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# INTERNATIONAL REVIEW

## OF THE RED CROSS

**SPECIAL**

The Convention on Bacteriological  
(Biological) Weapons: 25 years on



Published every two months by the  
International Committee of the Red Cross  
for the International Red Cross  
and Red Crescent Movement



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The **ICRC**, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension.

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May-June 1997

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## A note from the Editor

The Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Chemical Weapons Convention) entered into force on 29 April 1997, with 89 States Parties. A total of 165 States had signed the treaty, thus indicating their intention to become party to this international instrument. The importance of the event should not be underestimated. Indeed, the new Convention not only confirms the prohibition of the use of chemical weapons but also forbids their production; furthermore — and this is the most noteworthy innovation — it obliges States to destroy existing stocks. As Peter Herby, from the ICRC Legal Division, pointed out in the March-April 1997 issue of the *Review*,<sup>1</sup> the entry into force of the Chemical Weapons Convention is the crowning achievement of efforts that began with the intensive campaign launched by the ICRC after the First World War to bring about a ban on these horrific weapons.

A large section of this issue of the *Review* is, however, devoted to another means of mass destruction, namely bacteriological (or biological) weapons. Why are we discussing such weapons just when all eyes are turned on the new Chemical Weapons Convention? Quite simply because the banning of bacteriological (biological) weapons by the Convention of 10 April 1972 should not be forgotten, as these devices too have an enormous potential for destruction. The *Review* has therefore invited a number of experts to re-examine this Convention and highlight its strengths and weaknesses. All of them stress the great importance of this treaty, concluded in the very midst of the Cold War, while drawing attention to its shortcomings, particularly as regards verification and implementation.

This issue of the *Review* also looks back on the death of six ICRC delegates in Chechnya (Russian Federation) in December 1996. The

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<sup>1</sup> *IRRC*, No. 317, March-April 1997, p. 208.

President of the Norwegian Red Cross describes the way in which her National Society handled the aftermath of the tragedy in which two of its nurses, seconded to the ICRC, lost their lives. The ICRC doctor in charge of stress management for staff members focuses on the survivors, emphasizing how important it is for them to receive proper care and attention if they are to overcome their harrowing experience and be spared long-term after-effects.

**The Review**

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# The Biological Weapons Convention

## An overview

by Jozef Goldblat

### Introduction

Since ancient times, the use in war of poison and pathogenic agents has been considered a treacherous practice. It was condemned by international declarations and treaties, notably by the 1907 Hague Convention (IV) respecting the laws and customs of war on land.<sup>1</sup> Efforts to strengthen this prohibition resulted in the conclusion, in 1925, of the Geneva Protocol which banned the use of asphyxiating, poisonous or other gases, usually referred to as chemical weapons, as well as the use of bacteriological methods of warfare. The latter are now understood to include not only bacteria, but also other biological agents, such as viruses or rickettsiae which were unknown at the time the Geneva Protocol was signed. (On 1 January 1997, 132 States were party to this Protocol.) However, the Geneva Protocol did not prohibit the development, production and stockpiling of chemical and biological weapons. Attempts to achieve a complete ban were made in the 1930s in the framework of the League of Nations, but with no success.

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<sup>1</sup> For the text of this Convention, as well as the texts of the 1925 Geneva Protocol and the 1972 Biological Weapons Convention, which are discussed later in this article, see J. Goldblat, *Arms control: A guide to negotiations and agreements*, London, Thousand Oaks, New Delhi, PRIO and SAGE Publications, 1994, pp. 257, 277 and 370, or D. Schindler and J. Toman (ed), *The laws of armed conflicts*, 3rd ed., Martinus Nijhoff Publishers/Henry Dunant Institute, Dordrecht/Geneva, 1988.

Shortly after World War II, the United Nations called for the elimination of all weapons “adaptable to mass destruction”.<sup>2</sup> Biological and chemical weapons were included in this category of arms along with atomic and radiological weapons.<sup>3</sup> Debates on their prohibition took place in the 1950s and 1960s in the context of proposals for general disarmament but, again, the debate remained inconclusive.

As a separate issue, the prohibition of chemical and biological weapons appeared on the agenda of the Eighteen-Nation Committee on Disarmament in 1968. One year later, the United Nations published an influential report on the problems of chemical and biological warfare,<sup>4</sup> and the question received special attention at the UN General Assembly. The UN report concluded that certain chemical and biological weapons cannot be confined in their effects in space and time and might have grave and irreversible consequences for man and nature. This would apply to both the attacking and the attacked nations. A report by the World Health Organization (WHO) on the health aspects of chemical and biological weapons, issued in 1970, stated that these weapons pose a special threat to civilians, and that the effects of their use are subject to a high degree of uncertainty and unpredictability.<sup>5</sup>

Although simultaneous prohibition of chemical and biological weapons had been considered for many years as both desirable and necessary, towards the end of the 1960s it became clear that such a prohibition was not achievable. In the Eighteen-Nation Committee on Disarmament, where the issue was under discussion, the United Kingdom and a few other Western countries adopted the view that biological weapons should be banned first. The Socialist and many neutral and non-aligned States were opposed to a separate treatment of these weapons, but finally accepted the Western approach. A factor which facilitated this development was the unilateral renunciation of biological weapons by the United States, announced on 25 November 1969, and the decision by the US government to destroy its stockpile of these weapons, irrespective of a possible future international agreement.<sup>6</sup> On 14 February 1970, the United States also

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<sup>2</sup> United Nations General Assembly Resolution No.1, 24 January 1946.

<sup>3</sup> As decided in 1948 by the UN Commission on Conventional Armaments, a subsidiary body of the UN Security Council (United Nations document S/C.3/32/Rev.1).

<sup>4</sup> United Nations, *Chemical and bacteriological (biological) weapons and the effects of their possible use*, New York, 1969.

<sup>5</sup> World Health Organization, *Health aspects of the use of chemical and biological weapons*, Geneva, 1970.

<sup>6</sup> ACDA, *Documents on disarmament 1969*, Washington DC, 1970, pp. 592-93.

formally renounced the production, stockpiling and use of toxins for war purposes. It stated that military programmes for biological agents and toxins would be confined to research and development for defensive purposes.<sup>7</sup> Subsequent negotiations on a global prohibition of biological weapons led to an international agreement. On 16 December 1971, the text of the convention worked out by the Conference of the Committee on Disarmament (CCD), the successor of the Eighteen-Nation Committee on Disarmament, was commended by the UN General Assembly.<sup>8</sup>

### **A critical analysis of the BW Convention**

On 10 April 1972, the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction* was opened for signature. It entered into force on 26 March 1975, after the deposit of the instruments of ratification by 22 signatory governments, including the governments of the Soviet Union, the United Kingdom and the United States, designated as depositaries. By 1 January 1997, the BW Convention had been joined by 140 States, including all the permanent members of the United Nations Security Council.

#### *Scope of the obligations*

The BW Convention prohibits the development, production, stockpiling or acquisition by other means, or retention of microbial or other biological agents or toxins, as well as of weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict (Article I).

The Convention has not defined the prohibited items nor the targets to which the prohibitions relate. There exists, however, an authoritative definition of biological agents formulated by the WHO. In its 1970 report, mentioned above, the WHO described biological agents as those that depend for their effects on multiplication within the target organism and are intended for use in war to cause disease or death in man, animals or plants; they may be transmissible or non-transmissible. Toxins are poisonous products of organisms; unlike biological agents, they are inanimate

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<sup>7</sup> Office of the White House Press Secretary, *Press release*, Washington DC, 14 February 1970.

<sup>8</sup> United Nations document A/2826(XXVI).

and not capable of reproducing themselves. The Convention applies to all natural or artificially created toxins, "whatever their origin or method of production" (Article I). It thus covers toxins produced biologically, as well as those produced by chemical synthesis. Since toxins are chemicals by nature, their inclusion in the BW Convention was a step towards the projected ban on chemical weapons.

Since the signing of the Convention, there have been no disputes among the parties regarding the definition of biological agents or toxins, but the lack of definition of "weapons, equipment or means of delivery" led to a controversy. In ratifying the BW Convention, Switzerland reserved the right to decide for itself which items fall within the definition of weapons, equipment or means of delivery designed to use biological agents or toxins. The United States entered an objection to this reservation, claiming that it would not be appropriate for States to reserve unilaterally the right to take such decisions. In its opinion, the prohibited items are those the design of which indicates that they could have no other use than that specified in the Convention, or that they were intended to be capable of the use specified.<sup>9</sup> There are, however, few weapons, equipment or means of delivery which would meet such criteria.

Under the BW Convention, the prohibition to develop, produce, stock-pile or otherwise acquire or retain biological agents and toxins is not absolute. It applies only to types and to quantities that have no justification for prophylactic, protective or other peaceful purposes. Retention, production or acquisition by other means of certain quantities of biological agents and toxins may thus continue, and there may be testing in laboratories and even in the field. According to the clarification given in the course of the negotiations, the term "prophylactic" encompasses medical activities, such as diagnosis, therapy and immunization, whereas the term "protective" covers the development of protective masks and clothing, air and water filtration systems, detection and warning devices, and decontamination equipment, and must not be interpreted as permitting possession of biological agents and toxins for defence, retaliation or deterrence.<sup>10</sup> The term "other peaceful purposes" has remained unclear. One can assume that it includes scientific experimentation.

There are no provisions in the BW Convention restricting biological research activities. One reason for this omission may be that research

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<sup>9</sup> This interpretation was contained in the note of 18 August 1976 addressed by the US Secretary of State to the Swiss government.

<sup>10</sup> Disarmament Conference document CCD/PV. 542.

aimed at developing agents for civilian purposes is difficult to distinguish from research serving military purposes, whether defensive or offensive. Moreover, in the biological field it is difficult to draw a dividing line between research and development; a country can develop warfare agents in research facilities. Once developed, these agents can be rapidly produced in significant quantities. This circumstance and the express authorization to engage in production (for peaceful purposes) of biological agents and toxins that may be used in warfare create a risk that the provisions of the Convention will be circumvented. The stipulation that any development, production, stockpiling or retention of biological agents or toxins must be justified does not carry sufficient weight. There are no agreed standards or criteria for the quantities of agents or toxins that may be needed by different States for the different purposes recognized by the Convention. The parties are not even obliged to declare the types and amounts of agents or toxins they possess and the use they make of them. The system of material accountancy that is useful in the verification of certain measures of arms control is not practicable in the case of biological or toxin agents. It is thus not evident how much of a given prohibited substance stocked by a given country would constitute a violation of the Convention. The secrecy surrounding biological research activities and, in particular, the maintenance of defensive preparations, which at certain stages may be indistinguishable from offensive preparations, could generate suspicions leading to allegations of breaches.

