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The 5th Review Conference of the BTWC: Closing Loopholes in the Bioweapons Convention

Article XII of the Biological and Toxin Weapons Convention (BTWC) stipulates that States Parties to the Convention will meet every five years to review the operations of the Convention.¹ Later this year, the 5th Review Conference of the BTWC will be held in Geneva, from 19 November to 7 December. The 5th Review Conference will be an excellent opportunity for the States Parties to close loopholes in the Convention by addressing urgent new problems related to law enforcement, anti-materiel microbes, and crop eradication agents.

At present, the primary attention of States Parties is given to the negotiations of a Verification Protocol to strengthen the Convention, which are in an advanced stage. This focus is appropriate and important, and we call on all governments to undertake every effort to reach consensus on a strong Protocol.

With due deference to the importance of the Verification Protocol negotiations, the time has arrived to also begin to consider important issues beyond the Protocol for discussion at the 5th Review Conference.

Very important among these issues are the difficult challenges posed to the BTWC by current projects developing biological agents for the use in internal conflicts, against individuals or their assets, and against materials. The 5th Review Conference should clarify in its Final Declaration that any use of such agents would constitute a violation of the Convention.

Rather than being passive in the face of the development of agents, such as military-grade plastic eating microbes or crop-killing fungi, States Parties should seize the opportunity of the 5th Review Conference to reinforce and affirm the unambiguous and broad scope of the BTWC and strengthen international consensus against biological weapons.

The Scope of the Convention

During the past four Review Conferences, the BTWC was reviewed Article by Article, and a Final Declaration adopted consisting of statements regarding the individual headings of the Preamble and each Article of the Convention. Significant attention has always been given to

¹ The text of the Convention and related documents can be found at <http://www.un.org/Depts/dda/WMD/page6.html>.

Article I, which contains the basic prohibition of biological and toxin weapons and defines the scope of the Convention. Article I reads:

Each State Party to this 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.*
- (2) *Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

During the last three Review Conferences, new scientific and technical developments in microbiology, genetic engineering and biotechnology were addressed, and language was included into the Final Declaration that emphasizes the inclusion of all agents, "*naturally or artificially created or altered, whatever their origin or method of production.*"² Thus States Parties have addressed future development or production of biological warfare agents.

However, a close look at the Convention reveals several uncertainties and ambiguities that could be and are being exploited to deploy biological agents in conflicts. The 5th Review Conference of the BTWC should close this burgeoning loophole in the Convention and reject its erosion of the scope of the Convention.

What is a "hostile purpose"?

A key feature of the BTWC is that it defines biological weapons with the "general purpose criterion". A specified list of living organisms or toxins are not prohibited by the BTWC, rather their development for "*hostile purposes*". The criterion is a strong, purpose-based definition that theoretically includes any kind of biological agent or toxin. The terms "*peaceful purpose*", "*hostile purpose*" or "*armed conflict*", however, have never been defined in the Convention or during any of the Review Conferences.

Internal conflicts

The BTWC clearly prohibits the use of biological agents or toxins by a State Party against another country in a declared war, but the applicability of the Convention to internal conflicts is less clear. The 5th Review Conference should make it explicit that the definition of "*armed conflict*" is not restricted to declared wars between nations, but comprises any hostilities between groups of people, including civil wars and other internal conflicts. Any use of biological agents or toxins by a State Party against the people, animals, plants or material on their territory must be outlawed.

Law enforcement

While the Chemical Weapons Convention explicitly contains an exemption for law enforcement purposes,³ this is not the case in the BTWC. This reflects the aim of the negotiators of the BTWC to comprehensively outlaw any kind of hostile use of biological agents and toxins. But there has been no explicit statement from State Parties that the BTWC's prohibitions include development and stockpiling of biological weapons for law enforcement purposes. This ambiguity should be clarified at the 5th Review Conference with a clear statement in the Final Declaration that affirms that police forces and law enforcement are equally subject to the BTWC's prohibitions as militaries.

² From the Final Declaration of the 4th Review Conference, December 1996. View the whole document at <http://www.brad.ac.uk/acad/sbtwc/revconf/bw-revconf.htm>

³ See Article VI and Article II.9. ("Purposes Not Prohibited Under this Convention" means: (...) (d) Law enforcement including domestic riot control purposes) of the CWC at <http://www.opcw.nl/>

This clarification is critical, as any exemption from the general prohibition has strong potential to lead down an undesirable slippery slope. If States Parties allow an exemption or loophole to develop for using biological agents in law enforcement, e.g. the use of biological agents in forced narcotic crop eradication, this could lead, for example, to the use of biological agents in judicially-approved executions or the use of psychotropic substances in riot control.

The use of biological agents in forced drug eradication

It is in the legitimate interest of any government to take all appropriate measures to fight the production and consumption of illicit drugs such as heroin or cocaine. One controversial and arguably ineffective measure is forced eradication of drug crops. In the past, eradication of drug crops have been accomplished by chemical or manual means. Recently, however, a number of projects to use plant pathogens to eradicate coca, opium poppy, and cannabis (marijuana) have been promoted for use in drug producing states by a small number of governments. Narcotics-exporting states have generally rejected biological eradication, and large numbers of civil society organizations and indigenous peoples have condemned the plans as biological warfare.

