

BEIGIUM

Memorandum on monitoring of the prohibition of the use in combat
of chemical and bacteriological (biological) or toxin weapons

The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, is one of the most important international instruments in the field of arms control.

Its importance was formally recognized in the Final Document of the first special session, paragraph 72 of which declares that all States should adhere to the Protocol.

It should perhaps, however, be pointed out that the international community had taken the view that prohibition of the development, production and stockpiling of chemical and bacteriological agents, and the destruction of such agents, whose use in war is prohibited by the Geneva Protocol, constituted a significant contribution to the achievement of disarmament under strict and effective international control.

The negotiations on this question resulted in the conclusion in 1972 of a first agreement on the prohibition of bacteriological (biological) weapons and toxin weapons and on their destruction. The Committee on Disarmament is at present elaborating a convention prohibiting chemical weapons, taking into account paragraph 75 of the Final Document, which describes this as one of the most urgent tasks of multilateral negotiations.

After the 1972 treaty, and taking into account the ongoing negotiation in the Committee on Disarmament, it becomes apparent that the international community cannot ignore another aspect of the process of reinforcing the Geneva Protocol: deciding on arrangements for monitoring compliance with the prohibition of the use in combat of chemical and bacteriological weapons. In its report to the thirty-fifth session of the General Assembly, the Committee on Disarmament made reference to this point.

There is more than one reason why compliance with the Geneva Protocol needs to be ensured:

- (a) Every aspect of the undertaking begun in 1925 would then be completed, and the international régime concerning bacteriological (biological) and chemical weapons would thus be consolidated;
- (b) Monitoring compliance with the prohibition of use in combat would meet a need that has been expressed on several occasions during the last few decades;
- (c) An agreement on this question would create confidence and have a beneficial effect on the climate of international relations.

^{*/} Re-issued for technical reasons.

Moreover, the monitoring of compliance with the prohibition of the use in combat of chemical and bacteriological weapons can be effected only through an ad hoc instrument, in view of:

(a) The scope of the prohibition under the Geneva Protocol, which has customarily been regarded as being the broadest possible, including both bacteriological (biological) weapons and chemical weapons;

(b) The special procedures required for verification of compliance with the prohibition of the use in combat of chemical and bacteriological weapons.

The Committee on Disarmament, which is the only multilateral forum for disarmament negotiations, could be given the task of elaborating such an instrument, making whatever procedural arrangements it deemed appropriate, such as having the drafting done in its Ad Hoc Working Group on Chemical Weapons in view of the interrelatedness of the problems for purely practical reasons.

The elements of such an instrument, which might be entitled "Protocol on the monitoring of the prohibition of the use in combat of chemical and bacteriological (biological) or toxin weapons", could be structured as follows:

I. Preamble

Establishing the link between this Protocol, the Geneva Protocol of 1925, the 1972 Convention on the prohibition of biological weapons and the ongoing negotiations concerning the prohibition of chemical weapons;

Expressing the hope that States will agree among themselves, at the regional level, on measures stricter than those referred to in this Protocol.

II. Scope

Organization of the monitoring of the prohibition of the use in combat of the agents referred to in the Geneva Protocol of 1925 and of chemical and bacteriological (biological) or toxin weapons generally.

III. Activities and obligations

1. A firm commitment by States parties to consult one another and to co-operate in solving any problems which may arise in relation to compliance with the prohibition of the use of chemical and bacteriological (biological) or toxin weapons.
2. Such consultation and co-operation may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

Such international procedures may involve the services of appropriate international organizations (e.g., WHO), as well as the services of the Advisory Committee established under this Protocol.

IV. Advisory Committee

1. An Advisory Committee shall be established as soon as this protocol enters into force. Its composition shall be as follows:

(a) Institutional arrangements

The Advisory Committee shall be composed of States parties to this Protocol, as well as States parties to the Geneva Protocol of 1925 and the 1972 Convention on biological weapons.

It shall be presided over by the depositary of this Protocol.

It shall meet every four years to define and assess its methods of work and to discuss technical and budgetary questions.

It may meet at other times, if special circumstances so warrant.

(b) Permanent Committee

Upon the entry into force of this Protocol, questions relating to its application shall be dealt with, between sessions of the Advisory Committee, by a Permanent Committee, which shall act on behalf of the Advisory Committee and subject to its approval.

The Permanent Committee shall have 10 members, appointed for a renewable four-year term by the depositary of this Protocol in consultation with the members of the Advisory Committee, taking into account the principle of equitable geographical distribution.

The chairmanship of the Permanent Committee shall rotate among its members, who must be nationals of States members of the Advisory Committee.

The members of the Permanent Committee may be assisted by experts.

A State member of the Advisory Committee which files a complaint or against which a complaint is filed shall be entitled, upon simply notifying the Chairman of the Permanent Committee, to designate a representative to sit on the Permanent Committee when the complaint is before it, if the membership of the Permanent Committee does not include a national of that member State.