A separate article of the Convention prohibits the transfer of agents, toxins, weapons, equipment or means of delivery, specified above, to "any recipient whatsoever", that is, to any State or group of States or international organizations, as well as sub-national groups or individuals. The provision of assistance, encouragement or inducement to acquire the banned weapons is likewise forbidden (Article III). These non-proliferation clauses appear hard to reconcile with the commitment of the parties to engage in the "fullest possible" exchange of biological agents and toxins, and of equipment for the processing, use or production of such agents and toxins for peaceful ends (Article X). For all such materials and technologies, as well as expertise, are dual-use and as such widespread. To reduce the risk of misuse, an informal forum of industrialized countries, known as the Australia Group (after the country which took the initiative to convene it), decided to apply certain restrictions on transfers of items relevant to the BW Convention.<sup>11</sup>

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<sup>11</sup> The Australia Group was founded in 1985, in the aftermath of chemical weapons' use in the Iran-Iraq war, to constrain the trade in the technologies and materials of chemical warfare. In 1990, its purview was expanded to include biological weapons.

Many nations consider the control arrangements adopted by the Group as complementary to the BW Convention, because an export may be precluded if there is particular concern about its potential diversion for weapon purposes. Other nations consider these arrangements to be discriminatory, because they chiefly affect the developing world. The latter would like to see the Australia Group disbanded and have all export restrictions that might be agreed among all parties incorporated in a legally binding verification document.

Parties to the BW Convention have undertaken to cooperate in the further development and application of scientific discoveries in the field of biology for the prevention of diseases or for other peaceful purposes (Article X). However, since the Convention is essentially a disarmament treaty, it can hardly serve as an effective instrument for such cooperation. The participants in the latest BW Convention Review Conference acknowledged the existence of an increasing gap between the developed and developing countries in the field of biotechnology, genetic engineering, microbiology and other related areas.<sup>12</sup>

The most remarkable feature of the BW Convention is the disarmament obligation of the parties: to destroy or divert to peaceful purposes all agents, toxins, weapons, equipment and means of delivery (Article II). The BW Convention was the first treaty providing for the abolition of an entire category of arms. The envisaged destruction or diversion was to take place not later than nine months after entry into force of the Convention, it being understood that for States acceding to the Convention after its entry into force the destruction or diversion was to be completed upon accession. All the necessary safety precautions are to be observed during the destruction operations to protect "populations" (that is, not only the population of the country carrying out these operations) as well as the environment in general. The United States was the only State to announce that its stockpile of biological and toxin agents and all associated munitions had been destroyed, except for small quantities for laboratory defensive research purposes. It also made it known that former biological warfare facilities had been converted to medical research centres.<sup>13</sup> No other State has made such an announcement. The United Kingdom said that it had no stocks of biological weapons.<sup>14</sup> The Soviet Union stated that

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<sup>12</sup> Fourth Review Conference of the Parties to the BW Convention, document BWC/CONF.IV/9.

<sup>13</sup> Disarmament Conference documents CCD/PV. 585 and 655.

<sup>14</sup> Disarmament Conference document CCD/PV. 659.

it did not possess any biological agents or toxins, weapons, equipment or means of delivery, as prohibited by the Convention,<sup>15</sup> but this statement turned out to be untrue (see below).

*Relationship with the 1925 Geneva Protocol*

The BW Convention does not expressly prohibit the use of biological or toxin weapons. It only states that the obligations assumed under the 1925 Geneva Protocol, which prohibits such use, remain valid (Article VIII). However, adherents to the BW Convention are not necessarily parties to the Geneva Protocol. Moreover, the Convention stipulates that nothing in its provisions shall be interpreted as in any way limiting or detracting from the obligations assumed by States under the Geneva Protocol. This implies that the reservations to the Protocol, which form part of the obligations contracted by the parties, continue to exist. Insofar as the reservations concern the right to employ the banned weapons against non-parties or in retaliation against a party violating the Protocol, they are incompatible with the obligation of the parties to the Convention never “in any circumstances” to acquire biological weapons (Article I). They also contradict the parties’ expressed determination to exclude “completely” the possibility of biological agents and toxins being used as weapons (ninth preambular paragraph). It is for this reason that, in acceding to the BW Convention in 1984, China declared that the absence of an explicit prohibition on the use of biological weapons was a defect which should be corrected “at an appropriate time”. Indeed, over the years, a number of States have withdrawn their reservations to the Geneva Protocol, either with regard either to biological weapons alone, or to both biological and chemical weapons.<sup>16</sup> They have thereby recognized that since the retention and production of biological weapons are banned, so must, by implication, be their use, because use presupposes possession.

Nonetheless, in 1996, Iran proposed that the Convention (its title and Article I) be amended so as to make the ban on use explicit rather than implicit.<sup>17</sup> An amendment submitted by a party enters into force for each

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<sup>15</sup> Disarmament Conference document CCD/PV. 666.

<sup>16</sup> Ireland (1972), Barbados (1976), Australia (1986), New Zealand (1989), Czechoslovakia (1990), Mongolia (1990), Bulgaria (1991), Canada (1991), Chile (1991), Romania (1991), United Kingdom (1991), Spain (1992), Russia (1992), South Africa (1996), France (1996), Belgium (1997).

<sup>17</sup> Fourth Review Conference of the Parties to the BW Convention, document BWC/CONF.IV/COW/WP.2.

State accepting it upon its acceptance by a majority of the parties (Article XI). However, the Iranian proposal is opposed by many States which fear the risks of having other provisions of the Convention opened up for renegotiation as well. Some are apprehensive that States not accepting the Iranian-proposed amendment would appear to condone the use of biological weapons under certain circumstances, and since use would be possible only after breaking the BW Convention, the absolute character of the Convention prohibitions would be called into question. What seems less objectionable than an amendment is a solemn declaration of understanding by all parties that the use of microbial or other biological agents or toxins in any way that is not consistent with prophylactic, protective or other peaceful purposes, would be a violation of the Convention.

#### *Verification of compliance*

No specific measures are set forth in the BW Convention to verify compliance with the obligation not to develop, produce, stockpile or otherwise acquire or retain biological agents or toxins for "hostile purposes". Indeed, hostile intentions, like any other intentions, cannot be verified. As mentioned above, the parties are not obliged to declare biological agents or toxins used in non-prohibited activities. Nor are they obliged to declare all laboratories engaged in research and development of substances that could be used as agents of warfare. This is a serious lacuna, because advances in biotechnology have made it possible to produce large quantities of potent toxic substances by a small number of people, in a short period of time, and in facilities which are difficult to identify. Such substances may be stored in inconspicuous repositories and eventually "weaponized", that is, filled into missiles, bombs or spray systems. Consequently, a violator could relatively easily break out from the Convention. What is even more incongruous, States joining the Convention are not required to declare the possession or non-possession of the banned weapons. Nor are States, which may have declared such possession, obligated to prove that they have destroyed the weapons or diverted them to peaceful purposes. The opening-up by the United States of some of its biological facilities for public inspection and international visitors, following the destruction of its stocks, was a voluntary act.<sup>18</sup>

National technical means of verification cannot be relied upon to verify in other countries the non-development and non-production of

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<sup>18</sup> US Congressional Record-Senate, 9 March 1971.

biological agents and toxins for hostile purposes, and there are at present no international means to perform such tasks. Illegal possession of the banned weapons could be demonstrated indirectly through investigations which the UN Secretary-General is authorized to carry out in response to reports that may be brought to his attention on the possible use of chemical and biological or toxin weapons entailing a violation of the Geneva Protocol or of any other applicable rule of international treaty or customary law.<sup>19</sup> However, such investigations, which may be initiated by UN member States (but not by individuals or non-governmental organizations), could also prove inconclusive, because the diseases allegedly caused by biological weapons might be similar to those occurring naturally, and because it might be difficult for the investigators to determine the identity of the aggressor.

Each party is obliged to take measures, in accordance with its constitutional processes, to prohibit and prevent the activities banned by the Convention from taking place within its territory and under its jurisdiction or control anywhere (Article IV). The term "measures" applies to legislative, administrative or regulatory measures, whereas the term "under its jurisdiction or control" (also used in Article II referred to above) extends the bans to non-self-governing territories administered by States parties, and to territories under military occupation. "Anywhere" implies that even transnational corporations operating in the territories of non-parties to the Convention are covered by the prohibitions if they remain under the jurisdiction or control of the parties. Not all parties, however, have taken the steps required to ensure domestic compliance with the Convention.<sup>20</sup> This is all the more regrettable in that biological agents appear to be becoming attractive, for terrorist purposes, to players other than States. According to reliable reports, the Aum Shinrikyo sect, which released nerve gas in a Tokyo subway train, had also been working on the development of biological weapons and in 1995, shortly before the arrest of its leader, was close to completing this programme.<sup>21</sup>

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<sup>19</sup> United Nations Security Council Resolution 620 (1988). Guidelines and procedures for United Nations investigations were developed by a group of experts and endorsed by the United Nations General Assembly Resolution 45/57C(1990).

<sup>20</sup> Even before the BW Convention entered into force, France — not a signatory — adopted a law (No. 72-467 of 9 June 1972) prohibiting biological and toxin weapons on its territory. The wording of its main provisions is almost identical to that of the Convention. Severe punishment of violators by fines and imprisonment is provided for, and elaborate procedures are intended to ensure that the prohibitions are respected. France acceded to the Convention only in 1984.

<sup>21</sup> United States Senate Permanent Sub-Committee on Investigations, *Hearings on global proliferation of weapons of mass destruction: A case study on Aum Shinrikyo*, 31 October 1995.

