

Strengthening the Biological Weapons Convention

Review Conference Paper No 9

The Resumed Fifth BTWC Review Conference: Maximizing the Benefits from the Final Declaration

October 2002

Series Editors

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THE RESUMED FIFTH BTWC REVIEW CONFERENCE: MAXIMIZING THE BENEFITS FROM THE FINAL DECLARATION

by Graham S. Pearson* & Nicholas A. Sims†

Introduction

1. The Fifth Review Conference of the Biological and Toxin Weapons Convention (BTWC) opened in Geneva on 19 November 2001 and agreed on Friday 7 December to adjourn until 11 November 2002. The Interim Report¹ records that:

33. At its sixth plenary meeting on 7 December 2001, the Conference decided by consensus to adjourn its proceedings and reconvene at Geneva from 11 to 22 November 2002.

Ambassador Tibor Tóth, President of the Review Conference, had said at his Press Conference² on the morning of 7 December 2001 that 75% of the Final Declaration had been consolidated and at a later Press Conference³ the same day he had said that, when the decision to adjourn was taken, the draft Final Declaration was 95% ready. The Fifth Review Conference had thus been close to agreement of its Final Declaration when it agreed to adjourn until 11 December 2002.

2. As the Final Declarations at successive Review Conferences have provided a valuable strengthening of the BTWC regime through the extended understandings agreed in these Final Declarations⁴, it is timely to revisit the draft Final Declaration⁵ circulated by the Chairman of the Drafting Committee on the morning of Friday 7 December 2001 -- the 75% consolidated version -- and to examine what language is needed to complete the Final Declaration and achieve a valuable outcome that continues the strengthening of the regime through further extended understandings.

3. Although there is an argument that no changes should be proposed to those sections of the draft Final Declaration where there is no disagreement, this would be a failure by the States

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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, *Interim Report*, BWC/CONF.V/12, 14 December 2001. Available at <http://www.opbw.org>

²United Nations, *Highlights of Press Conference held on Ongoing Developments of the Fifth Review Conference of States Parties to the Biological Weapons Convention on 7 December at the Palais des Nations*, 7 December 2001. Available at <http://www.unog.ch/news/documents/newsen/pc011207.html>

³United Nations, *Comments made by the President of the Fifth Review Conference of States parties to the Biological Weapons Convention after the Adjournment of the Review Conference until November 2002*, 7 December 2001. Available at <http://www.unog.ch/news/documents/newsen/pc011207b.html>

⁴Nicholas A. Sims, *The Functions of the BTWC Review Conferences: Maximizing the Benefits from the Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 2, April 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁵Chairman of the Drafting Committee, *Draft Final Declaration*, morning 7 December 2001. Available at http://www.brad.ac.uk/acad/sbtwc/revconf/draft_FD.pdf

Parties to extract the maximum benefit from the Final Declaration particularly in those sections where the language in the draft has not been but should be developed from that adopted in the Final Declaration of the Fourth Review Conference in 1996. Such a failure would be particularly unfortunate given that the Fifth Review Conference has taken place at a time when concern about biological weapons whether in the hands of States or of terrorists is at an all-time high around the world.

4. The Bradford briefing book⁶ "Key Points for the Fifth Review Conference" distributed to States in November 2001 considered each Article in turn, first set out the language in the relevant section of the Final Declaration of the Fourth Review Conference, then the developments since the Fourth Review Conference relating to the Article and concluded by recommending language for the appropriate section of the Final Declaration of the Fifth Review Conference. The approach taken in this Review Conference Paper is to consider on an Article by Article basis the language in the draft Final Declaration⁷ of the morning of Friday 7 December 2001 against the background of the "Key Points for the Fifth Review Conference" and to consider where language could and **should** be developed so as to maximize the benefits to the BTWC regime from the extended understandings included in the Final Declaration of the Fifth Review Conference. Consequently, on an Article by Article basis we have **recommended** appropriate language for the Final Declaration. In addition, we have included corrections to typographical errors found in the draft Final Declaration and we **recommend** that the draft Final Declaration be reviewed throughout to correct all such typographical errors. Finally, a Check List has been added at the end of this Review Conference Paper which lists all the recommended changes to the draft Final Declaration.

Solemn Declaration

5. The language in the Solemn Declaration section of the draft Final Declaration stated that:

THE STATES PARTIES TO THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION AND STOCKPILING OF BACTERIOLOGICAL (BIOLOGICAL) AND TOXIN WEAPONS AND ON THEIR DESTRUCTION, WHICH MET IN GENEVA FROM 19 NOVEMBER TO 7 DECEMBER 2001 TO REVIEW THE OPERATION OF THE CONVENTION, SOLEMNLY DECLARE:

- *The determination of the States Parties to accomplish the total elimination of all weapons of mass destruction;*
- *The determination of the States Parties also to achieve general and complete disarmament under strict and effective international control, which is the ultimate objective of the efforts of States in the disarmament process;*
- *Their reaffirmation that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (biological) and Toxin Weapons and on their Destruction is essential for international and regional peace and security;*

⁶Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

⁷Chairman of the Drafting Committee, *Draft Final Declaration*, morning 7 December 2001. Available at http://www.brad.ac.uk/acad/sbtwc/revconf/draft_FD.pdf

- *Their reaffirmation of their firm commitment to the purposes of the Preamble and the provisions of the Convention;*
- *Their dissatisfaction at the fact that, after a quarter of a century since the entry into force of the Convention, universality has not yet been achieved;*
- *Their reiteration that the effective contribution of the Convention to international peace and security would be enhanced through universal adherence to the Convention, and their call on signatories to ratify, and other non-States parties to accede to, the Convention at the earliest;*
- *Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention;*
- *Their continued determination, for the sake of humankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of humankind;*
- *Their renewed determination to ensure, through the full implementation of Article I prohibitions that biological and toxin weapons are never acquired, developed, produced, stockpiled or used;*
- *Their conviction that terrorism in all its forms and manifestations and whatever its motivation, is abhorrent and unacceptable to the international community and that terrorists must be prevented from acquiring agents, toxins, biological weapons or associated knowledge;*
- *Their conviction that the full implementation of the provisions of the Convention should facilitate economic and technological development and international cooperation in the field of peaceful biological activities;*
- *Their recognition of the particular importance of responding to the threat posed by biological weapons by strengthening the Convention including through binding measures agreed by all States Parties.*

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

6. Unlike at the Fourth Review Conference where the Solemn Declaration was developed from that at the Third Review Conference with the addition of two additional points⁸, the draft Final Declaration for the Fifth Review Conference uses new language. The new language had been agreed with 12 subparagraphs and contains several new subclauses from the nine subparagraphs of the Fourth Review Conference including the following:

⁸See page 140, paragraph 3 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

- *The determination of States Parties to accomplish total elimination of all weapons of mass destruction;*
- *Their dissatisfaction at the fact that, after a quarter of a century since the entry into force of the Convention, universality has not yet been achieved;*
- *Their conviction that terrorism in all its forms and manifestations and whatever its motivation, is abhorrent and unacceptable to the international community and that terrorists must be prevented from acquiring agents, toxins, biological weapons or associated knowledge;*
- *Their recognition of the particular importance of responding to the threat posed by biological weapons by strengthening the Convention including through binding measures agreed by all States Parties.*

The addition of the subparagraph relating to terrorism, a suggestion made in the Key Points⁹, is welcomed.

7. Two subparagraphs are omitted from those that had appeared in the Solemn Declaration for the Fourth Review Conference:

- *Their recognition that effective verification could reinforce the Convention;*
- *Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*

The first of these subparagraphs has clearly been subsumed into the new subparagraph:

- *Their recognition of the particular importance of responding to the threat posed by biological weapons by strengthening the Convention including through binding measures agreed by all States Parties.*

The second subparagraph addressing the prohibition of use could, we **recommend**, usefully be added with "reaffirmation" replacing "recognition":

- *Their **reaffirmation** that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.*

In addition, the opening words of the Solemn Declaration will need to be updated to read " ... **WHICH MET IN GENEVA FROM 19 NOVEMBER TO 7 DECEMBER 2001 AND FROM 11 TO 22 NOVEMBER 2002 TO REVIEW...**". Finally, we **recommend** that the typographical error in the second line of the third subparagraph be corrected to read "*(Biological)*".

Preamble

⁹See page 142, paragraph 7 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

8. The paragraph in the draft Final Declaration is identical to that in the Final Declaration of the Fourth Review Conference with the insertion of the word "the" prior to "review" in the first line. No changes are recommended.

Article I

9. The draft Article I section consists of twelve paragraphs of which nine were agreed and three -- in bold -- were not yet agreed:

1. *The Conference notes the importance of Article I as the provision which defines the scope of the Convention. The Conference reaffirms its support for the provisions of this Article.*

2. *The Conference reaffirms that the Convention prohibits the development, production, stockpiling, other acquisition or retention of microbial or other biological agents or toxins harmful to plants and animals, as well as humans, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.*

3. ***The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, including within their own territory, of microbial or other biological agents or toxins, as well as of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention.***

4. *The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, including by transmission by means of vectors of biological origin, in order to exclude completely and forever the possibility of their use.*

5. *The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.*

6. *The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, biotechnology, molecular biology, genetic engineering, and any applications resulting from genome studies, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments.*

7. ***The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to humans is inconsistent with the undertakings contained in Article I; experimentation involving open-air release of pathogens or toxins harmful to animals or plants that has no justification for prophylactic,***

protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

8. *The Conference appeals through the States Parties to their scientific communities to lend their support only to activities that have justification for prophylactic, protective and other peaceful purposes, and refrain from undertaking or supporting activities which are in breach of the obligations deriving from provisions of the Convention.*

9. *The Conference condemns the use of all biological agents or toxins, including anthrax, as tools of terrorism and finds such acts reprehensible.*

10. The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Article I. The Conference calls upon all States Parties and Signatories to comply fully with their obligations on the basis of the conviction that any non-compliance with its provisions could undermine confidence in, and achieving the basic provisions of, the Convention.

10. The language has largely been developed from that in the Final Declaration of the Fourth Review Conference. Much of this had been agreed using language essentially the same as at the Fourth Review Conference. Interestingly, one reaffirmation had an agreed extension to include "*transmission by means of vectors of biological origin*" so that this now read:

The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, including by transmission by means of vectors of biological origin, in order to exclude completely and forever the possibility of their use. [Underlining indicates new language from that agreed at the Fourth Review Conference]

11. However, in the light of the pace of scientific and technological developments since the Fourth Review Conference, it is surprising that two of the paragraphs agreed in November 2001 are unchanged from the 1996 Final Declaration. These are the paragraphs relating to the scope of the Convention:

5. *The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.*

and the apprehensions paragraph:

6. *The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, in the fields of microbiology, biotechnology, molecular biology, genetic engineering, and any applications resulting from genome studies, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertaking given by the States Parties in Article I applies to all such developments.*

12. In the Key Points we had **recommended**¹⁰ that in view of growing knowledge of the dangers of prion diseases, the increasing capabilities for manipulation of receptors and ligands in the nervous, endocrine and immune systems, and the growing understanding of how proteins may be designed for particular purposes, the **scope** paragraph be amended by the addition of an explanatory sentence to read as follows:

5. *The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. **Consequently, prions, proteins and bioregulators and their synthetically produced analogues and components are covered.*** [Added language shown in bold]

13. In addition, we **recommended**¹¹ firstly that it should be made clear that the scientific and technological developments that could be of concern apply to **animals and plants as well as to human beings** and secondly that because the genomics revolution is impacting on **all** aspects of biology and medicine, the process of adding discrete new topics that are causing apprehension could be misleading. It would be clearer and better to use language making it clear that developments throughout the **whole** of the life sciences could potentially be of concern. This could then be complemented with an explanatory sentence mentioning some of the specific recent areas in which significant advances have occurred along the lines of "*Consequently, genomics, proteomics and bioinformatics are covered.*" Consequently, the **apprehensions** paragraph should be amended to read as follows:

6. *The Conference, conscious of apprehensions arising from relevant scientific and technological developments, inter alia, **in the life sciences in animals and plants as well as in humans**, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertakings given by the States Parties in Article I applies to all such developments. **Consequently, genomics, proteomics and bioinformatics are covered.*** [Added language shown in bold]

14. The importance of developing the language in paragraphs 5 and 6 from that agreed at the Fourth Review Conference is emphasised by considering the way in which the language in the Article I section of the Final Declaration relating to scientific and technological advances of relevance to the Convention which have addressed both the **scope** and the **apprehensions** caused by recent developments. In regard to the **scope** of the Convention, the extended understandings that have developed at successive Review Conferences in the language in the Article I section of the Final Declaration are summarised in the table below where the developments are emphasised in bold:

¹⁰See page 25, paragraph 41 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹¹See page 24, paragraph 39 and 40 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

Convention (Article I)	<i>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;</i>
First Rev Con	<i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con	<i>... the Convention unequivocally applies to all natural or artificially created microbial or other biological agents or toxins whatever their origin or method of production.</i>
Third Rev Con	<i>... the Convention unequivocally covers all microbial agents or toxins, naturally or artificially created or altered, whatever their origin or method of production.</i>
Fourth Rev Con	<i>... the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.</i>

In a similar way, successive Review Conferences have extended the understandings regarding the **apprehensions** raised by recent developments by reaffirming *that the undertaking given by the States Parties in Article I applies to all such developments*. The table below shows how the apprehensions addressed have been extended by successive Review Conferences where the developments are emphasised in bold:

Convention	<i>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;</i>
First Rev Con	<i>The Conference believes that Article I has proved sufficiently comprehensive to have covered recent scientific and technological developments relevant to the Convention.</i>
Second Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, genetic engineering and biotechnology,</i>
Third Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, genetic engineering and biotechnology,</i>
Fourth Rev Con	<i>... apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the fields of microbiology, biotechnology, molecular biology, genetic engineering and any application resulting from genome studies,</i>

15. Against this background, the realization that the relevant scientific and technological developments have burgeoned during the past five years and that biotechnology is seen as the technology of the 21st Century makes it even more critical that the Fifth Review Conference should in its Final Declaration further extend the understandings relating to both the scope and the apprehensions arising from relevant developments.¹² We **recommend** that the fifth

¹²Graham S. Pearson, *New Scientific and Technological Developments of Relevance to the Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 3, July 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

and sixth paragraphs be extended as proposed in the Key Points and reproduced above in paragraphs 12 and 13.

16. Three paragraphs in the Article I section of the draft Final Declaration are not yet agreed. The first one reaffirms that use, in any way and under any circumstances, is a violation of Article I:

3. The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, including within their own territory, of microbial or other biological agents or toxins, as well as of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention. [Underlining indicates new language from that agreed at the Fourth Review Conference]

The proposed additional language, underlined above, contains two valuable extensions -- the first to explicitly state "*including within their own territory*" and the second to extend the reaffirmation to include "*weapons, equipment and means of delivery*" -- which are welcomed. We **recommend** inclusion of the additional underlined language.

17. The second paragraph contains two formulations relating to experimentation involving open-air release of pathogens or toxins.

7. The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to humans is inconsistent with the undertakings contained in Article I; experimentation involving open-air release of pathogens or toxins harmful to animals or plants that has no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I. [Underlining indicates new language from that agreed at the Fourth Review Conference]

The second formulation is identical to that agreed in 1996. The new alternative formulation would appear to be more all embracing and to exclude any possibility that such open-air experimentation might have justification for prophylactic, protective, or other peaceful purposes. As open-air releases of pathogens or toxins are used for biocontrol of plants for peaceful purposes, the new formulation is unnecessarily restrictive and is thus **not** recommended. We therefore **recommend** language identical to that in the 1996 Final Declaration:

7. The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to animals or plants that has no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.

18. The third paragraph emphasizes the importance of full implementation of all provisions of the Convention and especially of Article I:

10. The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Article I. The Conference calls upon all States Parties and Signatories to comply fully

with their obligations on the basis of the conviction that any non-compliance with its provisions could undermine confidence in, and achieving the basic provisions of, the Convention. [Underlining indicates new language from that agreed at the Fourth Review Conference]

The corresponding paragraph in the Final Declaration of the Fourth Review Conference was:

9. The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Articles I, II and III. The Conference agrees that the application by States Parties of positive approaches in accordance with the provisions of the Convention is in the interest of all States Parties and that any non-compliance with its provisions could undermine confidence in the Convention. Non-compliance should be treated with determination in all cases, without selectivity or discrimination.

The new language proposed for the Final Declaration of the Fifth Review Conference provides a useful reiteration of the importance of all States Parties and Signatories complying fully with their obligations and on this basis, we **recommend** the inclusion of the new underlined language. We also **recommend** the inclusion of the final sentence from the 1996 Final Declaration language that "*Non-compliance should be treated with determination in all cases, without selectivity or discrimination.*" as this does need to be reaffirmed by the Fifth Review Conference.

Article II

19. The draft Article II section consists of two agreed paragraphs:

1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.

2. The Conference stresses that states, which become parties to the Convention, in implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

These are identical to the first and fourth paragraphs of the Fourth Review Conference Final Declaration. In the Key Points, we had proposed¹³ that the second sentence of the first paragraph be extended by addition of the words "*and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.*" as such an extension would provide a useful strengthening of the BTWC regime by affirming the requirement for the conversion to peaceful purposes or destruction of **all** facilities which participated in past offensive biological weapon programmes and/or activities. We **recommend** that the first paragraph be amended to read:

¹³See pages 33 & 34, paragraphs 12 to 16 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

1. *The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively **and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.*** [Additional language in bold]

20. The second and third paragraphs of the Fourth Review Conference Final Declaration which have been omitted are those which stated that:

2. *The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Third Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.*

3. *The Conference notes that the submission to the Centre for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.*

Although both of these paragraphs were included in the Key Points proposed language, we **recommend** the reinsertion of the third paragraph, amended as shown below in bold, as this needs to be included in the Final Declaration of the Fifth Review Conference; the second paragraph can be safely omitted.

3. *The Conference notes that the submission to the **Department** for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations, **and of appropriate information on destruction or diversion to peaceful purposes of any past biological weapons facilities, when sufficiently specific as to types, quantities, location and the date and method of the destruction or diversion to peaceful purposes, may enhance confidence in the Convention and its objectives, and calls on States Parties which had stockpiles or facilities and which have not already made such submissions to make them without delay.***

This new wording takes into account the proposed extension of "biological weapons facilities" to paragraph 1 and also encourages the provision of specific details (types, quantities, location and the date and method of the destruction or diversion to peaceful purposes), which are not required by the present CBM Form F format which simply requires a date when the past offensive programme ended, but which would help build confidence **when sufficiently specific**. In addition, the wording renews the call for such submissions first made in the second sentence of the second paragraph of the Article II section of the 1980 Final Declaration¹⁴ which stated that:

¹⁴United 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/10, Geneva 1980. Available at <http://www.brad.ac.uk/acad/sbtwc> and at <http://www.opbw.org>

*The Conference believes that such voluntary declarations contribute to increased confidence in the Convention and believes that States not having made such voluntary declarations **should do so.** [Emphasis added]*

It would be better to call for such submissions rather than just welcome those already made as in the language of subsequent Final Declarations.

Article III

21. The draft Article III section consists of nine paragraphs of which the first seven are agreed and the last two -- shown in bold below -- have not yet been agreed. This is in contrast to the four paragraphs in the Article III section of the 1996 Final Declaration. The draft Article III section states that:

1. *The Conference recognises the continuing importance of Article III and affirms that its provisions are sufficiently comprehensive to cover transfer to any recipient whatsoever, directly or indirectly, at international, national and sub-national levels.*

2. *The Conference notes that a number of States Parties stated that they have taken concrete measures to give effect to their undertakings under this Article, and in this context also notes statements by States Parties at the Conference about the legislative and administrative measures they have taken since the Fourth Review Conference.*

3. *The Conference calls for appropriate measures by all States Parties, within their constitutional and legislative procedures, to ensure effective implementation of this Article. The Conference underlines that transfers relevant to the Convention should be authorised only for purposes not prohibited under the Convention.*

4. *The Conference urges States Parties to take appropriate measures to prevent and respond to any violation, including by individuals or sub-national groups, of transfer regulations or legislation, including the qualification of such a violation as a punishable offence, consistent with the provisions of the Convention.*

5. *The Conference stresses that any recipient, including a State not party, must be prevented from acquiring biological agents or toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; weapons, equipment or means of delivery, and information that would assist the development, production, stockpiling and means of delivery of biological and toxin weapons.*

6. *The Conference emphasises that terrorists and terrorist groups should be prohibited from receiving materials and capabilities relevant to the Convention.*

7. *The Conference reiterates that the provisions of this Article should not be used to impose restrictions and/or limitations on the transfers for purposes consistent with the objectives and purposes of the Convention of scientific knowledge, technology, equipment and materials under Article X.*

8. The Conference encourages States Parties to consider, within the framework of the Convention, ways to enhance the implementation of this Article, including elaboration of a set of common principles and guidelines in the field of export controls.

9. The Conference takes note with interest of the provisions of the Cartagena Protocol on Biosafety which addresses, inter alia, transboundary movements of living genetically modified organisms.

22. The first, second and seventh agreed paragraphs have been developed from the language in corresponding paragraphs in the Article III section of the Fourth Review Conference Final Declaration. The third paragraph is elaborated from what had previously been the second sentence of the second paragraph. The fourth, fifth and sixth agreed paragraphs are new:

4. The Conference urges States Parties to take appropriate measures to prevent and respond to any violation, including by individuals or sub-national groups, of transfer regulations or legislation, including the qualification of such a violation as a punishable offence, consistent with the provisions of the Convention.

5. The Conference stresses that any recipient, including a State not party, must be prevented from acquiring biological agents or toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; weapons, equipment or means of delivery, and information that would assist the development, production, stockpiling and means of delivery of biological and toxin weapons.

6. The Conference emphasises that terrorists and terrorist groups should be prohibited from receiving materials and capabilities relevant to the Convention.

These additions are welcomed as they rightly emphasise the importance of preventing **any** recipient from acquiring biological agents or toxins; weapons, equipment and means of delivery; and information that would assist in the development, production and delivery of biological and toxin weapons. It is also made clear that the measures to implement Article III of the Convention are to prevent and respond to any violation, including by individuals or sub-national groups, and that terrorists are to be prohibited from receiving such materials or capabilities.

23. The first of the paragraphs not agreed states that:

8. The Conference encourages States Parties to consider, within the framework of the Convention, ways to enhance the implementation of this Article, including elaboration of a set of common principles and guidelines in the field of export controls.

This is a development of the language in the first sentence of the third paragraph of the Fourth Review Conference Final Declaration which states that:

3. The Conference discussed the question whether multilaterally-agreed guidelines or multilateral guidelines negotiated by all States Parties to the Convention concerning the transfer of biological agents, materials and technology for peaceful purposes to any recipient whatsoever might strengthen the Convention.

The proposed new language is somewhat stronger in that it encourages States Parties to consider ways to enhance the implementation of Article III including elaboration of a set of principles and guidelines in the field of export controls. We have pointed out previously in several Bradford Briefing Papers¹⁵ that increasingly all States -- north and south, east and west -- are increasingly concerned about imports and exports of dangerous materials and that governments increasingly are seeking to monitor and control such imports and exports. Given the world-wide concern about biological terrorism, there would be benefits from States Parties considering ways to enhance the implementation of Article III. Consequently, we **recommend** agreement of the language in this paragraph.

24. The second paragraph not agreed states that:

9. The Conference takes note with interest of the provisions of the Cartagena Protocol on Biosafety which addresses, inter alia, transboundary movements of living genetically modified organisms.

This paragraph is unexceptional. The 1996 Final Declaration in its Article X section included the following language:

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

The recent agreement of the Cartagena Protocol on Biosafety is but a development of language in one of the Articles of the Convention on Biological Diversity and the provisions in the Cartagena Protocol for advance informed agreement for transboundary movements of living modified organisms is clearly of relevance and interest to the States Parties to the BTWC. We **recommend** agreement of the language in this paragraph.

Article IV

25. The draft Article IV section consists of fourteen paragraphs of which ten are agreed, two (paragraphs 4 and 8) are agreed apart from one or two words, and the last two -- shown in bold below -- have not yet been agreed. This is in contrast to the seven paragraphs in the Article IV section of the 1996 Final Declaration. The draft Article IV section states that:

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

¹⁵See for example Graham S. Pearson, *The BTWC Protocol: Improving the Implementation of Article III of the Convention: Pragmatic Considerations*, University of Bradford, Department of Peace Studies, Briefing Paper No. 33, February 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

the review and/or adoption of national measures, the effective fulfillment of their obligations under the Convention in order, inter alia, to exclude use of biological and toxin weapons in terrorist or criminal activity.

