the BTWC and in the relevant paragraphs of all four Final Declarations in the Review Conferences of 1980, 1986, 1991 and 1996. This in itself is an argument for adding the word to Article X of the BTWC Protocol. At present, the rolling text, following closely the language of the CWC in this respect, *prohibits* but does not *prevent*.

49. The amendments to the rolling text to achieve this would be to couple the two words in paragraph 1 (a):

(a) Prohibit and prevent natural and legal persons.....

and to do the same in paragraph 1 (b)

(b) Prohibit and prevent natural and legal persons.....

50. The criterion "*the effective fulfilment of their obligations under the Convention*" is the most recent collective interpretation placed by the States Parties on BTWC Article IV. It sets a very high standard for national implementation measures. It would therefore be advisable to incorporate this criterion into the first sentence of paragraph 1 of Article X thus:

1. Each State Party [to the Protocol] shall, in accordance with its constitutional processes, take all necessary measures of national implementation in order to ensure the effective fulfilment of its obligations under [the Convention and][this Protocol].

The term "*all necessary measures*" is preferable to "*any*" in view of the requirements stated in the subparagraphs of paragraph 1 and in paragraph 4. "*Any*" was used in BTWC Article IV when no such requirements were conjoined, and should be replaced in the Protocol by "*all*".

51. The second argument arises from the experience of the BTWC as a multilateral treaty regime which has been in force since 1975. Unlike CWC Article VII, which was drafted as part of a new Convention, the Protocol which the AHG is negotiating will follow a quarter of

a century **after** its Convention. This has implications for the rolling text. In the national implementation measures section of the rolling text, as in others, these implications arise from the patchy experience of compliance with BWC obligations. Even compliance with Article IV has been uneven.

52. The third argument is simply stated. If it is accepted that biological weapons present an even more formidable threat than chemical weapons, then the treaty provisions against them need to be made even more stronger than those in the CWC against chemical weapons.

53. For all these reasons, the AHG would be well advised to strengthen the rolling text and go beyond the level of CWC Article VII in the ways proposed above in paragraphs 49 and 50, as well as in expanding the National Authority requirement.

National Authority

54. The present rolling text keeps close to CWC language in its only reference in para 3 of Article X to the National Authority. This requires that each State Party must designate or establish one and inform the BTWC's international organization (assuming that there will be one) of what it has done. All that is required of the National Authority in Article X at present is -- as in CWC Article VII para 4 -- that it "*shall serve as the national focal point for liaison with the Organization and with other States Parties.*"

55. It is a fair assumption that the eventual States Parties to the BTWC Protocol will, in almost all cases, have been party to the CWC since 1997 or 1998. Consequently most will have had their CWC National Authority serving as the national focal point for liaison with the OPCW (Organization for the Prohibition of Chemical Weapons) since the entry into force of the CWC on 29 April 1997. Some will have had a National Authority in being for even longer, having designated or established it some time before the CWC entered into force, for example as an outcome of their ratification and legislation processes.

56. BTWC States Parties participating in the AHG should therefore be encouraged to draw on the experience that most of them have been accumulating as CWC States Parties to inform the National Authority provisions of the Protocol. They should pool that experience to set standards of effectiveness for their future BTWC National Authority.

57. It is clear that the structure and resourcing of each National Authority and its operational location within governmental machinery are the responsibility of the State Party concerned. Consequently any proposal for a provision that was excessively detailed would be rejected as over-prescriptive. Nevertheless, it would be desirable and advisable to expand the provision in para 3 of Article X with a set of criteria which every National Authority must satisfy in order to meet the standards set by the Protocol itself for the effectiveness of national implementation.

58. Every National Authority must possess statutory powers of investigation and a degree of statutory protection sufficient to ensure that other organs of government do not interfere in the effective performance of its functions. It must be sufficiently independent of other agencies within the machinery of government to command the confidence of the Organization and of the other States Parties, with which it shares responsibility for ensuring full compliance by all States Parties with their international BTWC obligations.

59. Every National Authority needs to retain access to the legislature, for example through parliamentary scrutiny of regular reports, specified in the legislation under which it is established and which guarantees its statutory powers.

60. Each National Authority must be provided with adequate staff and other resources for the effective performance of its functions.

61. All the information which demonstrates that these criteria remain satisfied must be made available as an annual reporting requirement through the Organization to the other States Parties, and, subject to any confidentiality constraints, to the general public. National Authorities should also be encouraged to make additional information available so that States Parties and the Organization, and as much as possible the public, can be made aware of good practice in national implementation. Such an expansion of para 3 of Article X could be achieved by adopting the following language:

3. In order to fulfil its obligations under this Protocol and the Convention, each State Party shall designate or establish a National Authority and shall so inform the Organization upon entry into force of this Protocol for it. The National Authority shall serve as the national focal point for liaison with the Organization and with other States Parties. Information shall be provided annually by each State Party to the Organization, to be made available by the Organization to the other States Parties and (subject to any confidentiality constraints) to the general public, which demonstrates that the National Authority continues to satisfy all the following criteria; namely the possession of:

(a) statutory powers of investigation and a degree of statutory protection sufficient to ensure that other organs of government do not interfere in the effective performance of its functions;

(b) access to the legislature...

(c) adequate staff and other resources for the effective performance of its functions.

Each State Party may, in addition, transmit information to the Organization, to be made available by the Organization to other States Parties and (subject to any confidentiality constraints) to the general public, which helps promote wider awareness of good practice in national implementation of the international obligations assumed under this Protocol.

Article X of the Rolling Text

62. If the proposals made in this Briefing Paper were to be adopted, the full national implementation article (Article X) in the BTWC Protocol, with the minimum of other changes to the rolling text, would read as follows:

1. Each State Party to the Protocol shall, in accordance with its constitutional processes, take all necessary measures of national implementation in order to ensure the effective fulfilment of its obligations under the Convention and this Protocol. In particular, it shall:

(a) *Prohibit and prevent natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;*

(b) *Prohibit and prevent natural and legal persons from undertaking any such activity anywhere under its control; and*

(c) *Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.*

2. *Each State Party shall, where requested, cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.*

3. *In order to fulfil its obligations under this Protocol and the Convention, each State Party shall designate or establish a National Authority and shall so inform the Organization upon entry into force of this Protocol for it. The National Authority shall serve as the national focal point for liaison with the Organization and with other States Parties. Information shall be provided annually by each State Party to the Organization, to be made available by the Organization to the other States Parties and (subject to any confidentiality constraints) to the general public, which demonstrates that the National Authority continues to satisfy all the following criteria; namely the possession of:*

(a) *statutory powers of investigation and a degree of statutory protection sufficient to ensure that other organs of government do not interfere in the effective performance of its functions;*

(b) *access to the legislature...*

(c) *adequate staff and other resources for the effective performance of its functions.*

Each State Party may, in addition, transmit information to the Organization, to be made available by the Organization to other States Parties and (subject to any confidentiality constraints) to the general public, which helps promote wider awareness of good practice in national implementation of the international obligations assumed under this Protocol.

4. *Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Protocol and the Convention.*

5. *Each State Party, during the implementation of its obligations under this Protocol and the Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.*

6. *Each State Party undertakes to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.*