



The Prohibition of ‘Use’ under the BTWC

Backgrounder on relevant developments
during the negotiations, 1969-1972

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Note: The present compilation is not exhaustive. The selection of extracts from documents and SIPRI books published at the time of the negotiations was made on their relevance to the discussions on the prohibition of use of biological weapons. It does not reflect an implicit or explicit SIPRI position on the current debate.

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● **UNGA Resolution 2162 (XXI). Question of general and complete disarmament. - B**

The General Assembly,

Guided by the principles of the Charter of the United Nations and of international law,

Considering that weapons of mass destruction constitute a danger to all mankind and are incompatible with the accepted norms of civilization,

Affirming that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining these standards of civilization,

Recalling that the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of June 1925, has been signed and adopted and is recognized by many states,

Noting that the Conference of the Eighteen-Nation Committee on Disarmament has the task of seeking an agreement on the cessation of the development and production of chemical and bacteriological weapons and other weapons from national arsenals, as called for in the draft proposals now before the Conference,

1. Calls for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and condemns all actions contrary to these objectives;

2. Invites all States to accede to the Geneva Protocol of 17 June 1925.

(Adopted on 5 December 1966 by a vote of 91 to none, with four abstentions.)

- The Eighteen-Nation Disarmament Committee adopted a provisional agenda which, among non-nuclear measures, envisaged the discussion of the question of CB warfare.¹ On 16 July 1968, the British representative in the Committee said that he could not agree with those who claimed that nothing more was needed in the field of chemical and biological warfare than that all states should adhere to the 1925 Geneva Protocol and strictly observe its principles. There was a strong case for either revising the Geneva Protocol or trying to negotiate some additional instrument to clarify and strengthen its provisions while keeping the Protocol itself in being. The UK preference was for the latter case.

The problems involved in seeking to go beyond the Geneva Protocol seemed greater, and international opinion less clear, in the field of chemical weapons than in that of biological weapons. The former had already been used in war with terrible effect. The latter had never been used but they were generally regarded with even greater abhorrence.

It seemed, therefore, that one answer might be to make a distinction between chemical and biological weapons in the approach to the problems involved. It might be easier first to tackle agents of biological warfare and seek to conclude an instrument on biological warfare which would go beyond the Geneva Protocol and actually ban the production and possession of agents of biological warfare.

As far as chemical warfare was concerned, the British Representative thought that one must rest content for the moment with the Geneva Protocol. [...]

¹ ENDC/236.

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), p. 254]

● **Statement by the Soviet Representative (Roshchin) to the Eighteen Nation Disarmament Committee, August 1, 1968²**

49. There are examples in history when there was no resort to certain kinds of weapons because their use had been banned by international agreements. Poison gases and toxic substances destroyed thousands of lives in the First World War, but they were not used in the Second World War, when the Geneva Protocol of 1925 prohibiting the use of chemical and bacteriological weapons was already in existence.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1968*, pp. 554-555]

● **Statement by the British Disarmament Minister (Mulley) to the Eighteen Nation Disarmament Committee, August 6, 1968³**

6. I should stress again, as I did in my speech on 16 July, that our purpose is to supplement and not to supersede the Geneva Protocol of 1925. [...] As we seek to reduce and, I hope, ultimately to eliminate the terrible threat of nuclear conflagration, we must not neglect to take steps also to deal with the threat posed by these means of warfare which have a potential of misery and suffering of comparable severity.

7. I contest the view, therefore, that the 1925 Protocol or similar declarations against first use is all we need or that, as Mr. Roshchin suggested last week, the Geneva Protocol has prevented the use of chemical and biological warfare in the past, notably in the Second World War, and that by implication the Protocol can be relied upon to prevent the use of these horrible weapons in the future. I cannot accept that argument. I know of no evidence to support the view that Hitler did not resort to the use of gas because of respect for the Geneva Protocol. Respect for international law was not one of his strongest points, as far as I recall—and I had some first-hand experience of his concern for another Geneva Convention, concerning prisoners of war. In my opinion a more likely explanation of his restraint was fear of retaliation. And although chemical warfare was not used in the Second World War, it was used in the 1930s and has been used again since then.

8. But the most eloquent evidence of the fear of the use of these weapons, and the lack of faith in the Protocol's power to prevent their use, lies in the fact that the armed forces of all the major Powers are trained and equipped to defend themselves at any rate against chemical methods of warfare, and that those countries are engaged in expensive research programmes to produce counter-measures against attack by microbiological agents. I am sure neither of those precautions will be abandoned even if the Protocol is ratified by all states.

[...]

16. Finally, in paragraph 10 we have suggested that all parties should accept an obligation to co-operate in countering the use, or threatened use, of microbiological methods of warfare. We feel that if such an article were included this might do more than anything else to give

² ENDC/PV.386.

³ ENDC/PV.387.

parties the security they need if they are to assume the additional obligations which we envisage. In the non-proliferation treaty the security assurances took the form of a Security Council resolution, backed by declarations of the three nuclear-weapon Powers. But in this field there are no microbiological weapon States and non-microbiological weapon States—we are all on the same footing; and we therefore felt that the best approach would be to write this undertaking into the convention itself, with the possibility that it might be strengthened by Security Council endorsement.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1968*, pp. 560-563]

● **British Working Paper on Microbiological Warfare, August 6, 1968⁴**

The United Kingdom Delegation consider that the 1925 Geneva Protocol is not an entirely satisfactory instrument for dealing with the question of chemical and microbial warfare. The following points may be noted:

(i) Many states are not parties to the Protocol and of those that are parties many, including the United Kingdom, have reserved the right to use chemical and bacteriological weapons against non-parties, violators of the Protocol and their allies.

(ii) Jurists are not agreed whether the Protocol represents customary international law or whether it is of a purely contractual nature.

(iii) Even if all states were to accede to the Protocol there would still be a risk of large-scale use of the proscribed weapons as long as states have the right to manufacture such weapons and to use them against violators and their allies.

[...]

(v) The term “bacteriological” as used in the Protocol is not sufficiently comprehensive to include the whole range of microbial agents that might be used in hostilities.

(vi) The prohibition in the Protocol applies to use “in war”. There may therefore be doubt about its applicability in the case of hostilities which do not amount to war in its technical sense.

[...]

3. [...] As far as chemical agents are concerned it seems unlikely that states will be prepared to forego the right to produce and stockpile such agents for possible use in war unless adequate verification procedures can be devised and applied and problems of definition, etc. resolved. However, the use of microbiological methods of warfare has never been established, and these are generally regarded with even greater abhorrence than chemical methods. The United Kingdom Delegation therefore consider that in this field the choice lies between going ahead with the formulation of new obligations and doing nothing at all—in which case the risks and the fears of eventual use of microbiological methods of warfare will continue and intensify indefinitely.

4. The United Kingdom Delegation therefore propose the early conclusion of a new Convention for the Prohibition of Microbiological Methods of Warfare, which would supplement but not supersede the 1925 Geneva Protocol. This Convention would proscribe the use for

⁴ ENDC/231.

hostile purposes of microbiological agents causing death or disease by infection in man, other animals, or crops. Under it states would:—

(i) declare their belief that the use of microbiological methods of warfare of any kind and in any circumstances should be treated as contrary to international law and a crime against humanity;

(ii) undertake never to engage in such methods of warfare themselves in any circumstances.

5. The Convention should also include a ban on the production of microbiological agents [...]

[...]

10. Consideration should be given to the possibility of including in the Convention an article under which the parties would undertake to support appropriate action in accordance with the United Nations Charter to counter the use, or threatened use, of microbiological methods of warfare. If such an article were included it might be endorsed by the Security Council in rather the same way as the Council welcomed and endorsed the declarations made by the United States, the Soviet Union and the United Kingdom in connexion with the Non-Proliferation Treaty.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1968*, pp. 569-571]

- **Statement by the Soviet Representative (Roshchin) to the Eighteen Nation Disarmament Committee, August 13, 1968⁵**

71. The representative of the United Kingdom has submitted for the consideration of the Committee a working paper on microbiological warfare, and has also put forward some arguments on the question of chemical weapons that cast doubt upon the significance of the Geneva Protocol, which established an important standard of international law.

