Meeting of Experts on Institutional Strengthening of the Convention: Reflections and proposals for possible outcomes

Submitted by the Chair of the Meeting of Experts on Institutional Strengthening of the Convention

I. Background

1. At the 2017 Meeting of States Parties, the mandate for the intersessional programme 2018-2020 was adopted and institutional strengthening of the Convention was included among the issues to be discussed as a separate topic for discussion. It was possible thanks to breaking up of the former single MX with a number of major topics on its agenda into separate meetings, each with one major topic.

2. The text of the BWC itself, if we compare it with other treaties and conventions, is relatively short and the wording is at many instances very general. That is why, over the years, it has been supplemented by a series of additional understandings reached at its Review Conferences. Subsequently, the ISU updates information on additional agreements that interpret and define the meaning of provisions of the Convention and provide States Parties instructions and guidelines on how the provisions should be implemented.

3. As we all know, the BWC does not include any institutional structures, nor does it include measures to ensure compliance by States Parties and so, from the very beginning of the Convention, we witnessed various efforts to strengthen it, to create institutions and structures, and to establish confidence-building, consultative, and verification mechanisms.

4. One such effort was launched in 1992, with the intention to develop verification and other measures in a draft protocol to the Convention. The attempt to finalize a legally-binding instrument failed in 2001. Nevertheless, in the course of time, there were many other proposals for strengthening of the Convention that were not of a legally-binding nature, such as Confidence-Building Measures, transparency initiatives, and guidelines for applying for assistance under Article VII of the Convention, just to mention some of them.

II. Discussions at the Expert Meeting

5. The discussion in the MX5 meeting confirmed that there was a strong desire and willingness by the State Parties to strengthen the Convention. However, there are still
differing views on ways and means to strengthen the Convention. The most significant point of disagreement remains whether to pursue objectives through a new legally-binding agreement.

6. There are some States Parties that are convinced that the only sustainable method of strengthening the Convention is to negotiate and conclude a non-discriminatory, legally-binding agreement. Among these, many also recommend preserving the mandate established by the Special Conference in 1994 and wish to continue based on the text presented to the Ad Hoc Group in 2001.

7. On the other side, there are States Parties that do not consider a legally-binding protocol a realistic or practicable solution. These States Parties have expressed the view that such a protocol would not meet the desired objective to strengthen confidence in compliance with the provisions of the BWC. In addition, States Parties also noted that due to current rapid advances in science and technology, in their view, a permanent verification mechanism to prevent potential breaches of the Convention is not achievable.

8. It is obvious that there is no prospect of consensus on this matter now or in the near future. Even if consensus did exist, negotiation of the protocol would last for years and with the current financial uncertainties for the BWC, it is unclear how financial support for future negotiations could be sustainable.

9. It is clear that these are strongly held positions: if progress is to be made, it will be essential to avoid taking action prejudicial to either position. Within this context, however, it may be possible to take steps to strengthen the Convention in the near term through politically agreed measures that do not involve new legal mechanisms. Such measures could be agreed and implemented swiftly, while further discussions on the specifications of a legally-binding protocol could proceed. In other words, the discussion in the MX5 should continue to focus not only on legal mechanisms, but on other institutional aspects of the BWC as well.

III.  Next steps

10. In order to achieve any tangible improvements to the operation of the Convention and its strengthening, it will be desirable to reach consensus on how to proceed and where to steer future meetings of MX5. After having discussed the topic in the form of a “general debate” during the first MX5 meeting, it would be appropriate to step forward and to focus on concrete and specific topics that should be addressed one by one.

11. Acknowledging that we devoted the first MX5 meeting to the concepts, mechanisms and procedures of a legally-binding BWC Protocol, it is recommended that the second MX5 in 2019 should elaborate on other options for strengthening of the Convention. It is apparent that the submission of information to other States Parties is an essential element for transparency and confidence; it would be worth exploring options to improve and widen the existing set of CBMs. There is also a need to finalize setting up guidelines that would aid States Parties when submitting a request for assistance under Article VII. These are only some examples of how the institutional strengthening of the Convention could proceed. The choice of non-legally binding measures should be discussed in greater depth and may require further deliberation, but it is clear that such discussions will only bear fruit if they are not seen as an alternative to the possible eventual negotiation of a legally-binding instrument, subject to consensus approval of States Parties.