

# Strengthening the Biological Weapons Convention Briefing Paper No 28:

## The BTWC Protocol: Improving the Implementation of Article III of the Convention

### Executive Summary

**Graham S. Pearson**

Series Editors, Graham S. Pearson and Malcolm R. Dando  
Department of Peace Studies, University of Bradford

This Briefing Paper considers the undertakings placed on States Parties in Article III and takes note of the relevant language in the Final Declaration of the Fourth Review Conference. Attention is then given to the development of the provisions in the draft Protocol relating to Article III of the Convention and consideration given to the objectives that should be sought in strengthening the BTWC through improved implementation of Article III. The transfer regime for the Chemical Weapons Convention (CWC) which includes controls of two toxins is analysed. The emerging Protocol transfer regime compared with the CWC regime to identify possible developments in the Protocol provisions for improving the implementation of Article III of the Convention.

#### THE CWC REGIME

The CWC transfer regime for Schedule 1, 2 and 3 chemicals can be summarised as follows:

Chemicals	Transfers within State Party	Transfer to other States Parties	Transfers to States not party to the Convention	
Schedule 1	Detailed annual declarations	Notification 30 days before transfer	Prohibited	
		Detailed annual declarations		
		Retransfer prohibited		
Schedule 2	Annual declaration of sale or transfer within State	Aggregate national data of quantities imported and exported	Prohibited three years after entry into force of the Convention	
		Annual declaration of direct export		End-use certificate during interim period
				Retransfer prohibited
Schedule 3		Aggregate national data of quantities imported and exported	End-use certificate	
			Retransfer prohibited	
			Review five years after entry into force of Convention	

The CWC control regime already applies to two toxins -- ricin and saxitoxin -- which are listed as Schedule 1 chemicals and the importance of harmonizing the Protocol transfer regimes in the Protocol and the CWC is recognized.

## THE BTWC PROTOCOL REGIME

It is recognized that the BTWC Protocol regime is not one that stands alone without regard to the national environment relating to biological agents and equipment. There are increasing concerns around the world about the possibility that sub-State actors or terrorist groups make seek to use biological materials and equipment as weapons to achieve their aims. Furthermore, countries are increasingly concerned about public, animal and plant health, about the environment and about trade in an increasing variety of goods as all States are keen to live in a safer, more prosperous world.

As all States are increasingly introducing infrastructure and controls of dual-use materials and equipment for public health and safety reasons as well as to facilitate trade, the approach to be followed under a Protocol regime should be towards controlled transfers between States Parties to the Protocol with the onus being placed on the State Party making the transfer satisfying itself -- as it is the sovereign responsibility of that State Party to make the decision whether or not to make a particular transfer -- that the situation in the receiving State Party is such that the transfer is only for permitted purposes and will not be retransferred. There can be no certainty that one State Party to the Protocol will always approve a transfer to another State Party to the Protocol -- as this is a sovereign decision for the State Party making the transfer -- although over a number of years after entry into force of the Protocol **for the State Party** receiving the transfer the State Party making the transfer should gain greater confidence that the transfer will only be for permitted purposes and will not be misused -- and thus the likelihood that the transfer will be approved will increase.

To permit a transfer, the State will need to have confidence that the transfer to a State Party to the Protocol is:

- a. **only** being used for permitted purposes;
- b. **not** being retransferred, without approval, to another facility within the receiving State Party; or
- c. **not** being retransferred, without approval, to another State Party to the Protocol.

There are thus three requirements. First, that there should be **transparency** as to what the transferred materials and equipment are being used for. Secondly, there should be **national internal** controls on the facilities within a State Party to the Protocol in which particular agents are handled and on transfers between such facilities. Thirdly, there should be **national** controls of **interstate** transfers from the State Party to the Protocol to other States Parties.

The Protocol regime will establish minimum standards for transfers and it will be a matter for individual States as to whether they decide that they need to adopt and implement higher standards. It is recognized that over time after the entry into force of the Protocol **for the requesting State**, the State making the transfer should gain greater transparency of activities in the requesting State together with greater confidence that the requesting State has indeed the appropriate **national internal and interstate controls** both in place and in operation and thus the transfer is more likely to be approved. The increasing transparency being provided by States into transfer decisions and denials is welcomed. As confidence in regard to States not party to the Protocol will over time decrease and it is evident from the CWC experience that a regime in which transfers to non-States Parties to the Protocol become increasingly controlled and prohibited contributes **both** to enhancing the safety and security of States Parties to the Protocol **and** provides a strong incentive for non-States Parties to become party to the Protocol.