[...]

74. The proposal to revise the Geneva Protocol is a dangerous one. If we were to follow that course we might destroy an already existing, useful and important international document on the prohibition of chemical and bacteriological weapons without having replaced it by a better or indeed by any other international instrument—a treaty or convention that would provide for the prohibition of the use of such types of weapons.

75. Therefore, the question is not that the Geneva Protocol of 1925 should be revised, but that it should be strictly observed. That is the task set by the General Assembly, and the Soviet memorandum proposes that ways and means to carry it out should be found. Having achieved this we could pass on to the next measure—cessation of the manufacture of chemical and bacteriological weapons and their destruction. [...]

- India could not agree with the view that the Geneva Protocol, being a declaratory prohibition and without a system of international control—which in this case it would be extremely difficult to provide—was of no use.⁶

⁵ ENDC/PV.389.

⁶ ENDC/PV.389.

The representative of Sweden considered the Geneva Protocol as part and parcel of established international law. The Protocol should be strengthened through accession by all states and the abolition of reservations made to it. Nothing should be done that would damage or undermine the ban already expressed in it. Moreover, it would be both desirable and natural explicitly to give the Protocol a broad interpretation precisely in order to retain it without amendment, and to consider all existing biological and chemical weapons as belonging in one set and the prohibition to use any of them as valid without exceptions. Some joint collective statement in the General Assembly or elsewhere might be useful which, without regard to the various positions and practices of the past as to the extent of the existing ban, would enable states to register adherence to a ban on all biological and chemical means of warfare, comprehensively interpreted. [...]⁷

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), p. 258]

- On 10 July 1969, at the Conference of the Committee on Disarmament, the United Kingdom, developing its earlier proposal, tabled a draft convention, providing for undertakings: never, in any circumstances, by making use for hostile purposes of microbial or other biological agents causing death or disease by infection or infestation in man, other animals, or crops, to engage in biological methods of warfare (Article I); not to produce or otherwise acquire, or assist in or permit the production or acquisition of microbial or other biological agents of types and in quantities that have no independent peaceful justification for prophylactic or other purposes, as well as of ancillary equipment or vectors the purpose of which is to facilitate the use of such agents for hostile purposes; not to conduct, assist or permit research aimed at production of the kind prohibited above; to destroy, or divert to peaceful purposes, within three months after the convention comes into force for a given party, any stocks of such agents or ancillary equipment or vectors as have been produced or otherwise acquired for hostile purposes (Article II).

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), p. 295]

- On 26 August 1969, taking account of some of the critical remarks made by different delegations, the United Kingdom revised the text of its draft by introducing the following amendments:

The undertaking by a party not to engage in biological methods of warfare (Article I) was now qualified by the clause: "insofar as it may not already be committed in that respect under Treaties or other instruments in force prohibiting the use of chemical and biological methods of warfare". The purpose of the amendment was to make it clear that existing commitments under the Geneva Protocol and other agreements were not affected by the draft convention; some countries in becoming parties to the convention would undertake additional commitments under Article I, other would not. The ban was extended to cover microbial or other biological agents causing damage in addition to those causing death or disease (Article I).

⁷ ENDC/PV.383.

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), p. 296]

- [...] The United States also suggested the deletion in Article I of the phrase “by infection or infestation” in order to put the emphasis of the prohibition on the agents themselves rather than on the manner in which a disease is introduced.

Article I, as proposed by the USA, would provide for an undertaking never, in any circumstances, by making use for hostile purposes of microbial or other biological agents or toxins causing death, damage or disease to man, other animals or crops, to engage in biological methods of warfare.

[...]

The UK considered that the formulation of its draft already covered the prohibition of production and acquisition of toxins but agreed to making a specific mention to that effect and accepted the US amendments. [...] ⁸

The UK draft was criticized by the Socialist and many non-aligned countries chiefly for not dealing with chemical weapons. [...] A mere assurance that negotiations on measures to strengthen the existing constraints on chemical methods of warfare would be pursued was considered inadequate.

The complete prohibition of use of biological weapons, that is even in self-defence or retaliation, was obviously a step forward, when compared to the Geneva Protocol; some countries however thought that its inclusion in a convention dealing with production was unnecessary. In Sweden's opinion, such a clause, because it was confined to biological weapons, could even be a risky undertaking. ⁹

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), pp. 297-298]

- **UNGA Resolution 2603 (XXIV). Question of chemical and bacteriological (biological) weapons—A**

The General Assembly,

Considering that chemical and biological methods of warfare have always been viewed with horror and have been justly condemned by the international community,

Considering that these methods of warfare are inherently reprehensible, because their effects are often uncontrollable and unpredictable and may be injurious without distinction to combatants and non-combatants and because any use would entail a serious risk of escalation,

Recalling that successive international instruments have prohibited or sought to prevent the use of such methods of warfare,

Noting specifically in this regard:

(a) That the majority of States then in existence adhered to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,

(b) That since then further States have become Parties to that Protocol,

⁸ See the revised UK draft convention of 18 August 1970.

⁹ CCD/PV.457.

(c) That yet other States have declared that they will abide by its principles and objectives,
(d) That these principles and objectives have commanded broad respect in the practice of States,

(e) That the General Assembly, without any dissenting vote, has called for the strict observance by all States of the principles and objectives of the Geneva Protocol,

Recognizing therefore, in the light of all the above circumstances, that the Geneva Protocol embodies the generally recognized rules of international law prohibiting the use in international armed conflicts of all biological and chemical methods of warfare, regardless of any technical developments,

Mindful of the report of the Group of Experts, appointed by the Secretary-General of the United Nations under General Assembly resolution 2454 A (XXIII) of 20 December 1968, and entitled Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use,

Considering that this report and the foreword to it by the Secretary-General add further urgency for an affirmation of these rules and for dispelling for the future, any uncertainty as to their scope and, by such affirmation, assure the effectiveness of the rules and enable all States to demonstrate their determination to comply with them,

Declares as contrary to the generally recognized rules of international law, as embodied in the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, the use in international armed conflicts of:

(a) Any chemical agents of warfare — chemical substances, whether gaseous, liquid or solid — which might be employed because of their direct toxic effects on man, animals or plants;

(b) Any biological agents of warfare — living organisms, whatever their nature, or infective material derived from them — which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked.

(Adopted on 16 December 1969 by a vote of 80 to 3 with 36 abstentions.)

● **Revised UK draft convention for the prohibition of biological methods of warfare and accompanying draft Security Council resolution, 18 August 1970¹⁰**

The States concluding this Convention, hereinafter referred to as the “Parties to the Convention”,

Recalling that many States have become Parties to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,

Recognizing the contribution that the said Protocol has already made, and continues to make, mitigating the horrors of war,

Recalling further United Nations General Assembly Resolutions 2162B (XXI) of 5 December 1966, and 2454A (XXIII) of 20 December 1968, which called for strict observance by all

¹⁰ CCD/225/Rev.2.

States of the principles and objectives of the Geneva Protocol and invited all States to accede to it,

Believing that chemical and biological discoveries should be used only for the betterment of human life,

Recognizing nevertheless that the development of scientific knowledge throughout the world will increase the risk of eventual use of biological methods of warfare,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Desiring therefore to reinforce the Geneva Protocol by the conclusion of a Convention making special provision in this field,

Declaring their belief that, in particular, provision should be made for the prohibition of recourse to biological methods of warfare in any circumstances,

Have agreed as follows:

ARTICLE I

Each of the Parties to the Convention undertakes, insofar as it may not already be committed in that respect under the Treaties or other instruments in force prohibiting the use of chemical and biological methods of warfare, never in any circumstances, by making use for hostile purposes of microbial or other biological agents or toxins causing death, damage or disease to man, other animals, or crops, to engage in biological methods of warfare.

