

1972 CONVENTION ON THE PROHIBITION OF BIOLOGICAL WEAPONS



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 IV of 1907 already banned the use of poison or poisoned weapons as a means of conducting warfare. All these prohibitions are based on 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 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. In addition, the prohibition on the use of biological weapons is considered customary in both international and non-international armed conflicts, applying to all States and non-State actors, including those who are not a party to the Convention (Rule 73 of the ICRC study on customary IHL).¹

¹ Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule73.

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.

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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) have regularly 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 no later than nine months after the entry into force of the Convention, the Review Conference declared that any State joining the Convention after that date should have fulfilled this obligation at the time of joining.

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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). To address such complaints, the Security Council may ask 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 State Party which so requests, if the Security Council decides that a State 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 has therefore 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 requested that States Parties 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 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 must 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.

The Statute of the International Criminal Court (ICC) was amended in 2017 to grant the ICC the jurisdiction – for those States that have accepted the amendment – to try individuals accused of the war crime of employing weapons that use microbial or other biological agents, or toxins, whatever their origin or method of production (Arts 8(2)(b)(xxvii) and 8(2)(e)(xvi) of the Statute).

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In accordance with the principle of complementarity, the ICC 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.

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.

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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 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.

An Implementation Support Unit was established at the Sixth Review Conference in 2006. The Unit in Geneva assists States with: national implementation; universalization of the Convention; confidence-building measures; efforts to implement the decisions and recommendations of the Review Conference and other administrative issues; the Unit further administers the database for assistance, requests and offers and facilitated associated exchanges of information.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

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