On the international level, the parties have undertaken to consult one another and to cooperate in solving problems relating to the objective or the application of the provisions of the Convention. Such consultation and cooperation may also take place “through appropriate international procedures within the framework of the United Nations and in accordance with its Charter” (Article V). Since the Convention does not explain what “appropriate international procedures” amount to, the participants in the BW Review Conferences agreed that such procedures should include the right of any party to request that a “consultative meeting”, open to all parties, be convened promptly at expert level.<sup>22</sup>

The parties have the right to lodge with the UN Security Council complaints regarding breaches of the Convention. They have undertaken to cooperate in carrying out any investigation which the Security Council may initiate on the basis of the complaint received, and they are entitled to be informed of the results of such investigation. Each complaint must contain “all possible evidence” confirming its validity (Article VI). However, only a few States have the means to collect such evidence. Others may not be in a position to do so, and could not always count on obtaining relevant information from foreign sources, even from their allies. There is thus a possibility that, for political or other reasons (for example, unwillingness to disclose the nature or the source of the evidence), certain powers will deliberately overlook transgressions committed by some States to the detriment of others. A State which suspects a violation, but lacks reliable information and therefore does not possess sufficient evidence, may have its request for consideration rejected by the Security Council. Even if the Security Council agreed to discuss a charge which did not satisfy the above requirement, there would always be a danger that the case would not receive proper examination. For the Council is not entitled (or equipped) by the UN Charter to check compliance with arms control agreements; nor is it empowered to take action against violators of such agreements. Only when the Council finds that the situation created by the violation can lead to international friction may it recommend, under Chapter VI of the UN Charter, “appropriate procedures or methods of adjustment” to the State or States concerned. This may not always be the case.

In 1992, the President of the UN Security Council stated, on behalf of its members, that proliferation of weapons of mass destruction, which

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<sup>22</sup> First and Second Biological Weapons Convention Review Conferences, documents BWC/CONF.I/10 and BWC/CONF.II/13.

include biological weapons, would constitute a “threat to international peace and security”, and that appropriate action would be taken to prevent it.<sup>23</sup> That action could include the application of coercive measures under Chapter VII of the UN Charter. However, the statement of the President of the Security Council has no binding legal effect. Even if it were transformed into a formal decision of the Council to have such effect, it would not necessarily enable the Council to act in all pertinent instances. The power of veto possessed by the permanent members of the Council can always be used to protect violators of treaties, especially when the violator happens to be a great power. A suggestion, put forward during the BW negotiations, that the Security Council’s permanent members should waive their right of veto at least with regard to resolutions concerning investigations of complaints, was not accepted. This is why proposals have been repeatedly made that a representative body of States parties — rather than the United Nations — should deal with investigations of alleged breaches of the BW Convention. If, in 1982, the UN General Assembly requested the UN Secretary-General to investigate alleged violations of the ban on use of chemical and biological weapons (see above), it did so primarily because the ban, as embodied in the 1925 Geneva Protocol, is widely considered to form part of international customary law to be observed by all States, parties and non-parties to relevant treaties alike.<sup>24</sup>

The circumstance that the fact-finding stage of the complaints procedure is not clearly separated from the stage of legal/political consideration and judgment is a serious shortcoming of the BW Convention. It makes it difficult to ascertain a violation. Moreover, a State under suspicion of having violated its obligations has no international impartial mechanism to turn to in order to free itself from that suspicion. Ill-considered allegations can therefore be made with impunity.

In the case of an established violation, parties would have to provide or support assistance, in accordance with the UN Charter, to a party which so requested, if the Security Council decided that this party had been exposed to danger as a result of the violation (Article VII). It appears from the negotiating history that assistance was meant primarily as action of

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<sup>23</sup> United Nations Security Council document S/23500, 31 January 1992.

<sup>24</sup> See S. Sur, “La résolution A/37/98 D du 13 décembre 1982 et les procédures d’enquête en cas d’usage allégué d’armes chimiques et bactériologiques (biologiques)”, *Annuaire français de droit international (AFDI)*, 1984, pp. 93-109.

a medical or other humanitarian or relief nature. In the understanding of at least the United Kingdom and the United States, it would be for each party to decide whether it could or was prepared to supply the requested aid.<sup>25</sup> In other words, assistance would be optional, not obligatory: it could be refused without incurring the charge of non-compliance.

The Convention provided for a review conference of the parties to be convened five years after its entry into force (Article XII). Later, the parties decided to meet at least every five years; these Conferences review the operation of the Convention, taking into account the relevant scientific and technological developments.

### **Allegations of non-compliance**

Several allegations of non-compliance with the BW Convention have been made since the Convention entered into force.<sup>26</sup> Those which received most attention were the “Sverdlovsk” and “Yellow Rain” cases.

#### *The Sverdlovsk case*

In March 1980, the United States accused the Soviet Union of maintaining an offensive biological weapons programme which included production, weaponization and stockpiling of biological warfare agents. The accusation was based on the suspected airborne release of anthrax spores from a Soviet biological facility, which caused an outbreak of anthrax in the city of Sverdlovsk in April and May 1979.<sup>27</sup> The Soviet Union confirmed that there had been an outbreak of anthrax in the Sverdlovsk region, but attributed this occurrence to the sale of anthrax-contaminated meat in violation of veterinary regulations.<sup>28</sup> It provided little additional information. The issue was the subject of bilateral US/Soviet consultations, and various groups of scientists met to evaluate the Soviet account of the incident,<sup>29</sup> but the US government

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<sup>25</sup> Disarmament Conference documents CCD/PV. 542 and CCD/PV. 544.

<sup>26</sup> Descriptions of these allegations can be found in *SIPRI Yearbooks*. Allegations of use of biological means of warfare had also been made before the BW Convention entered into force.

<sup>27</sup> New York Times, 19 March 1980.

<sup>28</sup> First Biological Weapons Convention Review Conference document BWC/CONF.I/SR.12 para 29.

<sup>29</sup> For detailed descriptions of the case see M. Meselson, “The biological weapons convention and the Sverdlovsk anthrax outbreak of 1979”, *Federation of American scientists public interest report*, Vol. 41(7), Washington D.C., September 1988; E. Harris, “Sverdlovsk and yellow rain: Two cases of Soviet noncompliance?”, *International security*,

maintained its accusation.<sup>30</sup> In 1992, the Russian authorities admitted that a breach of the BW Convention had been committed. They undertook, under a decree issued by the President of the Russian Federation, to open secret military research centres to international inspection and convert them to civilian use.<sup>31</sup>

*The "Yellow Rain" case*

In 1981, the US government accused the Soviet Union of being involved in the production, transfer and use of trichothecene mycotoxins in Laos, Kampuchea and Afghanistan in violation of both the 1925 Geneva Protocol and the BW Convention.<sup>32</sup> The allegation was categorically rejected by the Soviet Union. US charges were based on reports by alleged victims and eye-witnesses who stated that since the autumn of 1978 enemy aircraft had been spraying a toxic yellow material (hence the name of the case). Chemical analyses of samples of the yellow material and medical checks of the affected persons were conducted to substantiate the case. However, as the investigations proceeded, with the involvement of laboratories in different countries and a careful scrutiny of the eye-witnesses' reports, the reliability of the evidence was increasingly questioned.<sup>33</sup> Some authoritative scientists found that the yellow substance consisted to a large extent of excrements of wild honeybees, and extensive analytical efforts in several laboratories failed to confirm the initial positive reports of trichothecenes.<sup>34</sup>

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Vol. 11(4), spring 1987, pp. 45-47; Ch. C. Flowerree, "Possible implications of the anthrax outbreak in Sverdlovsk on future verification of the Biological Weapons Convention: a U.S. perspective"; S.J. Lundin (ed), *Views on possible verification measures for the Biological Weapons Convention*, SIPRI, Oxford University Press, Oxford, 1991; V. Issraelyan, "Possible implications of the anthrax outbreak in Sverdlovsk on future verification of the Biological Weapons Convention: a Soviet perspective", *ibid*.

<sup>30</sup> The White House, *Report to the Congress on Soviet noncompliance with arms control agreements*, Washington D.C., 23 February 1990.

<sup>31</sup> *Chemical Weapons Convention Bulletin*, No.16, June 1992, pp.18-19.

<sup>32</sup> The allegation was in public for the first time by Secretary of State Haig in September 1981 (US Department of State, press release, 13 September 1981). More details were given in: US Department of State, *Chemical warfare in Southeast Asia and Afghanistan*, Special Report No.98, Report to the Congress from Secretary of State Alexander M. Haig, Jr., March 22, 1982; and US Department of State, *Chemical warfare in Southeast Asia and Afghanistan: An update*, Special Report No.104, by Secretary of State George P. Shultz, November 11, 1982.

<sup>33</sup> A UN expert team, dispatched by the Secretary-General in 1981 and 1982, was not able to shed more light on the issue (UN documents A/36/613 Annex and A/37/259).

<sup>34</sup> For an analysis of the Yellow Rain case, disputing the allegations, see J. P. Robinson, J. Guillemin, M. Meselson, "Yellow rain in Southeast Asia: The story collapses", S. Wright (ed), *Preventing a biological arms race*, MIT Press, Cambridge Mass., 1990.

## Assessment

As compared to other arms control agreements, the negotiations for the BW Convention — conducted separately from those on chemical weapons with which they had been associated for decades — encountered few obstacles and were concluded relatively quickly, in a common taboo on use. The reasons were as follows.

Biological weapons are unpredictable in their effects and of limited value in combat.<sup>35</sup> Since cheating under a BW Convention could not yield significant military advantages to the cheating party, a ban on biological weapons without verification of compliance was considered by the negotiators to be free of serious security risks. By contrast, chemical weapons are predictable, capable of producing immediate effects and, consequently, useful in combat. Banning their possession without elaborate and intrusive methods of verification was, therefore, deemed impossible. Most states which joined the BW Convention did so on condition that the complete prohibition of biological weapons would be recognized as a step towards a complete prohibition of chemical weapons (Preamble and Article XI).

The aim of the BW Convention was not so much to remove an immediate peril, as to eliminate the possibility that scientific and technological advances, modifying the conditions of production, storage or use of biological weapons, would make these weapons militarily attractive. Indeed, progress in biotechnology is making it increasingly possible to “improve” upon known biological agents. Normally harmless organisms which do not cause diseases can be modified so as to become highly toxic and produce diseases for which there is no known treatment. But the Convention is comprehensive enough to cover all relevant scientific and technological developments, including biological agents and toxins that could result from genetic engineering processes.

The disclosure by the UN Special Commission of an extensive biological weapons programme in Iraq,<sup>36</sup> as well as reports that certain other nations, too, have or are seeking to acquire a biological weapon capability,<sup>37</sup> indicate that the threat of biological warfare remains real. Since the

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<sup>35</sup> They might, perhaps, be militarily more useful for area denial.

<sup>36</sup> United Nations Security Council document S/1995/864.

<sup>37</sup> Statement by the Director of the US Arms Control and Disarmament Agency to the BW Convention Review Conference, 26 November 1996.

