

Options for Article X

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Article X appears to have received little attention during the construction of the Biological and Toxin Weapons Convention (BWC). However, as the convention has evolved Article X has become increasingly important to many states, to the extent that progress in the Eighth Review Conference will be dependent on a balanced package of measures, including measures that attend to this article. Accordingly, this short paper is intended to outline some options for improving the implementation of Article X that states parties may wish to consider at the Eighth Review Conference.

The paper begins by outlining the origins and evolution of Article X over the course of the BWC's history. It then proceeds to discuss the changing expectations of states from this article, but also the limits of what can realistically be expected, before presenting a number of possible options to move Article X forward, based on activities undertaken in other fields.

Origins and Evolution of Article X

It has long been recognized that the agents, equipment and materials required for biological warfare are dual use, in that they could be applied for peaceful, but also hostile purposes. Early efforts towards the integration of a provision on peaceful purposes in biological disarmament measures can be seen in Article X of the Socialist states' Draft Convention on Bacteriological (biological) Weapons from March 1971.¹ The language in this early Soviet proposal drew, in part, from Article IV of the Nuclear Non-Proliferation Treaty and was kept largely unchanged in subsequent drafts, except for the addition of text from Neutral and Non-Aligned states "directed towards the promotion of cooperation" in August of 1971.² The Article appears to have been "generally found constructive",³ with little to suggest Article X proved divisive and the US Ambassador, James Leonard, indicating that he believed the "...article, perhaps more than any

The BWC is a disarmament treaty, but attention to international cooperation will be essential for success at the 8th Review Conference. Five balanced options for Article X are identified:

- Establish a format for national reports,
- Appoint an ISU "Cooperation officer";
- Undertake a voluntary peer review of Article X;
- Establish regional technical workshops;
- Launch an Article X Working Group.

Individually or collectively these options could aid in the development of a balanced package of measures during the Eighth Review Conference.

other, reflects the basic objective of our negotiations: to turn scientific efforts from the paths of destruction to the service of mankind".⁴

However, as early as the First Review Conference, expectations over the function and focus of Article X began to diverge. This was compounded by changes in the perceived value of biotechnology and other influences creating a growing sense of division around Article X.

The situation improved little during the 1990s. Although the technical focus of VEREX meant that the issue was largely avoided in the early 1990s, in the run up to - and during - the 1996 Special Conference the Non Aligned Movement (NAM) indicated renewed attention to international cooperation. During the Ad Hoc Group (AHG) negotiations Article X became one of four "equally important" areas⁵ that was becoming increasingly divisive.

Since the conclusion of the work of the AHG, Article X has continued to prove divisive. At the Sixth Review Conference, proposals for Article X and Article IV Action Plans effectively cancelled each other out. The Seventh Review Conference saw a repetition of "well-known points of conflict", with Western states seeking to narrow the focus of the Article around disease-related activities, and others, principally from the NAM seeking to broaden its focus.⁶

¹ SIPRI. 1971. "CB Disarmament Negotiations 1920-1970." Ahnqvist & Wiksell. pg 334.

² CCD/PV.530. August 17, 1971. Pg 26.

³ SIPRI. 1971. Op Cit, pg, 319.

⁴ CCD/PV.542. September 28, 1971.

⁵ BWC/AD HOC GROUP/28, pg 36.

⁶ Becker-Jakob, Una. 2013. "Balanced Minimalism", PRIF-Report No. 120, Pg 15.

Expectations under Article X

As such, the passage of time has generated a divergence of expectations around the focus *and* function of Article X. Regarding the function, the language can be interpreted as having a “promotional aspect and a regulatory aspect”.⁷ The NAM has increasingly emphasised the promotional aspect of Article X; for some other states the emphasis has been on the obligation to avoid hindering international cooperation and/or technology transfer.

In terms of the focus, as Table 1 illustrates, the range of activities specifically linked to Article X has grown considerably as the convention has evolved. Notably, through internal or exogenous activities many of these measures have been taken forward: the Seventh Review Conference agreed a Database; WHO activities, such as the implementation of the IHR have advanced global disease monitoring; and the rise of the internet (as well as the recent trend towards ‘open access’ publications) has to some extent facilitated greater international exchanges of information.

Table 1. Examples of Specific Measures for Article X in Final Declarations⁸

Examples of measures for Article X agreed in Final Declarations	Review Con						
	1	2	3	4	6	7	
Increase/promote scientific and technological co-operation	•	•	•	•	•	•	
Transfer and exchange of information	•	•	•	•	•	•	
Training of personnel/capacity building	•	•	•	•	•	•	
Transfer of materials and equipment	•	•	•	•	•	•	
Background materials on Article X (by UN Secretariat or ISU)	•	•	•	•	•	•	
Active promotion of contracts (including by ISU)		•	•	•	•		
Greater co-operation in international public health/disease control		•	•	•	•	•	
Coordination through UN system		•	•	•	•	•	
Co-ordination/improvement of national & regional programmes		•	•	•	•	•	
Bilateral, regional and multi-regional agreements related to disease		•	•	•	•	•	
Institutional ways of ensuring multilateral cooperation		•	•	•	•	•	
Inclusion on the agenda of a relevant United Nations body,		•	•	•			
Information on implementation of Art X to Secretary-General/ISU			•	•	•	•	

⁷ BWC/AD HOC GROUP/31, pg 72.