ARTICLE II

Each of the Parties to the Convention undertakes:

- (a) not to produce or otherwise acquire, or assist in or permit the production or acquisition of:
 - (i) microbial or other biological agents or toxins of types and in quantities that have no justification for prophylactic or other peaceful purposes;
 - (ii) ancillary equipment or vectors the purpose of which is to facilitate the use of such agents or toxins for hostile purposes;
- (b) not to conduct, assist or permit research aimed at production of the kind prohibited in subparagraph (a) of this Article; and
- (c) to destroy, or divert to peaceful purposes, within three months after the Convention comes into force for that Party, any stocks in its possession of such agents or toxins or ancillary equipment or vectors as have been produced or otherwise acquired for hostile purposes.

ARTICLE III

1. Any Party to the Convention which believes that biological methods of warfare have been used against it may lodge a complaint with the Secretary-General of the United Nations, submitting all evidence at its disposal in support of the complaint, and request that the complaint be investigated and that a report on the result of the investigation be submitted to the Security Council.

2. Any Party to the Convention which believes that another party is in breach of any of its undertakings under Articles I and II of the Convention, but which is not entitled to lodge a complaint under Paragraph 1 of this Article, may lodge a complaint with the Security Council, submitting all evidence at its disposal, and request that the complaint be investigated.

3. Each of the Parties to the Convention undertakes to co-operate fully with the Secretary-General and his authorized representatives in any investigation he may carry out, as a result of a complaint, in accordance with Security Council Resolution No...

[...]

ARTICLE VI

Nothing contained in the present Convention shall be construed as in any way limiting or derogating from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

[...]

● **Statement by the Swedish Representative (Myrdal) to the Conference of the Committee on Disarmament: Chemical and Biological Weapons, 9 March 1971¹¹**

[...]

10. Prior to discussing the substance of the prohibitions to be included in the treaty, we should circumscribe the problem by stating explicitly what they should not try to encompass. The Swedish delegation recommends that we should now decide definitely to abandon any references to the use of chemical and biological weapons in the treaty we are now about to draft. This would require a surgical change in the United Kingdom draft convention. Without my making a long-winded plea on this score, I hope all delegations will agree that—

11. First, prohibition of use is already covered by the Geneva Protocol, and—

12. Second, even if that legislation were to be amended in any way, it would belong to the laws of war and not in a text concerned with arms limitation and disarmament.

13. For the sake of the parallel it may be observed that in neither the non-proliferation Treaty, the Moscow Treaty nor the limited sea-bed Treaty, was any prohibition of use included. Such a regulation should be *sui generis*.

[...]

15. Logically, the solution should be quite simple: the treaty should open with a principal overriding regulation of the type indicated in the socialist draft convention. The scope of such an undertaking would be “not to develop, produce, stockpile or otherwise acquire chemical and biological weapons”.

A further improvement would be the inclusion of the prohibition of transfers.

This, as a primordial clause, would in reality amount to a solemn, multilateral declaration of the total renunciation of chemical and biological weapons.

[...]

38. In order to facilitate our process of mutual comprehension—yes, even in order to press forward with our work in this Committee—we would like to invite other delegations to reply to certain basic questions more or less immediately. These are:

1. Do you agree that we decide to exclude from the ambit of this new treaty the question of use of chemical and biological weapons, and to confine it to prohibiting production, testing,

¹¹ CCD/PV.499, pp. 5-14.

stockpiling and transfers of such means of warfare and prescribing the elimination of existing stocks? [...]

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 110.]

● **Swedish Working Paper submitted to the Conference of the Committee on Disarmament: Model for a Comprehensive Agreement Concerning the Prohibition of Chemical and Biological Means of Warfare, 16 March 1971**¹²

In the intervention by the Swedish delegation on 9 March, 1971 a model for a comprehensive convention prohibiting the development, testing, production and stockpiling of chemical and biological means of warfare was tentatively described in general terms. In order to make the suggestions contained therein more easily comprehensible, they are outlined in the following in an abbreviated form. A “skeleton” of our ideas is thus presented. It should be underlined that the presented model is not complete—it deals primarily with the thorny issues of the scope of the prohibitions and procedures for verification—and that some of the suggestions are still very tentative. As a matter of fact both the intervention itself and the abbreviated presentation should primarily be regarded as stages in the “mapping expedition”, covering the whole field of CBW, in which the CCD has been engaged for more than a year.

II. Scope of prohibition

1. No prohibitory rules should be included in the presently discussed treaty against *use* of CBW which is dealt with in a comprehensive way in the Geneva Protocol of 1925. [...]

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 151-152]

● **Statement by the Soviet Representative (Roshchin) to the Conference of the Committee on Disarmament: Chemical and Bacteriological Weapons, March 30, 1971.**¹³

31. Permit me now to describe briefly the content of the draft convention proposed by the socialist countries. The basic aim of the agreement is to preclude completely the possibility of the use in war of bacteriological weapons and toxins. The achievement of that aim is ensured by the provisions of articles I and II of the draft convention under which each State party to the convention undertakes not to develop, produce, stockpile or otherwise acquire microbiological or other biological agents or toxins of such types and in such quantities as are not designed for peaceful purposes. The States parties also undertake to destroy within a period of three months after the entry into force of the convention all types of such weapons in their possession. At the same time provision is made for a corresponding ban on auxiliary equipment and means of delivery of bacteriological agents and toxins.

[...]

37. All those provisions of the convention are designed to ensure and facilitate progress towards the elimination of chemical weapons from the arsenals of States. They reflect the position of the socialist countries, which advocate the complete prohibition of both bacteriological and chemical means of warfare.

¹² CCD/322, Mar. 16, 1971.

¹³ CCD/PV.505.

38. We should also like to stress the importance of article VIII of the draft convention. That article stipulates that nothing in the convention should be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol of 1925, which contains generally-recognized rules of international law. By concluding the proposed convention the parties to it would thereby confirm their adherence to the purposes and principles of the Geneva Protocol of 1925 and stress the importance of that document and its prohibition of the use of chemical and bacteriological means of warfare. Moreover, as the content of article VIII shows, the authors of the draft convention base themselves on the understanding that the Protocol contains generally-recognized rules of international law concerning the inadmissibility of the use of chemical and bacteriological weapons—that is to say, the understanding which, as we know, was confirmed by the twenty-fourth session of the General Assembly in resolution 2603 A (XXIV).

[...]

40. The entry into force of a convention prohibiting the development, production and stockpiling of biological weapons and toxins and providing for their destruction would preclude the possibility of the unleashing of a war using these means of warfare [...]

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 185-190]

- The seven Socialist members of the CCD submitted [...] a draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their destruction.¹⁴

The draft, which was slightly revised on 15 April 1971, took up in essence the UK proposal of 18 August 1970. It provided for an undertaking not to develop, produce, stockpile or otherwise acquire microbiological or other biological agents or toxins of such types and in such quantities as are not designed for the prevention of disease or for other peaceful purposes; as well as auxiliary equipment or means of delivery designed to facilitate the use of such agents or toxins for hostile purposes (Art. I). The parties would also undertake to destroy within a period of three months after entry into force of the convention—observing all the necessary precautions—or to divert to peaceful uses all previously accumulated weapons as well as the equipment and means of delivery (Art. II). It was explained by the sponsors of the draft that the terms “weapons” or “means of warfare”, as used in the text, covered all bacteriological agents and toxins which can be used for purposes of war.¹⁵

[SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920-1970* (Almqvist & Wiksell: Stockholm, 1971), p. 314.]

- **Draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their destruction, submitted by Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Poland, Romania, Ukrainian SSR and the USSR, 15 April 1971¹⁶**

¹⁴ CCD/325; CCD/325/Rev.1.

¹⁵ CCD/PV.508; CCD/PV.511.

¹⁶ CCD/325/Rev.1.

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament and, above all, with view to prohibiting and eliminating nuclear, chemical, bacteriological (biological) and all other types of weapons of mass destruction,

Convinced that the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their elimination, will facilitate the achievement of general and complete disarmament,

Convinced of the immense importance and urgent necessity of eliminating from the arsenals of States such dangerous weapons of mass destruction as weapons using bacteriological (biological) agents and toxins,

[...]

