

ARTICLE IX: PROHIBITION OF CHEMICAL WEAPONS

by Graham S Pearson

Consideration of Article IX at the Fourth Review Conference

1. Article IX of the Convention states that:

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production and use of chemical agents for weapons purposes.

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

1. The Conference reaffirms that Article IX identifies the recognized objective of effective prohibition of chemical weapons. The Conference welcomes conclusion of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, which was opened for signature on 13-15 January 1993 in Paris.

2. The Conference welcomes the fact that sixty-five instruments of ratification have now been deposited, and that the Convention will therefore enter into force on 29 April 1997.

3. The Conference stresses the importance to the Convention that all possessors of chemical weapons, chemical weapons production facilities or chemical weapons development facilities should be among the original parties to the Convention and, in this context, the importance of the United States of America and the Russian Federation, having declared possession of chemical weapons, being among the original States Parties to the Convention.

4. The Conference calls upon all States that have not yet done so to sign and/or ratify the Convention without delay.

5. The Conference notes that the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons, at its fourteenth session (22-26 July 1996) entrusted the Chairman of the Commission, in close consultation with its member States, with the task of convening, as

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.

necessitated by circumstances in connection with the occurrence of the trigger point, a meeting of the Commission to provide appropriate guidance.

3. As the Fourth Review Conference in November/December 1996 had taken place just after the lodging of the 65th instrument of ratification of the CWC, the Final Declaration was considerably developed from that² of the Third Review Conference which had said that all States Parties participating in the Conference reiterated their strong commitment to this important goal and noted with satisfaction the substantial progress made in the negotiations on the Convention on Chemical Weapons in the Conference on Disarmament during the period under review. Note was also taken of the bilateral agreement, signed in June 1990, between the Union of Soviet Socialist Republics and the United States of America on destruction and non-production of chemical weapons. Finally the Third Review Conference had urged the Conference on Disarmament to exert all possible efforts to implement the mandate for the chemical weapons negotiations as amended on 20 June 1991, and to achieve final agreement by 1992 on the convention on the complete and effective prohibition of chemical weapons.

4. It is also relevant to note that the Fourth Review Conference in its consideration of Article XII of the Convention, dealing the review conferences, had agreed language in its Final Declaration on Article XII which recognized the relevance of the CWC to the BTWC as follows:

2. The Conference decides that the Fifth Review Conference shall consider, inter alia, ...

- The relevance of the provisions of, and the implementation of the Chemical Weapons Convention on the effective implementation of the Biological and Toxin Weapons Convention, duly taking into account the degree of universality attained by such conventions at the time of the Fifth Review Conference;

Developments since the Fourth Review Conference

5. The principal development in the context of Article IX has been the entry into force of the CWC on 29 April 1997 and its successful implementation over the past four years. The Fifth Review Conference has agreed to consider the *relevance of the provisions of, and the implementation of the CWC on the effective implementation of the BTWC duly taking into account the degree of universality attained by such conventions.*

6. Insofar as **universality** is concerned, as of 1 November 2001, the number of States Parties to the CWC is 143, the same number as that for the BTWC on the same date. The CWC has 31 Signatory States which have signed, but have not yet ratified the CWC, whilst the BTWC has 18 Signatory States which have signed, but have not yet ratified the BTWC.

² United 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 1992.

7. Analysis of this information shows that 112 States are Party to both the BTWC and the CWC and 5 States are signatory to both Conventions. The other States who are Party or signatory to one or other Convention or to neither are as follows:

State	BTWC	CWC
Afghanistan	Party	Signatory
Algeria		Party
Azerbaijan		Party
Bahamas	Party	Signatory
Barbados	Party	
Belize	Party	
Bhutan	Party	Signatory
Burundi	Signatory	Party
Cambodia	Party	Signatory
Cameroon		Party
Cape Verde	Party	Signatory
Central African Republic	Signatory	Signatory
Chad		Signatory
Comoros		Signatory
Congo	Party	Signatory
Cook Islands		Party
Cote d'Ivoire	Signatory	Party
Democratic People's Republic of Korea	Party	
Democratic Republic of the Congo	Party	Signatory
Djibouti		Signatory
Dominica	Party	Signatory
Dominican Republic	Party	Signatory
Egypt	Signatory	
Eritrea		Party
Gabon	Signatory	Party
Grenada	Party	Signatory
Guatemala	Party	Signatory
Guinea-Bissau	Party	Signatory
Guyana	Signatory	Party
Haiti	Signatory	Signatory
Holy See		Party
Honduras	Party	Signatory
Iraq	Party	
Israel		Signatory
Kazakhstan		Party
Kiribati		Party
Kyrgyzstan		Signatory
Lebanon	Party	

Liberia	Signatory	Signatory
Libyan Arab Jamahiriya	Party	
Madagascar	Signatory	Signatory
Malawi	Signatory	Party

State	BTWC	CWC
Mali	Signatory	Party
Marshall Islands		Signatory
Mauritania		Party
Micronesia, Federated States of		Party
Morocco	Signatory	Party
Mozambique		
Myanmar	Signatory	Signatory
Namibia		Party
Nauru		Signatory
Nepal	Signatory	Party
Palau		
Republic of Moldova		Party
Rwanda	Party	Signatory
Saint Kitts and Nevis	Party	Signatory
Saint Vincent and the Grenadines	Party	Signatory
Samoa		Signatory
Sao Tome and Principe	Party	
Sierra Leone	Party	Signatory
Solomon Islands	Party	
Somalia	Signatory	
Sudan		Party
Syrian Arab Republic	Signatory	
Tajikstan		Party
Thailand	Party	Signatory
Tonga	Party	
Trinidad and Tobago		Party
Tuvalu		
Uganda	Party	Signatory
United Arab Emirates	Signatory	Party
United Republic of Tanzania	Signatory	Party
Vanuatu	Party	
Zambia		Party

8. The principal points that relate to *the relevance of the provisions of, and the implementation of the CWC on the effective implementation of the BTWC* are first, the overlap -- and rightly so -- of the provisions of the two Conventions, and second, the implementation of the verification regime of the CWC.

