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## ARTICLE V: CONFIDENCE-BUILDING MEASURES

by Filippa Lentzos

### Consideration of Article V: Confidence-Building Measures at the Seventh Review Conference

1. Article V of the Convention states that:

*The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. 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.*

2. At the Seventh Review Conference of the BTWC held from 5 to 22 December 2011, the *Final Declaration*<sup>204</sup> in respect of Confidence Building Measures stated in the section on Article V that:

*22. The Conference emphasises the importance of the exchange of information among States Parties through the confidence-building measures (CBMs) agreed at the Second and Third Review Conferences. The Conference welcomes the exchange of information carried out under these measures and notes that this has contributed to enhancing transparency and building confidence.*

*23. The Conference recognises the urgent need to increase the number of States Parties participating in CBMs and calls upon all States Parties to participate annually. The Conference notes that since the Sixth Review Conference, there has only been a slight increase in the percentage of State Parties submitting their CBMs. The Conference emphasises the importance of increasing and continuing participation in the CBMs.*

*24. The Conference recognises the technical difficulties experienced by some States Parties in completing full and timely submissions. The Conference urges those States Parties, in a position to do so, to provide technical assistance and support, through training for instance, to those States Parties requesting it to assist them to complete their annual CBM submissions. The Conference notes the decision to update the CBM forms.*

*25. The Conference notes the desirability of making the CBMs more user-friendly and stresses the need to ensure that they provide relevant and appropriate information to States Parties.*

*26. The Conference recalls that the Third Review Conference agreed, "that the exchange of information and data, using the revised forms, be sent to the United Nations Department for Disarmament Affairs no later than 15 April on an annual*

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<sup>204</sup> United Nations, The Seventh 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, 5 - 22 December 2011, *Final Document*, BWC/CONF.VI/7, 13 January 2012. Available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/92CFF2CB73D4806DC12572BC00319612?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/92CFF2CB73D4806DC12572BC00319612?OpenDocument)

*basis". The Conference reaffirms that the data submitted in the framework of the annual exchange of information should be provided to the Implementation Support Unit within the United Nations Office for Disarmament Affairs and promptly made available electronically by it to all States Parties according to the updated modalities and forms in Annex I. The Conference recalls that information supplied by a State Party must not be further circulated or made available without the express permission of that State Party. The Conference notes the fact that certain States Parties made the information they provide publicly available.*

As noted above, the *updated modalities and forms* are provided in the 15 page Annex I to the *Final Document* of the Seventh Review Conference.

3. In addition, the Seventh Review Conference included the following in *Part III: Decisions and Recommendations*:

#### ***F. Confidence-building measures***

*25. The Conference notes that the review of Article V of the Convention has shown the need for further enhancing participation of States Parties in the confidence-building measures (CBMs). The Conference therefore decides:*

- (a) to adopt the revised reporting forms in Annex I as the basis for all CBM submissions from States Parties;*
- (b) to consider during the 2012–2015 intersessional programme how to enable fuller participation in the CBMs (see section B above);*
- (c) that the Implementation Support Unit shall, in cooperation with States Parties, continue to examine and develop options for electronic means of submission of CBMs.*

*26. The Conference calls upon States Parties that have not yet done so to designate a national point of contact responsible preparing the submission of CBMs, in accordance with the decision of the Sixth Review Conference.*

In Section B, this included:

*9. The Conference decides that the following other items will be discussed during the intersessional programme in the years indicated:*

- (a) How to enable fuller participation in the CBMs (2012 and 2013);*

4. It is thus evident that the Seventh Review Conference agreed *the need for further enhancing participation of States Parties in the confidence-building measures (CBMs)* and that consideration would be given *to consider during the 2012–2015 intersessional programme how to enable fuller participation in the CBMs.*

#### **Developments since the Seventh Review Conference**

##### **Biennial item in 2012/2013 on enabling fuller participation in the CBMs**

5. At the Meeting of States Parties in 2012 the report<sup>205</sup> contained the following language on the biennial item on enhancing participation in the CBMs:

***D. Biennial item: how to enable fuller participation in the Confidence-building Measures (CBMs)***

*41. States Parties recognized the importance of annual exchanges of information to provide transparency and build mutual trust among States Parties.*

*42. Taking into account the technical difficulties experienced by some States Parties in completing full and timely CBM submissions, States Parties agreed to work to:*

*(a) Find ways to improve participation, including through raising awareness and training;*

*(b) Make the CBM submissions more user-friendly;*

*(c) Promote their possible utility in improving domestic coordination and in enhancing domestic understanding of national activity to be reported in the CBMs;*

*(d) Provide technical assistance and support to States Parties, on request, for preparing and submitting CBM submissions;*

*(e) Further develop electronic means of submission; and*

*(f) Improve access by States Parties to the information submitted in CBMs, including through the provision of voluntary, informal translations of CBM submissions.*

*43. States Parties agreed to continue discussing in 2013, including in the light of various proposals made by States Parties, how to enable fuller participation in the CBMs, focusing on the practical difficulties experienced by some States Parties in completing full and timely submissions.*

*44. States Parties agreed on the importance of all States Parties participating in, and reiterating to others the importance of, the CBMs. States Parties recalled that they are to designate a National Point of Contact as agreed at the Sixth Review Conference and reiterated at the Seventh Review Conference.*

*45. States Parties recognised the value of the Chairman writing each year to all States Parties to remind them of the call by the Seventh Review Conference to participate annually in the CBMs.*

6. At the Meeting of States Parties in 2013 the report<sup>206</sup> contained the following language on the biennial item on enhancing participation in the CBMs:

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<sup>205</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 10-14 December 2012, *Report of the 2012 Meeting of States Parties*, BWC/MSP/2012/5, 19 December 2012. Available at: [http://www.unog.ch/80256EE600585943/\(httpPages\)/89835CB0A2DAA4A0C1257B6E003415C5?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/89835CB0A2DAA4A0C1257B6E003415C5?OpenDocument)