Believing that scientific discoveries in the field of bacteriology (biology) must in the interests of all mankind be used solely for peaceful purposes,

Recognizing nevertheless that in the absence of appropriate prohibitions the development of the scientific knowledge throughout the world would increase the risk of the use of bacteriological (biological) methods of warfare,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Recognizing the important significance of the Geneva Protocol of the 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the purposes and principles of that Protocol and calling upon all States to comply strictly with them,

Guided by the resolutions of the United Nations General Assembly which has condemned all actions contrary to the Geneva Protocol of 17 June 1925 as well as the use in international armed conflicts of any chemical and any biological means of warfare,

Noting the conclusions contained in the report submitted to the United Nations General Assembly and the Disarmament Committee on the grave consequences for mankind that might result from the use of chemical and bacteriological (biological) weapons,

[...]

Have agreed as follows:

ARTICLE I

Each State Party to this Convention undertakes not to develop, produce, stockpile or otherwise acquire:

(1) microbiological or other biological agents or toxins of such types and in such quantities as are not designed for the prevention of disease or for other peaceful purposes;

(2) auxiliary equipment or means of delivery designed to facilitate the use of such agents or toxins for hostile purposes.

[...]

ARTICLE VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol of 17 June 1925 on the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, an instrument which embodies generally recognized rules of international law.

● **Statement by the Soviet Representative (Roshchin) to the Conference of the Committee on Disarmament: Bacteriological Weapons, April 27, 1971.**¹⁷

16. May I now dwell on another aspect of the draft convention of the socialist countries? The United Kingdom delegation has asked why the draft does not contain a provision prohibiting the use of bacteriological methods of warfare and toxins.¹⁸ In deciding that matter we based ourselves on the premise that the Geneva Protocol of 1925 clearly and unequivocally prohibited the use of all types of chemical and bacteriological means of warfare. That prohibition is a generally recognized rule of international law.

17. In our opinion any attempt, even on the pretext of strengthening the Geneva Protocol, to settle the question of the prohibition of the use of chemical and bacteriological weapons in another document under international law could only weaken and detract from the significance of the Protocol. If a convention on the prohibition of bacteriological weapons were to include a provision prohibiting their use, that might give rise to the interpretation on the one hand that there was still no such prohibition in existence, and on the other that the question of the prohibition of the use of chemical weapons was also still open.

The convention on bacteriological weapons should be a further step along the road which was opened by the conclusion of the Geneva Protocol.

18. We have noted with satisfaction that our position is shared by other delegations. The representative of India, Mr. Krishnan, has said in this connection:

Since the issue of the use of both chemical and biological weapons has been comprehensively and definitely solved by the Geneva Protocol of 1925, that issue need not and should not be dealt with in any other international instrument that might now be concluded concerning the other aspects of such weapons: namely their development, production, stockpiling and elimination. Any other course would only create complications and harm the Geneva Protocol of 1925, which the international community wishes to observe and strengthen further.¹⁹

Likewise the representative of Brazil, Mr. Saraiva Guerreiro, has said: Brazil cannot but share the view that the question of the use of biological weapons has already been fully settled...we do not think its place is to be found necessarily in the draft convention we are now considering.²⁰

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 258-259]

● **Statement by the Mexican Representative (Castañeda) to the Conference of the Committee on Disarmament: Chemical and Biological Weapons, May 4, 1971.**²¹

¹⁷ CCD/PV.511.

¹⁸ CCD/PV.510.

¹⁹ CCD/PV.504.

²⁰ CCD/PV.510.

²¹ CCD/PV.513.

54. Thus the draft treaty of the nine socialist countries and the earlier United Kingdom draft may be regarded, not as agreements prohibiting the manufacture of biological weapons, but rather as agreements which do not prohibit the manufacture of chemical weapons. I believe that this is their essential character. They are more important for what they do not contain than for what they do. And in truth they do not contain much. To prohibit biological weapons only is of minor practical importance. As has been reiterated many times in the debate, biological weapons are practically unusable weapons because they represent as great a danger for the user as for the adversary. Moreover, as is well known, there have been several important unilateral declarations renouncing their manufacture and use.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 273]

● **Statement by the Moroccan Representative (Khattabi) to the Conference of the Committee on Disarmament: Bacteriological Weapons, May 6, 1971.**²²

6. The provisions of the socialist text are based on the principle that prohibition of the use in war of bacteriological means is covered by the Geneva Protocol of 1925, which lays down a generally-recognized rule of international law. They are aimed essentially at the elimination of bacteriological agents and toxins designed for military purposes. The draft convention of the United Kingdom, by contrast, gives a large place to the use for hostile purposes of microbial agents or other biological agents or of toxins, though it likewise seeks to eliminate them.

7. Article I of the United Kingdom text endorses the prohibition of the use for hostile purposes of microbial agents or other biological agents or of toxins formulated in the Protocol of 1925. Their use is also dealt with in articles III and IV, dealing with the procedure for complaint of non-observance of the provisions of the agreement. In our opinion this method of procedure is likely not only to create confusion about the true objective of the agreement which we have to prepare, but also somewhat to extend the effect of the reservations made by a certain number of States to the Geneva Protocol.

8. The sixth and eighth paragraphs of the preamble and articles I, III and IV of the United Kingdom text give the clear impression that its principal object is to amplify the Geneva Protocol of 1925 by adopting a complaints system applicable essentially to the use of bacteriological agents or of toxins. We all know that the Geneva Protocol does not provide for a complaints procedure in the event of violation of its provisions by a State party; it only appeals to “the conscience and practice of nations”, so that a certain number of States parties to the Protocol have believed it to be in their interest to formulate reservations. Moreover, in explaining why the United Kingdom introduced into its draft convention provisions applying to “use”, its delegation said that many States parties to the Geneva Protocol “entered reservations which had the effect of making this instrument a ‘no first use’ agreement only.”

9. [...] There is ground, then, for supposing that the States parties to the Protocol which have not formulated any reservations—for example, my own country—would be induced in some way to accept, through the agreement that we are required to draft, the reservations to the Protocol formulated by other States. This reasoning is all the more correct if we bear in

²² CCD/PV.514.

mind that the agreement proposed to us would not apply to chemical weapons. Obviously—and this is truly lamentable—the Geneva Protocol, as was once stated by the representative of the United Kingdom, “means different things to different people.”²³ Thus it is difficult, if only with clarity in view, to conceive of an agreement containing provisions which could lead to confusion or to restrictive or even arbitrary interpretations concerning the meaning which each party would wish to give either to the Protocol or to the new convention.

10. Furthermore, it should be said that article VI of the United Kingdom text, which largely corresponds to article VIII of the socialist text, would apparently suffice to dispel any doubts about the attitude of the different States towards the Geneva Protocol.

11. In his statement of 29 April the representative of Italy, Mr. Caracciolo, pointed out that, whereas the prohibition of use in the Protocol was limited by the reservations, “The United Kingdom draft, on the contrary, provides for a complete prohibition of the use of biological weapons.”²⁴ This observation seems to us pertinent; but who could guarantee that the new convention would not also be whittled down by reservations? In any case, the existence of an agreement prohibiting the development, manufacture and stockpiling of bacteriological weapons and of toxins and providing for their destruction would render purposeless the reservations made to the Geneva Protocol concerning the use of bacteriological weapons. It is thus hoped that the Powers directly interested will give us their opinion on this precise question.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 276-278]

● **Statement by the Soviet Representative (Roshchin) to the Conference of the Committee on Disarmament: Bacteriological Weapons, May 6, 1971.**²⁵

29. [...] the most important points of our criticism of the United Kingdom draft are that its adoption would lead to the undermining of the existing generally-recognized rule of international law contained in the Geneva Protocol, and that the draft could not ensure the necessary basis for making progress towards the solution of the problem of eliminating the arsenals of chemical weapons. That criticism remains valid.

30. It was precisely on the basis of that critical appraisal of the United Kingdom draft that the socialist countries introduced their own draft convention on the prohibition of bacteriological weapons and toxins, which differs essentially from the United Kingdom draft in that the draft of the socialist countries is intended to obviate those phenomena which would occur if the United Kingdom proposal were adopted. Thus, in order to prevent the undermining of the existing rule of international law contained in the Geneva Protocol, which provides for the prohibition of the use of all types of chemical and bacteriological weapons, the draft convention of the socialist countries, first of all, does not contain a provision similar to that in the United Kingdom draft prohibiting the use of bacteriological weapons.

