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UNITED STATES DETAILED VIEWS ON
THE CONTENTS OF A CHEMICAL
WEAPONS BAN

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TABLE OF CONTENTS

<u>Subject</u>	<u>Page</u>
INTRODUCTION	iv
I. SCOPE OF PROHIBITION	1
Basic Prohibition	1
Non-Transfer/Non-Assistance	1
Terminology	1
Permitted Activities	2
II. DECLARATION/DESTRUCTION	3
Initial Declaration	3
Other Declarations	4
Elimination of Stocks	4
Provisions for Chemical Weapons Found after the Initial Declaration Has Been Made	4
Closure and Destruction of Facilities	5
III. VERIFICATION AND ASSURANCE	6
Consultative Committee	6
Preparatory Commission	7
Consultation and Co-operation; Resolving Compliance Issues	7
Domestic Implementation Measures	8
Confidence-Building Measures	8
IV. OTHER PROVISIONS	9
Withdrawal	9
Entry into Force	9
Additional Provisions	9
Annexes	9
Appendix I. Preparatory Commission	10
Appendix II. Fact-Finding Panel	11
Appendix III. Special Meeting of the Consultative Committee	12

INTRODUCTION

This paper presents current United States views on the contents of a chemical weapons convention. It is subject to further modification and refinement.

I. SCOPE OF PROHIBITION

Basic Prohibition

The Convention should require a party: (a) never to develop, produce, otherwise acquire, stockpile, retain, or transfer chemical weapons; (b) to eliminate existing stockpiles of chemical weapons; (c) to eliminate facilities for production or filling of chemical weapons; (d) not to conduct activities directly related to use of chemical weapons (for example, not to practice employment of chemical weapons - protective activities would be unaffected); (e) not to use chemical weapons in any circumstances where use is not already prohibited by the 1925 Geneva Protocol (according to the terms of the Protocol, its provisions apply, for example, only in "war" and only between Parties).

The provisions of the Convention should cover super-toxic lethal, other lethal, other harmful chemicals (such as incapacitating chemicals), and their precursor chemicals, but not riot-control agents or herbicides. Toxins would be included implicitly since they are toxic chemicals.

Non-Transfer/Non-Assistance

The Convention should prohibit:

(a) transfer to anyone, directly or indirectly, of any chemical weapons;

(b) transfer to anyone, directly or indirectly, other than another party, of any super-toxic lethal chemical or key precursor produced or otherwise acquired for protective purposes. Transfers would be limited to a maximum of 100 grams in any 12-month period. Advance notification of the Depositary (as specified in an annex) of any transfers of such a super-toxic lethal chemical or key precursor should be required.

(c) assisting, encouraging, or inducing, directly or indirectly, anyone to engage in activities prohibited to a party under the Convention.

Terminology

Key terms used in the Convention should be carefully defined to ensure that the Convention's provisions are clear and precise. Important terms that need to be defined, and the United States understanding of them, are given below:

The term "chemical weapons" should be used to mean:

(a) super-toxic lethal, other lethal, and other harmful chemicals, and their precursor chemicals, regardless of the method of production, except for those intended for permitted purposes as long as the types and quantities involved are consistent with such purposes; or

(b) munitions or devices specifically designed to cause death or other harm through the toxic properties of chemicals released as a result of the employment of such munitions and devices; or

(c) any equipment or chemical specifically designed for use directly in connection with the employment of such munitions or devices.

The term "super-toxic lethal chemical" should be applied to any toxic chemical with a median lethal dose which is less than or equal to 0.5 mg/kg (subcutaneous administration) or 2,000 mg-min/m³ (by inhalation), when measured by an agreed method (this category is intended to include nerve gas and mustard gas, but not such agents as hydrogen cyanide);

The term "other lethal chemical" should mean any toxic chemical with a median lethal dose which is greater than 0.5 mg/kg (subcutaneous administration or 2,000 mg-min/m³ (by inhalation) and which is less than or equal to 10 mg/kg (subcutaneous administration) or 20,000 mg-min/m³ (by inhalation), when measured by an agreed method;

The term "other harmful chemical" should be applied to any toxic chemical with a median lethal dose which is greater than 10 mg/kg (subcutaneous administration) or 20,000 mg-min/m³ (by inhalation), when measured by an agreed method;

The term "precursor chemical" should be applied to any chemical which may be used in production of a super-toxic lethal chemical, other lethal chemical, or other harmful chemical;

The term "key precursor" should be applied to any precursor chemical which, based on agreed guidelines, is agreed to be of particular importance;

The term "non-hostile purposes" should cover industrial, agricultural, research, medical or other peaceful purposes, law-enforcement purposes, or protective purposes;

The term "permitted purposes" should cover non-hostile purposes and military purposes which are not dependent on the toxic properties of chemicals;

The term "protective purposes" should cover purposes directly related to protection against chemical weapons;

The term "chemical weapons production or filling facility" should be used for any building or any equipment which in any degree was designed, constructed or used since (blank) for the production of any chemicals, including key precursors, primarily useful for chemical weapons, or designed, constructed or used since (blank) for filling chemical weapons.