<sup>206</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 9-13 December 2013, *Report of the 2012 Meeting of States Parties*, BWC/MSP/2013/5, 24 December 2013. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/600/07/PDF/G1460007.?OpenElement>

***D. Biennial item: how to enable fuller participation in the Confidence-building Measures (CBMs)***

*44. Recalling their recognition of the importance of annual exchanges of information to provide transparency and build mutual trust, States Parties noted the value of:*

- (a) Encouraging States Parties that have not participated regularly in the CBMs or have never participated, to share information on the specific reasons on why they do not participate;*
- (b) Consider voluntarily making all, or part, of their CBM returns public.*

*45. Recalling their previous understanding of the value of the Chairman writing each year to all States parties to remind them of the call by the Seventh Review Conference to participate annually in the CBMs, States Parties recognized the value of including in this reminder a request for information on issues affecting their participation in the CBMs*

*46. Recalling their agreement on the value of activities identified in 2012 for addressing the technical difficulties experienced by some States Parties in completing full and timely CBM submissions, States Parties agreed to work to:*

- (a) Provide further technical assistance and support to States Parties, on request, for preparing and submitting CBM submissions, including through bilateral cooperation on CBMs and the provision of assistance, using the national point of contact list available on the ISU website;*
- (b) Continue to develop the electronic CBM platform that was demonstrated at the Meeting of States Parties, including through collaborating with the ISU to test and refine the system;*
- (c) Further improve access by States Parties to the information submitted in CBMs by examining the financial and technical feasibility, benefits and implications of various means of making CBM submissions available in more UN languages;*
- (d) Convene regional seminars and workshops to promote awareness of CBMs and to provide an opportunity for States Parties to report on their difficulties and needs for assistance;*
- (e) Consider a “step-by-step” approach in CBM participation whereby States Parties submit CBM forms separately or one by one, as the information is collected and updated, working towards the end goal of updating and completing CBM submissions while upholding the Decisions of the Seventh Review Conference. In this approach, submitting a “less than perfect” CBM initially, and subsequently updating and completing it, would not have negative consequences.*

7. It is noted that the Annex to the Report of the Meeting of Experts in 2013 (BWC/MSP/2013/MX/3 in the section entitled *Agenda item 8: How to enable fuller participation in the CBMs* included 120 Considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions on the topics under discussion at the Meeting which were provided by 22 States Parties: Australia (1), Belarus (2), Belgium (1), Benin (2), Brazil (4), Canada (7), China (1), Cuba (1), Ecuador (1), Germany (9), India (5), Iran (1), Iran (NAM) (4), Japan (2), Kenya (1), Malaysia (1), Mexico (3), Pakistan (1), South Africa (2), Switzerland (20), United Kingdom (22) and United States (31). These were distilled into two

paragraphs containing nine subparagraphs in the Annex entitled *Synthesis of considerations, lessons, perspectives, recommendations, conclusions and proposals drawn from the presentations, statements, working papers and interventions on the topics under discussion at the Meeting of Experts to the report of the Meeting of States Parties in 2013 (BWC/MSP/2013/5)*.

8. In a report<sup>207</sup> on the Meeting of States Parties a section entitled *Reflections* noted that:

One area in which we had argued for effective action in our report on the Meeting of Experts in August 2013 related to the biennial topic on CBMs. In our report we said that:

*As the Meeting of Experts considered three Standing Agenda items and also a biennial topic (on CBMs) which will not be considered further in the formal Intersessional Process, attention needs to be given at the Meeting of States Parties as to what common understandings and effective action should be agreed in regard to the biennial topic on how to enable fuller participation in the Confidence-Building Measures so that an up-to-date well considered situation can be presented prior to the Eighth Review Conference in 2016. One possible approach that has been suggested already is that the Chair could ask one of the Vice Chairs to maintain a watching brief on the topic of Confidence-Building Measures and to provide an annual report on developments to the successive annual Meetings of States Parties. Such an approach would help to ensure that Confidence-Building Measures are not overlooked in the coming two years.*

The outcome recorded in MSP/2013/5 is disappointing in that no effective action is agreed to follow up the 2012-13 biennial item on CBMs through the next two years (such as putting it under the continuing care of one of the Vice-Chairs). This makes it all the more necessary to have some work on CBMs done in the margins of the intersessional process, to compensate for CBMs no longer being on the official agenda. The initiative being shown by the Chair for 2014 in his letter of 14 February 2014 in which he specifically focuses on the need to address effective action is greatly welcomed, where he says that ... *as we move closer to the Eighth Review Conference in 2016, this may be a suitable point to turn more of our attention towards options for promoting effective action*. It is very much to be hoped that this consideration of effective action could include consideration of how best to ensure that the biennial topic on CBMs does not come to the Eighth Review Conference insufficiently prepared – which is the likely outcome if no action is taken to change the current situation.

### **Implementation Support Unit Annual Reports**

9. Since the Seventh Review Conference, the Implementation Support Unit has provided information on the submission of CBMs as part of their annual report to the States Parties. Thus, in 2012 the ISU reported<sup>208</sup> that:

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<sup>207</sup> Graham S. Pearson & Nicholas A. Sims, Report from Geneva: The Biological Weapons Convention Meeting of States Parties December 2013, Review No 39, March 2014. Available at: <http://www.sussex.ac.uk/Units/spru/hsp/Reports%20from%20Geneva/HSP%20Reports%20from%20Geneva%20No.%2039.pdf>

<sup>208</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,

17. In accordance with the decisions of the Sixth and Seventh Review Conferences, the ISU is responsible for compiling and distributing the Confidence-Building Measures. The ISU maintains electronic versions of the CBM forms on the BWC website in all official languages. Annex III lists the 2012 submissions and includes a breakdown by each CBM form.

18. All the CBM returns covering the 2011 calendar year are available to States Parties in the restricted area. At the request of several States Parties, their CBMs are also available in the public area of the website in the interest of transparency.