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

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

4. *The Conference encourages States Parties to adopt **promptly**, in accordance with their constitutional processes, measures to prevent terrorists from acquiring biological agents or toxins, **dual use** equipment and information on the 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. The Conference calls upon States to make all possible efforts to prevent all terrorist acts including bio-terrorist acts in all their forms and manifestations.*

5. *The Conference stresses the importance of:*

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

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

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

- *Efforts by industry and scientific community to develop codes of conduct and/or ethical standards for work relevant to the prohibitions of the Convention, without prejudice to the primary responsibility of States Parties to adopt legislative, administrative and other measures to implement the provisions of the Convention. Such codes could include, inter alia, a statement that scientists will use their knowledge and skills for the advancement of human welfare and will not conduct any activities directed toward use of microorganisms or toxins or other biological agents for hostile purposes or in armed conflict.*

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

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

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

9. *The Conference calls upon each State Party to consider to adopt and implement national regulations to establish and maintain the protection of biological agents and toxins considered to be dangerous and relevant to the objectives of the Convention, including regulations on who may possess or acquire them and where and how they may be handled as well as regulations governing domestic and international transfers, and to enforce all such regulations by legislative or administrative measures, including penal measures, as appropriate.*

10. *The Conference encourages each State Party to consider adopting and implementing, if it is not yet the case, national guidelines for genetic engineering work consistent with the objectives and purposes of the Convention.*

11. *The Conference urges each State Party to provide appropriate legal assistance, in accordance with their national legislation and international agreements, in connection with criminal investigations or criminal proceedings relating to the development, production, acquisition, stockpiling or use by natural persons or legal entities of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention.*

12. *The Conference calls on each State Party to enhance its ability to prosecute or, where appropriate, extradite individuals for biological weapons offenses, in accordance with their national law and bilateral extradition agreements.*

13. *The Conference invites States Parties to consider, as appropriate, the negotiation of legal agreements to prevent and eliminate crimes involving biological and toxin weapons.*

14. *The Conference notes also that some States Parties have provided proposals and suggestions of further strengthening international law and relevant national legislation, and believe those proposals and suggestions are worthy of further*

exploration and consideration. The Conference also welcomes and encourages other States Parties to provide relevant comments, suggestions and proposals in this regard.

26. The first, second, third, fifth, sixth, seventh and eighth paragraphs are either identical to or developed slightly from those in the 1996 Final Declaration. Of note is the extension of the fifth paragraph to include an additional subparagraph stating that:

- *Efforts by industry and scientific community to develop codes of conduct and/or ethical standards for work relevant to the prohibitions of the Convention, without prejudice to the primary responsibility of States Parties to adopt legislative, administrative and other measures to implement the provisions of the Convention. Such codes could include, inter alia, a statement that scientists will use their knowledge and skills for the advancement of human welfare and will not conduct any activities directed toward use of microorganisms or toxins or other biological agents for hostile purposes or in armed conflict.*

The increased emphasis in paragraph five from the 1996 words "*The Conference notes the importance of*" to "*The Conference stresses the importance of*" is welcomed. In addition, in the third line of the third subparagraph of paragraph five, the typographical error in the draft should be corrected so as to read "*Biological and Toxin Weapons Convention*".

27. Although the third paragraph is identical to that agreed in the 1996 Final Declaration, we proposed¹⁶ in the Key Points that, because of the greater awareness internationally of biological terrorism, the language should be slightly strengthened by amending the phrase reading "for example the adoption of penal legislation" to read "including the adoption of penal legislation". The remainder of the paragraph would then apply fully and unambiguously to national measures including the adoption of penal legislation. This would represent an extended understanding of the implications of Article IV on an issue which has achieved an even greater urgency since 1996. We **recommend** that "*for example*" in the second line be replaced by "*including*".

28. The one word not yet agreed in the eighth paragraph is the final word "*regime*." As the eighth paragraph is identical to that agreed in 1996, we **recommend** that the word "*regime*" be agreed.

29. The new agreed paragraphs are paragraphs four, nine, ten, eleven and twelve. In the fourth paragraph two words "*promptly*" in line 1 and "*dual use*" in line 3 are not yet agreed. This paragraph encourages States Parties to adopt promptly measures to prevent terrorists from acquiring biological agents, dual use equipment and information -- and as such it largely parallels the language in the paragraph agreed in the Article III part of the draft Final Declaration which stated that:

5. *The Conference stresses that any recipient, including a State not party, must be prevented from acquiring biological agents or toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; weapons, equipment or means of delivery, and information that would assist the*

¹⁶See pages 57 and 58, paragraph 26 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

development, production, stockpiling and means of delivery of biological and toxin weapons.

Insofar as the two words not yet agreed in the fourth paragraph in the draft Final Declaration are concerned, the word "*promptly*" has been used previously in the language in Final Declarations and the encouragement to adopt measures promptly is sensible given the world-wide concern about biological terrorism. We therefore **recommend** agreement of the word "*promptly*." The use of "*dual-use*" appears to be redundant as the word "equipment" is clearly placed in context by the continuation of the fourth paragraph and consequently we **recommend** deletion of "*dual-use*."

30. The new ninth, tenth, eleventh and twelfth paragraphs address national regulations for the control of biological agents and toxins considered to be dangerous, national guidelines for genetic engineering, provision of legal assistance and enhanced prosecution and extradition capabilities respectively are all welcomed.

31. The two paragraphs not yet agreed are the thirteenth and fourteenth. The thirteenth invites States Parties to consider, as appropriate, the negotiation of legal agreements to prevent and eliminate crimes involving biological and toxin weapons. In principle, this is to be encouraged as the omission of explicit mention of biological and toxin weapons in the Rome Statute of the International Criminal Court should be rectified and proposals such as those put forward by the Harvard-Sussex Program for a Convention to Prohibit Biological and Chemical Weapons under International Criminal Law¹⁷ that would complement the prohibitions of the BTWC and the CWC, as it would make it a crime under international law for any person knowingly to develop produce, acquire, retain, transfer or use biological or chemical weapons or knowingly to order, direct or render substantial assistance to those activities or to threaten to use biological or chemical weapons, should be explored and taken forward. We **recommend** that the thirteenth paragraph be agreed.

32. The fourteenth paragraph is much less focussed than the other paragraphs in the Article IV section of the draft Final Declaration and largely appears to repeat some of the language already agreed. We **recommend** that the fourteenth paragraph be deleted.

Article V

33. The draft Article V section consists of nine paragraphs of which seven are agreed and two -- paragraphs 3 and 9 shown in bold below -- have not yet been agreed. This is one more than the eight paragraphs in the Article V section of the 1996 Final Declaration. The draft Article V section states that:

1. The Conference notes the importance of Article V and reaffirms the obligation assumed by States Parties to consult and cooperate with one another in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. The Conference reiterates its appeal to States Parties made at the Third Review Conference to make all possible efforts to solve any

¹⁷The Harvard Sussex Program on CBW Armament and Arms Limitation, *The Draft Convention to Prohibit Biological and Chemical Weapons under International Criminal Law*, November 2001. Available at <http://fas-www.harvard.edu/~hsp/crim01.pdf>

problems which may arise in relation to the objective of, or in the application of the provisions of the Convention with a view towards encouraging strict observance of the provisions subscribed to. The Conference notes that this Article provides an appropriate framework for resolving any such problems, and reaffirms that any State Party which identifies such a problem should, as a rule, use these procedures to address and resolve it.

2. *The Conference also reviewed the operation of the procedures to strengthen the implementation of the provisions of Article V which were adopted in the Final Declaration of the Third Review Conference and which built on the agreements reached at the Second Review Conference. The Conference notes that the implementation provisions were invoked since the Fourth Review Conference and calls on any State Party which identifies a problem arising in relation to the objective of, or in the application of the provisions of the Convention to use these procedures, if appropriate, to address and resolve it.*

3. ***The Conference stresses the need for all State Parties to deal effectively and promptly with compliance issues. In this connection, States Parties reconfirm their agreement to provide specific, timely responses in solving any problems which may arise in the application of any provision of the Convention. Such responses should be submitted, if appropriate, in accordance with the procedures agreed upon by the Second Review Conference and further developed by the Third Review Conference. The Conference reiterates its request that information on such efforts be provided to the Review Conferences. The Conference reaffirms that consultation and cooperation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.***

4. *The Conference stresses its determination to strengthen effectiveness and improve the implementation of the Convention, and its recognition that effective verification could reinforce the Convention.*

5. *In accordance with the decision of the Fourth Review Conference, the Conference reviewed the effectiveness of the confidence building measures as agreed in the Final Declaration of the Third Review Conference and reaffirmed at the Fourth Review Conference. The Conference notes the continued importance of the confidence building measures agreed upon at the Second and Third Review Conferences, as well as the modalities elaborated by the Ad Hoc Meeting of Scientific and Technical Experts from States Parties to the Convention, held in 1987.*

6. *The Conference notes the background information document providing, in summary tabular form, data on the participation of States Parties in the agreed confidence building measures since the last Review Conference.*

7. *The conference recognizes that participation with confidence building measures since last review conference has not been satisfactory nor universal and that not all responses have been prompt or complete. In this regard, the Conference urges all States parties to complete full and timely declarations in the future, noting the value of nil returns. The Conference further reminds all States Parties of the importance of submitting their CBMs to the United Nations by the 15 April each year.*

In this regard, the Conference also recognizes the technical difficulties experienced by some States Parties with respect to preparing CBM responses.

8. *The conference invites States Parties to consider setting up or designating a national entity responsible for the national implementation of the CBMs.*

9. *The Conference takes note of proposals to expand the scope of existing confidence building measures, to improve existing measures and to create new measures, in order to provide a broader range of relevant information, consistent with the approach agreed upon in 1991. Therefore, the Conference invites States Parties to further discuss modifications of CBMs.*

34. The first, second, fourth, fifth, and sixth paragraphs are either identical to or developed slightly from those in the 1996 Final Declaration. In the second sentence of the first paragraph we **recommend** that the words "*and reiterated at the Fourth Review Conference*" be inserted after "*The Conference reiterates its appeal to States Parties made at the Third Review Conference*" to show the continuity of this appeal through successive Review Conferences. Of note is the inclusion in the second paragraph in the second sentence of the words "*The Conference notes that the implementation provisions were invoked since the Fourth Review Conference*" in place of the words in the 1996 Final Declaration "*While noting that these procedures have not yet been invoked, the Conference reaffirmed their present validity.*" Given the concerns that have been expressed about compliance at the opening session of the Fifth Review Conference, there is much to be said for the reiteration of the language reaffirming the validity of the procedures. We therefore **recommend** amendment of the second and third sentences of the second paragraph so that they read "*The Conference notes that the implementation provisions were invoked since the Fourth Review Conference and reaffirms their continuing validity. The Conference calls upon ...*" in which the new language is in bold.

35. The sixth paragraph corresponds to the first sentence of the fifth paragraph in the 1996 Final Declaration with the addition of the words "*providing, in summary tabular form, data*". The seventh paragraph which sets out the unsatisfactory basis of the annual responses to the agreed confidence-building measures is developed from the rest of the fifth paragraph of the 1996 Final Declaration and usefully includes recognition of the value of nil returns. We **recommend** that the typographical error in the fourth line of the seventh paragraph is corrected so as to read "*States Parties*". The new eighth paragraph invites States Parties to set up or designate a national entity for the national implementation of the CBMs which is to be welcomed although this needs to be taken further by asking States Parties to advise the United Nations of this national entity thereby enabling States Parties to be able to approach the national entity for the purposes of consultation and cooperation in respect of the CBM declarations. We **recommend** extension of the eighth paragraph to read "*... national implementation of the CBMs and to advise the United Nations of the name and address of the national entity.*" in which the new language is in bold.

36. The two paragraphs not yet agreed are the third and ninth paragraphs. The new ninth paragraph which is not yet agreed contains language inviting States Parties to further discuss modifications of CBMs. Given that useful proposals were submitted in the initial session of the Fifth Review Conference by South Africa and by the European Union, there would be benefit in the Final Declaration using language similar to that agreed in the Article V section of the Final Declaration of the 1986 Second Review Conference which set up an ad hoc

meeting in April 1987 to finalize the modalities for the CBMs. The language agreed in 1986 was that:

The Conference decides to hold an ad hoc meeting of scientific and technical experts from the States Parties to finalise the modalities for the exchange of information and data by working out, inter alia, appropriate forms to be used by the States Parties for the exchange of information agreed to in this Final Declaration, thus enabling States Parties to follow a standardised procedure. The group shall meet in Geneva for the period 31 March - 15 April 1987 and shall communicate the results of the work to the States Parties immediately thereafter.