Permitted Activities

Each party should be allowed to retain, produce, acquire, or use any toxic chemical, and its precursor chemicals, for permitted purposes, of types and in quantities consistent with such purposes. The aggregate quantity of super-toxic lethal chemicals and their key precursors produced, diverted from chemical weapon stocks, or otherwise acquired, or on hand at any one time for protective purposes, should be as low as possible and should not exceed one metric ton for any party.

Any party which produces super-toxic lethal chemicals for protective purposes should be required to carry out the production at a single specialized facility, the capacity of which should not exceed an agreed limit.

Each party should be required to make an annual declaration regarding all toxic chemicals which are useful for chemical weapons but are devoted to protective activities.

II. DECLARATION/DESTRUCTION

Shortly after a State becomes a party certain key information regarding its chemical weapons capability should be provided, as outlined below. Other declarations relating to required or permitted activities would be made subsequently. Detailed requirements for the contents of all declarations should be specified in annexes.

Initial Declaration

The Convention should require a declaration from each party, within 30 days after the convention enters into force for it, regarding the following:

(a) whether or not any chemical weapons, or any chemical weapons production or filling facility, are under its jurisdiction or control;

(b) the presence on its territory of stocks of chemical weapons and/or of chemical weapons production or filling facilities, which are under the jurisdiction or control of anyone else, and the locations of such stocks and facilities;

(c) the location of any chemical weapons stocks which are under its jurisdiction or control and the detailed composition of the stocks at each location; (Chemicals should be declared by scientific chemical name, toxicity and weight. The fraction in munitions/devices should be given. Munitions/devices should be declared by type and quantity. "Specifically-designed" equipment should be declared by type and quantity);

(d) its plans for destruction of any stocks under its jurisdiction or control;

(e) the location, nature, and capacity of any chemical weapons production or filling facility which has been under its jurisdiction or control at any time since (blank). (Such facilities should be declared even if they were or are dual-purpose facilities designed or used in part for civilian production, have been destroyed, or are now being used for other purposes. The declaration should also specify the chemical name of any chemical ever produced at the facility, including civilian products, if any);

(f) its plans for closing and eventually destroying any chemical weapons production or filling facilities under its jurisdiction or control;

(g) the location and capacity of the small-scale production facility, if any, for super-toxic lethal chemicals for protective purposes;

(h) the location and nature of any other facility designed, constructed or used, since (blank) for the production of certain commercial chemicals deemed by the Consultative Committee to pose a particular risk (such as key precursors or chemicals closely related to them);

(i) the location and nature of any facility under its jurisdiction or control designed, constructed, or used since (blank) for development of chemical weapons. (This would include test and evaluation sites).

Locations should be specified with sufficient precision to permit unambiguous identification of sites and facilities.

Other Declarations

Each Party should be obligated to provide information (as specified in an annex) regarding the production and use of key precursors and other specific commercial chemicals deemed to pose a particular risk.

Elimination of Stocks

The Convention should require that any party having chemical weapons stocks under its jurisdiction or control must:

(a) permit systematic international on-site inspection of its stocks promptly after declaration, on an agreed basis;

(b) eliminate these chemical weapons by destroying them;

(c) begin the elimination process not later than six months after the Convention enters into force for it and complete the process not later than ten years after that date;

(d) carry out, according to an agreed schedule, the elimination process, employing agreed procedures which permit systematic international on-site verification;

(e) permit systematic international on-site verification of the destruction process on a continuous basis until destruction is completed; (Both Inspectors and sensors should be utilized).

(f) notify the Depositary annually regarding implementation of its plans for elimination of chemical weapons stocks;

(g) certify to the Depositary that its stocks have been eliminated, not later than 30 days after the elimination process has been completed.

Provisions for Chemical Weapons Found After the Initial Declaration Has Been Made

Experience has shown that small quantities of chemical weapons may from time to time be found. The provisions of the Convention must take into account that such discoveries may occur after the initial declaration has been made. Care must also be taken to ensure that an opportunity for evasion is not created.

