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# Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

14 November 2018

English only

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## 2018 Meeting

Geneva, 4–7 December 2018

Item 7 of the provisional agenda

Consideration of the factual reports of the Meetings of Experts reflecting their deliberations, including possible outcomes

## Strengthening implementation of Article III of the BTWC

### Submitted by India and the United States of America

1. Article III of the Convention states: “Each state party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of states or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of this Convention.”
2. The Eighth Review Conference:
  - (a) reaffirmed “that Article III is sufficiently comprehensive to cover any recipient whatsoever at the international, national or subnational levels.”
  - (b) called for “appropriate measures, including effective national export controls, by all States Parties to implement this Article, in order to ensure that direct and indirect transfers relevant to the Convention, to any recipient whatsoever, are authorized only when the intended use is for purposes not prohibited under the Convention.”
  - (c) reiterated “that States Parties should not use the provisions of this Article to impose restrictions and/or limitations on transfers for purposes consistent with the objectives and provisions of the Convention of scientific knowledge, technology, equipment and materials under Article X.”
3. We believe that BWC States Parties should adopt further specific decisions and recommendations on measures to promote and strengthen the implementation of Article III. Some suggested measures are elaborated in this Working Paper (paragraphs 4-6). Meetings of Experts on “strengthening national implementation” would be useful forums for States Parties to discuss and agree upon such measures, with a view to their adoption at the Ninth Review Conference (paragraphs 7-11).
4. National Legislation: Each State Party should establish, amend or review, as necessary and in accordance with its constitutional procedures, appropriate legislation, regulatory or administrative provisions to regulate transfers relevant to Article III of the Convention. Upon request, States Parties in a position to do so may provide assistance to other States Parties on drafting legislation, or on establishment of administrative authorities or regulations, training of personnel, supply of equipment or advice relevant to the implementation of Article III.
5. National Export Controls: States Parties should agree that such national measures should include the following essential elements:



(a) National legislation and related administrative, regulatory provisions or rules that allow for effective implementation of Article III, including penalties, both civil and criminal, for violations;

(b) A list of items requiring authorization prior to export; such a list should include materials and technologies to prevent transfers, both direct and indirect, and both tangible and intangible, that would be in contravention of the Convention; this list should be reviewed and updated regularly. An internationally agreed list that could be used for this purpose is found in UN Security Council document S/2006/853.<sup>1</sup> National measures should also include ‘catch all’ controls on unlisted items;

(c) A national licensing system containing relevant factors for evaluating export applications and making a licensing decision that includes possible dual-use applications of the item; relevant information on the recipient, recipient state, and all other parties to the transaction; stated end use and end-use assurances; and risks of misuse, diversion or re-transfer without authorization, among others;

(d) Export control guidelines that are comprehensive and include criteria for transfers to limit the risks of proliferation of biological weapons by States or non-State actors, including the risks of such items falling into the hands of terrorist groups or individuals;

(e) Regular outreach to all stakeholders including industry and academia.

All export control authorizations or otherwise remain the national decision of each individual State Party.

6. Cooperative activities: Discussions in this year’s Meetings of Experts on “strengthening national implementation” and “cooperation and assistance” demonstrated the importance that States Parties attach to the provision of assistance with capacity building, including for the purpose of implementing Article III (and other articles) of the Convention. States Parties, in a position to do so and upon request, may provide assistance to other States Parties in establishing or improving their national export systems through training, sharing of best practices, and supply of relevant equipment and/or financial support. States Parties are encouraged to undertake cooperation in this field bilaterally, regionally or through multilateral arrangements, as appropriate and on the basis of the consent of the States Parties concerned. A voluntary fund may also be established to provide assistance to State Parties in this regard, which may be coordinated through the Implementation Support Unit (ISU). States Parties, may, if they deem it appropriate, consult and exchange further information amongst themselves to enhance clarity and confidence that implementation of Article III would ensure that the cooperation envisaged under Article X is taken forward in mutual confidence and that the Convention as a whole is implemented in a balanced manner.

7. In discussing these ideas, States Parties could consider the following language, with a view to its adoption at the Ninth Review Conference:

8. In establishing, amending, or reviewing measures to implement Article III, as necessary and in accordance with constitutional procedures, States Parties shall endeavor to include the following:

(a) Appropriate legislation or regulatory or administrative provisions to regulate transfers as required by Article III of the Convention. This legislation and related provisions should include penalties, both civil and criminal, for violations and should provide that all export control authorizations or otherwise remain the national decision of State Parties.

(b) A list of items requiring authorization prior to export; such a list should include materials and technologies to prevent transfers, both direct and indirect, and both tangible and intangible, that would be in contravention of the Convention. This list should be reviewed and updated regularly, and national measures should also include ‘catch all’ controls on unlisted items.

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<sup>1</sup> Letter dated 1 November 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) concerning the Democratic People’s Republic of Korea addressed to the President of the Security Council.

(c) A national licensing system containing relevant factors for evaluating export applications and making licensing decisions that include possible dual-use applications of the item; relevant information on the recipient, recipient State, and all other parties to the transaction; stated end use and end-use assurances; and risks of misuse, diversion or retransfer without authorization.

(d) Export control guidelines that are comprehensive and include criteria for transfers to limit the risks of proliferation of biological weapons by States or non-State actors, including the risks of such items falling into the hands of terrorist groups or individuals.

(e) Regular outreach to all stakeholders including industry and academia.

9. The Conference reiterates that States Parties should not use the provisions of Article III to impose restrictions and/or limitations on transfers for purposes consistent with the objectives and provisions of the Convention of scientific knowledge, technology, equipment and materials under Article X.

10. States Parties in a position to do so are encouraged to provide assistance, upon request, to other States Parties in the implementation of Article III, including drafting legislation, establishing administrative authorities or regulations, training of personnel, supplying of equipment or advice relevant to the implementation of Article III, sharing of best practices, and/or providing financial support. The Conference encourages States Parties to undertake cooperation in this field bilaterally, regionally or through multilateral arrangements, as appropriate and on the basis of the consent of the States Parties concerned. For this purpose, the Conference decides to establish a voluntary fund to provide assistance to State Parties in the implementation of Article III, which will be coordinated through the ISU.

11. The Conference encourages States Parties, if they deem it appropriate, to consult and exchange further information amongst themselves to enhance clarity and confidence that implementation of Article III would ensure that the cooperation envisaged under Article X is taken forward in mutual confidence and that the Convention as a whole is implemented in a balanced manner.

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