We **recommend** that the ninth paragraph be amended to read as follows in which the new language is in bold:

9. The Conference takes note of proposals to expand the scope of existing confidence building measures, to improve existing measures and to create new measures, in order to provide a broader range of relevant information, consistent with the approach agreed upon in 1991 and decides to hold an ad hoc meeting of the States Parties to finalise the modalities for these measures by working out, inter alia, appropriate forms to be used by the States Parties. The group shall meet in Geneva for the period [31 March - 11 April 2003] and shall communicate the results of the work to the States Parties immediately thereafter.

37. The new third paragraph which is not yet agreed starts by stressing the need for all States Parties to deal effectively and promptly with compliance issues and is closely similar to the language agreed in the eighth paragraph of the 1996 Final Declaration. The second sentence is, however, broader as it states that "*In this connection, States Parties reconfirm their agreement to provide specific, timely responses in solving any problems which may arise in the application of any provision of the Convention.*" than the more narrowly focussed language agreed in the 1996 Final Declaration which stated that "*In this connection, the States Parties had agreed to provide a specific, timely response to any compliance concern alleging a breach of their obligations under the Convention.*" The broadening to "*any problems which may arise in the application of any provision*" is welcomed as being consistent with the broad scope of the obligation to consult and cooperate under Article V. The third and fourth sentences in the draft Final Declaration are closely similar to those agreed in 1996. The final sentence is identical to the sentence agreed as the third paragraph of the 1996 Final Declaration. We **recommend** that the third paragraph be agreed.

Article VI

38. The draft Article VI section consists of seven paragraphs of which five are agreed, one (paragraph 5) is agreed apart from a single phrase and one -- paragraphs 4 shown in bold below -- has not yet been agreed. This is the same number of paragraphs as in the Article VI section of the 1996 Final Declaration. The draft Article VI section states that:

- 1. The Conference notes that the provisions of this Article have not been invoked.*
- 2. The Conference reaffirms the importance of Article VI, which, in addition to the procedures contained in Article V, provides that any State Party which finds that any other State Party is acting in breach of its obligations under the Convention may lodge a complaint with the United Nations Security Council. The Conference*

emphasizes the provision of Article VI that such a complaint should include all possible evidence and documents confirming its validity. It stresses that, as in the case of the implementation of all the provisions and procedures set forth in the Convention, the procedures foreseen in Article VI should be implemented in good faith within the scope of the Convention.

3. *The Conference invites the Security Council to consider immediately any complaint lodged under Article VI and to initiate any measures it considers necessary for the investigation of the complaint in accordance with the Charter. The Conference reaffirms the undertaking of each State Party to cooperate in carrying out any investigations which the Security Council may initiate.*

4. *The Conference invites States Parties to consider the development by all States Parties of a compliance mechanism within the framework of the Convention to conduct investigations regarding alleged breaches of the Convention.*

5. *The Conference recalls, in this context, United Nations Security Council resolution 620 (1988), which at the time encouraged the United Nations Secretary-General to carry out prompt investigations, in response to allegations brought to its attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that could entail a violation of the 1925 Geneva Protocol or of any other applicable rule of international treaty or customary law. The Conference also recalls the technical guidelines and procedures contained in Annex I of United Nations document A/44/561 to guide the United Nations Secretary-General on the timely and efficient investigation of reports of the possible use of such weapons. The States Parties reaffirm their agreement to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons and to cooperate fully with the United Nations Secretary-General in carrying out such investigations. **Pending the establishment of the mechanism described in the paragraph above,** the Conference stresses that in the case of alleged use the United Nations is called upon to take appropriate measures expeditiously, which could include a request to the Security Council to consider action in accordance with the Charter.*

6. *The Conference invites the Security Council to inform each State Party of the results of any investigation initiated under Article VI and to consider promptly any appropriate further action which may be necessary.*

7. *The Conference notes that the procedure outlined in this Article is without prejudice to the prerogative of the States Parties to the Convention to consider jointly the cases of alleged non-compliance with the provisions of the Convention and to make appropriate decisions in accordance with the Charter of the United Nations and applicable rules of international law.*

39. The first, third, sixth and seventh paragraphs are identical to those in the 1996 Final Declaration. The second paragraph is also identical apart from the deletion of a sentence in the corresponding paragraph in the 1996 Final Declaration that referred to any future verification regime resulting from the Ad Hoc Group. The fifth paragraph is also identical to the corresponding paragraph in the 1996 Final Declaration apart from the insertion of a clause not yet agreed at the start of the final sentence "*Pending the establishment of the mechanism described in the paragraph above,*" that refers to the not yet agreed fourth paragraph.

40. The not yet agreed fourth paragraph invites States Parties to consider the development by all States Parties of a compliance mechanism to conduct investigations regarding alleged breaches of the Convention. If this language had been proposed for the Article VI section of the Final Declaration of the Third Review Conference, it would probably have been agreed without undue difficulty as in an ideal world, States Parties would wish to consider development of such a mechanism. In reality, this paragraph is being proposed to the Fifth Review Conference following the United States rejection of the composite Protocol which included a carefully elaborated compliance mechanism that would have enabled investigations to be conducted of alleged breaches of the Convention. The way¹⁸ in which the United States rejected the Protocol -- and has continued to take every opportunity to denigrate the Protocol -- has effectively poisoned the multilateral framework so that otherwise reasonable proposals have little or no chance of being accepted.

41. In the Key Points we recognised that any cross reference to the work of the Ad Hoc Group in the Final Declaration would be unlikely to attract consensus and consequently we proposed¹⁹ language that referred to "*any future legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention*". Consequently, there would be advantage in considering further the language developed in the Key Points from that in the final paragraph of the 1996 Final Declaration which proposed that:

7. The Conference notes that provisions for investigating alleged breaches of the Convention, including measures for the investigation of alleged use of biological and toxin weapons, continue to be considered in regard to the negotiations of a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention, in accordance with its mandate.

We **recommend** that the fourth paragraph be amended to read as follows, with new language in bold:

*4. The Conference invites States Parties **when considering the development of a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention to include a compliance mechanism to conduct investigations regarding alleged breaches of the Convention.***

The linked phrase not yet agreed in the fifth paragraph could then be agreed without change.

Article VII

¹⁸See the analysis in Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The US Rejection of the Composite Protocol: A Huge Mistake based on Illogical Assessments*, University of Bradford, Department of Peace Studies, Evaluation Paper No 22, August 2001. Available at <http://www.brad.ac.uk/acad/sbtwc> Available at <http://www.brad.ac.uk/acad/sbtwc> and also in Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims, *The US Statement at the Fifth Review Conference: Compounding the Error in Rejecting the Composite Protocol*, University of Bradford, Department of Peace Studies, Review Conference Paper No 4, January 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

¹⁹See pages 72 to 74, paragraphs 5 to 11 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

42. The draft Article VII section consists of six paragraphs which are all agreed. This is one paragraph more than in the Article VII section of the 1996 Final Declaration. The draft Article VII section states that:

1. *The Conference notes with satisfaction that these provisions have not been invoked.*

2. *The Conference underlines the importance of Article VII and reaffirms the undertaking made by each State Party to provide or support assistance in accordance with the Charter of the United Nations to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger or damage as a result of a violation of the Convention.*

3. *The Conference affirms that, should a request for assistance be made, it should be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the United Nations Security Council, timely emergency assistance could be provided by States Parties or appropriate international organizations, if requested. The Conference takes note of the proposal that States Parties might need to coordinate procedures for assistance in order to ensure that timely emergency assistance could be provided if requested.*

4. *The Conference invites each State Party in a position to do so to identify possible types of medical, veterinary, or other assistance that might be made available. The Conference urges States Parties to commit, to the extent that they are able, to provide, or contribute to, the training and operation of national and/or international rapid response teams for emergency medical assistance, as well as necessary materials and equipment, especially for detection.*

5. *The Conference expresses concern at the possibility of biological weapons use or threat of use. The Conference underlines the value of promoting, as appropriate, access to medicines, medical prophylaxis and treatment as a crucial condition in the combat of outbreaks of diseases resulting from a violation of the Convention.*

6. *The Conference considers that in the event this Article might be invoked, the United Nations, with the help of appropriate intergovernmental organizations such as the World Health Organization (WHO), Office International des Epizooties (OIE) and the Food and Agriculture Organization (FAO), could play a coordinating role in providing assistance.*

43. The first paragraph is identical to and the second, third and sixth paragraphs are developed from those in the 1996 Final Declaration. These developments are welcomed as they have in general strengthened the language and have usefully extended the understandings. The development in the sixth paragraph to include mention of the OIE and FAO as well as the WHO is particularly welcomed as this was proposed²⁰ in the Key Points. The fourth and fifth paragraphs are new: the fourth invites States Parties to identify possible types of assistance and to contribute to the training of national and/or international rapid response teams for emergency medical assistance and the fifth underlines the importance of

²⁰See page 77, paragraph 5 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

promoting access to medicines, medical prophylaxis and treatment in countering outbreaks of disease resulting from a violation of the Convention. We **recommend** no amendments to the Article VII section of the draft Final Declaration.

Article VIII

44. The draft Article VIII section consists of seven paragraphs which are all agreed. This is the same number of paragraphs as in the Article VIII section of the 1996 Final Declaration. The draft Article VIII section states that:

1. *The Conference reaffirms the importance of Article VIII and stresses the significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, poisonous or Other Gases, and of Bacteriological methods of Warfare, signed at Geneva on 17 June 1925.*
2. *The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, forms an essential complement to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.*
3. *The Conference reaffirms that nothing contained in the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, poisonous or Other Gases, and of Bacteriological Methods of Warfare.*
4. *Noting the actions in support of the Protocol taken by the Security Council and General Assembly of the United Nations, and recalling the solemn reaffirmation of the prohibition as established in the Protocol, issued by the Conference of States parties to the 1925 Geneva Protocol and other interested States held in Paris from 7 to 11 January 1989, the Conference appeals to all States Parties to the Geneva Protocol to fulfil their obligations assumed under that Protocol and urges all states parties not yet parties to the 1925 Geneva Protocol to accede to it without delay.*
5. *The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.*
6. *The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and notify the Depositary of the Protocol of their withdrawals without delay.*
7. *The Conference notes that reservations concerning retaliation, implying the possible use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even if conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and*

retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.

45. The first, fifth and seventh paragraphs are identical to and the second, third, fourth and sixth paragraphs are slightly amended from the language in the Article VIII section of the 1996 Final Declaration. The second and third paragraphs are amended by using the formal title of the Convention -- "*the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*" -- in place of the shorter title "*the Biological and Toxin Weapons Convention*" used in the 1996 Final Declaration. The fourth paragraph is amended by deletion of the clause in the 1996 Final Declaration which had referred to the particular UN Security Council and General Assembly resolutions. We **recommend** that the typographical errors which have found their way into the third, fourth and sixth paragraphs of the Article VIII section of the draft Final Declaration be corrected as follows: in the fifth line of the third paragraph correct to read "**Poisonous**"; in the fourth line of the fourth paragraph correct to read "**Parties**" and in the sixth and seventh lines correct to "**States Parties**"; and in the third line of the sixth paragraph correct to read "**Convention**". We also **recommend** that the draft Final Declaration be reviewed throughout to remove any other such typographical errors.