19. In accordance with the decision of the Sixth Review Conference, on 20 January 2012 the Head of the ISU wrote to the permanent missions and the national points of contact of States Parties to remind them of the annual 15 April CBM submission deadline. The Head of the ISU also reminded States Parties of the revised reporting forms adopted by the Seventh Review Conference available in the Final Document of the Seventh Review Conference (BWC/CONF.VII/7) and on the website.

20. As of 1 November 2012:

(a) 66 States Parties (39% of States Parties) had submitted a CBM covering the calendar year 2011.

(b) Of these, 42 submitted their CBM on or before the deadline of 15 April 2012.

(c) 4 States Parties submitted a CBM for the first time.

(d) 12 States Parties which submitted a CBM in 2011 had not yet done so in 2012.

(e) 47 States Parties have never submitted a CBM.

(f) 57 States Parties (86% of States Parties that submitted a CBM in 2012) used the revised reporting forms adopted by the Seventh Review Conference.

(g) 21 CBMs are available in the public area of the website in addition to the restricted area.

21. In 2012, the Unit provided routine administrative assistance and advice on participating in the CBMs to 15 States Parties.

22. In accordance with the specific request of the Seventh Review Conference, the ISU, in collaboration with interested States Parties, examined possibilities for developing a method to complete and submit CBMs over the Internet.

10. The following year, in November 2013, the Implementation Support Unit reported<sup>209</sup> on CBMs that:

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Geneva, 10 - 14 December 2012, *Report of the Implementation Support Unit*, BWC/MSP/2012/2, 19 November 2012. Available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/92CFF2CB73D4806DC12572BC00319612?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/92CFF2CB73D4806DC12572BC00319612?OpenDocument)

<sup>209</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 9 - 13 December 2013, *2013 Report of the Implementation Support Unit*, BWC/MSP/2013/4, 8 November 2013. Available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/92CFF2CB73D4806DC12572BC00319612?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/92CFF2CB73D4806DC12572BC00319612?OpenDocument)

15. *In accordance with the decisions of the Sixth and Seventh Review Conferences, the ISU is responsible for compiling and distributing the Confidence-Building Measures. The ISU maintains electronic versions of the CBM forms on the BWC website in all official languages. Annex III lists the 2013 submissions (covering the 2012 calendar year) and includes a breakdown by each CBM form.*

16. *All the 2013 CBM returns are available to States Parties in the restricted area of the website (<http://www.unog.ch/bwc/restricted>). Twenty-one States Parties have requested that their CBM submissions are also made available in the public area of the website (<http://www.unog.ch/bwc/cbms>).*

17. *In accordance with the decision of the Sixth Review Conference, on 15 January 2013 the Head of the ISU wrote to the permanent missions and the national points of contact of States Parties to remind them of the annual 15 April CBM submission deadline. In accordance with paragraph 45 of the 2012 Report of the Meeting of States Parties (BWC/MSP/2013/5), throughout the year the Chairman of the 2013 Meeting of States Parties also included CBM reminders in all her correspondence with States Parties.*

18. *As of 1 November 2013:*

*(a) 57 States Parties (35% of States Parties) had submitted a CBM covering the calendar year 2012.*

*(b) Of these, 44 submitted their CBM on or before the deadline of 15 April 2013.*

*(c) No States Parties submitted a CBM for the first time.*

*(d) 15 States Parties which submitted a CBM in 2012 had not yet done so in 2013.*

*(e) 52 States Parties have never submitted a CBM.*

*(f) 46 States Parties (81% of States Parties that submitted a CBM in 2013) used the revised reporting forms adopted by the Seventh Review Conference. The remaining 11 States all used the earlier version of the forms.*

19. *In accordance with the specific request of the Seventh Review Conference, the ISU, in collaboration with interested States Parties and with support provided under EU Council Decision 2012/421/CFSP in support of the Convention, continued to examine possibilities for developing a method to complete and submit CBMs over the Internet. A phased plan has been developed. An electronic platform for completing and submitting the forms is currently under development by the Information and Communication Technology Service of the United Nations Office at Geneva. It is expected a beta-version of this tool will be available early in 2014. Discussions have already begun to ensure that existing tools developed by States Parties for their national use will be compatible with this system. A second phase is then planned to add search, comparison and basic analytical tools. Additional financial resources are being sought to support this second phase.*

11. Then, a year later, in November 2014, the Implementation Support Unit reported<sup>210</sup> on CBMs that:

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<sup>210</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 1 - 5 December 2014, *2014 Report of the Implementation Support Unit*, BWC/MSP/2014/4, 28

16. In accordance with the decisions of the Sixth and Seventh Review Conferences, the ISU supports the exchange of confidence-building measures (CBM). The ISU maintains electronic versions of the CBM forms on the BWC website in all official languages. Annex III lists the 2014 submissions (covering the 2013 calendar year) and includes a breakdown by each CBM form.

17. All the 2014 CBM returns are available to States Parties in the restricted area of the website (<http://www.unog.ch/bwc/restricted>). Twenty-three States Parties have requested that their CBM submissions are also made available in the public area of the website (<http://www.unog.ch/bwc/cbms>).

18. In accordance with the decision of the Sixth Review Conference, on 15 January 2014, the Chief, Implementation Support Unit, wrote to the permanent missions and the national points of contact of the States Parties informing them of the deadline (15 April) for the annual CBM submission. In accordance with paragraph 45 of the 2013 Report of the Meeting of States Parties (BWC/MSP/2013/5), the Chairman of the 2014 Meeting of States Parties also included CBM reminders in his correspondence with States Parties.

19. As of 15 September 2014:

(a) 67 States Parties (39.4 per cent of States Parties) had submitted a CBM covering the calendar year 2013. [Subsequently this increased to 69 States Parties (40.6 per cent of States Parties)]

(b) Of these, 37 submitted their CBM on or before the deadline of 15 April 2014.

(c) One State Party submitted a CBM for the first time.

(d) Eight States Parties which submitted a CBM in 2013 had not yet done so in 2014.

(e) 52 States Parties have never submitted a CBM.

