

## ARTICLE VIII: GENEVA PROTOCOL OBLIGATIONS

by Nicholas A Sims & Graham S Pearson

### Consideration of Article VIII at the Fourth Review Conference

1. Article VIII of the Convention states that:

*Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925.*

2. At the Fourth Review Conference of the BTWC held on 25 November to 6 December 1996, the Final Declaration<sup>1</sup> in respect of Article VIII stated that:

*1. The Conference reaffirms the importance of Article VIII and stresses the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.*

*2. The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, and the Biological and Toxin Weapons Convention complement each other.*

*3. The Conference reaffirms that nothing contained in the Biological and Toxin Weapons Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.*

*4. Noting the actions in support of the Protocol taken by the Security Council and General Assembly of the United Nations, through Security Council resolution 620 (1988) and General Assembly resolutions 41/58 C, 42/37 C, 43/74 A, 44/115 B and 45/57 C and recalling the solemn reaffirmation of the prohibition as established in the Protocol, issued by the Conference of the States Parties to the 1925 Geneva Protocol and other interested States held in Paris from 7 to 11 January 1989, the Conference appeals to all States Parties to the Geneva Protocol to fulfil their obligations assumed under the Protocol and urges all States not yet Parties to the 1925 Geneva Protocol to accede to it without delay.*

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<sup>1</sup>United 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.

5. *The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.*

6. *The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay.*

7. *The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

3. The Final Declaration<sup>2</sup> of the Third Review Conference had already appealed to all States Parties to the Geneva Protocol of 1925 to fulfil their obligations assumed under the Protocol and urged all States not yet Parties to the Geneva Protocol to accede to it without delay. The Conference had acknowledged that the Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, and the Biological and Toxin Weapons Convention complement each other.

4. The Third Review Conference had also stressed the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention. The Fourth Review Conference repeated these points, but also noted in new language, that had not been in the Final Declaration of the Third Review Conference in 1991, that:

6. *The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay.*

7. *The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*

### **Developments since the Fourth Review Conference**

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<sup>2</sup>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.

5. In considering the developments since the Fourth Review Conference, it is useful first to recall the outcome of the First, Second and Third Review Conferences. In 1980 the Final Declaration of the First Review Conference<sup>3</sup> simply reaffirmed Article VIII and called on those States Parties to the Convention which were Parties to the Protocol to comply strictly with its provisions and those States not yet Parties to the said Protocol to ratify or accede to it at the earliest possible date.

6. In 1986 the Final Declaration<sup>4</sup> of the Second Review Conference ran into difficulty over the equivalent sentence. After last-minute delays over Iran's wish to have the Conference condemn Iraq for using chemical warfare against Iran in breach of the Protocol, a reference to the most relevant Security Council document (S/17911) was inserted. Other changes were minor: "*comply strictly with its provisions*", for example, was replaced by "*fulfil their obligations assumed under that Protocol*" and non-Parties were now "*urged to adhere to it*" at the earliest possible date.

7. The Second Review Conference prefaced the substantially-repeated paragraph from 1980 with a new one of the most general character, which added little. The two paragraphs now read, in full:

*The Conference reaffirms the importance of Article VIII and stresses the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.*

*The Conference reaffirms that nothing contained in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925. Noting the report of the Security Council (S/17911), the Conference appeals to all States Parties to the Geneva Protocol of 1925 to fulfil their obligations assumed under that Protocol and urges all States not yet Parties to the said Protocol to adhere to it at the earliest possible date.*

8. At the Third Review Conference, these two paragraphs, save only for the reference to S/17911 which had been necessary in 1986 to carry Iran with the consensus, were reproduced almost word for word in 1991 as the first two paragraphs of the section dealing with Article VIII in the Final Declaration<sup>5</sup> of the Third Review Conference. (The last nine words were slightly altered to "*to accede to it without delay.*")

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<sup>3</sup>United Nations, *The First 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, 3–21 March 1980, BWC/CONF.I/10, Geneva 1980.

<sup>4</sup>United Nations, *The Second 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, 8–26 September 1986, BWC/CONF.II/13, Geneva 1986.

<sup>5</sup>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.

9. They were, however, now only the first two paragraphs of six. The third paragraph referred obliquely to the removal of an explicit ban on BTW use during the 1971 negotiation of the Convention.<sup>6</sup> The Geneva Protocol had then (although significantly not in the subsequent negotiation of the Chemical Weapons Convention signed in 1993 with an explicit ban on use included<sup>7</sup>) been invoked as the reason for leaving use out of the list of biological and toxin weapon activities expressly prohibited by the Convention (a "gap" in the Convention which was criticised at the time<sup>8</sup>). Now, in 1991,

*The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, forms an essential complement to the Biological and Toxin Weapons Convention.*

10. The fourth paragraph stressed the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.

11. The fifth paragraph noted UN resolutions in support of the Geneva Protocol which had been adopted between 1986 and 1990, and the sixth paragraph recalled that the Paris Conference of 1989 had solemnly reaffirmed the prohibition as established in the Protocol and urged all States which had not done so to accede to it.