The Permanent Committee shall have its seat in (New York) (Geneva).

(c) Technical Secretariat

The Advisory Committee and the Permanent Committee shall be assisted by a small Technical Secretariat, which shall be responsible for maintaining contacts with the members of the Advisory Committee and the Permanent Committee, for facilitating contacts between them and for assisting them in the performance of their duties.

The Technical Secretariat shall be responsible for, inter alia, designing and improving monitoring procedures (fact-finding and collection and impartial analysis of samples), in close consultation with the Advisory Committee, the Permanent Committee, national monitoring agencies and appropriate international organizations.

The Technical Secretariat shall be established as soon as this Protocol is opened for signature.

It shall be under the jurisdiction of the Advisory Committee and the Permanent Committee and shall report to them on its activities.

The depositary shall attend to the material organization of the Technical Secretariat.

The Technical Secretariat shall have its seat in (New York) (Geneva).

2. National monitoring agencies

The States members of the Advisory Committee shall endeavour to establish national monitoring agencies, with which the Advisory Committee and its organs shall maintain contact.

The national monitoring agencies shall assist the Advisory Committee and its organs in the performance of their duties.

3. Procedures

(a) A complaint may be brought before the Permanent Committee by one or more members of the Advisory Committee, by the depositary or by the Director of the Technical Secretariat if they have serious reasons to believe that the prohibition of the use in combat of chemical or bacteriological weapons has been violated.

The complaint must be set forth in detail and substantiated with evidence relating to the acts that are alleged.

(b) The Permanent Committee shall be convened by its Chairman immediately, or in any event not later than five days, after the complaint has been brought before it in accordance with paragraph 3 (a) above.

(c) The Committee shall first investigate whether a bilateral solution to the dispute is possible and shall offer it good offices for that purpose.

(d) If such a solution is not possible and the nature of the complaint so requires, the Permanent Committee may decide to dispatch a fact-finding mission to the area. The decision to dispatch a mission shall be regarded as being of a procedural nature. The State party against which the complaint has been made may itself request the Permanent Committee to dispatch a fact-finding mission to its territory. Where necessary, and after expeditiously consulting its members by any suitable procedure, the Chairman of the Permanent Committee may make all necessary arrangements for the dispatch of the mission, if possible within 48 hours of the event to which the complaint refers.

The Permanent Committee shall arrange for samples collected on the spot to be analysed by at least two laboratories selected, by agreement among its members, from a list of establishments proposed by the States members of the Advisory Committee.

(e) The Permanent Committee shall have the right to request, through its Chairman, to request States and international organizations to provide such information and assistance as it deems desirable to enable it to fulfil its task.

(f) If the State party in whose territory the events are alleged to have taken place refuses to admit the mission, it must furnish the Permanent Committee with appropriate explanations showing that the dispatch of such a mission to the area at that particular time would jeopardize its higher interests.

If the Permanent Committee is not satisfied with the explanations furnished by the State in question, it may, should it deem necessary, make a new request.

In case of a further refusal, it shall report the matter to the depositary, who shall in turn inform the competent United Nations bodies to which a complaint relating to the same events may have been brought.

(g) Whenever a State member of the Advisory Committee requests a determination of the facts in a specific case or the provision of an authoritative opinion, the Permanent Committee shall transmit to the depositary a summary of its findings or its authoritative opinion, in which all the views and information presented to it shall be set forth. The depositary shall circulate the summary to all States members of the Advisory Committee.

(h) The Advisory Committee and the Permanent Committee shall take all procedural decisions relating to the organization of their work by consensus where possible, or otherwise by a majority of the members present and voting. Substantive matters shall not be put to the vote. If the Advisory Committee and the Permanent Committee are unable to reach a unanimous decision with respect to determinations of facts or authoritative opinions which they have been requested to provide, they should render an account of the different views that have been taken.

V. Final provisions

1. The Protocol would be open for signature by all States. Any State which had not signed the Protocol before its entry into force could accede to it at any time.
2. The Protocol would be subject to ratification by the signatory States. The instruments of ratification or accession would be deposited with the Secretary-General of the United Nations.
3. The Protocol would enter into force when instruments of ratification had been deposited by two Governments.
4. The Protocol would enter into force for States whose instruments of ratification or accession were deposited after its entry into force on the date of deposit of their instruments of ratification or accession.

5. The depositary would promptly inform all States which had signed or acceded to the Protocol of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force and the receipt of any other communication.

6. The Protocol would be registered by the depositary in accordance with Article 102 of the Charter of the United Nations.

7. The Protocol could provide for a review procedure so that, when the Convention on the prohibition of chemical weapons was concluded, the terms of the Protocol could be amended accordingly and use could be made of the Advisory Committee infrastructure to be established under the Convention, while ensuring that the special machinery for monitoring compliance with the prohibition covered by the Protocol was retained.