46. The sixth paragraph has been slightly simplified by the omission of the words "1925 Geneva" which had preceded "Protocol" in the last line in the 1996 Final Declaration. In Key Points, we proposed that the sixth paragraph should be extended by an added sentence to enable the proposed continuing representative body (Committee of Oversight) to follow up the "calls on" request. We **recommend** that the sixth paragraph be extended by the following additional sentence: "***The Conference authorises its [Committee of Oversight] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations.***"

Article IX

47. The draft Article IX section consists of four paragraphs of which three are agreed and one -- paragraph 3 -- is yet to be agreed. This is one paragraph less than in the Article IX section of the 1996 Final Declaration. The draft Article IX section states that:

1. *The Conference reaffirms that Article IX identifies the recognised objective of the effective prohibition of chemical weapons. The Conference welcomes the entry-into-force on April 29, 1997 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, thus fulfilling the provisions of this Article.*

2. *The Conference also welcomes the fact that 143 countries have become States Parties to the Convention and some others have declared their intention to adhere to the Convention. It strongly urges all those that have not yet ratified or acceded to do so, in order to achieve the early universalization of the Convention and a world free of chemical weapons. In this connection, the Conference urges all States Parties to persuade non-Parties to the Chemical Weapons Convention to ratify or accede to the Convention to realise its universality.*

3. *The Conference also underlines the importance of effective and full implementation of the Convention in all its aspects.*

4. *The Conference takes note that the First Review Conference of the Chemical Weapons Convention will take place in 2003, and affirms the complementarity between the objectives of the two Conventions.*

48. The first paragraph is identical to that in the 1996 Final Declaration. The second and fourth paragraphs that are agreed are both new. The second paragraph welcomes the fact that 143 countries have become States Parties to the Chemical Weapons Convention (CWC) and strongly urges all those that have not ratified or acceded to do so. The fourth paragraph takes note that the First Review Conference of the CWC will take place in 2003 and usefully "*affirms the complementarity between the objectives of the two Conventions.*" The third paragraph, yet to be agreed, states that "*3. The Conference also underlines the importance of effective and full implementation of the Convention in all its aspects.*" As Article IX of the BTWC gives the BTWC States Parties a special standing and continuing responsibility in relation to the CWC, language that emphasizes the importance of effective and full implementation of that Convention is appropriate and necessary. We **recommend** that the third paragraph be agreed.

Article X

49. The draft Article X section consists of twenty-two paragraphs of which nineteen are agreed, one -- paragraph 6 (c) -- is agreed apart from one phrase and two -- paragraphs 5 and 20 -- are yet to be agreed. This is five paragraphs more than in the Article X section of the 1996 Final Declaration. The draft Article X section states that:

1. *The Conference once more emphasizes the increasing importance of the provisions of Article X, especially in the light of recent scientific and technological developments - including innovative research on genome sequencing like the human genome project - in the field of biotechnology, bacteriological (biological) agents and toxins with peaceful applications, which have vastly increased the potential for cooperation between States to help promote economic and social development, and scientific and technological progress, particularly in developing countries with a specific focus on least developed countries, in conformity with their interests, needs and priorities.*

2. *The Conference notes that, since the Fourth Review Conference, States Parties - both bilaterally and multilaterally, including through specialized International Organizations such as WHO, UNDP, FAO, OIE and ICGEB and other relevant organisations - have increased their contributions to facilitate international cooperation in the field of biotechnology, which focused on, inter alia:*

(a) *Research activities aimed at improving the capabilities of States Parties to monitor emerging and re-emerging diseases and to treat them;*

(b) *International cooperation on disease outbreaks;*

(c) *International cooperation on vaccine research and production and on global vaccination programs;*

(d) *Technology transfers;*

- (e) *Training of national experts from developing countries on microbiology, molecular biology, immunology and pathology, plant biology, protein structure and function, virology, industrial biotechnology;*
- (f) *Research activities on genome dynamics;*
- (g) *Establishment of biological data bases;*
- (h) *Publication, exchange and dissemination of relevant information.*

3. *The Conference, while acknowledging what has already been done towards this end, notes with concern the gap still existing between the developed and developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas. The Conference urges all States Parties to actively continue to promote international cooperation and exchange with States Parties in the peaceful uses of biotechnology, and urges all States Parties possessing advanced biotechnology to adopt positive measures to promote technology transfer and international cooperation on an equal and non-discriminatory basis, in particular with developing countries, for the benefit of all mankind. At the same time, the Conference stresses that measures to implement Article X need to be consistent with the objectives and provisions of the Convention.*

4. *The Conference welcomes the information provided by a number of States Parties on the cooperative measures they have undertaken towards fulfilling their Article X obligations and encourages other States Parties in a position to do so to provide such information.*

5. ***The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro Brazil, 1992.***

5 bis (previously paragraph 20) The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992. The Conference welcomes the adoption of the Protocol on Biosafety to the Convention on Biological Diversity in 2001 and looks forward to further steps being taken during the World Summit on Sustainable Development, to be held in Johannesburg, in 2002.

6. *The Conference urges States Parties to continue to implement specific measures designed to enhance compliance with and ensure effective and full implementation of Article X of the Convention among the States Parties. The implementation of such measures shall, inter alia, be aimed at:*

- (a) *Promoting scientific and technological exchanges and fostering international co-operation, as appropriate, on a multilateral, regional or bilateral basis in the field of peaceful bacteriological (biological) and toxin activities;*

(b) *Facilitating free trade and the fullest possible exchange in biological agents, toxins, equipment and materials for peaceful purposes in order to enhance the economic and technological development of States Parties, and ensuring the right of States Parties to participate in such exchanges to the fullest extent possible;*

(c) *Avoiding hampering the economic and technological development of States Parties through any restrictions incompatible with the obligations undertaken under the Convention or **limitations on the transfer**, for purposes consistent with the objectives and the provisions of the Convention, of scientific knowledge, technology, equipment and materials.*

7. *The Conference recalls that the States Parties have a legal obligation to facilitate, and have the right to participate, in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents, and toxins for peaceful purposes and not to hamper the economic and technological development of States Parties.*

8. *The Conference reiterated the confirmation of the Forth Review Conference that the provisions of Article III should not be used to impose restrictions and/or limitations on the transfers for purposes consistent with the objectives and the purposes of the Convention, of scientific knowledge, technology, equipment and materials under Article X.*

9. *The Conference urges States Parties to undertake or continue to promote and support the following activities, in furtherance of any current endeavors relevant to and in accordance with the Convention, where appropriate, individually, jointly, through arrangements with relevant international organizations including, but not limited to, the Food and Agriculture Organization, International Center for Genetic Engineering and Biotechnology, International Vaccine Institute, Office International des Epizooties, Organization for the Prohibition of Chemical Weapons, United Nations Environment Program, United Nations Industrial Development Organization or World Health Organization and the Secretariat of the Convention on Biological Diversity:*

(a) *The publication, exchange and dissemination of information on research and development on the peaceful uses of microbial or other biological agents and toxins, on bio-safety, prophylactics and protection, biotechnology, Good Laboratory Practice and current Good Manufacturing Practice, and diagnosis, surveillance, detection, treatment and prevention of diseases caused by microbial or other biological agents and toxins;*

(b) *The improvement and development, as appropriate, of research capabilities, including research institutes, in relevant fields of biosciences and biotechnology for peaceful purposes, through collaborative research programs and projects, upon the specific request of, and in co-operation with, the State Party concerned, in particular in the use of micro-organisms and other biological agents and toxins for medical, agricultural, veterinary and industrial purposes;*

- (c) *International cooperation on the research, development and production of vaccines;*
- (d) *Transfer and exchange of information concerning research programs in biosciences and greater cooperation in international public health and disease control;*
- (e) *Technological exchange of information among States Parties of technology for the peaceful uses of genetic engineering, the prevention, diagnosis and treatment of diseases caused by microbial and other biological agents or toxins, in particular infectious diseases, and for other relevant fields of biosciences and biotechnology for peaceful purposes;*
- (f) *Participation on a fair and equitable basis and as wide a geographic basis as possible at the bilateral, regional or multilateral levels in the application of biotechnology and scientific research and development, for the prevention, surveillance, detection, diagnosis and treatment of diseases caused by microbial and other biological agents or toxins, in particular infectious diseases;*
- (g) *The establishment or continuation of a framework for cooperation aimed at improving and strengthening the capabilities of States Parties through research activities in the field of prophylaxis and protection against diseases caused by microbial and other biological agents or toxins, in particular infectious diseases;*
- (h) *Transfer and exchange of information concerning research programmes in biosciences and greater cooperation in international public health and disease control;*
- (i) *Increased technical cooperation and assistance including training programmes, workshops and scientific conferences for health workers and experts in developing countries through interaction with relevant international organizations such as WHO, FAO and OIE;*
- (j) *Cooperation in providing information on epidemiological and epizootical study of diseases and data reporting systems on bilateral, regional and international levels in conjunction with relevant United Nations agencies within their competencies with a view to improve identification and timely reporting of outbreak of human, animal and plant diseases;*
- (k) *Promotion of exchange of scientists and experts to enhance the capability of States Parties in strengthening their disease surveillance programmes;*
- (l) *Increased coordination, operation and updating of existing databases on infectious diseases in States Parties as well as easy access to such databases by all States Parties;*
- (m) *Strengthening the existing global networks for disease surveillance and building up their capabilities to respond to disease outbreaks in a timely*

fashion particularly in humanitarian assistance to the States Parties affected by disease outbreaks, utilizing relevant international organizations and agencies including WHO, and its global outbreak alert and response network launched in 2000 as well as its centre on communicable diseases surveillance and response established in Lyon in 2000, with the participation of relevant institutions of the States Parties;

(n) Assisting the States Parties through relevant international bodies within their competencies to strengthen national and local programmes of surveillance for infectious diseases an improving early notification, surveillance, control, protection and response capabilities.

10. The Conference invites WHO, FAO and OIE to enhance their coordination efforts on epidemiological surveillance and disease prevention by making use of existing international efforts for enhancing a system of global cooperation for surveillance of infectious diseases.

11. The Conference urges the use of existing institutional means within the United Nations system and the full utilization of the possibilities provided by the specialized agencies and other international organizations, and considers that the implementation of Article X could be enhanced through greater coordination among international cooperation programs in the biological field for peaceful purposes conducted by States Parties, specialized agencies and other international organizations.

12. The Conference reiterates its call upon the Secretary-General of the United Nations to propose for inclusion on the agenda of a relevant United Nations body, before the next Review Conference, a discussion and examination of the means of improving institutional mechanisms in order to facilitate the fullest possible exchange of equipment, materials and scientific and technological information regarding the use of Bacteriological (biological) agents and toxins for peaceful purposes.

13. The Conference welcomes to elaborate an international programme of vaccine development for the prevention of diseases which would involve the scientific and technical personnel from developing countries that are States Parties to the Convention. The Conference recognizes that such a program will not only enhance peaceful international cooperation in biotechnology but also contribute to improve health care in developing countries, assist in establishing systems for surveillance of communicable diseases, and provide transparency in accordance with the Convention.

14. The Conference, recognizing progress already achieved in this field, calls upon all States in a position to do so to enhance cooperation in promotion and financing the establishment of vaccine and prophylactic agents production facilities. The Conference recommends further that relevant multilateral organizations and world financial institutions continue to provide assistance for establishment and promotion of vaccine and prophylactic agents production projects in these countries.

15. The Conference welcomes the establishment, in 1997, of the International Vaccine Institute, an international institution devoted to strengthening the capacity of

developing countries in vaccine development, production and use in immunization programs.

16. *The Conference calls upon States Parties to explore ways of implementing at a global level Good laboratory Practices, including audit trails for the transfer of pathogens and toxins between, and within, laboratories, taking into account the views of the WHO, the OIE, the FAO, the ICGEB and other relevant organizations as appropriate.*

17. *The Conference considers that enhanced synergy among existing national and international data banks would facilitate the flow of information in the field of genetic engineering, biotechnology and other scientific developments. In this context, the Conference underlines the importance of monitoring all related developments in the field of frontiers science and high technology in the areas relevant to the Convention.*

18. *The Conference notes that existing institutional ways and means of ensuring cooperation between States Parties would profit from continued development in order to promote international cooperation in peaceful activities in areas such as medicine, public health and agriculture as well as related advanced fields of biotechnology.*

19. *The Conference proposes that States Parties consult bilaterally and/or multilaterally as appropriate on the creation of opportunities for cooperation on matters relevant to scientific and technological exchanges for peaceful purposes related to the implementation of the Convention.*

20. *The Conference calls for the establishment of a forum for consultation and creation of opportunities for cooperation on matters related to the promotion of scientific and technological exchange in the field of peaceful, bacteriological (biological) and toxin activities, and review of the implementation of Article X of the Convention among the States Parties to the Protocol.*

21. *The Conference urges the States Parties, the United Nations and its specialized agencies to take appropriate measures within their competence for the fullest possible exchange of equipment, materials, scientific and technological information and to promote technology transfer among themselves in particular to developing countries for surveillance and control of disease caused by biological agents and toxins in humans, animals and plants. Such measures should include, inter alia;*

(a) *Exchange of information concerning research programmes in biosciences and close cooperation in international public health and control of infectious diseases;*

(b) *Increased technical cooperation and assistance including training programmes, workshops and scientific conferences for health workers and experts in developing countries through interaction with relevant international organizations such as WHO, FAO and OIE;*

(c) *Cooperation in providing information on epidemiological and epizootological study of infectious diseases and data reporting systems on bilateral, regional and international levels in conjunction with relevant United*

Nations agencies with a view to improve identification and timely reporting of outbreak of human, animal and plant diseases;

(d) Promotion of exchange of scientists and experts to enhance the capability of States Parties in promoting their disease surveillance programmes;

(e) Increased coordination, operation and updating of existing databases on infectious diseases in States Parties as well as easy access to such databases by all States Parties;

(f) Implementation of a coordinating mechanism by the WHO, the FAO and OIE for epidemiological surveillance and disease prevention by making use of existing international effort for enhancing a system of global cooperation for surveillance of infectious diseases;

(g) Strengthening the existing global networks for disease surveillance and building up their capabilities to respond to disease outbreaks in a timely fashion particularly in humanitarian assistance to the States Parties affected by disease outbreaks, utilizing relevant international organizations and agencies including WHO, with the participation of relevant institutions of the States Parties;

(h) Assisting the States Parties to strengthen national and local programmes of surveillance for infectious diseases and improving early notification, surveillance, control, protection and response capabilities.