12. At the Fourth Review Conference, the Final Declaration on Article VIII extended to become seven paragraphs. The first paragraph reaffirming the importance of Article VIII was identical to that at the Third Review Conference apart from the inclusion of a comma.

13. The second paragraph was similar to the third paragraph of the Third Review Conference with a rewording that changed from stating that the Geneva Protocol *forms an essential complement* to one in which the Protocol and the Convention complement each other. This was probably a consequential change that would have been introduced because the Fourth Review Conference strengthened the language in its Final Declaration in several places<sup>9</sup> to make it clear that use is effectively a violation of Article I of the Convention.

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<sup>6</sup>The United Kingdom, in its 1968 initiative in the Eighteen Nation Disarmament Committee, had targeted BW use for prohibition in ENDC/231 (Working Paper on Microbiological Warfare), and ENDC/255/Rev. 1, the UK Draft Convention developed from it in 1969, had given pride of place to a prohibition on BW use, expressly in order to reinforce the 1925 Geneva Protocol, before proceeding to list the prohibitions on BW production and acquisition which survived 1971 and now form part of Article I of the Convention.

<sup>7</sup>Article I.1(b) of the 1993 Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) reads: "Each State Party to this Convention undertakes never under any circumstances.....to use chemical weapons."

<sup>8</sup>Nicholas Sims, *Biological disarmament: Britain's new posture*, New Scientist, **52**, 18-20, 2 December 1971.

<sup>9</sup>The third paragraph of the Solemn Declaration which forms the first part of the Final Declaration of the Fourth Review Conference; the third paragraph of the Article I section; the seventh paragraph of the Article IV section; and, by implication, the fourth paragraph of the Article VI section (*The States Parties reaffirm their agreement to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons...*) all express the extended

13. The third paragraph reaffirming that nothing in the obligations under the Convention shall be interpreted as in any way limiting or detracting from the obligations under the Protocol is identical to the first sentence of the second paragraph of the Third Review Conference.

14. The fourth paragraph referring to the relevant UN resolutions, the Paris Conference of 1989 and urging all States not yet Parties to the Protocol to accede to it without delay combined the fifth and sixth paragraphs together with the final sentence of the second paragraph of the Third Review Conference.

15. The fifth paragraph stressing the importance of the withdrawal of all reservations is identical to the fourth paragraph of the Third Review Conference whilst, as already noted above, the sixth and seventh paragraphs provide new language concerning reservations.

### **Withdrawal of Geneva Protocol Reservations**

16. Delegations of those States Parties which fall into the second category in the sixth paragraph of the Fourth Review Conference Final Declaration ("*those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol*") are recommended to check the reasons for this state of affairs with their Ministry of Foreign Affairs. In some cases an intention to withdraw pertinent reservations (meaning reservations pertaining to the retaliatory use of biological and toxin weapons, or in the words of the Protocol of "bacteriological methods of warfare") was announced several years ago, yet the States Parties in question remain listed by the Depositary for the Protocol (France) as maintaining their reservations in force. It is possible that formal effect has yet to be given to political decisions: that the necessary legal procedures, including formal notification to the Depositary, have still to be completed.

17. It is noteworthy that, of those States Parties which maintained pertinent reservations after the Fourth Review Conference, three years later only two States Parties had formally notified the withdrawal of their reservations, according to the Depositary's list. Belgium's withdrawal of its (1928) reservations took effect on 27 February 1997 and Estonia's withdrawal of its (1931) reservation on 29 July 1999. The Depositary still listed<sup>10</sup> 21 States Parties to the Protocol as maintaining pertinent reservations as at 31 December 1999.

18. Of the 21 States Parties to the Protocol maintaining a pertinent reservation on 31 December 1999, all but three (Algeria, Angola and Israel) were also States Parties to the BTWC. They were Bahrain, Bangladesh, China, Fiji, India, Iraq, Jordan, Korea (North), Korea (South), Kuwait, Libya, Nigeria, Papua New Guinea, Portugal, Russia, Solomon Islands, Viet Nam and Yugoslavia. A recent study<sup>11</sup> comments on this group of 18 States Parties:

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understanding of the States Parties that use *is effectively a violation of Article I of the Convention* (The quotation is from the third paragraph of the Article I section).

<sup>10</sup>Information supplied by the Embassy of France, Stockholm, 10 May 2000, to SIPRI for Nicholas A. Sims, *The Evolution of Biological Disarmament*, Oxford, OUP/SIPRI, 2001, p 161.

<sup>11</sup>Nicholas A. Sims, *The Evolution of Biological Disarmament*, Oxford, OUP/SIPRI, 2001, p 161.