⁸ Littlewood. J. 2005. “The Biological Weapons Convention: A Failed Revolution”, Ashgate. Pg 168.

Participation of/measures by specialized agencies			•	•	•	•
Information, assistance or communications on disease surveillance & detections systems			•	•	•	
Establishment of a world data bank			•	•		
Study of the influence of enhanced radioactivity on microorganisms			•			
Programme or promotion of vaccine development including public-private partnership			•	•	•	•
The promotion of programmes for the exchange and training of scientists and experts				•		•
Develop emergency & disaster management plans;					•	•
Review national regulations on exchanges and transfers						•
Capacity-building, in biosafety, biosecurity, disease detection, reporting and response.						•

“A dose of realism”

It is not unreasonable for states - particularly those untroubled by the threat of biological weapons but facing very real challenges from natural disease outbreaks - to expect some form of incentive for signing and ratifying the BWC. However, there is also a need for “a dose of realism”⁹ in expectations surrounding Article X.

First, for many the BWC is a disarmament agreement intended to build security through the prohibition of a particular means of warfare, it is not a development treaty. Moreover, there are already a number of cooperative activities taking place outside the convention that should not be duplicated. Second, as successive review conferences have pointed out, the private sector plays an “important role”, with technology frequently in the control of private industry *not* states.

Third, the literature on technology transfer and capacity development points to the importance of recipient states’ capacity; and making the most of cooperative activities requires effort on the part of the recipient, such as the provision of political will, institutional resources and the development of skills, competencies and a suitable environment to effectively absorb technology transfers.¹⁰ Finally, as noted during the AHG, any feasible measure for Article X must be reasonably

⁹ BWC/AD HOC GROUP/31, page 88.

¹⁰ See Hall, Andy. 2005. “Capacity Development for Agricultural Biotechnology in Developing Countries: An Innovation Systems View of What It Is and How to Develop It.” *Journal of International Development* 17 (5): 611–630.;

inexpensive, easy to implement and not require disclosure of intellectual property.¹¹

Options for Article X

Whilst there is therefore a need for realism, it is also apparent that progress at the Eighth Review Conference will require a balanced package of measures, and the implementation of Article X will form a significant part of that balance. Accordingly, what follows is a series of ideas taken from past BWC proposals and other international agreements. These are intended as 'balanceable' food-for-thought for those seeking options in this area.

Article X reports

A number of states parties have submitted information on Article X activities either as background for Review Conferences or during Intersessional Process meetings.¹² At the Seventh Review Conference, such national submissions averaged just under two and a half pages in length, with content ranging significantly from short statements on compliance with Article X, to longer illustrative lists of relevant activities, to statements and proposals for Article X-related activities and mechanisms.¹³

If these reports are considered as potentially useful, a common format for such reports - potentially adapting prior work in the AHG¹⁴ - could be developed with a view to generating more concrete and consistent data on: firstly, what states are doing in terms of Article X; and, secondly, identifying particular needs of states parties related to Article X, such as specific requests for "equipment, materials and scientific and technological information".¹⁵ Such an approach could be useful in the development of background information on trends in relation to this article and could be used to inform subsequent discussion in this area, perhaps even feeding into the initiation of an iterative process of determining reasonable expectations under Article X.

Appoint an ISU "Cooperation officer"

The Implementation Support Unit (ISU) is not "an operational agency in the field of international cooperation".¹⁶ Nevertheless, if states are serious about international cooperation and technology transfer under the BWC then there would be

value in expanding the ISU to include a cooperation officer tasked with, *inter alia*, actively working on the identification, collation and circulation of opportunities for relevant cooperation and capacity building, such as scholarships, e-learning courses, and funding opportunities.

Focused attention on Article X and the active identification and sharing of opportunities is likely to be a prerequisite for enhancing the effectiveness of this Article and could be used to populate the existing database and facilitate a process of matchmaking offers with needs. A cooperation officer could, moreover, play a role in informing states parties of opportunities for coordinating cooperation with other relevant international and regional organizations.¹⁷

Peer review of Article X

Several states have embarked upon some form of BWC-related peer review process. Most of these focus on aspects of national implementation of the BWC. However, building on the OECD's Development Assistance Committee (DAC) review process a potential option may be consideration of a process of voluntary peer review of national activities in relation to Article X to "provide in-depth examinations of development systems and policies, including lessons learned".¹⁸ In this regard, Article X reports and other materials could be used to inform a desk-based review process of Article X related activities with a view to developing an understanding of how technology transfer and receipt could be optimized in the BWC context.