BW Convention has no instruments to check compliance, there is a need for verification machinery to deter would-be violators. Negotiations for a verification protocol, or another legally binding document strengthening the Convention with measures of control, have been going on in an ad hoc group of States, open to all parties, since January 1995. So far, however, agreement has proved elusive. Until it is reached, parties to the Convention are expected to implement the confidence-building measures they have agreed at their Review Conferences. The most important among them are measures enhancing the transparency of activities involving biological agents and toxins. They include exchanges of information on facilities and research programmes relevant to the Convention, on vaccine production, and on significant and unusual outbreaks of diseases.

Eventually, to make possible a differentiation between treaty-prohibited and treaty-permitted activities, the objects of the prohibitions will have to be more clearly defined, and the criteria necessary to assess compliance will have to be unambiguously established. Moreover, apart from short-notice visits to declared sites, on-site inspections of undeclared sites will have to be accepted without reservation by all parties. It is, of course, understood that sensitive commercial proprietary information and national security information, not directly related to the BW Convention, must be reliably protected. A special organization will be needed to oversee the implementation of the parties' obligations.



# The prohibition of biological weapons

## Current activities and future prospects

by **Graham S. Pearson**

### Introduction

Deliberately induced disease or biological warfare is a source of increasing concern as we approach the twenty-first century, as its prevention is central to the security, health and well-being of the global community. In the simplest terms, biological warfare means placing the health of humans, animals and plants at risk from disease deliberately induced as a hostile act. Disease has caused more casualties in all wars than actual weapons of war and there is increasing — and justified — worldwide concern about new and emerging diseases.<sup>1</sup> As the world population continues to increase, new areas of land are occupied and there is greater overcrowding in populated areas, with an ever-greater demand for both plants and animals as sources of food. This creates more opportunities for new or old diseases to spread among humans, animals and plants, with all the consequential socio-economic damage to the countries concerned.

Awareness of the susceptibility of humans, animals and plants to disease is increasing. Headline reports of plague in India in September 1994 and of Ebola fever in Zaire in April 1995 show how the spread of disease can prompt widespread if not worldwide alarm and concern. A World Health Organization (WHO) team visited India in October 1994

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<sup>1</sup> Laurie Garrett, *The coming plague: Newly emerging diseases in a world out of balance*, Farrar, Strauss and Giroux, New York, 1994.

and reported that there had been an outbreak of bubonic plague in the town of Beed some distance inland from Bombay, followed by an outbreak of pneumonic plague in the city of Surat on the coast some 250 km north of Bombay.<sup>2</sup> In the Ebola outbreak, WHO had reported 93 cases and 86 deaths less than two months after the start of the outbreak, a similar pattern to the earlier 1976 outbreak in which 290 people died out of 318 infected — a 90% mortality rate.<sup>3</sup> Animals and plants are no less vulnerable. Livestock and crops can suffer devastating losses. In these times of universal air travel an infectious disease that breaks out in one country on one continent can all too readily reach countries on other continents, sometimes before the signs of the initial outbreak have been recognized. Outbreaks of disease can understandably lead to attempts to seal off areas and regions where they have occurred.

It is therefore hardly surprising that WHO chose to devote its 1996 World Health Report to the subject: “Fighting disease, fostering development”.<sup>4</sup> In the foreword, WHO Director-General Hiroshi Nakajima not only says: “We stand on the threshold of a new era in which hundreds of millions of people will at last be safe from some of the world’s most terrible diseases”, but goes on to warn: “We also stand on the brink of a global crisis in infectious diseases. No country is safe from them. No country can any longer afford to ignore their threat”. This worldwide concern about new and emerging diseases was expressed at the May 1995 World Health Assembly, which passed a resolution calling for “strategies enabling rapid national and international action to investigate and combat infectious disease outbreaks and epidemics”.<sup>5</sup> The resolution recognized that new and re-emerging diseases are of growing national and international concern, as the speed and ease of air travel means that infected individuals can reach any other country within 24 hours, well before the symptoms of the disease become apparent. Similarly, a biological attack can be carried out covertly from far away, long before it is known that such an attack has occurred. And such attacks may be aimed at livestock and crops, resulting in major socio-economic damage.

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<sup>2</sup> “India ponders the flaws exposed by plague...”, *Nature*, No. 372, 10 November 1994, p. 119. See also “India confirms identity of plague”, *Nature*, No. 373, 23 February 1995, p. 650.

<sup>3</sup> “The hobbled horseman”, *The Economist*, 20 May 1995, pp. 83-89, and “Disease fights back”, *ibid.*, pp. 15-16.

<sup>4</sup> *World Health Report 1996: Fighting disease, fostering development*, World Health Organization, Geneva, 1996.

<sup>5</sup> Forty-eighth World Health Assembly, *Communicable diseases prevention and control: new, emerging and re-emerging infectious diseases*, World Health Organization, Geneva, Resolution WHA 48.13, 12 May 1995.

The feasibility of biological warfare has been proven by all sorts of means short of actual use in war and has been demonstrated to a greater extent than had been the case for nuclear weapons before they were used on Hiroshima and Nagasaki. Although there is no proof that biological weapons have been used in war in recent years, it is evident that they were used by Japan against China in the 1930s.<sup>6</sup> It should be emphasized that the work carried out on biological weapons in the 1950s and 1960s is still valid today, and that advances in biotechnology over the last few decades have simply made such weapons easier to produce and use. When the United States decided to abandon its offensive biological warfare programme in 1969, it was widely perceived that such weapons were of marginal military utility even though research and development programmes in the United States and the United Kingdom had demonstrated the opposite. The reasons for this perception are unclear. The spread of disease in the environment is not questioned and tests have demonstrated the credibility of biological attacks. As for inadvertent attacks on one's own forces, this is only a matter of target selection and meteorological prediction, both of which have become significantly more reliable over recent decades.

Many comparisons of the effects of biological, chemical and nuclear weapons have been made over the years;<sup>7</sup> all demonstrate that the effects of a biological attack are much greater than those of a chemical attack and are as great as if not greater than those resulting from a nuclear attack. That is why biological weapons are sometimes referred to as the poor man's atomic bomb; the costs associated with a biological weapons programme are so much lower — and are being reduced further by advances in microbiology and biotechnology — than those of a nuclear weapons programme. There is therefore a real risk that as the Chemical

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<sup>6</sup> Sheldon H. Harris, *Factories of death: Japanese biological warfare 1932-45 and the American cover up*, Routledge, London and New York, 1994.

<sup>7</sup> See, for example, Report of the Secretary-General, *Chemical and bacteriological (biological) weapons and the effects of their possible use*, A/7575/Rev.1, S/9292/Rev.1, United Nations, New York, 1969; United States Congress, Office of Technology Assessment, *Proliferation of weapons of mass destruction: Assessing the risks*, OTA-ISC-559, S/N 052-003-01335-5, dated 5 August 1993. United States Congress, Office of Technology Assessment, Background Paper, *Technologies underlying weapons of mass destruction*, OTA-BP-ISC-115, S/N 052-003-01361-4, dated December 1993; Stephen Fetter, "Ballistic missiles and weapons of mass destruction: What is the threat? What should be done?", *International Security*, No. 16/1, Summer 1991, p. 5; and Karl Lowe et al., *Potential values of a simple BW protective mask*, Institute for Defense Analyses, IDA Paper P-3077, September 1995.

Weapons Convention makes chemical weapons far more difficult to acquire, and considering that the quantities needed are so much greater, biological weapons may come to be seen as an attractive alternative<sup>8</sup> and their proliferation may become more of a problem, especially if action is not taken urgently to strengthen the Biological and Toxin Weapons Convention (BWC), which prohibits the development, production, acquisition and stockpiling of biological weapons.<sup>9</sup>

There is therefore no doubt in technical terms that biological warfare is a credible option. It is notable that although the UK, the US and the former Soviet Union are the co-depositaries of the Biological and Toxin Weapons Convention, President Yeltsin admitted in April 1992 that the Soviet Union/Russia had continued an offensive programme up to 1992. The fact that the Soviet Union continued such a programme for 20 years after signing the BWC clearly indicates that it saw biological warfare as a worthwhile capability. There is continuing concern on this count as the trilateral US/UK/Russian process agreed in 1992 continues with few public signs of progress.<sup>10</sup> The US Arms Control and Disarmament Agency Report submitted in July 1996 stated that "the progress has not resolved all US concerns".<sup>11</sup> It went on to say: "The United States remains actively engaged in efforts to work with the Russian leadership to ensure complete termination of the illegal program and to pursue a number of measures to build confidence in Russian compliance with the BWC". During the Gulf conflict of late 1990/early 1991 there was very real concern that Iraq might use biological weapons against the coalition forces; US and UK forces were vaccinated against the biological agents which were thought to be in Saddam Hussein's inventory (and which Iraq at last admitted holding to the UN Special Commission — UNSCOM — in 1995), and detection and identification capabilities were deployed. The coalition forces rightly regarded biological warfare as being a real threat. Subsequently, General Colin Powell, Chairman of the US Joint Chiefs of Staff said: "Of all the various weapons of mass destruction, biological

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<sup>8</sup> Stephen Fetter, *op. cit.* (note 7).

<sup>9</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, which opened for signature in 1972 and entered into force in 1975, Annex to UN General Assembly resolution 2826(XXVI), hereafter "Convention".

<sup>10</sup> Joint Statement on Biological Weapons by the Governments of the United Kingdom, the United States and the Russian Federation, 15 September 1992.

<sup>11</sup> United States Arms Control and Disarmament Agency, *Threat control through arms control: Annual Report to Congress*, Washington, DC, 1995 (issued 26 July 1996).

weapons are of the greatest concern to me".<sup>12</sup> Such a statement would only have been made if biological weapons were regarded as being a credible option.

The reality and danger of the Iraqi biological warfare capability has become apparent through the work of UNSCOM.<sup>13</sup> Over a five-year period, Iraq initiated and aggressively developed a biological weapons programme which, by the outbreak of the Gulf conflict in 1991, had resulted in the filling of over 160 aircraft bombs and 25 Al Hussein missile warheads with biological warfare agents and their deployment to four locations. In addition, Iraq has stated that authority to launch biological and chemical warheads was pre-delegated in the event that Baghdad was hit by nuclear weapons during the Gulf conflict. A wide range of agents including not only anthrax and botulinum toxin but also aflatoxin, ricin and viruses such as camel pox virus, as well as a plant agent, wheat cover smut, were studied and a sizeable fermentation capability was established for their production. It is also clear that Iraq was engaged in the design and development of longer-range missiles capable of carrying biological warheads that could reach targets at distances of up to 3,000 km, thus bringing cities such as Paris and Bonn within range of attack from Baghdad. Iraq was thus potentially seeking the capability to pose much more than a regional threat.