[...] ²⁶

²³ CCD/PV.431

²⁴ CCD/PV.512.

²⁵ CCD/PV.514.

²⁶ At this point, the Soviet delegate cited his statement of 27 April. See p.14 above.

32. Secondly, the inclusion in the draft of the socialist countries of a number of provisions which do not appear in the United Kingdom draft reinforces [...] the Geneva Protocol of 1925 on the prohibition of the use of chemical and bacteriological methods of warfare.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 281-282]

- **UAR Working Paper Submitted to the Conference of the Committee on Disarmament: Suggestions in Regard to the Draft Convention on the Development, Production, and Stockpiling of Bacteriological (Biological) Weapons and Toxins and on Their Destruction, June 29, 1971.**²⁷

1. *Article I*: add in the first line after the word “undertakes” the following:

...never in any circumstances to engage in research,...

The first sentence will thus read:

Each State Party to this Convention undertakes never in any circumstances to engage in research, develop, produce, stockpile or otherwise acquire:...

[...]

- **Statement by the Netherlands Representative (Bos) to the Conference of the Committee on Disarmament: Bacteriological Weapons, July 29, 1971.**²⁸

6. Much has already been said in the past on the question of use, which is covered in the United Kingdom draft but not in the Soviet one. Many delegations have expressed their doubts on a renewed reference to prohibition of use, because in their opinion that question is adequately covered by the Geneva Protocol of 1925. We nevertheless remain of the opinion that it would be desirable to touch upon the question of use in a convention banning the production and possession of biological and/or chemical weapons. In particular we think that desirable in view of the various reservations now attached to the Geneva Protocol. Of course, in the context of that Protocol the principle of reciprocity made sense because the Protocol did not forbid the parties to produce and possess biological and/or chemical weapons.

7. However, in the case of a treaty ban on the production and possession of those means of warfare, it seems logical that such a ban would presuppose a ban on use under any circumstances: that is, also for purposes of retaliation and vis-à-vis non-parties. Therefore we are in favour of the inclusion of a provision in a draft convention on bacteriological (biological) weapons—and even more so in a future draft on chemical weapons—containing a clear expression of the will of the parties to ban the use for hostile purposes of any of those weapons under any circumstances.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 450]

- **Revised draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction, submit-**

²⁷ CCD/328.

²⁸ CCD/PV.525.

ted by Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Poland, Romania, Ukrainian SSR, and the USSR, 5 August 1971²⁹

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins intended for use as weapons and their elimination will facilitate the achievement of general and complete disarmament under strict and effective international control,

Desiring thereby, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced of the immense importance and urgent necessity of eliminating from the arsenals of states such dangerous weapons of mass destruction as weapons using bacteriological (biological) agents and toxins,

[...]

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimize this risk,

Recognizing the important significance of the Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the purposes and principles of that Protocol and calling upon all States to comply strictly with them,

Recalling resolutions of the United Nations General Assembly, which has condemned all actions contrary to the principles and purposes of the Geneva Protocol of 17 June 1925,

[...]

Have agreed as follows:

ARTICLE I

Each State Party to this Convention undertakes not to develop, produce, stockpile or otherwise acquire or retain:

(1) Microbial or other biological agents or toxins of types and in quantities that have no justification for prophylactic 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.

ARTICLE II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than . . . months after the entry into force of the Convention all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this Article all necessary safety precautions shall be observed to protect the population and the environment.

²⁹ CCD/337. The USA submitted a parallel and identical text, CCD/338.

[...]

ARTICLE VII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

[...]

● **Statement by the Soviet Representative (Roshchin) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 5, 1971.**³⁰

10. First of all, it appears necessary to dwell on the provisions of the draft convention relating to the Geneva Protocol of 1925 for the prohibition of the use of chemical and bacteriological weapons, which laid down the international legal basis for the solution of the problem of prohibiting those types of weapons. As we have already pointed out, our approach to this question is based upon the premise that the provisions of the draft convention on bacteriological weapons should envisage enhancing the role and place of the Geneva Protocol in international life. The draft convention notes the important significance of the Protocol, reaffirms adherence to its purposes and principles, and calls upon all States to comply strictly with them (eight, ninth and tenth paragraphs of the preamble of the revised draft). The draft convention provides further that nothing in the convention shall be interpreted as limiting or detracting from the obligations assumed by States under the Protocol (Article VII of the revised draft).

11. During the negotiations on the draft convention there were revealed different approaches to the interpretation of the Geneva Protocol and of the rules of international law deriving therefrom. The socialist countries base themselves on the premise—and this view is widely supported throughout the world—that the Protocol has established a generally recognized rule of international law on the prohibition of the use of chemical and bacteriological weapons. At the same time, some States hold the concept that that international instrument has established an agreed rule of international law which is mandatory only for the parties thereto. Since the negotiations have revealed that the two sides continue to hold different concepts of international law, it has been agreed not to include in the draft convention a provision reaffirming or refuting any of the aforesaid concepts. That does not mean, of course, that the socialist countries have changed to any extent their approach or their concept in this regard. They have invariably based themselves, and continue to base themselves, on the premise that the prohibition of the use of chemical and bacteriological weapons is a generally-recognized rule of international law.

12. Precisely because of that, the socialist countries do not deem it possible to include in the draft convention a provision prohibiting the use of bacteriological weapons, since the prohibition of the use of both chemical and bacteriological weapons has already been decided by the Geneva Protocol. The incorporation in the convention of a provision prohibiting the use of bacteriological weapons could weaken the Protocol—first, because it would somehow

³⁰ CCD/PV.527.

detract from the significance of the already-existing prohibition laid down by the Protocol; and secondly because different approaches to the prohibition of bacteriological weapons on the one hand and of chemical weapons on the other would be allowed; and that would likewise be contrary to the purposes and principles proclaimed by the Geneva Protocol. However, we have agreed to include in the second paragraph of the preamble of the revised draft an expression of intention to exclude completely the possibility of the use of bacteriological weapons. That provision of the preamble, which is not a repetition of the declaration of the prohibition of use already contained in the Geneva Protocol, must reflect the natural result of the conclusion of the convention, since the cessation of the production of biological weapons and the destruction of stockpiles thereof would also mean the complete exclusion of the possibility of their use.

13. Thus we should like to emphasize that the provisions relating to the Geneva Protocol in the revised draft convention on bacteriological weapons are intended to enhance in every possible way the international significance of the Geneva Protocol for the prohibition of the use of chemical and bacteriological methods of warfare.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 463-464]

- **Statement by the United States Representative (Leonard) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 5, 1971.**³¹

35. One point which has been stressed by a number of delegations is that a new convention in this field should not in any way undermine the Geneva Protocol of 1925 or cast any doubt on its continuing validity as an international legal instrument. We entirely share that view. In our opinion the convention we are negotiating will support and strengthen the Geneva Protocol. The Protocol is specifically and unambiguously protected by article VII, which precludes any possibility that the new convention might in any way be interpreted as limiting or detracting from obligations assumed under the Protocol. Moreover, the ninth preambular paragraph of the draft reaffirms the adherence of States parties to the convention to the purposes and objectives of the Protocol. The fact that this convention would as a practical matter strengthen the Geneva Protocol is reflected in the second preambular paragraph, which expresses the desire of the parties by means of this convention “for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons.”

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 469]

- **Statement by the British Representative (Hainworth) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 10, 1971.**³²

71. Members of the Committee know already of the interest of my delegation in the question of the prohibition of “use”. It has always been the United Kingdom view that any conven-

³¹ CCD/PV.527.

³² CCD/PV.528.

tion we negotiate on biological weapons should be as comprehensive as possible. The differences between the scope of the provisions contained in the United Kingdom proposal CCD/255/Rev.2 and those contained in the present parallel drafts are perhaps most clearly illustrated by the difference between the titles of those two documents. The draft in CCD/255/Rev.2 is entitled "Revised draft Convention for the Prohibition of Biological Methods of Warfare". This expresses the objective which the United Kingdom delegation feels the Conference of the Committee on Disarmament should strive to achieve. The new drafts are confined to a "Draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction". This is a less ambitious objective.