*"It is possible that some reservations have been retained, unmodified, through inattention to Geneva Protocol status, but it seems unlikely that all have been retained by default. Although several of these states, parties both to the Geneva Protocol and to the BTWC, showed some interest in the 1990s in withdrawing or modifying their protocol reservations, or declared their intention to do so, none had officially notified the depositary by 31 December 1999. As of that date, their reservations accordingly remained in force."*

The delegations of the States Parties listed are recommended to clarify the position of their government on the Geneva Protocol and if possible to announce the withdrawal of pertinent reservations before or during the Fifth Review Conference, as was done by Canada and the United Kingdom during the Third Review Conference, and by South Africa and France respectively before and during the Fourth Review Conference. Such announcements, by the eighteen States Parties listed, followed up by formal notification to the Depositary for the Protocol without delay, would contribute greatly to increasing confidence in the BTWC for the reasons stated in the seventh paragraph of the Fourth Review Conference Final Declaration. The importance of withdrawing reservations is recognised in the fifth paragraph and such actions are specifically welcomed in the sixth paragraph of the Article VIII section of the Final Declaration agreed by the Fourth Review Conference.

### **Issues for the Fifth Review Conference**

19. The Fifth Review Conference has again the opportunity to emphasise the absolute character and permanent status of the Convention by making a solemn declaration of the necessity for all States Parties to ensure that their treaty status under the Geneva Protocol is henceforth consistent with their obligations under the Convention, and to "regularise" that status, if there is any asymmetry remaining, by taking appropriate legal action.

20. The Final Declaration in 2001 will naturally draw upon language which proved its acceptability in 1996, and thereby confirm the cumulative development of the text through the recording of extended understandings of the implications of Articles of the Convention. In addition, it is recommended that the Conference authorise its General Committee or other continuing representative body (Committee of Oversight) to follow up the "calls upon" request which is addressed in the second part of the sixth paragraph of the Article VIII section to those States Parties which continue to maintain pertinent reservations even after the Fifth Review Conference. This would be consistent with the authorisation of the same continuing representative body to undertake demarches proposed<sup>12</sup> under paragraph 5 of the Article XIV section of the Final Declaration.

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<sup>12</sup>See Graham S. Pearson & Nicholas A. Sims, *Article XIV: Universal Adherence to the Convention*, in Graham S. Pearson & Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key Points for the Fifth Review Conference*, Bradford, October 2001.

## **Suggested language for the Final Declaration**

21. The Conference is recommended to repeat the seven paragraphs of the Article VIII section in the 1996 Final Declaration (possibly updating the UN Resolutions cited in paragraph 4) with the addition of a second sentence to paragraph 6 reading as follows: *"The Conference authorises its [Committee of Oversight] to follow up this request from the Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations"*. The proposed language would thus read as follows:

### ***Article VIII***

*1. The Conference reaffirms the importance of Article VIII and stresses the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.*

*2. The Conference acknowledges that the 1925 Geneva Protocol, by prohibiting the use of bacteriological methods of warfare, and the Biological and Toxin Weapons Convention complement each other.*

*3. The Conference reaffirms that nothing contained in the Biological and Toxin Weapons Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.*

*4. Noting the actions in support of the Protocol taken by the Security Council and General Assembly of the United Nations, through Security Council resolution 620 (1988) and General Assembly resolutions 41/58 C, 42/37 C, 43/74 A, 44/115 B and 45/57 C and recalling the solemn reaffirmation of the prohibition as established in the Protocol, issued by the Conference of the States Parties to the 1925 Geneva Protocol and other interested States held in Paris from 7 to 11 January 1989, the Conference appeals to all States Parties to the Geneva Protocol to fulfil their obligations assumed under the Protocol and urges all States not yet Parties to the 1925 Geneva Protocol to accede to it without delay.*

*5. The Conference stresses the importance of the withdrawal of all reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention.*

*6. The Conference welcomes the actions which States Parties have taken to withdraw their reservations to the 1925 Geneva Protocol related to the Biological and Toxin Weapons Convention, and calls upon those States Parties that continue to maintain pertinent reservations to the 1925 Geneva Protocol to withdraw those reservations, and to notify the Depositary of the 1925 Geneva Protocol of their withdrawals without delay. The Conference authorises its [Committee of Oversight] to follow up this request from the*

*Conference by undertaking demarches as appropriate to those States Parties that continue to maintain pertinent reservations.*

*7. The Conference notes that reservations concerning retaliation, through the use of any of the objects prohibited by the Biological and Toxin Weapons Convention, even conditional, are totally incompatible with the absolute and universal prohibition of the development, production, stockpiling, acquisition and retention of bacteriological (biological) and toxin weapons, with the aim to exclude completely and forever the possibility of their use.*