There is therefore real and justified concern about the proliferation and potential acquisition of biological weapons in the changing world of the 1990s. President Clinton in his address to the UN on 27 September 1993 said: "One of our most urgent priorities must be attacking the proliferation of weapons of mass destruction, whether they are nuclear, chemical or biological; and the ballistic missiles that can rain them down on populations hundreds of miles away. If we do not stem the proliferation of the world's deadliest weapons, no democracy can feel secure".<sup>14</sup> This continues to be a major concern. As John Deutch, US Director of Central Intelligence, testified in 1996: "Of the transnational issues, the prolifera-

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<sup>12</sup> General Colin Powell, Chairman, Joint Chiefs of Staff, House Armed Services Committee, 30 March 1993.

<sup>13</sup> United Nations Security Council, *Report of the Secretary-General on the status of the implementation of the Special Commission's plan for the ongoing monitoring and verification of Iraq's compliance with relevant parts of Section C of Security Council resolution 687 (1991)*, S/1995/864, New York, 11 October 1995.

<sup>14</sup> United Nations General Assembly, *Address by Mr William J. Clinton, President of the United States of America*, Forty-eighth Session, 4th Plenary Meeting, 27 September 1993, A/48/PV.4, 4 October 1993.

tion of weapons of mass destruction and advanced conventional weapons systems pose the gravest threat to national security and world stability. At least 20 countries have or may be developing nuclear, chemical, *biological* weapons and ballistic missile systems to deliver them. *Biological weapons, often called the poor man's atomic bomb, are also on the rise.* Small less developed countries are often eager to acquire such weapons to compensate on the cheap for shortcomings in conventional arms" [emphasis added].<sup>15</sup> At the Fourth Review Conference of the BWC in Geneva in November 1996, David Davis, the UK Minister of State for Foreign Affairs, said: "Biological weapons have for 25 years remained something of a Cinderella in international efforts to control the spread of weapons of mass destruction (...) A general perception held that the biological weapons problem was solved; that it did not present a real risk or threat (...) But over the last decade, we have seen these comfortable assumptions overturned".<sup>16</sup> The danger of the possible use of chemical and biological materials for terrorist purposes was recognized by the Heads of the G7 States at their meeting in Lyons, France, in their declaration on terrorism of 27 June 1996, which stated: "Special attention should be paid to the threat or utilization of nuclear, biological and chemical materials, as well as toxic substances, for terrorist purposes".<sup>17</sup>

The past decade has seen a move from the bipolar superpower stand-off of the Cold War era to a rash of regional conflicts around the world and the collapse of several economies. The deliberate spread of disease — among humans, animals or plants — may become to be regarded, especially by small States whose conventional military capabilities may be limited, as a possible option if we do not take action to make it unattractive. The window of opportunity to do this is now, with benefits not only for national, regional and international security but also for national and international prosperity and trade. We all need to focus on this growing problem and do what we can to make biological warfare a less attractive option. In this 25th year since the opening for signature of the BWC, it is particularly timely to give increased attention to the

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<sup>15</sup> John Deutch, Director of Central Intelligence, *Worldwide threat assessment brief*, US Senate Select Committee on Intelligence, Statement for the record, 22 February 1996.

<sup>16</sup> David Davis, MP, Minister of State for Foreign and Commonwealth Affairs, Statement, Biological Weapons Convention Fourth Review Conference, 26 November 1996.

<sup>17</sup> United Nations, Letter dated 5 July 1996 from the Permanent Representative of France to the United Nations, addressed to the Secretary-General, A/51/208, S/1996/543, 12 July 1996.

strengthening of the Convention, as significant developments have occurred in relation to the other two classes of weapons of mass destruction — nuclear and chemical weapons. Progress is being made to reduce nuclear weapon stockpiles, and in April 1995 the Nuclear Non-Proliferation Treaty was extended indefinitely. The Chemical Weapons Convention opened for signature in 1993; thus far over 160 States have signed and over 85 States have lodged their instruments of ratification. The Convention entered into force on 29 April 1997.

### **The prohibition of biological weapons**

The 1925 Geneva Protocol prohibits the use in war of biological (bacteriological) weapons. This instrument recognized that “the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials and devices, has been justly condemned by the general opinion of the civilized world” and that their use has been prohibited “in Treaties to which the majority of Powers of the World are Parties”. It went on to say that “the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, *agree to extend this prohibition to the use of bacteriological methods of warfare* and agree to be bound as between themselves according to the terms of this declaration” [emphasis added]. However, some signatories to the Geneva Protocol entered reservations which effectively reserved their right to retaliate in kind should biological weapons be used against them. During the last few years several States have given up their reservations;<sup>18</sup> the UK, for example, withdrew its reservation in respect of the 1925 Protocol in 1991.<sup>19</sup>

In 1972, the Biological and Toxin Weapons Convention prohibiting the development, production, acquisition and stockpiling of biological weapons opened for signature; it entered into force in 1975.<sup>20</sup> It had no provisions for verification of compliance. The basic prohibition is stated in Article I:

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<sup>18</sup> See Nicholas A. Sims, “Article VIII: Geneva Protocol obligations”, in Graham S. Pearson and Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key points for the Fourth Review Conference*, Quaker United Nations Office, Geneva, 1996.

<sup>19</sup> The Third Review Conference of the States Parties to the Convention ..., Geneva, 9-27 September 1991, BWC/CONF.III/23, Geneva 1992. See p. 2 of BWC/CONF.III/SR.8 dated 1 October 1991, reproduced as p. 210 of BWC/CONF.III/23, Part IV.

<sup>20</sup> See note 9.

“Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

1. Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.”

The BWC provides for Review Conferences to be held at about five-year intervals at which States Parties assess the operation of the Convention, taking into account any new scientific and technological developments relevant to the Convention; such Review Conferences have been held in 1980, 1986 and 1991, and most recently in November-December 1996. In their Final Declarations these Conferences have reaffirmed the basic prohibition laid down in the Convention and have confirmed that all developments in microbiology, biotechnology and genetic engineering are embraced by the Convention, thus reinforcing the international norm prohibiting biological weapons.

### **Strengthening the BWC: initial steps**

#### *Confidence-building measures*

The need to strengthen the BWC was recognized at the 1986 and 1991 Review Conferences. A series of politically binding confidence-building measures (CBMs) was agreed in 1986; these were improved and extended in 1991. Under these States Parties undertake to exchange information annually on a range of subjects of relevance to the Convention. In 1986 four CBMs were agreed:<sup>21</sup>

- a. Exchange of data on research centres and laboratories;
- b. Exchange of information on outbreaks of infectious disease and similar outbreaks caused by toxins;
- c. Encouragement of publication of results and promotion of use of knowledge;
- d. Active promotion of contacts.

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<sup>21</sup> The Second Review Conference of the States Parties to the Convention ..., Geneva, 8-26 September 1986, BWC/CONF.II/13, Geneva, 1986.

Under these measures information was to be provided by States Parties annually to the United Nations Department for Disarmament Affairs. At the Third Review Conference three (a, b and d above) of these four CBMs were amended and extended, and the fourth (c above) continued unchanged. Three new CBMs were added:

- e. Declaration of legislation, regulations and other measures,
- f. Declaration of past activities in offensive and/or defensive biological research and development programmes;
- g. Declaration of vaccine production facilities.

A useful simplified proforma was introduced on which States Parties could indicate "Nothing to declare" or "Nothing new to declare", so as to encourage more of them to make the agreed annual declarations.

The number of States Parties which have made at least a single CBM declaration during the ten years since the first CBMs were agreed in 1986 reached 70 in 1995 and 75 up to 22 May 1996. Some 11 States Parties have made the agreed CBM declarations every year.

#### *VEREX and the Ad Hoc Group*

In addition, the Third Review Conference in 1991 set up an Ad Hoc Group of Governmental Experts (VEREX) to consider potential verification measures from a scientific and technical viewpoint.<sup>22</sup> VEREX met four times, twice in 1992 and twice in 1993. Its final report in September 1993 identified and evaluated some 21 verification measures, both off-site and on-site, and concluded that "the potential verification measures as identified and evaluated could be useful in varying degrees in enhancing confidence, through enhanced transparency, that the States Parties were fulfilling their obligations under the BWC".<sup>23</sup> At the request of a majority of States Parties a Special Conference was held in 1994 to consider the VEREX report. This Special Conference mandated an Ad Hoc Group "to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the con-

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<sup>22</sup> The Third Review Conference of the States Parties to the Convention ..., Geneva, 9-27 September 1991, BWC/CONF.III/23, Geneva, 1992.

<sup>23</sup> Ad Hoc Group of Governmental Experts to Identify and Examine Potential Verification Measures from a Scientific and Technical Standpoint, Report BWC/CONF.III/VEREX/9, Geneva, 1993.

sideration of States Parties".<sup>24</sup> The Ad Hoc Group was also required to "complete its work as soon as possible and submit its report, which shall be adopted by consensus ...".

The Ad Hoc Group's mandate requires it, *inter alia*, to consider:

- definitions of terms and objective criteria (...) where relevant for specific measures designed to strengthen the Convention;
- the incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime;
- a system of measures to promote compliance with the Convention, including, as appropriate, measures identified, examined and evaluated in the VEREX Report;
- specific measures designed to ensure effective and full implementation of Article X [the promotion of microbiology for peaceful purposes]".

The mandate also requires that "measures should be formulated and implemented in a manner designed to protect sensitive commercial proprietary information and legitimate national security needs" and "to avoid any negative impact on scientific research, international cooperation and industrial development". Finally, the remit made it clear that "the regime would include, *inter alia*, potential verification measures, as well as agreed procedures and mechanisms for their efficient implementation and *measures for the investigation of alleged use*" [emphasis added].

The Ad Hoc Group, under the chairmanship of Ambassador Toth of Hungary, held five meetings, three in 1995 and two in 1996, prior to the Fourth Review Conference of the BWC at the end of 1996.<sup>25</sup> Three further meetings are scheduled up to September 1997. The Group has thus far functioned by the appointment of four Friends of the Chair, who chair the

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<sup>24</sup> Special Conference of the States Parties to the Convention ..., Final Report, BWC/SPCONF/1, Geneva, 19-30 September 1994.