72. The representative of the Soviet Union, in introducing the draft in Document CCD/337, said more than once that he wished to see the elaboration of a convention on the complete prohibition of bacteriological means of warfare. That is a position which my delegation is happy to support. In the same speech on 5 August Mr. Roshchin also stressed that the conclusion of a convention banning biological means of warfare and toxins for military purposes and providing for the elimination of their stockpiles would exclude the possibility of war with the use of those means. We can see the force of such an argument—to which I shall return shortly—and we agree entirely with the desirability of such an aim.

73. The United Kingdom delegation believes that an ideal convention on biological weapons should include an article providing for the express renunciation by all parties of the use of such means of warfare. A number of my colleagues have expressed the contrary view, arguing that such a provision is inappropriate to the sort of convention we are now trying to elaborate. Various arguments have been used.

74. The first argument has usually been that by repeating in the new draft convention an undertaking that is already enshrined in the Geneva Protocol of 1925 we should somehow detract from the significance of the existing prohibition prescribed by that Protocol. This I find totally unconvincing. Under the Geneva Protocol the parties promise not to do certain things in specified circumstances. One of these promises is not to use bacteriological methods of warfare. That promise was made in circumstances in which nothing was said about the preparation of such methods of warfare. The new convention which we are seeking to elaborate goes further, by providing for agreement not to prepare those methods of warfare. It is entirely relevant to repeat the earlier promise in an instrument to which it is wholly germane.

75. I can think of no other instance where repetition in a new international instrument of a promise made in an earlier one has been held to invalidate the earlier one. Indeed, I have some evidence that this view is shared by the Government of the Soviet Union. [...]

[...]

78. The next argument we have heard is that by repeating the undertaking in the Geneva Protocol not to use bacteriological methods of warfare, and by not at the same time repeating the other undertaking, namely, not to use certain chemical methods of warfare—which would in any case not be relevant to a biological-weapons convention—one would somehow weaken the earlier obligation. This too I find quite unconvincing. We note that article VII of the new parallel drafts states that nothing in the convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol. That is

so clear that there can be no question of detraction. And, if I may say so, I think it should set at rest the anxiety which the representative of Poland seemed to be expressing at one point in his statement today.

[...]

80. The third argument advanced is that under a biological-weapons convention we shall undertake not to develop, produce, possess or acquire biological means of warfare and the attendant ancillary equipment; therefore we shall not be in a position to use these things, and accordingly it is superfluous to say that we shall not use them. As I indicated earlier, I confess that this has an undoubted appeal as an argument of pure logic. It is, however, important to note that neither the United Kingdom draft in CCD/255/Rev.2, nor the new parallel drafts, would in any way prevent the production and stockpiling of biological agents for peaceful purposes. Article X of the parallel drafts, indeed, offers positive encouragement to this.

81. Under these drafts, however, I am advised that legally the reservations to the Geneva Protocol will continue to subsist, conferring a legally-valid international right to retaliatory use of the weapons we are discussing by those who have made reservations of this nature. If this legal entitlement subsists, then there is bound to be a risk that other parties to the new biological-weapons convention we are negotiating might become suspicious and fearful of what would otherwise be quite innocent activities. This, in turn, might lead to a weakening of the convention. It is rather the failure to enunciate the repudiation of all use of these weapons completely than its reiteration that would detract from the significance of the existing prohibition prescribed by the Geneva Protocol of 1925.

82. I believe I am not alone in this interpretation of the position. In his statement of 29 July the representative of the Netherlands drew attention to the views of his delegation in favour of including a provision containing a clear expression of the will of the parties to ban the use for hostile purposes of biological weapons. The representative of Italy stated on 29 April that an agreement which did not envisage the prohibition of use would leave doubts as to its validity in all circumstances. Likewise the representative of Nigeria, on 20 July, urged the view that a comprehensive biological-weapons convention offered a useful opportunity for mending the hole in the Geneva Protocol left by the reservations regarding the right to use biological weapons in certain circumstances. From what I have heard this morning I believe I am right in thinking that the representative of Canada is sympathetic to that point of view.

83. My delegation would like to draw one other consideration to the attention of the Committee. It is important to take account of the effect of what we are doing now in the field of biological weapons on the chemical-weapons agreement for which we shall be committed to work. We must therefore think about what we are doing on biological weapons in a chemical-weapons context. For chemical weapons, because of the nature of some of the possible agents concerned, which are normal industrial chemicals and which could not be eliminated by a convention on the prohibition of production and possession of chemical weapons, use of chemical weapons would have to be carefully and effectively covered. Surely, then, in an instrument on biological weapons, which so many delegations have stressed are linked to chemical weapons both in the Geneva Protocol and in many other ways, we should take care to consider the precedents we are setting.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 479-482]

● **Statement by the Canadian Representative (Ignatieff) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 10, 1971.**³³

9. We continue to have some concern over the lack of any reference in the operative paragraphs of the-treaty to the question of use. We have no desire to detract in any way from the importance of the Geneva Protocol and indeed we share the desire of all other members here to strengthen and supplement that historic document. However, as the Committee is aware, most nations attached reservations to their ratification of the Protocol, making it for many parties a first-use prohibition only. Thus, with the draft convention under consideration prohibiting the development, production and stockpiling of biological weapons, and the Geneva Protocol being for many a first-use prohibition only, there remains for parties to both conventions the right of retaliatory use.

10. We appreciate that the right of retaliation is an academic one, or could be represented as such if the development, production and stockpiling of biological weapons were prohibited; but it would nevertheless be, in our view, a more comprehensive and satisfactory approach if some reference were made in the operative paragraphs of the draft convention to prohibition of any use in any circumstances. Perhaps the most efficacious manner of dealing with this might be to incorporate into article VII of the draft before us some language which would render null and void for parties to this convention any reservations which they might have entered in the past with respect to the possible use of weapons prohibited under this draft convention.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 488]

● **Statement by the Italian Representative (Caracciolo) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 19, 1971.**³⁴

20. I should like now to put forward certain considerations on the relationship between the Geneva Protocol and the treaty which we are now drafting. In submitting their new draft the co-Chairmen emphasized that its object was to strengthen the Geneva Protocol this is confirmed, moreover, by article VII and various paragraphs of the preamble. Since, however, the new draft does not contain a specific prohibition of the use of biological weapons, a doubt could subsist, at least in form, about the maintenance of the reservations to the Geneva Protocol and in particular of those concerning the right of reprisal.

21. We understand very well the logic of the reasoning according to which the complete prohibition of the development, production and stockpiling of biological weapons would tend to make their use practically impossible and consequently to ensure, implicitly and despite those reservations, a total application of the ban imposed by the Geneva Protocol. Neverthe-

³³ CCD/PV.528.

³⁴ CCD/PV.531.

less, we deem it desirable that the purpose of prohibition of the use of biological weapons should be clearly stated in the new treaty. We therefore obviously appreciate the inclusion of the second paragraph of the preamble in the draft. Nevertheless, we would suggest that, in order to state this purpose even more clearly, the following words should be added after the words "as weapons" at the end of that paragraph: "thus reinforcing the prohibition already contained in the Geneva Protocol".

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 505-506]

- **Statement by the Moroccan Representative (Khattabi) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 19, 1971.**³⁵

35. By covering agents, weapons, equipment and means of delivery the present text of article I establishes more clearly and broadly the scope of the prohibition, by requiring the parties to undertake not to develop, produce, stockpile or otherwise acquire or retain the prohibited items. I would emphasize that the expression "or retain" is a new and important feature, which would end all possibility of the bacteriological means of warfare.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 507]

- **Statement by the Japanese Representative (Tanaka) to the Conference of the Committee on Disarmament: Draft Convention on Bacteriological (Biological) and Toxin Weapons, August 24, 1971.**³⁶

30. The more difficult problem we have to face is whether or not we should include the prohibition of use in our convention. Many delegations have already expressed their views, one way or the other, on that question. In our opinion, however, all the arguments have one thing in common: that is to say, that the conclusion of the present convention should in no way weaken but should strengthen the Geneva Protocol of 1925. Viewing it from that angle, our delegation does not believe that the provision in article I of the British draft would have any adverse effect on the Geneva Protocol. Indeed, that provision would serve to strengthen the Protocol.