20. In accordance with the specific request of the Seventh Review Conference, the ISU and the United Nations Office for Disarmament Affairs, in collaboration with interested States Parties and with support provided under EU Council Decision 2012/421/CFSP in support of the Convention, continued to examine possibilities for developing a method to complete and submit CBMs over the Internet. A phased plan has been developed. An electronic platform for completing and submitting the forms has been developed by the Information and Communication Technology Service of the United Nations Office at Geneva, and has been tested by a group of States Parties (Belgium, Malaysia, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and the United States of America) and is available on the restricted area of the website (<http://www.unog.ch/bwc/restricted>). It is expected that a beta-version of this tool will be available early in 2015. Discussions have already begun to ensure that existing tools developed by States Parties for their national use will be compatible with this system.

21. A second phase is planned to add search, comparison and basic analytical tools. Additional financial resources are being sought to support this second phase.

12. And, in November 2015, the Implementation Support Unit reported<sup>211</sup> on CBMs that:

*16. In accordance with the decisions of the Sixth and Seventh Review Conferences, the ISU supports the exchange of confidence-building measures (CBM). The ISU maintains electronic versions of the CBM forms on the BWC website in all official languages. Annex III lists the 2015 submissions (covering the 2014 calendar year) and includes a breakdown by each CBM form.*

*17. All the 2015 CBM returns are available to States Parties in the restricted area of the website (<http://www.unog.ch/bwc/restricted>). Twenty-nine States Parties, six more than in 2014, have requested that their CBM submissions are also made available in the public area of the website (<http://www.unog.ch/bwc/cbms>).*

*18. In accordance with the decision of the Sixth Review Conference, on 15 January 2015, the Chief of the Implementation Support Unit, wrote to the permanent missions and the national points of contact of the States Parties informing them of the deadline (15 April 2015) for the annual CBM submission. In accordance with paragraph 45 of the 2013 Report of the Meeting of States Parties (BWC/MSP/2013/5), the Chairman of the 2015 Meeting of States Parties also included CBM reminders in his correspondence with States Parties.*

*19. As of 30 October 2015:*

*(a) 70 States Parties (40.5 per cent of States Parties) had submitted a CBM covering the calendar year 2014;*

*(b) Of these, 42 submitted their CBM on or before the deadline of 15 April 2015;*

*(c) Six States Parties which submitted a CBM in 2014 had not yet done so in 2015; and*

*(d) Six other States Parties which did not submit a CBM in 2014 had done so in 2015.*

*20. A total of 55 States Parties have never submitted a CBM.*

13. Whilst these Implementation Support Unit reports show the number of States Parties that have submitted a CBM at the date stated in the reports, a more comprehensive appreciation can be obtained by examining the information on the ISU website<sup>212</sup> showing which States Parties have submitted a CBM and which have made them publicly available.

| Year               | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|--------------------|------|------|------|------|------|------|
| Number of CBMs     | 69   | 69   | 65   | 71   | 72   | 72   |
| Publicly available | 22   | 23   | 23   | 25   | 30   | 30   |

<sup>211</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 14 - 18 December 2015, *2015 Report of the Implementation Support Unit*, BWC/MSP/2015/3, 3 November 2015. Available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/92CFF2CB73D4806DC12572BC00319612?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/92CFF2CB73D4806DC12572BC00319612?OpenDocument)

<sup>212</sup> Available at

[http://www.unog.ch/\\_80256ee600585943.nsf/\(httpPages\)/4fa4da37a55c7966c12575780055d9e8?OpenDocument&ExpandSection=24%2C23%2C22%2C21%2C25%2C30%2C26%2C29%2C28%2C27%2C7#\\_Section24](http://www.unog.ch/_80256ee600585943.nsf/(httpPages)/4fa4da37a55c7966c12575780055d9e8?OpenDocument&ExpandSection=24%2C23%2C22%2C21%2C25%2C30%2C26%2C29%2C28%2C27%2C7#_Section24)

This shows that despite the biennial item in 2012 and 2013 addressing *how to enable fuller participation in the Confidence-building Measures (CBMs)*, the number of CBMs submitted from 2011 to 2016 has only increased from 69 to 72. What is more encouraging is that the number of CBMs made publicly available has increased from 22 (31.8%) in 2011 to 30 (41.7%) in 2016.

### **Current Proposals to Strengthen the CBM Regime**

14. The most recent proposals to enhance the CBM regime have been made by the USA and the European Union, and are outlined in their working papers to the April 2016 Preparatory Committee. Previous proposals to strengthen the CBMs have been summarized elsewhere.<sup>213</sup>

15. The USA working paper<sup>214</sup> states that

*Further steps to strengthen CBMs could provide for both easier access to, and analysis of, relevant information, as well as expanding participation. ...*

*Expanding participation in the CBMs reporting could be enhanced, for example, by developing more 'user-friendly' electronic tools for annual submissions of CBM reports.*

16. To enhance participation in the BTWC CBMs, as well as their utility and actual use by States Parties, the USA proposes three specific steps:

(a) *Establish a CBM assistance network, coordinated by the Implementation Support Unit (ISU), to provide expert advice and assistance for States Parties upon request, and urge States Parties in a position to do so to offer and to coordinate assistance, training, translations, and workshops in support of tasks such as compiling and submitting CBMs;*

(b) *Provide for the further development and ongoing operation and maintenance of the CBM electronic platform, following through on the decision of the Sixth Review Conference. Completing the transition to a fully electronic CBM system would simplify both reporting and analysis, and make the data more useful; and*

(c) *Further technical refinement on the type and range of information requested in select CBM forms with a view to generating more useful information. For example:*

*(i) Revising CBM Form A (Part 2 (i)), which calls for information on national biodefense research programs, to clarify that the request for information includes both military and civilian programs. At present, roughly one-third of*