The Convention should require any party which discovers any chemical weapons anywhere under its jurisdiction or control which have not been declared to:

(a) notify the Depositary within 30 days of the discovery of the approximate quantity and type of the chemical weapons found. The notification should also specify how, where, and when the chemical weapons were found, why they were previously unknown, and where they are being stored;

(b) notify the Depositary within 90 days of the discovery of the exact quantity and type of the chemical weapons found, including the scientific chemical name and formula of any toxic chemical found and its quantity. The notification should specify plans for destruction of the chemical weapons.

The chemical weapons found should be subject to:

- (a) prompt and systematic international on-site inspection;
- (b) internationally-monitored storage;
- (c) destruction within one year if found more than nine years after the Convention entered into force for the party;
- (d) systematic international on-site inspection of destruction.

Closure and Destruction of Facilities

The Convention should require each party to:

- (a) cease immediately all activity, except that required for closure, at any chemical weapons production or filling facility;
- (b) close each facility according to agreed procedures which would render the facility inoperative;
- (c) permit systematic international on-site inspection of each such facility promptly after declaration, and subsequently at agreed intervals until the facility is destroyed;
- (d) permit monitoring of each facility by appropriate types of sensors installed at the facility;
- (e) destroy each facility by razing it, employing agreed procedures which permit systematic international on-site verification and according to an agreed schedule;
- (f) begin destruction of its chemical weapons production and filling facilities not later than six months after the date on which the Convention entered into force for it and complete it not later than ten years after that date;
- (g) permit systematic international on-site verification of the destruction of such facilities, at an agreed level until the facilities are destroyed;
- (h) undertake not to construct any new facilities, or modify any existing facilities, for purposes proscribed by the Convention;
- (i) notify the Depositary annually regarding implementation of its plan for destruction of facilities;
- (j) certify to the Depositary that its facilities have been destroyed, not later than 30 days after the destruction process has been completed.

A chemical weapons production or filling facility could be temporarily converted for destruction of chemical weapons. The converted facility would have to be destroyed as soon as it was no longer in use for destruction of stocks and not later than ten years after the date on which the Convention entered into force for the party.

III. VERIFICATION AND ASSURANCE

Consultative Committee

The Convention should provide for establishment of a Consultative Committee. The Committee should hold its first meeting within one month after entry into force of the Convention. Each party should be allowed to designate a representative to the Consultative Committee.

The Consultative Committee should:

(a) Develop and revise, as necessary, detailed provisions for exchange of information, declarations, and technical matters related to implementation of the Convention;

(b) Review new scientific and technical developments which could affect the operation of the Convention;

(c) Provide a forum for timely and responsive discussion of questions regarding compliance;

(d) Conduct (as specified in annexes) systematic on-site inspection of:

(1) declared stockpiles, on an agreed basis;

(2) destruction of declared stocks, on a continuous basis until destruction is completed;

(3) closure and destruction of declared production and filling facilities, at an agreed level until the facilities are destroyed;

(4) permitted small-scale production and facilities for super-toxic lethal chemicals for protective purposes, at an agreed level for as long as a facility is maintained for this purpose;

(5) production for permitted purposes, of specified types of chemicals which are deemed to pose a particular risk, on a random basis and at an agreed level.

Such systematic international on-site inspection would be agreed to in advance in the Convention and thus would be mandatory in nature.

(e) Conduct ad hoc on-site inspections for fact-finding purposes;

(f) Participate in ad hoc on-site inspection for fact-finding purposes agreed between two or more parties, if requested to do so by one of the parties involved.

All on-site inspections, both systematic and ad hoc, should be carried out according to procedures agreed in advance. An annex to the Convention should specify the objectives for inspections, contain guidelines for inspection procedures, and specify the rights and functions of inspectors and of host-State personnel.

The Consultative Committee should not take any decisions as to whether or not a party is in compliance with the provisions of the Convention.

The Consultative Committee should be organized, and should function, as specified in an annex. The full Committee should meet at agreed intervals.

To assist in carrying out the activities of the Consultative Committee, a Committee Secretariat should be established. The over-all composition of the Secretariat should be generally consistent with the composition of the Consultative Committee. The Committee may, for specific tasks, set up other subordinate bodies which may continue their work between meetings of the Committee.

For the purpose of providing confidence in compliance, each party should be obligated:

(a) To co-operate fully with the Consultative Committee in the exercise of its verification responsibilities;

(b) Not to interfere, through deliberate concealment measures or in any other manner, with the conduct of verification activities. This should apply to activities conducted by the designated representatives of the Consultative Committee or by parties, including those using national technical means at their disposal in a manner consistent with generally recognized principles of international law.