<sup>25</sup> For a detailed account of the work of the Ad Hoc Group, see Graham S. Pearson, "Agenda Item 12, consideration of the work of the Ad Hoc Group established by the Special Conference in 1994", in Graham S. Pearson and Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key points for the Fourth Review Conference*, Quaker United Nations Office, Geneva, 1996; and Graham S. Pearson, "Addendum to agenda item 12", in Graham S. Pearson and Malcolm R. Dando (eds), *Strengthening the Biological Weapons Convention: Key points for the Fourth Review Conference, addendum to agenda item 12*, Quaker United Nations Office, Geneva, 1996.

sessions concerned with the four respective elements of the mandate. The Friends of the Chair have produced papers which reflect the discussions that have taken place, but which are without prejudice to the positions of delegations on the issues under consideration in the Ad Hoc Group and do not imply agreement on the scope or content of the papers. These papers drawn up by the Friends of the Chair are considered by the Ad Hoc Group in plenary session and amended as requested by delegations so that they reflect the views expressed before being accepted for attachment to the procedural reports of the meetings.

### **Strengthening the BWC: future steps**

#### *The continuing importance of confidence-building measures*

Although the Ad Hoc Group is addressing the incorporation of existing and further enhanced confidence building and transparency measures, as appropriate, into the regime destined to be the subject of a legally binding instrument to strengthen the Convention, it is evident that even once the Group has completed its work and such an instrument has been agreed and subsequently adopted there is likely to be a continuing role for some confidence-building measures in parallel with whatever measures are included in the instrument. Not all the existing politically binding confidence-building measures will be appropriate for incorporation in the legally binding instrument. Moreover, not all States Parties may choose to adopt the instrument at the earliest possible opportunity; in other words, for at least some time there is very likely to be a parallel regime whereby some States will remain committed as they are at present to providing data and information under the current politically binding CBMs, and some States will be committed to providing data and information under the legally binding instrument.

Consequently, it is important to note that at the Fourth Review Conference the States Parties asserted in their Final Declaration that the Conference “welcomes the exchange of information carried out under the confidence-building measures, and notes that this has contributed to enhancing transparency and building confidence”, and urged “all States Parties to complete full and timely declarations in the future”.<sup>26</sup>

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<sup>26</sup> The Fourth Review Conference of the States Parties to the Convention ..., Geneva, 25 November-6 December 1996, BWC/CONF.IV/9, Geneva, 1996.

*The work of the Ad Hoc Group*

In its September 1996 report the Ad Hoc Group informed the Fourth Review Conference that it had made “significant progress towards fulfilling the mandate (...) including by identifying a preliminary framework and elaborating potential basic elements of a legally binding instrument to strengthen the Convention”. Moreover, it had decided “to intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference”. The Fourth Review Conference later in 1996 commenced with two days of general debate in which 31 States Parties as well as the ICRC made statements. Some of these statements were delivered by ministers or other political representatives from countries including Bulgaria, Cuba, France, Germany, the UK and the US, and from the EU, reaffirming the importance of the BWC. The EU statement was noteworthy for the fact that it was made on behalf of 29 States. Without exception, every State which spoke in the general debate during the first two days of the Review Conference spoke in favour of the Ad Hoc Group’s work towards a legally binding instrument.<sup>27</sup> Although a number of delegations indicated the measures they envisaged being incorporated in the future legally binding instrument and suggested completion by 1998, there was no consensus on including such language in the Final Declaration. However, the wording adopted enabled the Ad Hoc Group to move on to a new form of negotiation based on a rolling text.

The report of the Group’s March 1997 meeting<sup>28</sup> included an annex outlining “Possible structural elements of a protocol to the BWC”, which should form the basis for the establishment of a rolling text in order to achieve the transition to a negotiating format. It is hoped that the Group’s future reports will contain an appendix comprising the rolling text available to date, always recognizing that nothing is agreed until everything is agreed. At the March meeting the Friends of the Chair further developed their papers, with the one on Compliance Measures providing four papers on declarations, investigations, other visits and procedures, and measures to strengthen the implementation of Article III; the one on Definitions

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<sup>27</sup> For a detailed account of the Fourth Review Conference, see Malcolm R. Dando and Graham S. Pearson, “The Fourth Review Conference of the Biological and Toxin Weapons Convention: Issues, outcomes and unfinished business”, *Politics and Life Sciences*, 16(1), 1-22 March 1997.

<sup>28</sup> Procedural Report of the Ad Hoc Group of the States parties to the Convention ..., BWC/ADHOC GROUP/34, 27 March 1997.

providing four papers on definitions, human pathogens, a list of equipment and threshold quantities; and the one on Article X presenting a paper suggesting how measures contained in Article X might be incorporated in a future instrument. These papers all include square brackets around parts of the text, a welcome initial move towards possible language for a legally binding instrument.

*Definitions:* An important point that has been discussed at some length by the Ad Hoc Group concerns precisely what the role of definitions might be in the legally binding instrument. It is clear from the Group's mandate that definitions and objective criteria are required where relevant for specific measures to strengthen the Convention. It is also recognized that care needs to be taken to avoid any attempt to define terms used in the Convention, as this would result in a reinterpretation of the Convention itself and its scope. The Convention has stood the test of time, with successive Review Conferences — including the Fourth Review Conference — reaffirming in relation to the basic prohibition in Article I that the undertaking given by States Parties in that Article applies to all “relevant scientific and technological developments, *inter alia*, in the fields of microbiology, biotechnology, molecular biology, genetic engineering”; and that “the Convention unequivocally covers all microbial or other biological agents or toxins, naturally or artificially created or altered, as well as their components, whatever their origin or method of production”.

*Confidence-building measures:* As the central structure of the legally binding instrument has yet to emerge clearly, it is difficult at this stage to identify which of the possible transparency and confidence-building measures will be required for the future instrument.

*Compliance measures:* The papers drawn up by the Friends of the Chair have focused on what are likely to be the central elements of the future instrument: mandatory declarations and their triggers; investigations of non-compliance whether at facilities or in the field; other non-challenge visits; and measures to strengthen the implementation of Article III (the undertaking to do nothing to assist in proliferation of biological weapons).

*Article X measures:* The papers have shown a welcome trend towards concentrating on potential measures relevant to the BWC and away from those which would duplicate unnecessarily measures being taken by other fora, such as Agenda 21 and the Convention on Biological Diversity. There appears to be promise in measures that will implement Article X

of the BWC whilst at the same time improving transparency and building confidence.<sup>29</sup>

*Towards a protocol:* The identification of possible structural elements in the March 1997 meeting and the imminent move to a negotiating rolling text should help to focus the negotiations on specific measures and procedures and so move towards problem-solving. As has already been said by several analysts, the basic measures needed to strengthen the BWC are already out there. Nothing new is needed; what is required is the tailoring of existing measures to meet the particular needs of the BWC. It must be recognized that a considerable number of valuable measures have been devised for the Chemical Weapons Convention — such as the procedures for the handling of confidential information by the Organisation for the Prohibition of Chemical Weapons — and these do not need to be reinvented for the strengthened BWC. However, all these existing measures need to be considered on their merits and adapted to meet the specific needs of the BWC.

### **Prospects for a stronger BWC**

As we look forward to the 21st century, it can be predicted that the negotiations of the Ad Hoc Group will lead to a legally binding instrument, hopefully in 1998, which will establish a regime of measures designed to strengthen the BWC and thus to achieve enhanced national and international security. It is clear that such an instrument is feasible and should be widely acceptable. It will involve safeguards against the loss of commercial proprietary or legitimate national security information. Mandatory declarations will be a central and key element of a strengthened BWC. A short list of pathogens and toxins appears likely to be included, but *only* as a tool to facilitate a specific measure in the legally binding regime: such a list can in *no* way redefine or limit the scope of the prohibition contained in Article I of the BWC. No new measures are needed for such a strengthened regime for the BWC; however, the States Parties need to be encouraged to demonstrate the political will to bring the work of the Ad Hoc Group to an early conclusion and then to adopt the legally binding instrument.

A Special Conference should be held in 1999 at which States Parties would open the legally binding instrument for signature and subsequent

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<sup>29</sup> Graham S. Pearson, "Environmental and security regimes for toxic chemicals and pathogens: A useful synergy", *Verification*, Westview Press, Boulder, 1997 (in press).

ratification. There is a clear need to bring this instrument into effect as soon as possible thereafter; consequently, the number of States needing to ratify it before it comes into force should be kept small. There will, however, inevitably be a period of transition during which some States are party to the BWC and have ratified the new instrument, some have only signed the instrument and some have not signed it; there will also be States which have signed the BWC but still have to ratify it; and yet others who have not signed it. Once the legally binding instrument has been opened for signature, there is much to be said for a move to encourage universal adhesion to the BWC.

Confidence-building measures are likely to continue to be important, either as politically binding measures as at present, or as mandatory or voluntary elements of a new instrument. There is a strong argument in favour of giving whatever organization is set up to implement such an instrument the task of collecting the annual confidence-building declarations, and then collating them and distributing them to States Parties. Such an organization could encourage States Parties to provide timely declarations and provide assistance in completing them, to help promote transparency and build confidence.

Disease, whether occurring naturally or caused deliberately, is increasingly on the agenda of governments and industry worldwide. The health and well-being of the global community (humans, livestock and crops) are of direct importance for prosperity and trade. Efforts to combat disease, whatever its origin, are in the interests of all. A realistic and pragmatic approach is needed now to strengthen the BWC. As President Clinton has said: "Let us strengthen our determination to fight the rogue states, the terrorists, the criminals who menace our safety, our way of life and the potential of our children in the 21st century. Let us recommit ourselves to prevent them from acquiring weapons of mass destruction". The BWC can and should be strengthened as a matter of urgency.



# The humanitarian dimension of the Convention on “silent weapons”

by **Valentin A. Romanov**

Analysing the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, concluded a quarter of a century ago (10 April 1972), American expert Lynn M. Hansen wrote: “The spectre of biological warfare is something no person enjoys contemplating. The spectre is real, however, as man has learned how to use biology to wage war against himself. Fortunately, the international community in 1972 outlawed these weapons.”<sup>1</sup> This is the essence of the Convention.

## **Prohibition of biological weapons**

Prohibiting biological weapons meant not only that the weapons as such were declared unlawful, but also that on the Convention’s entry into force existing stocks of biological weapons were to be eliminated and the production and acquisition of such weapons was once and for all banned by the international community. The Convention placed a duty on each State Party “never in any circumstances to develop, produce, stockpile or otherwise acquire or retain” either biological agents and toxins “of types and in quantities that have no justification for prophylactic, protective or

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Original: Russian

<sup>1</sup> Lynn M. Hansen, “Arms Control in Vitro”, *Disarmament, A periodic review by the United Nations*, Volume X, No. 1, Winter 1986/1987, p. 59.

other peaceful purposes” or “weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.”<sup>2</sup> Furthermore, each State Party undertook to destroy, or to divert to peaceful purposes, all biological weapons and means of delivery which were in its possession or under its jurisdiction and control.