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<sup>213</sup> Filippa Lentzos, *Article V: Confidence-Building Measures*, pp. 157-178 in University of Bradford, *Strengthening the Biological Weapons Convention: Key points for the Seventh Review Conference*, September 2011. Available at: [http://www.brad.ac.uk/acad/sbtwc/key7rev/article\\_V\\_2.pdf](http://www.brad.ac.uk/acad/sbtwc/key7rev/article_V_2.pdf)

Filippa Lentzos, *How to enable fuller participation in the Confidence Building Measures (CBMs)*, University of Bradford, Briefing Paper No. 3 (Third Series), July 2012. Available at: [http://www.brad.ac.uk/acad/sbtwc/briefing/3\\_BP\\_3\\_.pdf](http://www.brad.ac.uk/acad/sbtwc/briefing/3_BP_3_.pdf)

Filippa Lentzos & Graham S. Pearson, *Moving Forward with the Confidence Building Measures (CBMs)*, University of Bradford, Briefing Paper No. 9 (Third Series), June 2013. Available at: [http://www.brad.ac.uk/acad/sbtwc/briefing/3\\_BP\\_9\\_.pdf](http://www.brad.ac.uk/acad/sbtwc/briefing/3_BP_9_.pdf)

<sup>214</sup> United States, *Strengthening confidence-building and consultative mechanisms under the Biological Weapons Convention*, BWC/CONF.VIII/PC/WP.6, 21 April 2016.

*the States Parties declaring national biodefense research programs report civilian biodefense research. For the remaining two-thirds of States Parties, it is not clear whether they have construed the request for information to apply only to military programs, or whether they do not have biodefense research programs conducted by civilians aimed at protecting the civilian population.*

*(ii) Expanding CBM Form E on national implementation measures to provide more information, for example by adding a request for short descriptions of implementation measures. The current requests consist of a handful of yes/no questions with boxes to be checked, and do not provide sufficient information to make informed judgments regarding the status of BWC implementation by States Parties. Such national implementation measures are fundamental steps to upholding and strengthening the norm against the misuse of biological materials, and critical to guarding against the acquisition and use of biological weapons by both State and non-State actors.*

17. The European Union, equally keen to further strengthen the relevance and comprehensiveness of the CBM regime, also presents<sup>215</sup> a series of concrete steps that it will work towards:

- (a) examining annual CBM-forms as the regular national declaration tool on implementation and compliance and developing them further with this objective in mind;*
- (b) reducing to the largest extent possible remaining complexities of CBM-forms and removing potential ambiguities;*
- (c) supporting the ISU to play more of a role in support of national points of contact in compiling their CBMs through regional seminars and training for electronic submission of CBM-forms;*
- (d) working to increase the participation, quality and comprehensiveness of the CBMs, by expanding the functionality of the electronic CBM facility and making it, as well as the CBM guide, available in all official languages of the United Nations on the BWC website.*

18. Both the USA and European Union working papers place their discussion of CBMs within a larger discussion of enhanced transparency of capabilities, activities and actions, and of increased confidence in compliance. The USA ties its discussion in with consultation and cooperation; the European Union ties its discussion in with compliance and voluntary peer review exercises.

19. To encourage States Parties to engage more proactively in consultations and cooperation, the USA proposes a wider array of tools to facilitate bilateral and multilateral engagement, noting that *Article V of the Convention can and should be used not only or concerns about compliance, but also more broadly to resolve questions, clarify concerns, and/or address shared challenges*. Specifically, the USA proposes:<sup>216</sup>

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<sup>215</sup> European Union, *Position of the European Union relating to the Eighth Review Conference of the BWC*, BWC/CONF.VIII/PC/WP.5, 12 April 2016

<sup>216</sup> United States, *Strengthening confidence-building and consultative mechanisms under the Biological Weapons Convention*, BWC/CONF.VIII/PC/WP.6, 21 April 2016.

- (a) *Developing more detailed options for bilateral consultations, including some basic procedures, with timelines, that could be invoked when a concern is raised. ...*
- (b) *Developing separate, lower-key procedures for States Parties' use to ask questions about another State Party's CBM submission bilaterally or perhaps through the ISU. Because CBMs occasionally contain information that is unclear, inconsistent, or conflicts with other information, such questions should not be a rare occurrence, and seeking clarification of such issues should not carry any implication of suspicion of wrongdoing.*
- (c) *Developing illustrative options or non-binding guidelines for suggested procedures to address concerns. ...*
- (d) *Establishing an understanding that, where bilateral or multilateral consultations are unsuccessful, a State Party could request the United Nations Secretary-General to use his/her "good offices" to seek clarification, and calling on all States Parties to cooperate with any such effort. Such an understanding would explicitly serve as an "appeal" function, effectively escalating concern to a higher level if initial consultations are unsuccessful.*

20. The European Union in its working paper<sup>217</sup> also addresses efforts to enhance transparency and build confidence in compliance and states that the EU will:

*continue to support a voluntary peer review process as a valuable tool for increasing transparency between States Parties thereby enhancing confidence in compliance with the BWC and strengthening national implementation through the sharing of good practices, raising stakeholder awareness of implementation requirements and increasing international cooperation in this field;*

21. In a working paper<sup>218</sup> entitled *Peer review: an innovative way to strengthen the BWC*, Belgium, France, Luxembourg and Netherlands see this as a way of moving the debate on compliance forward in an innovative, workable and pragmatic way. They outline the main benefits from the pilot exercises they have conducted as being:

- (a) *Participation and feedback from foreign highly qualified experts are very useful for the host country to enhance the way the Convention can be implemented. It also allows for a substantive exchange among practitioners and the construction of a network of qualified experts, which can be developed along the road;*
- (b) *Interactivity of exchanges, which allows for a better engagement at the level of experts;*
- (c) *Collaborative exchanges on ways and means to improve the national implementation of the BTWC are useful to enhance understanding and build confidence;*

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<sup>217</sup> European Union, *Position of the European Union relating to the Eighth Review Conference of the BWC*, BWC/CONF.VIII/PC/WP.5, 12 April 2016

<sup>218</sup> Belgium, France, Luxembourg and Netherlands, *Peer review; An innovative way to strengthen the BWC*, BWC/CONF.VIII/PC/WP.13, 4 May 2016.

