

ARTICLE II: DESTRUCTION OF AGENTS AND WEAPONS

by Graham S Pearson

Consideration of Article II at the Fourth Review Conference

1. Article II of the Convention states that:

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration¹ in respect of Article II stated that:

1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.

2. The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Third Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.

3. The Conference notes that the submission to the Centre for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.

4. The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

3. This Final Declaration had two new additional paragraphs -- the first and third -- to the two paragraphs -- the second and fourth -- which were closely similar to the two paragraphs of the Final Declaration² of the Third Review Conference:

¹United Nations, *The Fourth 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, 25 November - 6 December 1996, BWC/CONF.IV/9, Geneva 1996.

The Conference notes the importance of Article II and welcomes the statements made by States which have become parties to the Convention since the Second Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention. The Conference believes that such statements contribute to enhancing confidence in the Convention.

The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

Developments since the Fourth Review Conference

4. Since the Fourth Review Conference a number of States have become States Parties to the Biological and Toxin Weapons Convention and may have made comparable statements of non-possession.

5. A further development since the Fourth Review Conference has been the entry into force of the Chemical Weapons Convention (CWC)³. The consideration of production facilities in the CWC is markedly different from that in the Biological and Toxin Weapons Convention (BTWC). This difference is examined here and consideration is given to how this anomaly might be remedied by language in the Final Declaration to be adopted by the Fifth Review Conference.

Production Facilities in the BTWC

6. There is no explicit mention of "**production facilities**" in the BTWC. The basic prohibition in Article I is all embracing in respect of both biological agents and the means of delivery:

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

(2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

²United Nations, *The Third 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, 9 - 27 September 1991, BWC/CONF.III/23, Geneva 1991.

³United Nations, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, Corrected version in accordance with Depositary Notification C.N.246.1994.Treaties-5 and the corresponding Procès-Verbal of Rectification of the Original of the Convention, issued on 8 April 1994. Available at <http://www.opcw.org/cwc/cwc-eng.htm>

7. Article II places an undertaking on States Parties to destroy, or divert to peaceful purposes, all biological agents, toxins, weapons and means of delivery in a safe way:

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this article all necessary safety precautions shall be observed to protect populations and the environment.

8. Article IV obliges each State Party to take any necessary measures to prohibit **and prevent** the development, production, stockpiling, acquisition, or retention of the agents specified in Article I:

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

It can be argued that it is thus **implicit** that there should be no biological weapons production facilities within a State Party and that any such facilities should, in accordance with Article II, have been destroyed or diverted to peaceful purposes upon entry into force of the Convention for a State Party.

Production Facilities in the CWC

9. In contrast to the BTWC, there is considerable explicit attention paid in the CWC to chemical weapon production facilities (CWPF) with a specific undertaking in Article I *General Obligations* obliging each State Party to destroy any CWPF:

4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.

Furthermore Article V *Chemical Weapons Production Facilities* sets out the specific requirements relating to CWPF with detailed requirements for the implementation of this Article being specified in the Verification Annex *Part V: Destruction of Chemical Weapons Production Facilities and its Verification Pursuant to Article V*.

10. It is clear from the CWC that the intention is that CWPF should be destroyed. However, there is provision for a State Party to request, in **exceptional cases of compelling need**, permission from the Conference of the States Parties to use the CWPF for purposes not prohibited under the Convention as elaborated in paragraphs 13 to 15 of Article V:

13. *A State Party may request, in exceptional cases of compelling need, permission to use a chemical weapons production facility specified in paragraph 1 for purposes not prohibited under this Convention. Upon the recommendation of the Executive Council, the Conference of the States Parties shall decide whether or not to approve the request and shall establish the conditions upon which approval is contingent in accordance with Part V, Section D, of the Verification Annex.*

14. *The chemical weapons production facility shall be converted in such a manner that the converted facility is not more capable of being reconverted into a chemical weapons production facility than any other facility used for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes not involving chemicals listed in Schedule 1.*

15. *All converted facilities shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part V, Section D, of the Verification Annex.*

11. Detailed procedures for the conversion of CWPF are set out in the Verification Annex, Part V, Section D. *Conversion of Chemical Weapons Production Facilities to Purposes not prohibited under this Convention.* This includes procedures for requesting conversion, actions pending a decision, conditions for conversion, decisions by the Executive Council and the Conference of States Parties, detailed plans for conversion and a review of the detailed plans. It also includes provision for verification for a minimum of 10 years after the Director-General has certified that conversion is complete:

85. *For the 10 years after the Director-General certifies that conversion is complete, the State Party shall provide to inspectors unimpeded access to the facility at any time. The inspectors shall have the right to observe all areas, all activities, and all items of equipment at the facility. The inspectors shall have the right to verify that the activities at the facility are consistent with any conditions established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right, in accordance with provisions of Part II, Section E, of this Annex to receive samples from any area of the facility and to analyse them to verify the absence of Schedule 1 chemicals, their stable by-products and decomposition products and of Schedule 2 chemicals and to verify that the activities at the facility are consistent with any other conditions on chemical activities established under this Section, by the Executive Council and the Conference. The inspectors shall also have the right to managed access, in accordance with Part X, Section C, of this Annex, to the plant site at which the facility is located. During the 10-year period, the State Party shall report annually on the activities at the converted facility. Upon completion of the 10-year period, the Executive Council, taking into account recommendations of the Technical Secretariat, shall decide on the nature of continued verification measures.*

Analysis

12. Although it is interesting to speculate why the treatment of production facilities under the BTWC and the CWC is so different⁴, it is nevertheless a clear difference and one which should be addressed as the continued existence of biological weapons production facilities presents undoubted risks to the BTWC. Although it has been proposed⁵ that the regime being negotiated by the Ad Hoc Group for the Protocol to strengthen the effectiveness and improve the implementation of the Convention should subject past biological weapons facilities, particularly those remaining in government ownership, to an appropriate compliance monitoring regime, paralleling that under the CWC, this has not been taken forward by the Ad Hoc Group. Although the rolling text and the Chairman's composite text⁶ include requirements for the declaration of a past offensive biological weapons programme, there are no provisions for a compliance monitoring regime for past offensive biological weapons facilities as such.