31. Needless to say, the question of the prohibition on use has arisen mainly because of the two factors involved in the Geneva Protocol. One is that the prohibition in the Protocol was based on reciprocity among the parties. The other is that many parties to the Protocol have their reservations attached to the Protocol and have still not yet withdrawn them.

32. At the same time we have not failed to appreciate the argument put forward by the socialist representatives to the effect that the conclusion of a convention prohibiting the production, stockpiling and so on of bacteriological (biological) weapons would render meaningless the reservations attached to the Protocol. In that sense we indeed welcome the insertion of the second preambular paragraph in the parallel texts. Still, my own feeling is that our efforts to eliminate completely the legal effects of the reservations attached to the Protocol

³⁵ CCD/PV.531.

³⁶ CCD/PV.532.

rather than leave the matter as a *de facto* consequence would in no way diminish the value of the Protocol. We might also have to take into consideration the fact that, although we prohibit the development, production and so on of biological weapons, there might yet be a possibility that biological agents for peaceful purposes could be converted to war purposes within a short period of time.

33. Moreover, there is article VII in the parallel drafts, which provides that nothing in the convention shall be interpreted as in any way "limiting or detracting from"—and here one might think that this includes the reservations—the obligations assumed by any State under the Geneva Protocol. I notice that the representative of Morocco made the same point in his most recent intervention. If we are to retain such an article—and I am sure that the members of the Conference of the Committee on Disarmament would wish to do so—would it not be useful to have in our convention a clear-cut provision prohibiting the use in any circumstances of biological and toxin weapons as a means of warfare, in order to eliminate once and for all any ambiguity surrounding this question?

34. For the reasons I have stated, my delegation shares the views expressed by the British representative at our meeting on 10 August. Likewise we are interested in the suggestion on the same subject put forward by the Canadian representative on the same day. However, if the majority of the members of the committee feel that the question of use should not be dealt with in the present convention, I would venture to suggest that those countries which still attach reservations to the Geneva Protocol might declare the withdrawal of their reservations at the time of their ratification of or accession to the present convention.

35. With regard to the procedures to be followed in case of a suspected breach of an obligation assumed under the convention, we share the views expressed by the delegation of the Netherlands on the need for separating the procedures for fact-finding in connexion with a suspected violation from those for the political decision on such a violation.³⁷ Accordingly, if the present convention is to contain the prohibition on the use of biological and toxin weapons, we deem it appropriate that it should have provisions similar to those in paragraph 1 of article III of the British draft, which relates to procedures regarding complaints addressed to the Secretary-General of the United Nations. As we understand it, the statement of the representative of Nigeria on 20 July was along those lines.³⁸

36. The conclusion of the convention now under discussion would bring to an end the deterrent against the use of biological and toxin weapons allegedly due to the right of retaliation deriving from the reservations to the Geneva Protocol. In such circumstances an assured procedure for impartial fact-finding upon a breach of the obligation stemming from the prohibition of those weapons would not only constitute an important deterrent against such a violation but also have the effect of a possible deterrent against the clandestine production or stockpiling of those weapons.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 518-519]

³⁷ CCD/PV.502.

³⁸ CCD/PV.522.

- **Statement by the Mexican Representative (Garcia Robles) to the Conference of the Committee on Disarmament: Nuclear Test Ban and Chemical and Biological Weapons, August 24, 1971.**³⁹

55. The main reasons for our unswerving attitude towards the matter are shortly these.

(1) We feel that the question of the total prohibition of the use of chemical and microbiological weapons was definitely settled by resolution 2603 A (XXIV) of 16 December 1969, in which the United Nations General Assembly declared that such use was contrary to the generally-recognized rules of international law embodied in the Geneva Protocol, and defined the scope of that prohibition by stating that it includes "any chemical agents of warfare" and "any biological weapons of warfare" without any exception.

[...]

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, p. 525]

- **Statement by the United States Representative (Leonard) to the Conference of the Committee on Disarmament: Revised Draft Convention on Bacteriological (Biological) and Toxin Weapons, September 28, 1971.**⁴⁰

9. There are three changes in article I. First, the phrase "never in any circumstances" has been inserted in place of the word "not" in the 5 August draft. That phrase appeared in article I of the United Kingdom draft convention. Its insertion in the present convention was originally suggested by the Egyptian delegation.⁴¹ This addition is one to which my delegation and several others attach considerable importance because it seems to us very helpful in dealing with two rather difficult problems.

10. There has been some discussion during the course of our deliberations regarding the effectiveness of this convention in the event of armed conflict between any of the parties. It is our view, which appears to be shared, that this convention, as a companion measure to the Geneva Protocol, would, like the Protocol, remain in full force and effect in time of war. The addition of the phrase "never in any circumstances" reinforces this view, since war would obviously be one of the "circumstances" referred to. This change does not, of course, prejudice the rights of parties under the withdrawal clause of article XIII in the conditions set forth in that provision.

11. A further question has been raised concerning the relationship between this convention and the reservations of many parties to the Geneva Protocol, by which they have retained the right to use weapons covered by that Protocol under certain circumstances. While this convention does not affect legal rights and obligations of States under the Geneva Protocol, the addition of the phrase "never in any circumstances" in article I will serve to emphasize the intention of parties to this convention that reservations to the Protocol should not, as a practical matter result in any exception to the total prohibition of biological and toxin weapons achieved by the present convention.

³⁹ CCD/PV.532.

⁴⁰ CCD/PV.542.

⁴¹ See UAR Working Paper on p. 17.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 574-575]

● **Statement by the Soviet Representative (Roshchin) to the Conference of the Committee on Disarmament: Revised Draft Convention on Bacteriological (Biological) and Toxin Weapons, September 28, 1971.**⁴²

47. Important provisions in the draft are those which refer to the Geneva Protocol of 1925 on the Prohibition of the Use of Chemical and Bacteriological Weapons. Article VIII stipulates that no provision of the convention shall be interpreted as limiting or detracting from the obligations assumed by States under the Geneva Protocol. Furthermore, in the preamble the important significance of the Protocol is recognized, adherence to its principles and objectives is re-affirmed and all States are called upon to comply strictly with them. As suggested by the non-aligned countries, these provisions, which were previously placed at the end of the preamble, have been moved to the beginning. The former eighth, ninth and tenth preambular paragraphs have now become the second, third and fourth paragraphs respectively. Moreover, as proposed by Morocco, the fourth preambular paragraph now states that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of 1925. The socialist countries consider that the prohibition of the use of chemical and bacteriological weapons is a generally-recognized rule of international law. On the whole, the draft convention meets the need to reinforce the Geneva Protocol.

48. Important changes have been made in the convention as a result of amendments to article I, concerning the basic prohibitions. In its present form this article binds the parties "never in any circumstances" to resort to the acts prohibited in the article. This phrase was inserted on the proposal of Egypt.⁴³ Such a formulation undoubtedly strengthens article I in which it is now emphasized that the prohibitions provided for in the convention remain effective both in peace time and in war time. Nothing in this convention gives grounds for other interpretations.

49. Some delegations have also raised the question that States at the time of ratification or accession to the convention, should withdraw their reservations to the Geneva Protocol in so far as bacteriological weapons are concerned. The phrase "never in any circumstances" covers this question, too. Furthermore, in the ninth preambular paragraph it is stated that the parties to the convention are determined to exclude completely the possibility of bacteriological agents or toxins being used as weapons. This provision—which is not a re-statement of the prohibition of the use of such weapons, which is already contained in the Geneva Protocol—reflects the result of the conclusion of the convention, since the cessation of production, and the elimination, of stockpiles of bacteriological and toxin weapons will completely exclude the possibility of their use. This solves the problem of reservations with regard to such weapons.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 582-583]

⁴² CCD/PV.542.

