ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

1972 Convention on the Prohibition of Bacteriological Weapons and their Destruction

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction is one of the instruments of international law aimed at reducing the suffering caused by war. The use of chemical and bacteriological weapons in war had been widely condemned since the end of the First World War, and was prohibited by the 1925 Geneva Protocol, the forerunner to the Convention. The Regulations annexed to Hague Convention No. IV of 1907 already banned the use of poison or poisoned weapons as a means of conducting warfare. All these prohibitions are based on the fundamental principle of the law relating to the conduct of hostilities, that is, that the right of parties to an armed conflict to choose methods and means of warfare is not unlimited. The Convention was drafted during the Conference of the Committee on Disarmament and subsequently adopted by the United Nations General Assembly. It was opened for signature on 10 April 1972 in London, Moscow and Washington. The Convention entered into force on 26 March 1975, and is now binding on the vast majority of States.

Objectives of the Convention

The Convention was adopted with a view to achieving effective progress towards disarmament and constituted a decisive step towards the prohibition and elimination of weapons of mass destruction. Its ultimate objective, as set out in the Preamble, is to *exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons*.

The use of bacteriological weapons was already prohibited under the Geneva Protocol of 1925 for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. The ICRC was closely involved in the process leading to its adoption.

The Convention is complementary to the Protocol, prohibiting the development, production, stockpiling, acquisition, retention and transfer of bacteriological weapons, and requiring their destruction. The complementary nature of the two instruments is affirmed both in the Preamble and in Article VIII of the Convention.

While the Convention does not expressly forbid the use of bacteriological weapons, the Conference of Parties convened to review the operation of the Convention (the Review Conference) has stated that use would not only contravene the objectives of the Convention but would also violate the total ban on the production and stockpiling of bacteriological weapons, as use presupposes possession.

Prohibitions

The fundamental obligation of each State Party to the Convention lies in its commitment *never in any circumstances to develop, produce, stockpile or otherwise acquire or retain* (Art. I):

- 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;
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Each State Party also undertakes not to *transfer* to any recipient whatsoever, directly or indirectly, and not to *assist, encourage, or induce* any State, group of States or international organization to manufacture or otherwise acquire, any of the agents, toxins, weapons, equipment or means of delivery (Art. III).

Destruction

Finally, each State Party undertakes to *destroy, or to divert to peaceful purposes*, all agents, toxins, weapons, equipment and means of delivery which are in its possession or under its jurisdiction or control (Art. II).

While the Convention stipulates that the destruction or conversion must be carried out not later than nine months after the entry into force of the Convention, the Review Conference has declared that any State adhering

to the Convention after that date should have fulfilled this obligation at the time of adherence.

Breaches of the Convention

Any State Party to the Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations (Art. VI). In addressing such complaints, the Security Council has asked the Secretary-General to inquire into the validity of allegations concerning the use of, or threats to use, bacteriological weapons.

Each State undertakes to provide assistance to any Party which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention (Art. VII).

Consultation, cooperation and scientific exchange

The States Parties undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective or the application of the Convention (Art. V). Any State Party hence has the right to convene a consultative meeting open to all Parties.

The States Parties also undertake to facilitate the fullest possible exchange of equipment, materials and information relating to the use of agents and toxins for peaceful purposes (Art. X).

National implementation measures

Each State Party must, *in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention* of agents, toxins, weapons, equipment and means of delivery within its territory, under its jurisdiction or under its control anywhere (Art. IV).

While this provision only refers explicitly to the implementation of Article I, the Review Conference has requested the States Parties to take the measures necessary to prohibit and prevent *all* acts that could constitute contravention of any provision of the Convention, including those pertaining to the prohibition on transferring bacteriological weapons and the obligation to destroy them.

In order to fulfil all its obligations under the Convention, a State should therefore:

- take legislative, administrative and other measures to guarantee compliance with the provisions of the Convention;
- enact legislation providing for physical protection of laboratories and other facilities to prevent unauthorized access to and removal of pathogenic or toxic material;
- ensure that textbooks and medical, scientific and military educational programmes include the prohibitions contained in the Convention and the 1925 Protocol.

In particular, each State should enact penal legislation to prohibit and prevent any activity in breach of the Convention conducted within its territory, under its jurisdiction or under its control anywhere. In addition, each State should apply such measures to acts committed by its nationals outside its territory.

Review and implementation machinery

The Convention provides for a conference of States Parties to be held to review the operation and implementation of the Convention (Art. XII). This Review Conference has in fact met at regular intervals since 1980 (currently every five years), and has adopted recommendations (in the form of Final Declarations) aimed at promoting the application and the effectiveness of the Convention. Since 2003 these have been supplemented each year by a Meeting of Experts and subsequent Meeting of States Parties.

The Declarations adopted during the Conferences indicate the way in which the States Parties interpret the provisions of the Convention. The States are also requested to supply information pertaining to compliance with Articles I to III, and to participate in the mechanisms for implementation of certain provisions of the Convention, especially Articles V and X.

These confidence-building measures (CBM) require the States Parties to:

- exchange data on research centres and laboratories, national biological defence research and development programmes, and outbreaks of infectious diseases and similar occurrences caused by toxins;
- encourage publication and use of results of biological research related to the Convention and promote contacts between scientists working in this field;
- declare legislation, regulations and other measures adopted to implement the Convention;
- declare past activities in offensive and/or defensive biological research and development programmes;
- declare vaccine production facilities.

Efforts are underway to increase participation in the CBM process in order to expand the number of States making submissions and to improve the quality of the information provided..

At the Sixth Review Conference in 2006 an Implementation Support Unit (ISU) was established assist States with national implementation, universalization of the Convention, exchange of CBM and administrative matters. The mandate of the ISU was renewed in 2011 during the Seventh Review Conference.

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