The Consultative Committee should present an annual report on its activities to the States Parties.

Provisions should be included for meeting the expenses of the Committee.

Preparatory Commission

In order to facilitate prompt implementation of the provisions of the Convention after entry into force, an annex to the Convention should provide that a Preparatory Commission would come into existence soon after the Convention is opened for signature. Further views concerning the Preparatory Commission are outlined in Appendix I to this paper.

Consultation and Co-operation; Resolving Compliance Issues

The Convention should contain an undertaking by countries to consult one another and to co-operate in solving any problems which may be raised in relation to the objectives of, or in the application of the provisions of, the convention.

Parties should agree to provide in a timely manner, bilaterally or multilaterally, information to assure confidence in its compliance with the obligations assumed. Such provision of information could be accomplished by, but should not be limited to, inspection of the areas of concern, carried out in accordance with agreed procedures.

Consultation and co-operation might in addition be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter. These international procedures would include the services of appropriate international organizations, as well as the Consultative Committee and its subordinate bodies.

The Convention should establish a sequential process for resolving compliance issues, beginning, if possible, with discussions among the parties directly involved. If initial bilateral efforts were not possible or were unsuccessful, the issue could be discussed by a subordinate body of the Consultative Committee, by the Committee itself, and by the appropriate United Nations body. (Further details on this process is given below.)

Any party which has reason to believe that any other party may not be in compliance with the provisions of the treaty, or which has concerns about a related situation that may be considered ambiguous, should be entitled to request clarification of the actual state of affairs bilaterally or through the Consultative Committee. Such a request, which may include a request for an ad hoc on-site inspection, should be accompanied by an explanation. (A party should not be expected to present conclusive evidence, but only its reasons for concern. Also, any bilateral action taken under this procedure should not preclude recourse to multilateral action by a party.)

The Depositary should be obligated to convene, as soon as possible and in any case within 10 days, upon request by any party, the fact-finding panel of the Consultative Committee (outlined in Appendix II). The panel should promptly conduct a fact-finding inquiry, including any ad hoc on-site inspections considered necessary by at least five members of the panel, and transmit to the Depositary a report on its work, whether interim or final, within six months of the date of the convening of the panel. Reports of the panel should include all views and information presented to the panel during its proceedings. The Depositary should distribute the report to all parties.

Any party whose concerns about compliance have not been resolved by the fact-finding panel within six months should be able to request the Depositary to convene a special meeting of the Consultative Committee to consider a compliance issue. The Depositary should convene such a meeting as soon as possible and in any case within one month of the receipt of the request. Any party should be able to participate in such a meeting, whose functions and rules of procedures should be established in an annex.

Each party receiving a request for an ad hoc on-site inspection from the fact-finding panel or the Consultative Committee should have a stringent obligation to permit the inspection. If a party refuses such a request, the Depositary should promptly notify the Security Council.

The complaint provisions should not be interpreted as affecting the rights and duties of parties under international law, particularly as regards bringing to the attention of the Security Council concerns about compliance with the Convention.

Since questions arising about use of chemical weapons would also raise questions about compliance with the Convention's ban on production and stockpiling of chemical weapons, the fact-finding procedures should enable reports of chemical weapons use to be investigated. Evidence of use should constitute evidence of violation of the Convention.

Domestic Implementation Measures

Each party should: (a) take any measures necessary in accordance with its constitutional processes to implement the Convention, and in particular to prohibit and prevent any activity in violation of the Convention anywhere under its jurisdiction or control, and (b) inform the Consultative Committee of the legislative and administrative measures it had taken to implement the Convention.

Confidence-Building Measures

Further legally binding measures should be developed specifically for the purpose of building confidence in compliance.

Efforts should be made to identify, and place limitations on, any specific protective equipment and activities which are particularly valuable for use of chemical weapons. For confidence-building purposes, information should be provided on activities related to protection against chemical weapons.

Confidence in the declaration of stocks is particularly important for confidence in the effectiveness of the treaty regime as a whole. Additional measures should be developed which will promote, at the earliest possible stage, confidence in the stockpile declaration.

Until the destruction process has been completed, the existence of chemical weapons stocks poses a risk that these chemical weapons may be used in a surprise attack. Confidence-building measures should be devised to provide confirmation that chemical weapons have not been moved from declared storage sites and that any effort to do so would be detected promptly.