- (d) *The choice of topics of interest to the practical implementation of the BTWC, which allow focus on relevant provisions and their implementation;*
- (e) *On-site visits of facilities and opportunities to exchange with laboratory staff are essential for other States Parties to compare approaches in a way that goes beyond examining the text of laws and regulations and to see what the implications are in the field;*
- (f) *Comprehensive review implying various national agencies can be very helpful to enhance interagency efforts within the host nation and to inform them about BWC related issues.*

### **Issues for the Eighth Review Conference**

22. The significant growth of life science research and development programmes to counter outbreaks of disease, whether natural, accidental or deliberate, in the 21st Century have placed new pressures on the central provisions of the BTWC contained in Article I, and by extension Article V. There is growing recognition that States Parties engaged in life science research and development activities to counter outbreaks of disease must take active steps to ensure their own compliance with the Convention and to effectively reassure others of their compliance.

23. It was at the Third Review Conference in 1991 that the States Parties agreed *to reaffirm those measures established at the Second Review Conference with the following improvements ... to amend and extend the exchange of data on research centres and laboratories* and to introduce a part 2 to Confidence-building measure “A” which referred for the first time to *“national biological defence research and development programmes.”* Such an amendment was understandable back in 1991 when the focus was primarily on the possible misuse by States Parties with little if any attention being given to possible use by non-State actors or terrorists.

24. As the United States has proposed in its working paper in April 2016 summarised above CBM Form A (Part 2 (i)), which calls for information on national biodefense research programs, should be amended *to clarify that the request for information includes both military and civilian programs. At present, roughly one-third of the States Parties declaring national biodefense research programs report civilian biodefense research. For the remaining two-thirds of States Parties, it is not clear whether they have construed the request for information to apply only to military programs, or whether they do not have biodefense research programs conducted by civilians aimed at protecting the civilian population.*

25. Consequently, with the benefit of hindsight and considering concerns today about the possible misuse of biological agents and toxins, States Parties should return to the Second Review Conference language requiring declaration of ***centres and laboratories that ... specialise in permitted biological activities directly related to the Convention*** as it is evident that today the requirement should be to declare ***any*** facilities and programmes, whether in government, industry or academia, that are engaged in activities to counter deliberate outbreaks of disease or uses of toxins in humans, animals or plants. The word *research* should be omitted to make it clear that ***all*** such facilities are to be declared and the word *biodefense* should also be omitted to avoid any possible misunderstanding that only military programmes are to be declared. This could be achieved by the Eighth Review Conference in its *Final Declaration* recognizing that the information submitted in response to Form A part 2

should be regarding *any* facilities and programmes engaged in *activities to counter deliberate* outbreaks of disease or uses of toxins.

26. In considering how best to move forward on Confidence-Building Measures it is evident that there are some widely shared objectives<sup>219</sup>. Namely that:

- All activities in the life sciences whether in government, industry or academia must be compliant with the BTWC and other treaty obligations.
- All activities to counter outbreaks of disease in humans, animals or plants whether natural, accidental or deliberate must be compliant with the BWC and other treaty obligations.
- Activities to counter outbreaks of disease can and sometimes do raise compliance concerns among outside observers, both at home and abroad.
- Some activities could inadvertently cross into areas of non-compliance with the treaty.
- Compliance review mechanisms can help governments prevent inadvertent non-compliance within life science activities whether in government, industry or academia, and thereby provide internal and external reassurance that a nation is complying with the BTWC.

27. Trust between States Parties, and between nations and their citizens, is enhanced through openness. A good case can be made for a higher level of responsibility, and higher standards of transparency and communication, falling on those engaged in life science activities to counter deliberate outbreaks of disease. Furthermore, it is recognized that the understanding of what it means to be open and transparent differs from country to country, so the more transparent governments should therefore lead by example.

28. Multilateral discussions on ways to enhance assurance of compliance with the BTWC have gradually restarted in the last few years. In 2012, Australia, Canada, Japan, New Zealand and Switzerland<sup>220</sup> launched a process to develop a common understanding of what compliance with the BTWC means and to identify ways states parties can better demonstrate their compliance with, and national implementation of, the treaty. This process was reinforced by the parallel development of a compliance assessment initiative by Canada<sup>221</sup> in 2010, joined by Switzerland in 2011<sup>222</sup>, the Czech Republic in 2012<sup>223</sup>, and France in 2012. The

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<sup>219</sup> This list builds on ideas considered at the meeting '*Ensuring compliance with the Biological Weapons Convention*' in July 2009, and sponsored by Center for Arms Control and Non-Proliferation, Center for International and security Studies at Maryland (CISSM), Center for Science, Technology and Security Policy at the American Association for the Advancement of Science (AAAS), and the Center for the Study of Weapons of Mass Destruction at the National Defense University. Report available at: <http://www.cissm.umd.edu/publications/ensuring-compliance-biological-weapons-convention-0>

<sup>220</sup> Australia, Canada, Japan, New Zealand and Switzerland. *We need to talk about compliance*, BWC/MSP/2012/WP.11, 12 December 2012. Available at: [http://www.unog.ch/80256ee600585943.nsf/\(httpPages\)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#\\_Section1](http://www.unog.ch/80256ee600585943.nsf/(httpPages)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#_Section1)

<sup>221</sup> BWC/MSP/2010/WP.3/Rev.1, *National implementation of the BTWC: compliance assessment: a concept paper Revised*, 7 December 2010. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/639/23/PDF/G1063923.pdf?OpenElement>

<sup>222</sup> Canada and Switzerland, *National Implementation of the BTWC: Compliance Assessment*, BWC/MSP/2012/MX/WP.17, 3 August 2012. [This paper was submitted to the Seventh Review Conference but due to an oversight of the Secretariat, it was not processed as an official document.] Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/620/51/PDF/G1262051.pdf?OpenElement>

