



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

1993 Chemical Weapons Convention

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction belongs to the category of instruments of international law that prohibit weapons deemed particularly abhorrent. As soon as the First World War was over, chemical and bacteriological methods of warfare were condemned by public opinion, and their use was prohibited by the 1925 Geneva Protocol. The adoption of the Convention reinforces a basic 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, which was negotiated as part of the Conference on Disarmament, was opened for signature in Paris on 13 January 1993. It entered into force on 29 April 1997, and is now binding on the vast majority of States.

Objectives of the Convention

On the one hand, the Convention aims to exclude completely the use of chemical weapons. Like the 1972 Biological and Toxin Weapons Convention, it complements and in many ways strengthens the 1925 Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare.

Accordingly, besides not tolerating any reservations (Art. XXII), the Convention extends the prohibition on using chemical weapons to their development, production, stockpiling, retention and transfer, in addition to requiring that they and the facilities where they are produced be destroyed.

On the other hand, since it is based on the idea that achievements in the field of chemistry should be used exclusively for the benefit of mankind, the Convention promotes and supervises the development of the chemical industry for purposes not prohibited under its terms. It also provides for a system of assistance and protection on behalf of States against which chemical warfare has been used or threatened.

Prohibitions and destruction

Each State party to the Convention undertakes never under any circumstances to (Art. I.1):

- develop, produce, otherwise acquire, stockpile, retain or transfer chemical weapons
- use chemical weapons
- engage in any military preparations to use chemical weapons
- assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention.

The Convention also prohibits the use of riot-control agents as a method of warfare (Art. I.5).

Furthermore, each State party to the Convention undertakes to destroy:

- chemical weapons or any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control (Art. I.2 and I.4) – destruction must be finished no later than 10 years after entry into force of the Convention (Arts IV.6 and V.8)
- all chemical weapons it abandoned on the territory of another State Party, in accordance with the Verification Annex complementing the Convention (Art. I.3).

Prohibited weapons and production facilities

The Convention adopts a broad definition of chemical weapons, which covers everything that enters into their composition. The following, collectively or individually, are thus considered

chemical weapons (Art. II.1, II.3 and II.9):

- toxic chemicals, including reactants taking part in their production, except where intended for purposes not prohibited under the Convention, namely industrial, agricultural, research, medical, or pharmaceutical purposes, or purposes related to protection against toxic chemicals, or law enforcement or military purposes not connected with the use of chemical weapons
- munitions and devices specifically designed to cause death or other harm by the release of toxic chemicals
- any equipment specifically designed for use directly in connection with these munitions and devices.

"Chemical weapons production facility" means any equipment designed to produce or fill chemical weapons, and any building housing such equipment (Art. II.8).

Verification

The Convention establishes a coercive verification system to monitor compliance by the States with their obligations under the treaty to destroy weapons and facilities. This system, which is specified in detail in the annexes to the Convention, provides for initial and thereafter annual declarations to be made concerning the industrial chemical production of

the State (Arts III, IV.7, V.9 and VI.7–8, and Verification Annex).

Actual verification is carried out by inspections of three kinds: routine inspections on the basis of national declarations (Arts IV–VI), challenge inspections for the sole purpose of determining facts relating to possible non-compliance with the Convention (Art. IX) and inspections in response to an allegation that chemical weapons have been used (Art. X).

Toxic chemicals used for purposes not prohibited under the Convention and facilities related to such chemicals are also subject to verification measures as provided in the Verification Annex (Art. VI.2).

The Organization for the Prohibition of Chemical Weapons (OPCW)

The task of the OPCW is to ensure the implementation of the Convention and to provide a forum for consultation and cooperation among the States parties, which are *de facto* members of the Organization (Art. VIII.1–2). The Technical Secretariat of the OPCW, which has its headquarters in The Hague, is responsible for carrying out the verification measures and providing technical assistance to the States parties in implementing the provisions of the Convention (Art. VIII.3 and Art. VIII.37 ff.).

Each State Party must designate or establish a national authority to serve as the national focal point for effective liaison with the OPCW (Art. VII.4). The national authority will play a key role in the implementation of the Convention. The definition of its mandate, structure and powers of execution is left to the discretion of the State.

National implementation measures

Each State Party, in accordance with the procedures set down in its constitution, must adopt the measures necessary to fulfil its obligations under the Convention (Art. VII), and inform the OPCW that it has done so (Art. VII.5). To avoid differences of interpretation, the Convention's definition of chemical weapons should be incorporated into national legislation.

Each State must in particular extend its penal legislation to cover activities prohibited under the Convention (mainly those prohibited under Arts I.1, I.5 and VI.2) and provide for the extraterritorial application of these

penal measures to its nationals (Art. VII.1).

According to the International Criminal Court (ICC) Statute of 1998, the ICC is competent to try alleged perpetrators of war crimes, which include the employment of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices (Arts 8(2)(b)(xviii) and 8(2)(e)(xiv) of the Statute).

In accordance with the principle of complementarity, the Court may bring alleged criminals to justice only when a State is unable or unwilling to do so. It should be recalled here that to benefit from this principle a State must first enact legislation enabling it to prosecute the perpetrators of war crimes.

The form and content of the other measures that are necessary to implement the Convention will depend on the weapons stocks and facilities in the possession of a State Party, and on the nature of its chemical industry. Among other things, these measures must ensure and facilitate:

- cooperation and legal assistance between States Parties in fulfilling obligations under the Convention, in particular the prevention and suppression of prohibited activities (Art. VII.2)
- the designation or establishment of a national authority to ensure effective liaison with the OPCW and other States Parties (Art. VII.4)
- the mandatory transfer of the information needed to prepare accurate and complete national declarations from the entities concerned to the national authority
- in the framework of the verification system, and in accordance with the Verification Annex: the entry and removal of OPCW inspection equipment and approved materials, the access of the inspection team to the facilities, and the conduct of inspections, particularly with respect to the taking of samples and their analysis
- the review of existing national regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the Convention (Art. XI.2(e)), in accordance with control measures required by the Convention

- the confidential treatment, in accordance with the Confidentiality Annex, of the information received in confidence from the OPCW (Art. VII.6)
- respect for the privileges and immunities that are necessary for the exercise of the functions of the OPCW and persons designated by the Convention (Art. VIII. 48–51 and Verification Annex).

Review and implementation machinery

According to article VIII of the Convention, an annual Conference of the States Parties should be convened. As the principal organ of the OPCW, the Conference oversees the implementation of the Convention. It may take decisions and make recommendations on all matters within the scope of the Convention, including ensuring compliance among other responsibilities.

Every five years a Review Conference is held to review the operation and implementation of the Convention in more detail.

Moreover, the Convention established an Executive Council which promotes the effective implementation of the Convention, supervises the Technical Secretariat, cooperates with the national authority of each State, and facilitates consultations and cooperation among States Parties.

The Technical Secretariat of the OPCW assists both the Conference of States Parties and the Executive Council. It is also authorized to coordinate with States Parties on relevant matters.

More complete information concerning the implementation of the Convention is available at the OPCW website (www.opcw.org) and at the following address:

OPCW
Johan de Wittlaan 32
NL-2517 JR The Hague
The Netherlands

Tel.: +31 70 416 3300
Fax: +31 70 306 3535

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