22. *The Conference considers that the WHO has made valuable contributions in the area of humanitarian assistance in cases of outbreak of diseases and recognises the WHO's mandate for global health, epidemiological alert and response to outbreaks of human disease.*

50. The first, third, fourth, seventh, eighth, eleventh, twelfth, thirteenth, seventeenth, eighteenth paragraphs are identical to or developed from the corresponding paragraphs in the 1996 Final Declaration. The second, ninth, tenth, fourteenth, fifteenth, sixteenth, nineteenth and twenty-second paragraphs that are agreed are new as is the sixth paragraph, which is agreed apart from a clause in paragraph 6 (c). Some of the new paragraphs, frequently with several subparagraphs, have largely been taken from language in Article 14 of the Chairman's composite text²¹. We **recommend** that the typographical error in paragraph 8 be corrected so as to read "*Fourth*", that in the last line of paragraph 12 be corrected to read "*bacteriological*" and those in the second line of paragraph 16 be corrected to "*Laboratory Practice*". In addition, we **recommend** that the missing words "*efforts to*" be inserted in the first line of paragraph 13 after "*The Conference*" thereby restoring the language to that in the 1996 Final Declaration.

²¹United Nations, *Procedural Report of the 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/56-1 and 56-2, 18 May 2001, Geneva. Available at <http://www.brad.ac.uk/acad/sbtwc> and at <http://www.opbw.org>

51. Paragraph 6 of the draft Final Declaration lifts language from paragraph 1 of the General Provisions of Article 14 addressing technical cooperation in the Chairman's composite text of the Protocol with a slightly modified chapeau stating that:

6. *The Conference urges States Parties to continue to implement specific measures designed to enhance compliance with and ensure effective and full implementation of Article X of the Convention among States Parties. The implementation of such measures shall, inter alia, be aimed at: [underlined language is identical to that in paragraph 1 of Article 14 of the Chairman's composite text]*

This is then followed by three subparagraphs that are essentially identical to the three subparagraphs of paragraph 1 of Article 14 of the Chairman's composite text. It is in paragraph 6 (c) that the phrase yet to be agreed "or limitations on the transfer" sits:

(c) *Avoiding hampering the economic and technological development of States Parties through any restrictions incompatible with the obligations undertaken under the Convention **or limitations on the transfer**, for purposes consistent with the objectives and the provisions of the Convention, of scientific knowledge, technology, equipment and materials.*

This is language identical to that in the Chairman's composite text and may be compared with the language in the corresponding paragraph 1 (c) of the rolling text²² which states:

(c) *Avoiding hampering the economic and technological development of States Parties [or] [imposing and maintaining] [through] any restrictions incompatible with the obligations undertaken under the Convention and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.*

The disagreement in the rolling text was thus not about the clause "or limitations on the transfer," but about the lead in to the clause which had been addressed in the Chairman's composite text. We **recommend** that the clause "or limitations on the transfer," in paragraph 6 (c) be agreed.

52. Paragraph 9 of the draft Declaration contains language from paragraph 4 of Article 14 of the Chairman's composite text of the Protocol with a different chapeau stating that:

9. *The Conference urges States Parties to undertake or continue to promote and support the following activities, in furtherance of any current endeavors relevant to and in accordance with the Convention, where appropriate, individually, jointly, through arrangements with relevant international organizations including, but not limited to, the Food and agriculture Organization, International Center for Genetic Engineering and Biotechnology, International Vaccine Institute, Office International des Epizooties, Organization for the Prohibition of Chemical Weapons, United Nations Environment Program, United Nations Industrial Development Organization or World Health Organization and the Secretariat of the Convention on Biological*

²²United Nations, *Procedural Report of the 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/56-1 and 56-2, 18 May 2001, Geneva. Available at <http://www.brad.ac.uk/acad/sbtwc> and at <http://www.opbw.org>

Diversity: [underlined language is identical to that in paragraph 4 of Article 14 of the Chairman's composite text]

This is then followed by subparagraphs (a) to (n) which largely reflect the subparagraphs (a) to (k) of paragraph 4 of Article 14 of the Chairman's composite text as well as include new subparagraphs.

53. Two paragraphs are not yet agreed. Paragraph 5 proposes two alternatives dealing with references to the Convention on Biological Diversity; the second alternative includes an additional sentence making reference to the Cartagena Protocol on Biosafety:

5. The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992.

5 bis The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992. The Conference welcomes the adoption of the Protocol on Biosafety to the Convention on Biological Diversity in 2001 and looks forward to further steps being taken during the World Summit on Sustainable Development, to be held in Johannesburg, in 2002.

The first alternative is simply a rephrased version and substantively identical to paragraph 9 in the Final Declaration of the Fourth Review Conference which read as follows:

9. The Conference takes note of the significant steps forward in promoting cooperation in the biological field taken by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, in 1992, including the adoption of Agenda 21 and the Rio Declaration, and by the Convention on Biological Diversity, and underlines their importance in the context of Article X implementation.

The second alternative simply updates the same substantive points. As we have argued previously that the Article X developments need to be considered in the light of developments under the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, we **recommend** that the second alternative be agreed, updated as appropriate to take into account the World Summit on Sustainable Development held in South Africa earlier this year.

54. The other paragraph (20) which is not yet agreed relates to the establishment of a forum for the consultation on cooperation -- essentially a Cooperation Committee similar to that in the Chairman's composite text -- on which the proposed language is clearly taken, without even amendment to remove the inappropriate reference to the Protocol, from paragraph 2 of the Chairman's composite text and reads as follows:

20. The Conference calls for the establishment of a forum for consultation and creation of opportunities for cooperation on matters related to the promotion of scientific and technological exchange in the field of peaceful, bacteriological (biological) and toxin activities, and review of the implementation of Article X of the Convention among the States Parties to the Protocol. [underlined language is identical to that in paragraph 2 of Article 14 of the Chairman's composite text]

As in the Key Points we have proposed²³ in the Article XII section that an interim supportive institution should be set up to nurture and sustain the Convention between Review Conferences and that that institution should be able to establish, as necessary, for the exercise of its functions subsidiary organs such as a Legal Advisory Panel or Scientific Advisory Panel, we **recommend** that language be agreed in the Article X section of the Final Declaration for a Cooperation Advisory Panel as a subsidiary organ to the interim supportive institution as follows, with new language shown in bold:

20. The Conference calls for the establishment of a forum for consultation and creation of opportunities for cooperation on matters related to the promotion of scientific and technological exchange in the field of peaceful, bacteriological (biological) and toxin activities, and review of the implementation of Article X of the Convention as a subsidiary organ to the Oversight Committee established under Article XII.

Article XI

55. The draft Article XI section consists of one paragraph which is agreed. This is three paragraphs less than in the Article XI section of the 1996 Final Declaration. The draft Article XI section states that:

The Conference notes the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

56. This paragraph has been developed from the corresponding single paragraph in the Article XI section of the Final Declaration of the Third Review Conference which stated that:

The Conference notes the importance of Article XI and that since the entry into force of the Convention the provisions of the Article have not been invoked. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

The substance of this paragraph, abbreviated to take account of the invocation of Article XI by one State Party in 1996, which was the subject of three new paragraphs in the 1996 Final Declaration, was included as the fourth paragraph in the 1996 Final Declaration which stated that:

4. The Conference meanwhile reaffirms the importance of Article XI. In this context the Conference underlines that the provisions of Article XI should in principle be implemented in such a way as not to affect the universality of the Convention.

²³See pages 122 to 129, paragraphs 12 to 31 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

The Key Points proposed²⁴ a single paragraph using similar language to that in the fourth paragraph of the Article XI section of the 1996 Final Declaration. We, consequently, **recommend** no changes to the Article XI section of the draft Final Declaration.

Article XII

57. The draft Article XII section consists of three paragraphs of which one -- paragraph 1 -- is agreed. This is the same number as in the Article XII section of the 1996 Final Declaration. The draft Article XII section states that:

1. *The Conference decides that a Sixth Review Conference shall be held in Geneva at the request of the majority of States Parties, or in any case, not later than 2006.*

2. *The Conference decides that the Sixth Review Conference shall consider, inter alia:*
 - ...
 - *The impact of scientific and technological developments relating to the Convention;*
 - *The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Fifth Review Conference;*
 - *The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;*
 - *The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;*

3. *The Review Conference reaffirms that conferences of States Parties to review the operation of the Convention should be held at least every five years.*

58. It is the Article XII section of the Final Declaration on which the new language proposed by the United States on 7 December 2001 in the final hours of the initial session of the Fifth Review Conference led to the adjournment of the Review Conference until 11 November 2002. The first paragraph, which is agreed, and the third paragraph, which is not agreed, are essentially identical to the corresponding paragraphs of the 1996 Final Declaration: the first paragraph having "*Fifth*" in place of "*Fourth*" and "*2006*" in place of "*2001*" and the third

²⁴See page 117, paragraph 7 Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

paragraph having "*reaffirms*" in place of "*recommends*." As proposed²⁵ in the Key Points, we **recommend** that the third paragraph should move from recommendation to decision and that it should consequently read as follows "3. *The Review Conference **decides** that conferences of States Parties to review the operation of the Convention should be held at least every five years.*" with the new language in bold.

59. The second paragraph is the paragraph that sets out the agenda items to be included at the Sixth Review Conference. The 1996 Final Declaration included the following as its second paragraph:

2. The Conference decides that the Fifth Review Conference shall consider, inter alia,

- The impact of scientific and technological developments relating to the Convention;

- The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Fifth Review Conference;

- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences;

- The conclusions of a Special Conference, to which the Ad Hoc Group shall submit its report, including a legally-binding instrument to strengthen the Biological and Toxin Weapons Convention, which shall be adopted by consensus, to be held as soon as possible before the commencement of the Fifth Review Conference; and further action as appropriate;

- The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of the Fourth Review Conference;

60. The first three and the fifth subparagraphs are essentially non-contentious and should be updated as appropriate -- notably the second sub-paragraph needs to refer to "the degree of universality attained by such conventions at the time of the **Sixth** Review Conference" and not as in the draft Final Declaration to "the time of the Fifth Review Conference". We **recommend** that the first two subparagraphs be agreed as follows where the new language is shown in bold:

- The impact of scientific and technological developments relating to the Convention;

- The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons

²⁵See page 122, paragraph 11 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

*Convention, duly taking into account the degree of universality attained by such conventions at the time of the **Sixth** Review Conference;*

We **recommend** that the third subparagraph be extended as indicated in bold below so as to include developments to the confidence-building measures agreed by the ad-hoc meeting recommended above for the Article V section of the Final Declaration:

*- The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences **and at the ad-hoc meeting following this Review Conference;***

The fifth sub-paragraph in the draft Final Declaration refers to "*the effective implementation of the relevant decisions of the **Fourth** Review Conference*" when it is clearly intended to refer to the relevant decisions of the **Fifth** Review Conference. However, in the Key Points we proposed²⁶ that because there are outstanding requests from the earlier Review Conferences, the language should be amended to refer to "*the relevant decisions of **this and previous Review Conferences***". Consequently, we **recommend** that the fifth subparagraph be extended as follows, with new language in bold:

*- The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of **this and previous Review Conferences;***

61. The fourth sub-paragraph is more difficult. In the Key Points, we proposed²⁷ language as follows:

- The conclusions of a Special Conference, if held before the Sixth Review Conference for the purpose of receiving the report of the Ad Hoc Group, including a legally-binding instrument to strengthen the Convention, which shall have been adopted by consensus. The inclusion of this agenda item is without prejudice to the positions of States Parties on [the future work of the Ad Hoc Group and on] matters under negotiation in the Ad Hoc Group;