The Convention expressed the States Parties’ firm belief in “the importance and urgency of eliminating” biological weapons from the arsenals of States and their resolve “for the sake of all mankind to completely exclude the possibility” of their use, stressing that such use “would be repugnant to the conscience of mankind”. These preambular provisions actually reproduced the principle, already stated in international law, of the unacceptability of the use of biological weapons: indeed, in the well-known Geneva Protocol of 1925<sup>3</sup> the States agreed to extend the prohibition of the use of chemical weapons to “bacteriological methods of warfare”, too. Recognizing the significance of the Protocol, the States party to the Convention of 1972 reaffirmed their “adherence to the principles and objectives” thereof and called upon all States “to comply strictly with them”, specifying that no provision of the Convention “shall be interpreted as in any way limiting or detracting from the obligations” assumed by the States under the 1925 Protocol.

### **A disarmament measure and a significant contribution to international humanitarian law**

The Biological and Toxic Weapons (BW) Convention was drafted and concluded primarily as a disarmament measure. It is referred to as “the world’s first disarmament treaty”,<sup>4</sup> with analysts noting that it is the first agreement “which involves the elimination of an entire class of weapons”<sup>5</sup> and not just a weapon but “a dangerous weapon of mass destruction”, as

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<sup>2</sup> For the Russian version of the Convention see «*Международное гуманитарное право в документах*». Составители Ю.М. Колосов, И.И. Котляров, М., Издательство Московского Независимого института международного права, 1996, стр. 445-450 (Y.M. Kolosov, I.I. Kotlyarov (eds), *International humanitarian law in documents*, Moscow Independent Institute of International Law Publishers, 1996, pp. 445-450).

<sup>3</sup> 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 (Russian version in *op. cit.* above [note 2], p. 444).

<sup>4</sup> Second Review Conference of the Biological Weapons Convention, Introduction, *Disarmament*, Volume X, No. 1, Winter 1986/1987, p. 43.

<sup>5</sup> Oscar Vaerno, “The forthcoming review conference of the parties to the Biological Weapons Convention”, *Disarmament*, Volume IX, No. 2, Summer 1986, p. 214.

the Convention, and earlier the United Nations, had defined it. Since the weapon in question is — by its nature and purpose — capable of causing great suffering to human beings and since there is no possibility of protecting the civilian population from its damaging effects if it is used, we have every reason to regard the BW Convention as a significant contribution to the humanization of war and a major component of international humanitarian law. Hans-Peter Gasser names this Convention as one of the sources of international humanitarian law<sup>6</sup>, and Dr Jean Pictet, speaking about biological weapons — which he places in the category of “barbarous forms of warfare”<sup>7</sup> — discusses the ban on their use provided for by the Geneva Protocol in the context of the principles of international humanitarian law.

The disarmament value of the BW Convention and its humanitarian dimension are determined by the specific nature and characteristic features of the weapon itself. According to the Special Report of a group of experts set up under the UN Secretary-General in 1968 by resolution of the UN General Assembly, the use of virulent bacteriological agents such as bacteria, viruses, fungi and rickettsia, which artificially cause plague, cholera, malignant anthrax, tularaemia and other grave diseases, can affect human beings, animals and agricultural crops. The report shows that in some ways bacteriological weapons are more dangerous than chemical or even nuclear arms: while nuclear weapons delivered by one strategic bomber can destroy an area of up to 30 sq km and chemical weapons an area twice that size, bacteriological weapons may affect an area of as much as 100 sq km.<sup>8</sup> Biological weapons are capable of affecting large areas with only minimal human and material resources used, and the disease will develop even if only a tiny dose of the agent gets into a human body. The military and industrial circles of some countries are increasingly seeking to design “low cost” and “high efficiency” means of warfare which would enable them to target human beings without destroying material property (it is well known that half a kilogram of botulism toxin

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<sup>6</sup> Hans-Peter Gasser, *International humanitarian law. An introduction*, Henry Dunant Institute/Paul Haupt Publishers, 1993, pp. 12 and 14.

<sup>7</sup> Jean Pictet, *Development and principles of international humanitarian law*, Henry Dunant Institute, Geneva, 1985, p. 55.

<sup>8</sup> Абаренков В.П., Красулин Б.П. Разоружение. Справочник. М., 1988. стр. 221 (V.P. Abarenkov, B.P. Krasulin, *Disarmament, Reference book*, Moscow, 1988, p. 221).

could theoretically be sufficient to exterminate the population of the earth).<sup>9</sup>

In view of all this, the BW Convention obviously belongs to the law of The Hague: one of the latter's fundamental principles is expressed by the St Petersburg Declaration of 1868, namely the fact that "the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable (...) would (...) be contrary to the laws of humanity".<sup>10</sup> Since then it has been widely recognized that in cases not expressly covered by legal texts "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience", in the words of the famous Martens clause which became an integral part of both the Geneva and the Hague branches of international humanitarian law.

The BW Convention may be justly considered as *jus cogens*, i.e., a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted, pursuant to the terms of the Vienna Convention on the Law of Treaties of 1969, which stipulates that the provisions of humanitarian treaties concerning the protection of human beings shall be peremptory.<sup>11</sup>

### **The attitude of Russia and other CIS countries**

The significance of the BW Convention as a major component of international humanitarian law lies not only in the content of the material and other obligations stipulated therein, but also in the fact that the overwhelming majority of States comprising the world community are party to it. The resolution of the 50th session of the UN General Assembly relative to the Convention noted with satisfaction that the latter bound more than 130 States. There are reasons to believe that their number will increase, in particular on account of the States which seceded from or were created following the break-up of the former USSR, once they take up the question of their accession or succession to the treaties to which the

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<sup>9</sup> Jean Pictet, *loc. cit.* (note 7).

<sup>10</sup> ICRC (ed.), *International law concerning the conduct of hostilities, Collection of Hague Conventions and some other treaties*, Geneva, 1989, p. 165.

<sup>11</sup> Действующее международное право, Том 1, М., Издательство Московского Независимого института международного права, 1996, стр. 360 (*Current international law*, Volume 1, Moscow Independent Institute of International Law Publishers, 1996, p. 360).

Soviet Union was party. The States which have already acceded to these treaties are Armenia, Georgia, Turkmenistan and Uzbekistan — joining Ukraine and Belarus, which were party to the treaties in their own right. This issue was envisaged by the [CIS] Agreement of 24 September 1993 on priority measures for the protection of victims of armed conflicts. In case the States were not yet bound by relevant international treaties, the agreement provided for measures to be taken by the countries of the Commonwealth of Independent States (CIS) "to promptly declare their succession in respect of international treaties in the field of international humanitarian law applicable to States and other parties to an armed conflict, and to bring their national legislation in line with the rules and principles of international humanitarian law."<sup>12</sup> The parties shall, the Agreement goes on to say, coordinate mutual activities envisaged for the protection of victims of armed conflicts, enlisting the services of National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and CIS bodies. The Agreement stresses that each party shall take necessary measures to suppress any breach of international humanitarian law, including effective prosecution and punishment of persons having organized, committed or ordered to be committed, acts qualified as war crimes or crimes against humanity under international law and/or national legislation.

As a successor to the USSR, which ceased to exist in 1991, Russia has taken on a special responsibility regarding the implementation of the Convention on biological weapons.<sup>13</sup> It has had to make a far-reaching revision of the policy pursued by the former Soviet Union. To this end, in 1992 the President of Russia issued Decree No. 390 prohibiting the development of a biological offensive programme throughout the country.<sup>14</sup>

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<sup>12</sup>For the text of the agreement in Russian, see *supra*, note 2, pp. 553-554.

<sup>13</sup>This does not mean, however, that groundless accusations of violating the Convention can be made against the former USSR in connection with the outbreak of anthrax in 1979 in Sverdlovsk (now Yekaterinburg). The State Ad-Hoc Anti-Epidemic Commission found that the Sverdlovsk region had been subject to the threat of anthrax for several centuries and that this type of disease was considered endemic to the territory. Anthrax nidi were proved to be present in the soil. The analysis of the dynamics of contracting the infection showed that the anthrax outbreak had spanned the period of a month and a half; the infecting agents were found in assays of mixed fodder for cattle, and in meat and meat products belonging to some residents of the region; the strain of the infecting agent extracted from those samples and that found in the people who had contracted the disease were identical. The 1979 outbreak of anthrax in Sverdlovsk did not and could not have had anything to do with the local military centre's research on vaccine preparations against anthrax.

<sup>14</sup>Россия: в поисках стратегии безопасности. Проблемы безопасности, ограничения вооружений и миротворчества. М., Наука, стр. 114. (Russia: in search of the security strategy. The problems of security, limitation of armaments and peacemaking. Moscow, Nauka, p. 114).

Breaches of law connected with biological weapons have become subject to criminal liability in Russia. Article 355 of the Criminal Code of the Russian Federation which came into force on 1 January 1997, provides that “the production, acquisition or sale of chemical, biological as well as any other type of weapons of mass destruction, prohibited by an international treaty to which the Russian Federation is a Party, shall be punishable by a prison sentence of 5 to 10 years”, and Article 356 of the Code states that “the use of prohibited means and methods of warfare, the use of weapons of mass destruction, prohibited by an international treaty to which the Russian Federation is a Party, shall be punishable by a prison sentence of 10 to 20 years.”<sup>15</sup>

Russia has demonstrated a spirit of goodwill and cooperation with other leading States party to the Convention on biological weapons — the United States and the United Kingdom — which are, together with Russia, Depositories of the Convention. As their joint statement on biological weapons of 14 September 1992 specifies, the governments of the three States “confirm their dedication to faithfully observe the Convention on biological weapons and agree that there is no place for biological weapons in their armed forces.”<sup>16</sup>

### **Shortcomings of the Convention and how to remedy them**

The high degree of importance attached to the BW Convention is matched by the attention given to the procedure providing for a regular review of its operation by the States party to it, introduced “with a view to assuring that the purposes of the preamble and the provisions of the Convention (...) are being realised”. Since the Convention’s entry into force in 1975 there have been four review conferences (in 1980, 1986, 1991 and 1996) as well as a special conference, convened in 1994. Convention-related issues are also regularly discussed by the UN General Assembly.

There are, however, more than enough reasons for concern over the implementation mechanism of the Convention. The text, drafted during the Cold War era, has numerous deficiencies. Russian scholar Alexander N. Kalyadin notes that “the Convention does not provide for the international inspection of the elimination of stocks of biological weapons, means

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<sup>15</sup> The Criminal Code of the Russian Federation, ICRC translation.

