

Thursday 23rd August 2007

2007 Meeting of Experts: The third day

Wednesday, the third day of the Meeting of Experts (MX) for the Biological and Toxin Weapons Convention (BTWC), again consisted entirely of closed working sessions. During the morning the presentations moved on from national implementation issues to the second topic on the agenda – regional and sub-regional co-operation on BTWC implementation. This second topic was the subject of detailed presentations by Japan and by Portugal (on behalf of the European Union).

In the afternoon an informal compilation of proposals made so far at the MX was circulated.

Informal compilation paper

An informal paper was circulated among States Parties under the title ‘Draft Considerations, Lessons, Perspectives, Recommendations, Conclusions and Proposals Drawn from the Presentations, Statements, Working Papers and Interventions on the Topic Under Discussion at the Meeting’.

The creation of this compilation follows the precedents of the Meetings of Experts in 2004 and 2005 which appended similar lists to the public reports of the meetings (these reports carry the following official document numbers – BWC/MSP/2004/MX/3 and BWC/MSP/2005/MX/3). In both of these cases, the compilation was circulated in draft form to allow States Parties to comment. Whereas some of the concepts in the earlier years were considered controversial, there is little in the current list that would raise the blood pressure of any of the delegates. The list may be updated if further proposals are made during Thursday.

The 2007 draft compilation tabulates each proposal with details of the statement or working paper in which it was made, together with the country that made it. The compilation is divided into five sections:

- Implementing the Articles of the Convention
- Scope of national implementation measures
- Enhancing domestic cooperation (managing national implementation)
- International and regional cooperation and assistance
- Transfers and export controls

Each of these areas is covered in a fairly comprehensive manner. However, one area that does not get a mention is any suggestion that national implementation measures should cover actions of the government itself.

Including activities of governments in national legislation

In a number of countries, the constitutional arrangements are such that governments are automatically covered by any legislation adopted. Within other countries, legislation of whatever type does not cover activities of the government unless it is explicitly expressed. A variety of approaches exist regarding the issue. Three examples are provided.

The first is the legislation to ratify and implement the Chemical Weapons Convention in the UK which includes provisions to bind the government (the 'Crown'). The provisions in section 37 of the *Chemical Weapons Act 1996*, contain the following proviso: 'No contravention by the Crown of a provision made by or under this Act shall make the Crown criminally liable; but [a high-level court] may ... declare unlawful any act or omission of the Crown which constitutes such a contravention'.

The second is the UK's equivalent legislation in relation to the BTWC, the *Biological Weapons Act 1974*, which contains no provisions to bind the Crown. Furthermore, under the provisions of this act no judicial test could be applied to the activities of the government without the express consent of the government itself.

The third example is India's *Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005* (the 'WMD Act'), of which section 25 reads: 'Nothing in this Act shall affect the activities of the Central Government in the discharge of its functions relating to the security or the defence of India'. This provision was seemingly introduced to ensure that the legislation did not inadvertently inhibit that country's nuclear weapons programme.

Each of the examples above has its own national and historical context. However, the increased transparency that would result from explicit inclusion of government activities in relation to the biological sciences is worthy of further consideration.

Confidence-Building Measures update

Some states identified in *MX report #3* as having submitted a CBM return in 2006 but not so far during 2007 have indicated that the delay is purely a matter of administration. If the ISU is able to confirm receipt of further CBM returns during the MX, this will be reported in a future *MX report*.

Meeting timetable

As of Wednesday night, it would appear that only a few presentations by States Parties remain to be made. This makes it likely that the closed working sessions will be completed on Thursday morning. The precedent is that time on the Thursday afternoon has been needed to resolve any disagreements on what should be in the final report. However, there has been little disagreement at this meeting.

This is the fourth report from the Meeting of Experts for the Biological and Toxin Weapons Convention which is being held from 20 to 24 August 2007 in Geneva. The reports are designed to help people who are not in Geneva to follow the proceedings.

The reports are prepared by Richard Guthrie on behalf of the BioWeapons Prevention Project (BWPP). Copies of all of these reports (and details of how to subscribe to them by e-mail) are available on the BWPP website at <<http://www.bwpp.org/2007%20MX/MX2007Resources.html>>. This page also includes other materials from the meeting.

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