Nevertheless, proponents of biological drug eradication argue that this is "biological control". This nomenclature has been strongly rejected by scientists in the field. According to a statement currently circulating among biological control scientists:

Biological control is about controlling pests and diseases, or, according to a FAO definition: 'Biological control is a strategy aimed at controlling noxious organisms...' We want to stress the fact that the term "noxious organism" solely relates to organisms that are noxious in the context of agriculture or food storage/processing. While plants producing illicit narcotics are certainly undesirable, they are not noxious in an agricultural sense, and they are not a legitimate target of biological control. Programs to kill drug producing plants with biological agents are not "biological control" by any logical definition...

We strongly reject any equation of legitimate biological control and the use of biological agents in drug eradication and want to emphasize that legitimate biological control is environmentally safe and should never be used without the consent of farmers and ranchers..."

Biological agents used in forced drug eradication are weapons, and if they are used without consent of the farmers this might be law enforcement, but it is also certainly a "hostile act".

Law enforcement or armed conflict?

Often it is difficult to distinguish law enforcement from internal conflicts. This problem can be highlighted by plans to use biological drug eradication in Colombia and Burma. In both countries, large areas of coca and/or opium poppy cultivation are combat zones where rebel movements are fighting against the national government. Colombia is the world's top producer of cocaine. Colombia's internal conflict has the largest number of combatants and is the bloodiest in the Western Hemisphere. The number of internally displaced persons in Colombia is second in the world. Under such circumstances, law enforcement and military action often become tightly intertwined.

The use of biological or toxin agents for law enforcement will open a Pandora's Box and lead to an erosion of the general prohibition of biological weapons. What starts with the use of anti-plant agents against a few thousand farmers could come to justify the widespread use of biological weapons in military operations in internal conflicts. The fight against coca or opium is internationally sanctioned, but other crops and animals are viewed as undesirable by some peoples for equally persuasive cultural or religious reasons. Could the use of anti-coca agents

lead to justification of a broad variety of biological agents targeting tobacco, grapes, hops, or other crops? We call on the 5th Review Conference to take appropriate measures to stop any law enforcement deployment of biological agents to eradicate crops.

What is a "biological agent"?

Article I of the BTWC prohibits the development or production of "*microbial or other biological agents, or toxins*", without further defining them. Scientifically, biological agents include any living organism without restriction. However, the Final Declarations of the 3rd and the 4th Review Conferences include a sentence that appears to restrict the definition of biological agents to those that harm humans, plants or animals. Under Article I it was stated in these Declarations:

2. The Conference reaffirms that the Convention prohibits the development, production, stockpiling, other acquisition or retention of microbial or other biological agents or toxins harmful to plants and animals, as well as humans (...).

The exclusion of anti-material agents in these statements is worrisome. There is increasing military interest in microorganisms that degrade material and which can be constructed with the help of genetic engineering techniques. Bacteria that degrade oil or fuel are under development as well as fungi that attack plastics or microorganisms that are able to clog filters or convert lubricants to abrasives. All of these developments have clear military application, highlighted by the fact that they are being thoroughly investigated in biodefense research.⁴

Material degrading organisms share the same properties and raise the same concerns as any other living agent. They are environmentally dangerous and threaten to blur the boundary between acceptable and prohibited use of biological warfare agents.

The BTWC does not contain any exclusion of material degrading agents, and the ambiguous statements from the last Review Conferences should be clarified in November with a clear prohibition on the development of material degrading agents for hostile uses.

Conclusion

The Review Conference must close burgeoning loopholes in the Convention and reaffirm the unrestricted applicability of the BTWC to any hostile development of biological agents, encompassing weapons targeting humans, animals, plants or material, for use against states, populations, or individuals, and in all types of conflict, including declared wars, internal conflicts, law enforcement and civil unrest.

Pursuit of biological weapons in the Drug War, or military materiel-degrading microbes would be a step down a slippery slope that, following the same logic, could easily lead to the use of other plant and animal pathogens or even non-lethal biological weapons against humans. Allowing these loopholes in the Convention would threaten to pave the way for a more widespread use of biological agents for hostile purposes in the future.

States Parties to the BTWC normally only have the opportunity to take this kind of action every five years. Anti-materiel agents are already the subject of intellectual property claims and are being quickly developed. Drug crop-killing fungi are scheduled to be ready for field use in early 2002. Failure to act in November could lead to a dangerous destabilization of international controls on biological weapons. By the time of the 6th Review Conference in 2006, it could be too late.

⁴ Defense Against Biodegradation of Military Materiel. Presentation of J.R. Campbell of the US Naval Research Laboratory at the 3rd Non-lethal Defense Symposium at the Johns Hopkins Applied Physics Laboratory in February 1998.
<http://www.dtic.mil/ndia/NLD3/camp.pdf>