<sup>223</sup> Canada, the Czech Republic and Switzerland, *National implementation of the BTWC: compliance assessment: update*, BWC/MSP/2012/WP.6, 5 December 2012. Available at:

peer review mechanism was put forward by France in 2011<sup>224</sup>, which also carried out a pilot exercise in 2013<sup>225</sup> and reported on this in 2014<sup>226</sup>. Belgium, Luxembourg and Netherlands carried out a further pilot exercise in 2015<sup>227</sup>. Additional peer review exercises are underway<sup>228</sup>. In 2011, the USA<sup>229</sup> emphasized its commitment to building an environment of openness and collaboration in its biodefence activities, and outlined a set of unilateral, voluntary activities for a bio-transparency and openness initiative. In 2012 the USA reported<sup>230</sup> on these planned activities. Similar initiatives to host visits to high containment laboratories and to organize international conferences on BWC topics have also been carried out by other states parties, such as Switzerland, to encourage transparency and foster the exchange of views.

29. These initiatives are to be encouraged and built on. One way in which to do so would be for an informal, voluntary grouping of States Parties engaged in activities to counter deliberate outbreaks of disease to develop common modes and mechanisms to ‘declare, document and demonstrate’ adherence to and compliance with the BTWC through reciprocal peer visits.<sup>231</sup> Such a grouping of States Parties would form a complementary element to the core, multilateral regime that would allow states to address shortcomings in the BTWC and go beyond its undertakings, all the while supporting and reinforcing its normative structure.

30. It is recommended that the Eighth Review Conference:

- Establish a dedicated working group on CBMs to revise the forms as deemed necessary and to further develop the electronic platform;
- Encourage States Parties to voluntarily make their CBMs publicly available to maximise transparency;
- Establish a CBM assistance network; and

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[http://www.unog.ch/\\_80256ee600585943.nsf/\(httpPages\)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#\\_Section1](http://www.unog.ch/_80256ee600585943.nsf/(httpPages)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#_Section1)

<sup>224</sup> France, *Etude de l'UNIDIR sur la création d'un mécanisme de revue par les pairs dans le cadre de la Convention d'interdiction des armes biologiques et à toxines*, BWC/MSP/2012/WP.12. Available at:

<sup>225</sup> France, *Exercice pilote de revue par les pairs Paris, 4-6 décembre 2013*, BWC/MSP/2013/WP.8. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/645/72/PDF/G1364572.pdf?OpenElement>

<sup>226</sup> France, *Exercice pilote de revue par les pairs tenu du 4 au 6 décembre 2013 à Paris*, BWC/MSP/2014/WP.3. Available at: [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/33475BB35F33E400C1257DA4003B74E7/\\$file/BWC\\_MSP\\_2014\\_WP.3.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/33475BB35F33E400C1257DA4003B74E7/$file/BWC_MSP_2014_WP.3.pdf)

<sup>227</sup> Belgium, Luxembourg and the Netherlands, *BENELUX BTWC Peer Review: Initial observations*, BWC/MSP/2015/WP.12. Available at: [http://www.unog.ch/\\_80256ee600585943.nsf/\(httpPages\)/52f94df16e2c376ec1257ede0033c774?OpenDocument&ExpandSection=1#\\_Section1](http://www.unog.ch/_80256ee600585943.nsf/(httpPages)/52f94df16e2c376ec1257ede0033c774?OpenDocument&ExpandSection=1#_Section1)

<sup>228</sup> Belgium, France, Luxembourg and Netherlands, *Peer review; An innovative way to strengthen the BWC*, BWC.CONF.VIII/PC/WP.13, 4 May 2016. Available at: [http://www.unog.ch/\\_80256ee600585943.nsf/\(httpPages\)/be0b6b9f091aa80dc1257fa7003362b6?OpenDocument&ExpandSection=3#\\_Section3](http://www.unog.ch/_80256ee600585943.nsf/(httpPages)/be0b6b9f091aa80dc1257fa7003362b6?OpenDocument&ExpandSection=3#_Section3)

<sup>229</sup> Hillary Rodham Clinton, US Secretary of State, *Remarks at the 7th Biological and Toxin Weapons Convention Review Conference*, 7 December 2011. Available at: [www.state.gov/secretary/20092013clinton/rm/2011/12/178409.htm](http://www.state.gov/secretary/20092013clinton/rm/2011/12/178409.htm)

<sup>230</sup> United States, *The United States Government's Bio-transparency and Openness Initiative*, BWC/MSP/2012/WP.3, 3 December 2012. Available at: [http://www.unog.ch/\\_80256ee600585943.nsf/\(httpPages\)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#\\_Section1](http://www.unog.ch/_80256ee600585943.nsf/(httpPages)/89835cb0a2daa4a0c1257b6e003415c5?OpenDocument&ExpandSection=1#_Section1)

<sup>231</sup> This is outlined in more detail in: Lentzos, Filippa, *3D Bio: Declare, Document & Demonstrate*, EU Non-proliferation Consortium, Non-Proliferation Papers No. 45, April 2015; available at <http://www.sipri.org/research/disarmament/eu-consortium/publications/eu-nonproliferation-paper-45>

- Encourage the development of interactive information exchanges, be they bilateral or multilateral ‘consultations’ or ‘peer review exercises’, to increase confidence in compliance.

### **Points for the *Final Document***

31. Consideration is given here to both the Article by Article *Final Declaration* and then to the *Decisions and Recommendations* section (*Part III* of the *Final Document*). It also needs to be recalled that the CBMs **are** politically-binding and are the measures that the Second Review Conference, repeated by the Third, agreed *that the States parties are to implement, on the basis of mutual cooperation*.