In the light of the proposal by one State Party to terminate the mandate of the Ad Hoc Group, we **recommend** that an alternative wording might be preferable which avoids explicit mention of the Ad Hoc Group:

- The conclusions of a Special Conference, if held before the Sixth Review Conference for the purpose of receiving a report, including a legally-binding instrument to strengthen the Convention. The inclusion of this agenda item is without prejudice to the positions of States Parties on matters under negotiation;

²⁶See page 121, paragraph 7 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

²⁷See page 121, paragraph 8 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

62. In the Key Points, we recognized²⁸ that there is a compelling argument for the Conference to establish an interim supportive institution or bureau to undertake continuing tasks between the Fifth and Sixth Review Conferences and proposed language for the Article XII section to achieve this. This language took the form of an additional subparagraph for the second paragraph as follows:

- *The report of the General Committee of the Fifth Review Conference, or other continuing representative body, constituted as a [Committee of Oversight] under paragraph 4 below, including any recommendation that its mandate be extended, with or without amendment, to bridge the interval between the Sixth and Seventh Review Conferences.*

together with an additional five new paragraphs:

4. The Conference, conscious of the need for interim institutions in support of the Convention to bridge the five years' interval between the Fifth and Sixth Review Conferences, and without prejudice to the positions of States Parties on the strengthening of the Convention through a legally-binding instrument, requests its General Committee [to constitute itself as a continuing body until the Sixth Review Conference] [to elect x of its members to constitute a continuing body until the Sixth Review Conference] under the name [Committee of Oversight] [Continuing Committee] [Interim Committee] [Representative Committee] and in that capacity, under the authority of this Conference and without detracting from the functions of the Depositary Governments designated under Article XIV:

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

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

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

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

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

²⁸See pages 122 to 129, paragraphs 12 to 31 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

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

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

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

5. *The Committee shall meet no less often than once a year between the Fifth and Sixth Review Conferences.*

6. *The Committee shall operate by consensus.*

7. *The Committee may be invited by any State Party to assist in undertaking consultation and cooperation pursuant to Article V, and may accede to such an invitation provided no State Party objects, without detracting from the right of any State Party to request that a Formal Consultative Meeting be convened in accordance with the decisions of successive Review Conferences and the procedures agreed by them, under Article V, or to lodge a complaint with the United Nations Security Council under Article VI.*

8. *The Committee shall issue interim reports on its work, in addition to the report to the Sixth Review Conference required under paragraph 1(h) above. Such reports shall be addressed to all States Parties and shall also be made available to States Signatories, the United Nations, and other organizations as appropriate;*

9. *The Committee shall be financed pro rata as an appendix of this Fifth Review Conference.*

63. In the Key Points, we recommended that the Article XII section of the Final Declaration of the Fifth Review Conference be extended to include the above additional subparagraph to the second paragraph and the new paragraphs four to nine. Since then proposals have been made by States Parties for other mechanisms to bridge the gap between the **Error!**

64. We **recommend** that the Article XII section be extended to make provision at least for:

- prolongation to 2006 of the General Committee of the Fifth Review Conference, or a smaller committee elected from its membership, constituted as a continuing representative body or bureau;

- authorisation for this continuing representative body or bureau to establish, as it finds necessary, subsidiary organs such as a Scientific Advisory Panel, a Legal Advisory Panel and in relation to Article X a Cooperation Advisory Panel;

- establishment, in consultation with the Secretary-General of the United Nations, of a small secretariat dedicated exclusively to the service of the Convention;
- financing of these mechanisms, and of any follow-up meetings of States Parties as an appendix of the Fifth Review Conference;

together with such annual meetings of States Parties and ad hoc meetings as also may be agreed.

65. These provisions should be included in further paragraphs drawing as appropriate on the detailed mandate recommended in Key Points and reproduced above in paragraph 62. We continue to **recommend** the title "*Committee of Oversight*".

Article XIII

66. The draft Article XIII section consists of one paragraph which is agreed. This is the same number as in the Article XIII section of the 1996 Final Declaration. The draft Article XIII section states that:

The Conference notes the provisions of Article XIII and emphasises that the Convention is of unlimited duration and applies at all times.

67. This paragraph is a curtailed version of the single paragraph in the 1996 Final Declaration which stated that:

1. The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.

There is no advantage from the curtailment so, consequently, we **recommend** the addition of the omitted words so that the Article XIII section reads as follows, with the added wording in bold:

*The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, **expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.***

Article XIV

68. The draft Article XIV section consists of two paragraphs which are agreed. This is three paragraphs less than in the Article XIV section of the 1996 Final Declaration. The draft Article XIV section states that:

1. *The Conference notes that eight States have ratified or acceded to the Convention since the Fourth Review Conference.*
2. *The Conference calls upon States which have not yet ratified or acceded to the Convention to do so without delay, thus contributing to the achievement of universal*

adherence to the Convention. In this connection, the Conference requests States Parties to encourage universality of the Convention.

69. The first paragraph is similar to the first paragraph in the 1996 Final Declaration which stated that:

1. The Conference notes with satisfaction that a number of States have acceded to the Convention since the Third Review Conference.

Since the initial session of the Fifth Review Conference, a further State has become a State Party to the Convention so the number needs to be increased from "eight" to "nine". There is no advantage from the omission of the words "with satisfaction" as this omission appears to suggest that the States Parties are indifferent to the increased number of States Parties. We **recommend** that the first paragraph be amended as follows with new language in bold:

*1. The Conference notes **with satisfaction** that **nine** States have ratified or acceded to the Convention since the Fourth Review Conference.*

70. The second paragraph has elided into a single paragraph the second and third paragraphs in the 1996 Final Declaration which stated that:

2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention.

3. In this connection, the Conference requests States Parties to encourage wider adherence to the Convention.

The omission of the specific language calling upon "those States which have not signed the Convention to join the States Parties thereto" adds no advantage and we **recommend** that these omitted words be added so as to make explicit the call to those States which have not signed the Convention as such States are **not** committed, as Signatory States are, to doing nothing contrary to the object and purpose of the Convention. The paragraph should therefore read as follows, with new language in bold:

*2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay **and upon those States which have not signed the Convention to join the States Parties thereto**, thus contributing to the achievement of universal adherence to the Convention. In this connection, the Conference requests States Parties to encourage universality of the Convention.*

71. The draft Final Declaration has omitted comparable language to that included in the fourth and fifth paragraphs of the 1996 Final Declaration that state:

4. The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.

5. The Fourth Review Conference appeals to those States Parties to the Biological and Toxin Weapons Convention which have taken part in the Conference to

participate in the implementation of provisions contained in the Final Declaration of this Conference. The Conference also appeals to all States Parties to participate actively in the Ad Hoc Group of States Parties, with a view to the early completion of its work to strengthen the Convention.

There is no advantage from omitting the fourth paragraph, especially at a time when regional groupings are paying increased attention to the treaties relating to weapons of mass destruction, so we **recommend** that it be included as the third paragraph of the Article XIV section of the Final Declaration of the Fifth Review Conference:

3. *The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.*

72. Likewise there is no advantage -- and indeed, there are clear disadvantages -- from omitting the first sentence of the fifth paragraph which, however, needs to be corrected as pointed out²⁹ in the Key Points by the insertion of "**not**" prior to "taken place" in the second line. This error appeared for the first time in the Final Declaration of the Fourth Review Conference and appears to have been inadvertent. We **recommend** that the first sentence be included as the fourth paragraph of the Article XIV section of the Final Declaration of the Fifth Review Conference with amendments from the 1996 Final Declaration shown in bold:

4. *The Fifth Review Conference appeals to those States Parties to the Biological and Toxin Weapons Convention which have not taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration of this Conference.*

Article XV

73. The draft Article XV section consists of one paragraph which is agreed. This is the same number as in the Article XV section of the 1996 Final Declaration. The draft Article XV section states that:

The Conference notes the importance of this Article as well as the legal status of the languages of the Convention and the United Nations system, including the Arabic language, which is an official language of the United Nations system, in the conduct of business related to the Convention.

74. This paragraph is developed from that of the Article XV section of the 1996 Final Declaration which stated that:

The Conference notes the importance of this Article as well as the importance of the legal status of the languages of the Convention and United Nations system in the work of the Ad Hoc Group established by the Special Conference in 1994.

The clause "in the work of the Ad Hoc Group established by the Special Conference in 1994" has been replaced by "in the conduct of business related to the Convention" and the additional clause "including the Arabic language, which is an official language of the United Nations

²⁹See page 134, paragraph 4 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

system," has been added. We **recommend** that the draft Article XV section be adopted as drafted.

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

75. No language was included in the draft Final Declaration which simply recorded that (*Language awaited from Facilitator on Follow-Up/AHG (President).*) In Key Points we proposed³⁰ language which was drafted to be non-controversial and thereby would attract, we hoped, the support of **all** States Parties. The language proposed was as follows:

The Conference notes the work carried out by the Ad Hoc Group since the Fourth Review Conference and notes in particular the following:

- *The 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 (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.*
- *Since its establishment, the Ad Hoc Group has held one short organizational session and twenty-three substantive sessions.*
- *In accordance with its mandate, as contained in the Final Report of the Special Conference (BWC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.*
- *The Ad Hoc Group has made progress towards fulfilling the mandate given by the Special Conference.*
- *Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the **Fifth** Review Conference.*

*The Conference encourages the Ad Hoc Group to **continue** its work in order to fulfil its mandate.*

³⁰See pages 146 to 151, paragraphs 2 to 13 of Graham S. Pearson, Malcolm R. Dando & Nicholas A. Sims (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, University of Bradford, Department of Peace Studies, November 2001. Available at <http://www.brad.ac.uk/acad/sbtwc>

76. Given the attempt by the United States in its proposed language on 7 December 2001 to terminate the mandate of the Ad Hoc Group, it is evident that it is likely to be even more difficult at the resumption of the Review Conference in November 2002 to find language that is acceptable to the United States and also to the other States Parties. In these circumstances, we **recommend** that language be considered which is purely factual about the work of the Ad Hoc Group, using largely language agreed in the Final Declaration of the Fourth Review Conference, and says nothing about further work, along the following lines:

The Conference notes the work carried out by the Ad Hoc Group since the Fourth Review Conference and notes in particular the following:

- The 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 (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.

- Since its establishment, the Ad Hoc Group has held one short organizational session and twenty-three substantive sessions.

- In accordance with its mandate, as contained in the Final Report of the Special Conference (BWC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.

- The Ad Hoc Group has made progress towards fulfilling the mandate given by the Special Conference.

*- Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the **Fifth** Review Conference.*

Conclusions

77. The resumed Fifth Review Conference in November 2002 is taking place after a year in which States Parties have had ample opportunity to prepare for the resumption -- as was pointed out in April 2002 in Review Conference Paper No. 5³¹ which noted that:

*Delegates will have no excuse after this 11 months' interval for not having mastered their brief, including the wealth of constructive ideas and textual proposals offered by NGOs and other friends of the Convention. This resumed session **should** be the most*

³¹Nicholas A. Sims, *Return to Geneva: The Next Stage of the BTWC Fifth Review Conference*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 5, April 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

thoroughly prepared and the best informed occasion in the whole history of the BTWC review process.

It has been clear from the developments prior to the start of the Fifth Review Conference and during the year since the adjournment on 7 December 2001 that there is immense national and international concern about biological weapons -- whether from biological terrorism or from biological weapons in the hands of States. This concern is further underlined by the burgeoning developments in the life sciences in areas such as biotechnology, genomics and molecular biology and the possibility that such advances might be misused for purposes prohibited under the Convention. It is thus **vital** that **all** States Parties need to consider what to do to make, and to be seen to have made, the world a safer place for all of us. The need to adjourn the Fifth Review Conference on 7 December 2001, when the United States introduced an unacceptable proposal two hours prior to the planned end of the Fifth Review Conference, was understandable. A further such suspension in November 2002 would be inexcusable particularly given the time that States Parties have had to consider all the possible outcomes and the options to deal with them.

78. It is critically important for the Review Conference to be **seen** to have strengthened the regime totally prohibiting biological weapons through the reaffirmations and the continued and further extension of the understandings developed at previous Review Conferences. It is simply **not** the time for a failure to adopt a Final Declaration -- and one which embodies a follow-up programme to further nurture and sustain the Convention. States Parties should therefore be ready to use voting³², if need be, to overcome continued intransigence. There is a compelling need **now** to establish the groundwork for concrete legally binding measures that would help to strengthen the regime. States Parties need to consider what message a failure to adopt a Final Declaration would send to the international community -- that the States Parties simply do not care enough about the international legal norm represented by the Biological and Toxin Weapons Convention to **rescue** the regime from a short sighted ideological prejudice that appears to disregard the value of the international norm. Failure would also send a totally wrong message about the seriousness with which the States Parties **now** regard the threat of biological and toxin weapons.