Consistent with the DAC model, a more ambitious Article X peer review process could be developed through visits that "gain an understanding of how policies are implemented".¹⁹ During the AHG discussions several states raised the idea of cooperation visits to facilities with the aim of providing technical assistance on biosafety and security, regulations, diagnostic techniques,²⁰ as well as the provision of technical knowledge to solve problems identified by states parties.

Regional technical workshops

The Preparatory Committee indicated that there is widespread support for further work on science and technology, moreover, scientific or technical conferences provide a key mechanism for the

¹¹ BWC/AD HOC GROUP/WP.25. pg 1.

¹² See for example BWC/MSP/2015/INF.2 and INF.2

¹³ BWC/CONF.VII/INF.8 & BWC/CONF.VII/INF.8/Add.1

¹⁴ See BWC/AD HOC GROUP/WP.350

¹⁵ BWC/CONF.VII/WP.29, pg 1.

¹⁶ Finland, 2016. *Statement*. BTWC PrepCom I.

¹⁷ BWC/CONF.VII/WP.29. pg 2.

¹⁸ OECD "Peer Reviews of DAC Members." OECD Website. <http://www.oecd.org/dac/peer-reviews/>.

¹⁹ OECD. 2013. "Information Note on the DAC Peer Review Process", DCD(2013)6. Pg 4.

²⁰ See BWC/AD HOC GROUP/WP/76

exchange of scientific and technological information and the stimulation of cooperation in the life sciences. A further useful option may therefore be organising a technical workshop or series of regional workshops to serve as a “forum for scientists from around the world to exchange knowledge and share advances”²¹ in topics of relevance to the BWC, such as disease detection and response, tailored to regional needs. These meetings could be located in United Nations regional centres, such as the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean or the UN Regional Centre for Peace and Disarmament in Africa. This could usefully complement future science and technology related activities under the convention, building on a number of existing models such as Agricultural Technical Cooperation Working Group (ATCWG) workshops on Capacity Building for Emerging Infectious Diseases.

Article X Working Group

A further option for consideration is an Article X working group of some form mandated over the course of the next intersessional period to review background materials, actively identify and share opportunities to promote and coordinate international cooperation and capacity building for peaceful purposes. The group might also be tasked to identify gaps and obstacles that need to be addressed and potentially explore methods for consultation and cooperation with any problems that might arise related to the implementation of Article X.

In order to ensure continuity and focus, there would be benefits to appointing a Chair of the working group for the duration of the intersessional period. The Chair, with the support of the ISU, could usefully identify and invite experts in particular areas, such as technology transfer, to inform the group’s discussion. Building on expert contributions and discussion, there would also be considerable benefits to such a group, in circumstances where consensus existed, being able to make recommendations for consideration at subsequent meetings of states parties.

Reflections

The negotiation record indicates that Article X was considered important when it was introduced into the text in 1971. Indeed, as Ambassador Ene of Romania recalled in his statement to the First

Review Conference, Article X “occupied a special place in the structure of the Convention”.²² It also appears to have been uncontroversial in the early 1970s. However, more recent history suggests that Article X could prove divisive at the Eighth BWC Review Conference.

Whilst the underlying differences in interpretations of the Article that have emerged since the 1980s are unlikely to be overcome at the Review Conference, the extent of division which may emerge is likely to depend on the preparations of states parties. To this end, the discussions and understandings achieved during the standing agenda item on Article X (and Article VII) during the last intersessional process and the two-part Preparatory Committee should serve states parties well. Indeed, already there are a number of proposals on the table for states parties to consider.

If states parties are to move beyond the repetition and recycling of traditional debates over Article X, past experience suggests that proposals need to be concrete, relatively inexpensive, feasible, and not impinge upon private sector interests. It would also be beneficial if they were both ambitious in scope and submitted early. With this in mind, this paper has identified five potential additional options for consideration in relation to Article X:

- Establish a format for national reports
- Appoint an ISU “Cooperation officer”
- Undertake a voluntary peer review of Article X
- Establish regional technical workshops
- Launch an Article X Working Group.

Such options are unlikely to satisfy all states’ expectations, but individually or collectively these options could aid in the development of a balanced package of measures during the Eighth Review Conference, which would advance international cooperation in a manner that both complements and enhances proposals in other areas.

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²¹ CTBTO. 2015. *CTBT: Science and Technology 2015 Conference*. <https://www.ctbto.org/specials/snt2015/>

²² BWC/CONF.1/SR.5, pg 7.