9. The **overlap** of the two Conventions is evident from consideration of their basic prohibitions. The basic prohibition of the Chemical Weapons Convention is set out in Article I in which:

Each State Party to this Convention undertakes never under any circumstances:

(a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(b) to use chemical weapons

Chemical weapons are defined in Article II of the Convention as being the following, together or separately:

(a) Toxic chemicals and their precursors, except where intended for purpose not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;

(b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;

(c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

with toxic chemicals being defined in the same Article as:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of manufacture, and regardless of whether they are produced in facilities, in munitions or elsewhere.

10. The prohibition thus applies to all chemicals, however produced, and therefore applies to toxins. Quite correctly there is an overlap between the scope of the Chemical Weapons Convention and that of the Biological and Toxin Weapons Convention in which the basic prohibition is that in Article I where

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

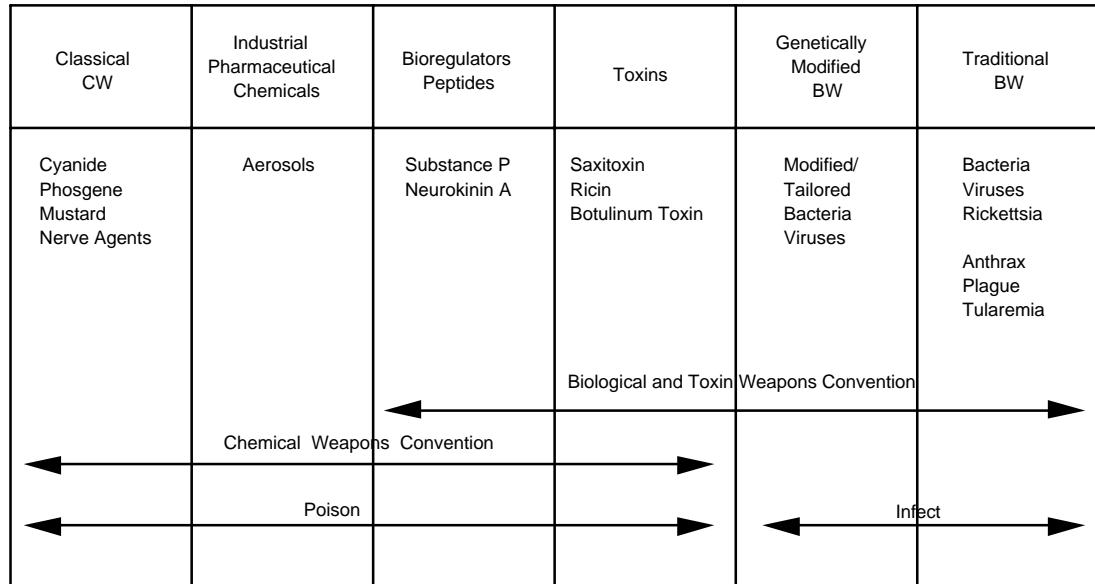
(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.

By the Fourth Review Conference in 1996 the States Parties in their Final Declaration had reaffirmed that:

The Conference also reaffirms that the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.

It is clear that both Conventions cover toxins. Two toxins – ricin and saxitoxin – are specifically included in Schedule I of the Chemical Weapons Convention.

11. The overlap of the two Conventions can be shown graphically as a chemical and biological weapons spectrum:



It is thus evident that the materials in the mid-spectrum such as toxins as well as bioregulators and peptides are covered by the prohibitions of **both** the BTWC and the CWC.

12. The **implementation of the verification regime** under the CWC that requires mandatory declarations and routine inspections together with challenge inspections and investigations of alleged use underlines the absence of a parallel regime under the BTWC -- and consequently reaffirms the importance of the mandate of the Ad Hoc Group to strengthen the effectiveness and improve the implementation of the Convention.

Issues for the Fifth Review Conference

13. It is suggested that the Fifth Review Conference might in its Final Declaration welcome with approbation the entry into force and implementation of the CWC. It might also urge all States Parties to the Biological and Toxin Weapons Convention to sign and ratify the Chemical Weapons Convention.

14. The Fifth Review Conference might adopt language, developed from that agreed at the Fourth Review Conference, along the following lines:

1. The Conference reaffirms that Article IX identifies the recognized objective of effective prohibition of chemical weapons. The Conference welcomes the entry into force on 29 April 1997 and the subsequent implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

2. The Conference welcomes the fact that one hundred and forty-three instruments of ratification or accession to the Chemical Weapons Convention have now been deposited.

3. The Conference calls upon all States that have not yet done so to sign and/or ratify the Chemical Weapons Convention without delay.