IV. OTHER PROVISIONS

Withdrawal

The Convention should contain a withdrawal provision along the lines of those in previous arms control agreements.

Entry into force

To be effective and durable, a future Convention on the prohibition of chemical weapons should be adhered to by as many States as possible. The United States hopes that all States would deem it to be in their interest to join in the Convention. The United States can support an approach under which the Convention would enter into force on ratification by a suitable number of States.

Additional Provisions

The Convention should also contain a preamble and provisions regarding:

- (a) international co-operation in the field of chemistry;
- (b) the relationship with other treaties;
- (c) amendment;
- (d) review conferences;
- (e) duration;
- (f) signature, ratification and accession;
- (g) languages and distribution.

Annexes

The annexes to the Convention should be considered an integral part of the Convention.

Appendix I. Preparatory Commission

The Commission should include one representative from each signatory. The Preparatory Commission should remain in existence until the Convention comes into force and thereafter until the first meeting of the Consultative Committee. Its actions must be consistent with the principles and objectives of the Convention.

Specific provisions should be made for meeting the expenses of the Preparatory Commission.

The Preparatory Commission should:

- (a) elect its own officers, adopt its own rules of procedure; meet as often as necessary, determine its own place of meeting and establish such committees as it deems necessary;
- (b) appoint an executive secretary and staff, who should exercise powers and perform such duties as the Commission determines;
- (c) make arrangements for the first session of the Consultative Committee, including preparing a provisional agenda, drafting rules of procedure, and choosing the site;
- (d) make studies, reports and recommendations for the consideration of the Consultative Committee at its first meeting on procedural matters of concern to the Committee which would require immediate attention, including:
 - (1) financing of the activities for which the Committee is responsible;
 - (2) the programmes and budget for the first year of the Committee's activities;
 - (3) technical problems relevant to advance planning of Committee activities;
 - (4) staffing of the Secretariat;
 - (5) the location of the permanent offices of the Committee.

The Preparatory Commission should submit a comprehensive report on its activities to the Consultative Committee at the Committee's first session.

Appendix II. Fact-finding panel

The Convention should contain an annex with provisions along the lines outlined below.

Within 30 days after entry into force of the Convention the Depositary should establish a fact-finding panel. The panel should undertake to conduct a prompt fact-finding inquiry, including any necessary ad hoc on-site inspections, to make appropriate findings of fact, and to provide expert views, on any problem referred to it by the Depositary upon request by a party.

The fact-finding panel should be composed of not more than 15 members representing parties:

(a) ten members should be appointed by the Depositary after consultation with parties. In selecting these members due regard should be given to ensuring an appropriate geographic balance. Members should be named for a two-year period, with five members being replaced each year;

(b) in addition, those permanent members of the Security Council who are parties to the Convention should also be represented on the fact-finding panel;

(c) each member could be assisted at meetings by one or more technical or other advisers.

The Depositary or his representative should serve as Chairman of the panel, unless the panel decides otherwise. The work of the fact-finding panel should be organized in such a way as to permit it to perform its functions. At the first meeting of the panel, to be held not later than 60 days after entry into force of the Convention, the Depositary should submit recommendations, based on consultations with parties and signatories, as to the organization of the work of the panel, including any necessary technical resources. The panel should decide procedural questions relative to the organization of its work, where possible by consensus but otherwise by a majority of those present and voting. There should be no voting on matters of substance.

Each member should have the right, through the chairman, to request from parties and from international organizations such information and assistance as the member considers desirable for the accomplishment of the work of the panel.

Appendix III. Special Meeting of the Consultative Committee

The Convention should contain an annex with provisions along the lines outlined below. The special meeting of the Consultative Committee provided for in the Convention should undertake to solve any problem which may be raised by the parties requesting the meeting. For this purpose, the assembled parties should be entitled to request and receive any information which a party is in a position to communicate.

The work of the special meeting should be organized in such a way as to permit it to perform the functions set forth above. The assembled parties should decide procedural questions relative to the organization of their work, where possible by consensus, but otherwise by a majority of those present and voting. There should be no voting on findings of fact.

Any party should be able to participate in the meeting. The meeting should be chaired by the Depositary or his representative.

Each party should have the right, through the chairman, to request from States and from international organizations such information and assistance as the party considers desirable for the accomplishment of the work of the meeting.

A summary of the meeting, incorporating all views and information presented during the meeting, should be prepared. The Depositary should distribute the summary to all parties.

DOCUMENT IDENTIQUE A L'ORIGINAL

DOCUMENT IDENTICAL TO THE ORIGINAL