⁴³ See UAR Working Paper on p. 17.

● **Statement by the British Representative (Hainworth) to the Conference of the Committee on Disarmament: Revised Draft Convention on Bacteriological (Biological) and Toxin Weapons, September 28, 1971.**⁴⁴

67. On 10 August I made a full statement in the Committee describing the sort of improvements to the 5 August drafts that I thought should be made. In the course of those remarks I noted with appreciation the appearance of what was then the second preambular paragraph. I went on to say that it was entirely right that the aim of excluding completely for the sake of all mankind the possibility of biological agents and toxins being used as weapons should find its appropriate place in the draft convention. After due reflection my delegation has come to the conclusion that the current wording of this preambular paragraph and its position as the penultimate paragraph are appropriate. Placed as it is, so close to the operative part of the new convention, it is in the view of my delegation a clear expression of the objective of the draft convention. In these circumstances—and I hope that in view of his statement on 24 August⁴⁵ what I am about to say will please the representative of Mongolia—we have not continued to press for an explicit operative undertaking by the parties never in any circumstances to engage in biological methods of warfare.

68. If I may be allowed to summarize the thought behind my statement of 10 August, it was that the United Kingdom delegation considered that we should ensure by the coming into force of the convention on biological weapons that there was no practical or legal possibility of biological weapons ever being used.

69. My United States and Soviet colleagues have already mentioned that there was in the minds of some delegations a question as to whether the convention would be operative in time of war. This was not a matter on which the United Kingdom was ever in any doubt, but the addition of the four words “never in any circumstances” to the key undertakings in article I will have removed any residual doubts other delegations may have had.

70. There remains, however, the problem of whether the reservations to the Geneva Protocol can be said to have been cancelled. We have taken note of the arguments advanced by a number of delegations in the Committee that it will be impossible in practice for States to use biological agents or toxins for non-peaceful purposes when they have bound themselves not to develop, produce or otherwise acquire or retain biological agents or toxins, except for peaceful purposes. We trust therefore that, even though the reservations to the Geneva Protocol may legally remain in force, for all practical purposes the risk of biological weapons or toxins actually being used for hostile purposes will be reduced to negligible proportions.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 587-588]

● **Statement by the British Representative (Hainworth) to the First Committee of the General Assembly: Chemical and Biological Weapons, December 8, 1971.**⁴⁶

Some delegations have expressed their regret that there is no explicit undertaking in the draft convention never to use biological or toxin weapons. As I think representatives are

⁴⁴ CCD/PV.542.

⁴⁵ CCD/PV.532.

⁴⁶ A/C.1/PV.1846.

aware, this is a point to which the United Kingdom delegation attaches great importance. In the British draft convention submitted in Geneva in 1969, there was such a provision, whereby parties to the convention would have undertaken never in any circumstances to make use for hostile purposes of biological weapons.

However, over the months in Geneva it became apparent that a number of delegations sincerely held deep-seated views that such an explicit provision could in some way damage the Geneva Protocol of 1925. We were not, and are not, of this opinion ourselves; but since our objective was also to avoid any calling into question of the proven efficacy of the Geneva Protocol, we eventually agreed to co-sponsor a draft convention without such an undertaking contained directly in its provisions. In so agreeing we took note of the arguments advanced by a number of delegations that it would be impossible in practice for States to use biological agents or toxins for non-peaceful purposes when they had bound themselves not to develop, produce, or otherwise acquire or retain biological agents or toxins except for peaceful purposes. We also took note of the force of the words "never in any circumstances", which appear in article I at the suggestion of the Egyptian delegation.

Furthermore, we noted that in the convention itself the penultimate preambular paragraph expressed the determination of eventual States-party, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons. We believe, therefore, that even though reservations to the Geneva Protocol may remain in force, there will never be any question of States making retaliatory use of biological weapons, and that, for all practical purposes, the risk of biological weapons or toxins being used for hostile purposes will have been reduced to negligible proportions.

[United States Arms Control and Disarmament Agency, *Documents on Disarmament 1971*, pp. 836-837]

- The parties undertake not to develop, produce, stockpile or otherwise acquire or retain the agents and toxins specified above (Article I). However, research aimed at production of these agents or at development of new warfare agents is not banned. This omission is fraught with consequences because the prohibition to develop, produce, stockpile or otherwise acquire or retain is not absolute. It applies only to types and quantities of biological agents and toxins "that have no justification for prophylactic, protective or other peaceful purposes".

[SIPRI, *World Armaments and Disarmament: SIPRI Yearbook 1972* (Almqvist & Wiksell: Stockholm, 1972), pp. 502-503]

- The prohibitions under the convention apply "in any circumstances". The term employed makes it difficult for states adhering to the convention to formulate reservations with regard to its basic aims and there can be no doubt that the prohibitions will also be in force in time of war. The effectiveness of the provision is weakened by a clause permitting formal withdrawal from the convention.

[SIPRI, *World Armaments and Disarmament: SIPRI Yearbook 1972* (Almqvist & Wiksell: Stockholm, 1972), p. 504]

- The draft convention does not contain a prohibition on the use of biological and toxin weapons. The ban is included in the 1925 Geneva Protocol prohibiting the use of asphyxiating, poisonous or other gases and of bacteriological methods of warfare. No one contests that toxins are also covered by the prohibition. The significance of the Protocol is strongly emphasized, its integrity safeguarded and its continuing validity confirmed in the text of the draft convention. All states are urged to comply strictly with the principles and objectives of the Protocol (Article VIII and paragraphs 2, 3, and 4 of the preamble).

In ratifying the Geneva Protocol, many countries reserved the right to use the banned weapons against non-parties or in retaliation. It is now agreed that the reservations will become pointless, as far as biological weapons are concerned, once the convention, aimed at eliminating completely these weapons, comes into force. In fact, the convention proclaims the determination of the parties "to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons" (paragraph 9 of the preamble). (This determination has been unnecessarily weakened by the last preambular paragraph expressing merely the conviction that no effort should be spared "to minimize" the risk of such use.) The phrase "never in any circumstances", reinforcing the prohibition under the convention (see above), is also taken as allowing no exemption from the ban on the use of biological and toxin weapons. Moreover, the procedure for investigating cases of illicit production and retention of the weapons in question, whatever its effectiveness, is clearly also applicable to cases of illicit use, since use presupposes possession.

All this, however, does not change the fact that the Geneva Protocol *is* accompanied by reservations which form an integral part of the that document. According to Article VIII of the convention, nothing shall be interpreted as in any way limiting or detracting from the obligations assumed by any state under the Geneva Protocol. This may imply that the reservations - part and parcel of the obligations - will continue to subsist. Legally, they can be nullified only through a direct act of withdrawal.

To avoid misunderstandings and incompatibility with the new commitments, the countries which have attached reservations to the Geneva Protocol should declare them null and void, at least with regard to biological and toxin weapons, at the time of ratification or accession to the biological disarmament convention.⁴⁷

[SIPRI, *World Armaments and Disarmament: SIPRI Yearbook 1972* (Almqvist & Wiksell: Stockholm, 1972), pp. 508-509]

- Besides the ratification requirement, before the convention becomes fully operative in so far as its verification is concerned, the UN Security Council must formally agree to assume the functions assigned to it by the parties, namely to receive, consider and act upon complaints and breaches of obligations. A draft Security Council resolution to that effect was submitted by Poland, the United Kingdom and Yugoslavia, as early as 25 April 1972 but was not considered because of the threat of a Chinese veto.

⁴⁷ Belgium stated its intention to study, after the entry into force of the convention, the possibility, as far as biological weapons and toxins are concerned, of abandoning the reservations it had made in ratifying the Geneva Protocol (UN document A/C.1/PV.1841).

[...]

China considers the convention as a “product of Soviet-US collusion” and has criticized it for not including the prohibition of chemical weapons and for not banning the use of biological weapons. China also strongly objected to the signing of the convention by the government of Taiwan.

[SIPRI, *World Armaments and Disarmament: SIPRI Yearbook 1973* (Almqvist & Wiksell: Stockholm, 1973), pp. 421-422]