79. States Parties are therefore urged to avoid falling into acrimony and to go the extra mile to find and adopt a Final Declaration that sends the message that the international community is **indeed** determined to strengthen the treaty regime and so do all that is possible to counter the risks of biological terrorism or of biological weapons being retained or developed by States. It is time for the States Parties -- and especially the co-Depositaries -- to demonstrate their commitment to the Convention and the continued development of the regime in the light of the challenges of today and tomorrow.

³²Graham S. Pearson & Nicholas A. Sims, *Return to Geneva: Uncertainties and Options*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 8, October 2002. Available at <http://www.brad.ac.uk/acad/sbtwc>

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CHANGES RECOMMENDED TO THE DRAFT FINAL DECLARATION ISSUED ON THE MORNING OF FRIDAY 7 DECEMBER 2001

Draft Final Declaration	Paragraph	Recommended change
Solemn Declaration	Heading	Update to read " ... WHICH MET IN GENEVA FROM 19 NOVEMBER TO 7 DECEMBER 2001 AND FROM 11 TO 22 NOVEMBER 2002 TO REVIEW..."
	Third subpara	Correct typographical error in the second line to read " (Biological) ".
	New subpara	Add - <i>Their reaffirmation that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.</i>
Preamble		No changes.
Article I	3	3. <i>The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, <u>including within their own territory</u>, of microbial or other biological agents or toxins, <u>as well as of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict</u>, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the Convention. [Underlining indicates new language from that agreed at the Fourth Review Conference]</i>
	5	5. <i>The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes. Consequently, prions, proteins and bioregulators and their synthetically produced analogues and components are covered.</i>
	6	6. <i>The Conference, conscious of apprehensions arising from relevant scientific and technological developments, <u>inter alia</u>, in the life sciences in animals and plants as well as in humans, and the possibilities of their use for purposes inconsistent with the objectives and the provisions of the Convention, reaffirms that the undertakings given by the States Parties in Article I applies to all such developments. Consequently, genomics, proteomics and bioinformatics are covered.</i>
	7	7. <i>The Conference notes that experimentation involving open-air release of pathogens or toxins harmful to animals or plants that has no justification for prophylactic, protective or other peaceful purposes is inconsistent with the undertakings contained in Article I.</i>

Draft Final Declaration	Paragraph	Recommended change
	10.	<i>10. The Conference emphasizes, once more, the vital importance of full implementation by all States Parties of all the provisions of the Convention, especially Article I. <u>The Conference calls upon all States Parties and Signatories to comply fully with their obligations on the basis of the conviction that any non-compliance with its provisions could undermine confidence in, and achieving the basic provisions of</u> the Convention. Non-compliance should be treated with determination in all cases, without selectivity or discrimination. [Underlining indicates new language from that agreed at the Fourth Review Conference]</i>
Article II	1	<i>1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.</i>
	New para	<i>3. The Conference notes that the submission to the Department for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations, and of appropriate information on destruction or diversion to peaceful purposes of any past biological weapons facilities, when sufficiently specific as to types, quantities, location and the date and method of the destruction or diversion to peaceful purposes, may enhance confidence in the Convention and its objectives, and calls on States Parties which had stockpiles or facilities and which have not already made such submissions to make them without delay.</i>
Article III	8	<i>8. The Conference encourages States Parties to consider, within the framework of the Convention, ways to enhance the implementation of this Article, including elaboration of a set of common principles and guidelines in the field of export controls.</i>
	9	<i>9. The Conference takes note with interest of the provisions of the Cartagena Protocol on Biosafety which addresses, inter alia, transboundary movements of living genetically modified organisms.</i>
Article IV	3	In second line replace "for example" by " including ".
	4	The word " <i>promptly.</i> " should be agreed and the word " <i>dual-use</i> " deleted.

Draft Final Declaration	Paragraph	Recommended change
	5	In the third line of the third subparagraph, correct the typographical error so as to read " Weapons ".
	8	The word "regime" should be agreed.
	13	13. The Conference invites States Parties to consider, as appropriate, the negotiation of legal agreements to prevent and eliminate crimes involving biological and toxin weapons.
	14	This paragraph should be deleted.
Article V	1	In the second sentence the words " and reiterated at the Fourth Review Confernce " should be inserted after " <i>The Conference reiterates its appeal to States Parties made at the Third Review Conference</i> "
	2	The second and third sentences should read " <i>The Conference notes that the implementation provisions were invoked since the Fourth Review Conference and reaffirms their continuing validity. The Conference calls upon ...</i> "
	3	This paragraph should be agreed.
	7	The typographical error in the fourth line should be corrected so as to read " <i>States Parties</i> "
	8	This should be extended to read " <i>... national implementation of the CBMs and to advise the United Nations of the name and address of the national entity.</i> "
	9	This should be amended to read: <i>9. The Conference takes note of proposals to expand the scope of existing confidence building measures, to improve existing measures and to create new measures, in order to provide a broader range of relevant information, consistent with the approach agreed upon in 1991 and decides to hold an ad hoc meeting of the States Parties to finalise the modalities for these measures by working out, inter alia, appropriate forms to be used by the States Parties. The group shall meet in Geneva for the period [31 March - 11 April 2003] and shall communicate the results of the work to the States Parties immediately thereafter.</i>
Article VI	4	This should be amended to read: <i>4. The Conference invites States Parties when considering the development of a legally-binding instrument to strengthen the effectiveness and improve the implementation of the Convention to include a compliance mechanism to conduct investigations regarding alleged breaches of the Convention.</i>
	5	The phrase at the start of the final sentence " <i>Pending the establishment of the mechanism described in the paragraph above,</i> " should be agreed.
Article VII		No changes.

Draft Final Declaration	Paragraph	Recommended change
Article VIII	3	The typographical error in the fifth line should be corrected to read " <i>Poisonous</i> ".
	4	The typographical errors in the fourth line should be corrected to read " <i>Parties</i> " and in the sixth and seventh lines to read " <i>States Parties</i> ".
	6	The typographical error in the third line should be corrected to read " <i>Convention</i> ".
	6	Extended by the following additional sentence: " <i>The Conference authorises its [Committee of Oversight] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations.</i> "
Article IX	3	This paragraph should be agreed.
Article X	5	The words <i>5 bis</i> <i>The Conference underlines the importance, in the context of Article X implementation, of the Convention on Biological Diversity and of the Rio Declaration and the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, 1992. The Conference welcomes the adoption of the Protocol on Biosafety to the Convention on Biological Diversity in 2001 and looks forward to further steps being taken during the World Summit on Sustainable Development, to be held in Johannesburg, in 2002.</i> should be agreed updated as appropriate to take into account the World Summit on Sustainable Development held in South Africa earlier this year.
	6	The clause " <i>or limitations on the transfer,</i> " in subparagraph c should be agreed.
	8	The typographical error in the first line should be corrected to read " <i>Fourth</i> ".
	12	The typographical error in the last line should be corrected to read " <i>bacteriological</i> ".
	13	The missing words " <i>efforts to</i> " should be inserted in the first line after " <i>The Conference</i> " thereby making the language identical to that in the 1996 Final Declaration.
	16	The typographical errors in the second line should be corrected to read " <i>Laboratory Practice</i> ".
	20	This should be amended to read: <i>20. The Conference calls for the establishment of a forum for consultation and creation of opportunities for cooperation on matters related to the promotion of scientific and technological exchange in the field of peaceful, bacteriological (biological) and toxin activities, and review of the implementation of Article X of the Convention as a subsidiary organ to the Oversight Committee established under Article XII.</i>

Draft Final Declaration	Paragraph	Recommended change
Article XI		No changes.
Article XII	3	This should be amended to read: " <i>3. The Review Conference decides that conferences of States Parties to review the operation of the Convention should be held at least every five years.</i> "
	2	The first and second subparagraphs should be updated and agreed as: - <i>The impact of scientific and technological developments relating to the Convention;</i> - <i>The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Sixth Review Conference;</i>
	2	The third subparagraph should be extended to read: - <i>The effectiveness of confidence-building measures as agreed at the Second and Third Review Conferences and at the ad-hoc meeting following this Review Conference;</i>
	2	The fourth subparagraph should be amended to read; - <i>The conclusions of a Special Conference, if held before the Sixth Review Conference for the purpose of receiving a report, including a legally-binding instrument to strengthen the Convention. The inclusion of this agenda item is without prejudice to the positions of States Parties on matters under negotiation;</i>
	2	The fifth subparagraph should be extended to read: - <i>The requirement for, and the operation of, the requested allocation by the United Nations Secretary-General of staff resources and other requirements to assist the effective implementation of the relevant decisions of this and previous Review Conferences;</i>

Draft Final Declaration	Paragraph	Recommended change
	New paras	<p>The Article XII section should be extended to make provision at least for:</p> <ul style="list-style-type: none"> - prolongation to 2006 of the General Committee of the Fifth Review Conference, or a smaller committee elected from its membership, constituted as a continuing representative body or bureau; - authorisation for this continuing representative body or bureau to establish, as it finds necessary, subsidiary organs such as a Scientific Advisory Panel, a Legal Advisory Panel and in relation to Article X a Cooperation Advisory Panel; - establishment, in consultation with the Secretary-General of the United Nations, of a small secretariat dedicated exclusively to the service of the Convention; - financing of these mechanisms, and of any follow-up meetings of States Parties as an appendix of the Fifth Review Conference; <p>together with such annual meetings of States Parties and <u>ad hoc</u> meetings as also may be agreed.</p> <p>These provisions should be included in further paragraphs drawing as appropriate on the detailed mandate recommended in Key Points and reproduced in paragraph 62 of RCP # 9.</p>
Article XIII	1	<p>This should be extended to read: <i>The Conference notes the provisions of Article XIII and, while emphasizing that the Convention is of unlimited duration and applies at all times, expresses its satisfaction that no State Party to the Convention has exercised its right to withdraw from the Convention.</i></p>
Article XIV	1	<p>This should be amended to read: <i>1. The Conference notes with satisfaction that nine States have ratified or acceded to the Convention since the Fourth Review Conference.</i></p>
	2	<p>This paragraph should be extended to read: <i>2. The Convention calls upon States which have not yet ratified or acceded to the Convention to do so without delay and upon those States which have not signed the Convention to join the States Parties thereto, thus contributing to the achievement of universal adherence to the Convention. In this connection, the Conference requests States Parties to encourage universality of the Convention.</i></p>
	New para	<p>An additional paragraph should be agreed as follows: <i>3. The Conference particularly welcomes regional initiatives that would lead to wider accession to the Convention.</i></p>

Draft Final Declaration	Paragraph	Recommended change
	New para	An additional paragraph should be agreed as follows: 4. <i>The Fifth Review Conference appeals to those States Parties to the Biological and Toxin Weapons Convention which have not taken part in the Conference to participate in the implementation of provisions contained in the Final Declaration of this Conference.</i>
Article XV		No changes
Consideration of the work of the Ad Hoc Group ...	New paras	<p>Additional paragraphs should be agreed as follows:</p> <p><i>The Conference notes the work carried out by the Ad Hoc Group since the Fourth Review Conference and notes in particular the following:</i></p> <ul style="list-style-type: none"> - <i>The 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 (September 1994) agreed to establish an Ad Hoc Group open to all States Parties to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention.</i> - <i>Since its establishment, the Ad Hoc Group has held one short organizational session and twenty-three substantive sessions.</i> - <i>In accordance with its mandate, as contained in the Final Report of the Special Conference (BWC/SPCONF/1), the Ad Hoc Group has been considering appropriate measures, including possible verification measures, to strengthen the Convention. Where relevant, consideration of issues has sought to build on the considerable body of technical work connected with strengthening the Biological and Toxin Weapons Convention regime undertaken by the Ad Hoc Group of Technical Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint (VEREX) in 1992 and 1993.</i> - <i>The Ad Hoc Group has made progress towards fulfilling the mandate given by the Special Conference.</i> - <i>Nevertheless, the Ad Hoc Group was not able to complete its work and submit its report including a draft of the future legally-binding instrument to the States Parties for consideration at the Fifth Review Conference.</i>