#### **Article V in the Article by Article *Final Declaration***

32. It is recommended that the Eighth Review Conference should adopt more concrete language for the CBMs in Article V than that in the *Final Declaration* of the Seventh Review Conference. It should make the following points:

- a. To note the comprehensive attention given to the Confidence-Building Measure regime at the Seventh Review Conference and to welcome the amendments agreed to the Confidence-Building Measures [See *Part III: Decisions and Recommendations*].
- b. To emphasise the importance of the exchange of information among States Parties through the politically binding confidence-building measures (CBMs) agreed at the Second and Third Review Conferences and amended at the Seventh Review Conference.
- c. To welcome the exchange of information carried out under these measures, and to note that this has contributed to enhancing transparency and building confidence.
- d. To note that only a limited number of States Parties make an annual CBM submission and to recognise the urgent need to increase the number of States Parties participating in CBMs.
- e. To note the value to enhancing transparency and building trust through voluntarily making all, or part, of their CBM returns public.
- f. To reaffirm that the data submitted in the framework of the annual exchange of information should be provided to the United Nations Office for Disarmament Affairs and promptly forwarded by it to all States Parties according to existing modalities.
- g. To agree that a working group reporting to the Annual Meeting of States Parties throughout the intersessional process should be established to examine further how the effectiveness of, and the participation in, the CBM regime might be enhanced, to revise the forms as necessary and to further develop the electronic platform.
- h. To encourage those States Parties in a position to do so to provide assistance, using the ISU to facilitate the provision of such assistance, to other States Parties on the preparation of and submission of CBMs.

- i. To welcome the development of interactive information exchanges, such as bilateral or multilateral ‘consultations’ or ‘peer review exercises’, to enhance transparency and increase confidence in compliance.

### ***Decisions and Recommendations section of the Final Document***

33. The section entitled *Confidence-Building Measures* in the *Decisions and Recommendations* section of the *Final Document* should make the following points:

#### Confidence-Building Measures

- a. To note that the review of Article V of the Convention has shown the need to enhance the effectiveness of the Confidence-Building Measures (CBM) process and to increase participation therein.

- b. To note the clarification that the information submitted in response to Form A part 2 should be regarding *any* facilities and programmes engaged in *activities to counter deliberate* outbreaks of disease or uses of toxins and thereby include both programmes conducted by governments to protect military personnel and programmes conducted by civilians to protect the civilian population, animals and plants.

- c. To decide that a Working Group on Confidence-Building Measures shall be established to enhance the effectiveness of the Confidence-Building Measures (CBM) process, to increase participation therein, to revise the forms as necessary and to further develop the electronic platform. The Working Group shall consider whether additional types of information or alternative means would increase transparency and build confidence. The Working Group shall make recommendations annually for amendments to the CBM Process to the Annual Meeting of States Parties which shall decide on their adoption.

- d. To decide that the ISU shall give professional support to the implementation of these decisions by providing necessary services as required by States Parties individually and collectively

- (i) for the effective operation of the CBMs already agreed, and their associated modalities, including but not limited to the following tasks decided by the Sixth and Seventh Review Conferences and now reaffirmed:

1. The Implementation Support Unit (ISU) within the United Nations Office for Disarmament Affairs, with the assistance of interested States Parties, shall develop an electronic format of the existing CBM forms.

2. Once completed, the electronic forms shall, with the consent of the State Party submitting them, be posted on a secure Internet site and made available for the use of States Parties, to be developed under the auspices of the ISU.

3. For those States Parties which have agreed to do so, to make all or part of their CBMs available publicly on the ISU website.

4. States Parties are encouraged to submit their CBMs using the electronic format. States Parties that wish to submit completed paper

forms instead of electronic forms may do so. The ISU shall insert the submitted hard copy data in the secure Internet site with the consent of the State Party providing this data in order to make it electronically available to all States Parties. For those States Parties that have agreed to do so, the ISU shall also make the hard copy data publicly available on the ISU website.

5. The ISU shall centralize requests and offers of assistance regarding the submission of CBMs.

6. The ISU shall facilitate the provision of such assistance, to other States Parties on the preparation of and submission of CBMs.

7. The ISU shall regularly inform States Parties about CBM returns and provide statistics on the level of participation at the Annual Meetings of States Parties.

8. States Parties shall designate a national point of contact in charge of preparing the submission of CBMs, the contact details of which shall be sent to the ISU.

9. The ISU shall circulate to points of contact a notice informing States Parties of the deadline for submitting information under the information exchange procedure (15 April) at least three months prior to this deadline.

(ii) for the new Working Group on CBMs, including action on any decisions arising out of its recommendations to the Annual Meeting of States Parties throughout the intersessional process;

(iii) for consequential changes and any other aspects of the CBM regime as they arise over the intersessional period, under the supervision of a Steering Committee consisting of the Chairmen and Vice-Chairmen of the Annual Meetings of States Parties to be held between the Eighth and Ninth Review Conferences together with the Chairmen of any Working Groups.

e. To agree that the CBM regime merits further attention at the Ninth Review Conference.

34. In addition, the *Decisions and Recommendations* section on the *Implementation Support Unit* should also include the assignment of tasks to the Implementation Support Unit relating to the CBMs which should make the following points:

B. Confidence Building Measures:

(i) Receiving and distributing confidence-building measures (CBMs) to/from States Parties;

(ii) Developing, with the assistance of interested States Parties, an electronic format of the existing CBM forms.

- (iii) Receiving the electronic forms and posting them on a secure Internet site made available for the use of States Parties and, for those States Parties which have agreed to do so, to make all or part of their CBMs available publicly on the ISU website.
- (iv) Sending information notices to States Parties regarding their annual submissions;
- (v) Supporting the Working Group in its activities to enhance the effectiveness of the Confidence-Building Measures (CBM) regime and to increase participation therein;
- (vi) Compiling, analyzing and distributing data on CBMs and informing on participation at each Meeting of States Parties;
- (vii) To the extent possible, and with the assistance of States Parties able to do so, making the CBM data available in more than one of the UN languages;
- (viii) Serving as an information exchange point for assistance related to preparation of CBMs;
- (ix) Facilitating the provision of such assistance, to other States Parties on the preparation of and submission of CBMs.
- (x) Facilitating activities to promote participation in the CBM regime, as agreed by the States Parties.