13. The offensive programme declaration requirement in the rolling text in *Article III D. Declarations (A) Offensive Biological and Toxin Programmes and/or Activities conducted prior to entry into force of the Protocol for each State Party* includes language within square brackets that requires the declaration of all participating facilities which have been converted/dismantled or destroyed:

[The declaration shall provide summaries of any research and development activities, of any use, and of any work performed on production, [testing, evaluation,] weaponization, stockpiling or acquisition of microbial or other biological agents or toxins and equipment or means of delivery for hostile purposes or in armed conflict, and on their destruction. [The declaration shall also include a list of all participating facilities and test ranges that have been converted/dismantled or destroyed since]]]

The corresponding declaration format in *Appendix A Declarations of Offensive and/or Defensive Biological and Toxin Programmes and/or Activities conducted prior to entry into force of the Protocol for each State Party* includes in *Part A Offensive Biological and Toxin Programmes and/or Activities conducted prior to entry into force of the Protocol for each State Party* language as follows:

11. List all facilities, including test ranges, that participated in any such programme(s)-and/or activities [and which were not destroyed or diverted to

⁴The different treatment may well reflect the negotiation of the CWC in a situation where at least two States -- the USA and the Soviet Union -- were admitted possessors of chemical weapons and thus the continued possession of chemical weapon production facilities presented a clear risk to the Convention. In contrast, the BTWC was negotiated at a time when arms control treaties were still short documents without any detailed provisions for verification or for monitoring of compliance, following the unilateral abandonment by the United States of its biological and toxin weapons and of its production facilities and without any admission by the Soviet Union of its biological weapon capabilities.

⁵Graham S. Pearson, *The Ad-Hoc Group: Past Biological Weapons Facilities* in Erhard Geissler, Lajos Gázsó and Ernst Buder (eds), *Conversion of Former BTW Facilities*, Kluwer Academic Press, Dordrecht, NATO Science Series, 1. Disarmament Technologies, Vol 21. pp. 201-208. Graham S. Pearson, *Past Biological Weapons Facilities: An Opportunity for the Ad Hoc Group*, ASA Newsletter 97-6, 4 December 1997, issue number 63, p.1, 16-17.

⁶United Nations, *Procedural Report of the Ad Hoc Group 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*, BWC/AD HOC GROUP/56-1 and 56-2, 18 May 2001, Geneva.

peaceful purposes by [26 December 1975] [the date of entry into force of the Convention for your State Party]. For each such facility, provide the address and a summary of the activities and purposes which were part of any such programmes and/or activities]. [Indicate which had been destroyed when, and how it was done. Describe what was done with all the facilities that were not destroyed]:

and

[12. List all facilities, including test ranges, that participated in such programmes and/or activities and which you are declaring and/or listing pursuant to Article III, section D, subsection I, part C. For each such facility, provide the address and a summary of the activities and purposes which were part of any such programmes and/or activities:]

14. It is thus evident that the intention in the rolling text is for States Parties to make an initial declaration *including a list of all facilities, including test ranges, that participated in such programmes and/or activities* which is usefully therefore broader than just past biological weapons production facilities.

15. Examination of the obligations in Articles I, II and IV of the Convention makes it clear that States Parties are required to *take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition, or retention of the agents, toxins, weapons, equipment and means of delivery specified in article I of the Convention* [Emphasis added] and thus that there is an **implicit** requirement to ensure that all facilities which participated in past offensive biological weapon facilities are converted or destroyed.

16. It is suggested that a useful strengthening of the BTWC regime could be achieved by the Fifth Review Conference in its Final Declaration adopting language that would affirm the requirement for the conversion to peaceful purposes or destruction of **all** facilities which participated in past offensive biological weapon programmes and/or activities. This could readily be achieved by extending the language adopted in the Final Declaration for Article II which at the Fourth Review Conference declared that:

The Conference recognizes that for any State acceding to the Convention after entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively.

The second sentence should be extended so that it reads as follows:

*The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively **and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.***

Issues for the Fifth Review Conference

17. It is therefore recommended that the Fifth Review Conference should adopt similar language to that in the Final Declaration of the Fourth Review Conference whilst extending the first paragraph to reaffirm that any past biological weapons facilities should be destroyed or diverted:

*1. The Conference recognizes that for any State acceding to the Convention after the entry into force of the Convention, the destruction or diversion to peaceful purposes specified in Article II would be completed upon accession to the Convention. The Conference emphasizes that the destruction or diversion to peaceful purposes specified in Article II should be carried out completely and effectively **and affirms that any past biological weapons facilities should likewise be destroyed or diverted to peaceful purposes.***

2. The Conference notes the importance of Article II and welcomes the statements made by States which have become Parties to the Convention since the Fourth Review Conference that they do not possess agents, toxins, weapons, equipment or means of delivery referred to in Article I of the Convention.

3. The Conference notes that the submission to the Department for Disarmament Affairs of appropriate information on destruction by States Parties which had stockpiles and have destroyed them in fulfilment of their Article II obligations and which have not already made such submissions could enhance confidence in the Convention and its objectives.

4. The Conference stresses that States which become Parties to the Convention, implementing the provisions of this Article, shall observe all necessary safety precautions to protect populations and the environment.

