

Ban without checks: The Biological Weapons Convention and its loopholes

The United Nations General Assembly adopted the Biological Weapons Convention on 16 December 1971. Its full title is “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) Weapons and Toxin Weapons and their Destruction”. Although the Geneva Protocol of 1925 had already outlawed the use of biological or chemical arms, their production and stockpiling continued to be permissible. Moreover, key nations, such as the United States had not signed the Protocol. The United States want to classify pesticides and non-lethal chemical war agents designed for counterinsurgency operations as chemical weapons in the sense of the Geneva Protocol.

In the 1960s, the United Nations redoubled its efforts to establish an agreement specifically outlawing chemical and biological weapons. One reason for this was the use of “Agent Orange”, a chemical warfare agent, by the United States during the Vietnam War. Whereas the countries of the Non-Aligned Movement and the Soviet Union argued for the ban on chemical and biological weapons to be regulated by a single treaty, or at least subject to simultaneous legislation, this view was rejected by the United States and its Western allies. The United States, in particular, was only willing to consider a separate bioweapons deal because it was convinced at the time that chemical weapons could still be militarily useful but saw little military value in biological arms.

When, by the spring of 1971, the Soviet Union agreed to de-coupling a chemical and a biological weapons agreement, the door was open to a Biological Weapons Convention. Having been adopted by the UN General Assembly in 1971, the BWC entered into force on 26 March 1975. It was the first international agreement since World War II to provide for the prohibition and destruction of an entire category of weapons. By 2012, 165 countries were party to the Convention. Twelve other countries, including Egypt, Syria, Myanmar, Somalia and Tanzania, have signed but not yet ratified. Nineteen other countries have not even signed it. They include Israel, some Pacific island states and nine African countries.

The core provisions of the Convention

Under Article I, the Biological Weapons Convention prohibits all states parties to “develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents, or toxins” for military purposes. It also bans the production and possession of “weapons, equipment or means of delivery designed to use such agents or toxins”. Article II lays down that each state party shall “undertake to destroy (...) all agents, toxins, weapons, equipment and means of delivery”.

It is true that the Convention does not explicitly forbid the use of biological weapons, but it underlines the provisions of the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925. The Convention of 1972 binds all state parties to “take any necessary measures” in their territory (Article IV). Finally, Article X stipulates that international research and development cooperation for the peaceful use of biological substances be facilitated.

Loopholes in the Convention

One challenge of the Biological Weapons Convention is the fact that it explicitly permits the work with microbial or other biological agents and toxins that could be used as warfare agents

that have the “justification for prophylactic, protective or other peaceful purposes” (Article I). This loophole allows research to be carried out on protective agents for countering biological weapons, which includes not only existing but also possible future biological weapons. In this way, a country can easily divert research into antigens into the development of new bioweapons. As, however, a general ban on such research or research into and with dangerous microbiological substances or toxins is neither feasible nor sensible, a military use can only be prevented by means of effective transparency and verification measures.

Here lies another basic problem for the Biological Weapons Convention. This, however, is the Convention’s second weakness as, contrary to treaties banning chemical weapons or treaties on nuclear disarmament, the BWC does not provide for any organization or mechanism that is to monitor adherence to the Convention. True, Article VI does say that a state suspecting breach of obligations by another state party may lodge a complaint with the UN Security Council, which can then investigate. However, this right has never been exercised because investigations of this kind could be blocked by any of the veto states (China, France, United Kingdom, Russia and the United States).

At present, experts, such as Gunnar Jeremias, Head of the Research Group for Biological Arms Control at the Carl Friedrich von Weizsäcker Centre for Science and Peace Research at the University of Hamburg, are of the opinion that no “country in the world is developing biological weapons”. US-American secret services, too, have corrected their previous statements that there is a growing number of countries with biological weapons programmes, Milton Leitenberg, University of Maryland, one of the leading US experts on biological weapons, notes. He concludes that the threat of bioterrorism was exaggerated in the early years of the 21st century and is less acute than is widely believed.

It would nevertheless make good sense to strengthen the Biological Weapons Convention by incorporating a robust verification mechanism. After all, progress in microtechnology and genetic engineering could, in particular, be used for future military use by countries with a high-tech sector. It is therefore imperative that the BWC states parties agree on a verification regime that involves compulsory inspections of suspicious activities and suspicious research and production facilities.

Debate on a verification mechanism

Efforts to establish a verification provisions have so far yielded very little progress. The Biological Weapons Convention has been followed up with review conferences every five years. In 1986 and 1991, the review conferences agreed on “certain confidence-building measures”. It is envisaged that each year, the parties voluntarily exchange information on biological activities being conducted at their civil research and production facilities if there is any potential connection with biological weapons. It is particularly important to make transparent those programmes that include research into agents intended to counter a bacteriological weapon attack. But only one-third of all state parties are voluntarily providing such information.

Since 2002, annual meetings of experts and states parties have been taking place to discuss various issues. These events, held between review conferences, are purely discussion fora and have no decision-making powers.

At the 8th Review Conference in 2006, the parties agreed to set up a permanent working group, to be called the Implementation Support Unit, located at the United Nations Office for Disarmament Affairs in Geneva. The Unit consists of three persons.

Moves to agree a proper control regime failed in 2001 in the face of rejection by the then US Administration under George W. Bush. The US-American stance was characterized by a general disdain for arms control agreements in general and doubts about the reliability of verification measures. The foot-dragging may also be explained by media reports on covert US biological weapons defence projects aimed at producing a biological bomb as well as genetically modified, highly lethal anthrax bacilli. According to the US armaments expert Seth Brugger, the Bush Administration had “rejected the protocol, in part, to protect defensive projects such as these from international scrutiny”.

The US administration under President Barack Obama was again – in contrast to the overwhelming majority of the BWC states parties – opposed to resuming discussions of a verification regime. At the time of writing (2013), Washington still maintains that effective monitoring of the Biological Weapons Convention is impossible.¹

Sources and further information

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¹. <http://warpp.info/en/m7/articles/m7-19>