

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

¹ 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. Available at <http://www.opbw.org>

member States, with the task of convening, as 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.*

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. Available at <http://www.opbw.org>

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

7. Analysis of this November 2001 information showed that 112 States were Party to both the BTWC and the CWC and 5 States were signatory to both Conventions. The other States who were Party or signatory to one or other Convention or to neither was as follows:

| State | BTWC | CWC |
|---------------------------------------|-------------|------------|
| Afghanistan | Party | Signatory |
| Algeria | | Party |
| Angola | | |
| 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 |

| State | BTWC | CWC |
|----------------------------------|-------------|------------|
| 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 |
| 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 situation has changed considerably over the past five years with in **August 2006** the BTWC having 155 States Parties and 16 Signatory States and the CWC having 178 States Parties and 8 Signatory States.

9. Analysis of this August 2006 information showed that 147 States were Party to both the BTWC and the CWC and 2 States were signatory to both Conventions. The other States who were Party or signatory to one or other Convention or to neither was as follows:

| State | BTWC | CWC |
|---------------------------------------|-------------|------------|
| Angola | | |
| Bahamas | Party | Signatory |
| Barbados | Party | |
| Burundi | Signatory | Party |
| Cameroon | | Party |
| Central African Republic | Signatory | Signatory |
| Chad | | Party |
| Comoros | | Signatory |
| Congo | Party | Signatory |
| Cook Islands | | Party |
| Cote d'Ivoire | Signatory | Party |
| Democratic People's Republic of Korea | Party | |
| Djibouti | | Party |
| Dominican Republic | Party | Signatory |
| Egypt | Signatory | |
| Eritrea | | Party |
| Gabon | Signatory | Party |
| Guinea-Bissau | Party | Signatory |
| Guyana | Signatory | Party |
| Haiti | Signatory | Party |
| Iraq | Party | |
| Israel | | Signatory |
| Kazakhstan | | Party |
| Kiribati | | Party |
| Lebanon | Party | |
| Liberia | Signatory | Party |
| Madagascar | Signatory | Party |
| Malawi | Signatory | Party |
| Marshall Islands | | Party |
| Mauritania | | Party |
| Micronesia, Federated States of | | Party |
| Mozambique | | Party |
| Myanmar | Signatory | Signatory |
| Namibia | | Party |

| | | |
|-----------------------------|-----------|-----------|
| Nauru | | Party |
| Nepal | Signatory | Party |
| Niue | | Party |
| Palau | | Party |
| Samoa | | Signatory |
| Somalia | Signatory | |
| Syrian Arab Republic | Signatory | |
| Trinidad and Tobago | | Party |
| Tuvalu | | Party |
| United Arab Emirates | Signatory | Party |
| United Republic of Tanzania | Signatory | Party |
| Zambia | | Party |

The only State that has not signed or acceded to either the BTWC or the CWC is Angola. All the other non-Parties to the BTWC have at least signed the CWC, and all the other non-parties to the CWC have at least signed the BTWC.

10. 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.

11. 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.

12. 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.

At the Fourth Review Conference in 1996 the States Parties in their Final Declaration had stated 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.

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

| Classical CW | Industrial Pharmaceutical Chemicals | Bioregulators Peptides | Toxins | Genetically Modified BW | Traditional BW |
|--|-------------------------------------|-----------------------------|---|--|---|
| Cyanide Phosgene Mustard Nerve Agents | Aerosols | Substance P Neurokinin A | Saxitoxin Ricin Botulinum Toxin | Modified/ Tailored Bacteria Viruses | Bacteria Viruses Rickettsia Anthrax Plague Tularemia |
| ← Chemical Weapons Convention → | | | ← Biological and Toxin Weapons Convention → | | |
| ← Poison → | | | ← Infect → | | |

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.

14. 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 emphasises the importance of the States Parties to the BTWC to continue to examine ways to strengthen the effectiveness and improve the implementation of the Convention.

Issues for the Sixth Review Conference

15. It is suggested that the Sixth 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 Sixth 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 seventy-eight 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 ratify or accede to the Chemical Weapons Convention without delay.