<sup>16</sup> *Дипломатический вестник*, 1992, No. 19-20, стр. 27 (*The Diplomatic Herald*, No. 19-20, 1992, p. 27).

of their transportation and respective equipment, and of their conversion for peaceful purposes. The Parties to the Convention are not obliged to notify one another whether they have liquidated these stocks and when exactly they did so. The Convention contains no provisions concerning effective verification, and inspection of biological sites is not even mentioned. Respect for the obligations assumed under the Convention is to be primarily ensured by measures of national control (i.e., self-control). The whole system of ensuring compliance with the Convention is based more on trust than on international supervision. There are no provisions setting out clearly defined sanctions against countries violating the Convention."<sup>17</sup> Since 1980 the number of unilateral accusations of Convention violations has grown; one crucial question is what course of action should be taken if bilateral efforts to settle problems yield no results.

The different Review Conferences have adopted a number of resolutions which are overall aimed at strengthening the Convention and improving its application without undertaking a formal revision of the text. It should be mentioned, however, that the main outcome of the Fourth Review Conference, according to its Final Declaration, was to confirm the Convention's viability. The Conference emphasized, in particular, the vital importance of the States Parties' full compliance with all the provisions of the Convention. At the same time the Final Declaration did not mention any specific cases of non-compliance with the Convention. The Conference participants noted with interest the information provided by the Russian delegation concerning measures taken in Russia in the preceding five-year period with a view to excluding even the possibility of any breaches of the Convention on the territory of the country.

When summing up the resolutions of the above-mentioned Review Conferences, the following key points should be noted:

1. Taking into account scientific discoveries in the field of microbiology, genetic engineering and biotechnology since the Convention's entry into force, the Conferences proceeded from the premise that Article I of the Convention, which provides for the total prohibition of biological weapons, covered all discoveries of the kind.
2. With reference to Article V, which sets out the States Parties' obligation "to consult one another and to cooperate in solving any prob-

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<sup>17</sup> *Supra*, note 14, p. 112.

lems which may arise in relation to the objective of, or in the application of the provisions of, the Convention”, Conference participants have agreed in principle that this includes the right of each State Party to call a consultative meeting at the level of experts which would be open to all other participants; in such a case the consultations and cooperation may be undertaken within the framework of the UN and in accordance with its Charter.

3. The above-mentioned Special Conference, held in 1994, passed a number of resolutions concerning Articles VI and VII of the Convention; these detail the procedure for lodging complaints with the UN Security Council for breach of obligations deriving from the provisions of the Convention, and bind the States Parties to cooperate with any investigations initiated by the UN Security Council. The Conference was convened pursuant to UN General Assembly resolution 37/98 C of 13 December 1982 and following the report of the Ad-Hoc Group of Governmental Experts (the so-called “VEREX” report) set up to identify and evaluate potential verification measures from a scientific and technical standpoint, The Group worked out 21 verification measures as well as some variations of their possible combinations to be able to distinguish between prohibited and authorized activities. The Special Conference then set up an Ad-Hoc Group open to all States party to the Convention to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included, as appropriate, in a legally binding instrument to be submitted for the consideration of States party to the Convention. The issues connected with strengthening the Convention were recognized as difficult, requiring a step-by-step approach to the establishment of a coordinated regime of its implementation. Various proposals were made. Specifically, the delegations of East European countries suggested drawing up an additional protocol which would contain measures strengthening the verification mechanism. Similar ideas were put forward — in less categorical terms — in the study prepared under the aegis of the Stockholm International Peace Research Institute (SIPRI), which recommended that the insufficiently explicit provisions of the Convention should be clarified through statements of understanding or, if possible, additional protocols.<sup>18</sup>

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<sup>18</sup> Winfried Lang, “Taking the pulse of the biological weapon regime”, *Disarmament*, Volume X, No. 1, Winter 1986/1987, p. 45.

4. Certain measures providing for greater transparency of biotechnological activities were envisaged: the States Parties undertook to exchange data, including names and localities, the volume of and general trends in the activities of scientific research centres. It is worth mentioning in this connection that Russia submits data about its biological activities to the UN Secretary-General every year; the information provided is so detailed as to include the floor space of laboratory premises, the number of specialists employed, their qualification, the sources of financing, etc.

Russian specialists support the idea of a further study of potential verification measures; according to A.N. Kalyadin, "they believe that there is more to the task than just creating an effective verification mechanism — the task also includes the need to effectively use the economic and technical resources for such verification, on the one hand, and to avoid inflicting damage to the activities allowed under the Convention, on the other hand. Notices and notifications of biological activities, checking documentation and interviews with personnel at the respective sites, visual inspection and identification of the equipment, medical examinations would, in their opinion, constitute the optimal elements of such a mechanism."<sup>19</sup>

Analysing the results of the Second Review Conference of the BW Convention, Winfried Lang — professor of international law and international relations at Vienna University and chairman of the Conference in question — mentioned "the extent and nature of new political commitments entered into by the States Parties."<sup>20</sup> The declarations concerning the substance of the Convention which were adopted at the First, Third and Fourth Review Conferences can in the same way be regarded as resolutions which also impose political obligations.

These political obligations, which naturally do not amount to an international agreement but have been adopted at a forum created by such an agreement — viz. the conference of the States party to the Convention on biological weapons — can be regarded both as a result of interpreting Convention provisions (the Vienna Convention on the Law of Treaties of 1969 keeps an eloquent silence over the issue of the legal value of the texts arising from such interpretation) and as a result of an innovative approach to the Convention's terms, which cannot but confer on the latter

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<sup>19</sup> *Supra*. note 14, p. 116.

<sup>20</sup> Winfried Lang, *supra*, note 18, p. 48.

the value of *sui generis* acts under international law. Taken together with the provisions of the Convention, such political obligations create a framework which one might call the regime of the Convention, without which the functioning of the Convention as an international legal act would be unthinkable — as would the fulfilment of the rights and obligations it provides for.

### **The effects of the Chemical Weapons Convention**

As little as ten years ago the Convention on biological weapons was “the only binding international agreement which prohibits (...) a particular weapons system.”<sup>21</sup> Now it is no longer alone, especially after the conclusion in 1993 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, known as the Chemical Weapons Convention (CW), the drafting of which was initially linked with that of the BW Convention. That link is reflected in Article IX of the BW Convention which affirmed the recognized objective of effective prohibition of chemical weapons and the obligation to continue negotiations with a view to reaching an appropriate agreement. The preamble of the CW Convention, in turn, stresses that it “reaffirms the principles and objectives as well as the obligations taken” under the BW Convention, referring to the objective defined in above-mentioned Article IX. This establishes a certain interrelationship between the two conventions, as they deal with a weapon of mass destruction in its two variations.

In view of that interrelationship, the more advanced system of implementation found in the CW Convention is of special significance. Since this system provides for a verification mechanism and on-site inspection, one would be tempted to extract from it the elements which could, *mutatis mutandis*, be incorporated into the BW Convention where appropriate. It is not, of course, a question of simply borrowing settlement procedures and applying them to the sphere of biological weapons. The first practical step, predetermined by the “kinship” of the two conventions, could be a resolution of the UN General Assembly, where issues concerning the BW Convention are discussed, authorizing the Secretary-General — possibly with the assistance of government experts — to prepare a comparative analysis of the implementation systems of the two conventions, including

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<sup>21</sup> Jorge Morelli Pando, “Results of the Second Review Conference”, *Disarmament*, Volume X, No. 1, Winter 1986/1987, p. 58.

measures of international supervision and verification of compliance with the commitments undertaken. In other words, a good solution might be to adopt the procedure that was used, pursuant to the decision of the UN General Assembly, for the above-mentioned special report on possible consequences of the use of chemical and bacteriological weapons, prepared by the international group of experts (from 14 countries) set up under the UN Secretary-General. The report of such a group could be sent out for consideration to the States party to the BW Convention and could then, together with the governments' comments, be submitted to the next Review Conference with a view to working out appropriate recommendations.

On the whole, the strategy of strengthening the provisions of the Convention banning biological weapons answers the need for promoting the value of international humanitarian law as a major achievement and an important component of civilization and contributes to its advancement throughout the world.

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# The 1972 Biological Weapons Convention

## A view from the South

by **Achilles Zaluar and Roque Monteleone-Neto**

Before addressing the 1972 Biological Weapons Convention (BWC) itself, we should point out that any view of the treaty from a Southern perspective can be only partial, that is, one perspective among many possible others. Developing and non-aligned countries may have different — and equally legitimate — interests and expectations regarding a particular international instrument. In fact, this diversity is itself one of the defining characteristics of the “South”, a term we use to categorize developing States whose main point in common is the absence of alignment with any great power and, indeed, with each other.

In the area of disarmament, the different positions adopted by the various blocs of developing countries<sup>1</sup> represents a series of attempts to define a common denominator on a number of issues. They are themselves the result of a negotiating process, sometimes laborious, but indispensable

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The opinions expressed in this article are personal and do not necessarily reflect the positions of the Brazilian government or UNSCOM.

<sup>1</sup> The Group of 21 or G-21 (actually numbering 28) in the Geneva Conference on Disarmament; the caucus represented by the Movement of Non-Aligned Countries in the General Assembly of the United Nations; and the various groupings of non-aligned and other developing countries in connection with multilateral treaties such as the BWC and the Non-Proliferation Treaty.

if Southern countries wish to avoid being pushed aside by the great powers and the more cohesive alliances of the North. One should not confuse the general principles articulated by the group coordinators — often with eloquence and foresight — with the diverse meanings that a particular treaty may have for different developing countries.

Nevertheless, we will attempt here to define a number of points common to the Southern views — we stress the plural — of the BWC. These common views will have to be understood as a first attempt, which must be interpreted according to each country's security environment, diplomatic tradition and world-view. It seems appropriate for the subject, therefore, to present our conclusions as a list of generalizations, which are then supplemented and in some cases even corrected by the commentary that follows.

**Generalization No 1: *Developing countries have no interest in biological disarmament***

This view seems to result from the generally low-key approach of developing countries to biological disarmament issues, as compared, for instance, with the traditionally keen interest of Non-Aligned and G-21 positions in the nuclear area. The Final Document of the 11th Conference of Heads of State or Government of the Non-Aligned Countries, held in Cartagena, Colombia in 1995, contains sixteen paragraphs on nuclear issues, but only one on the BWC.<sup>2</sup>

The number of States party to the BWC has risen only marginally (from 125 in 1992 to 138 at the time of the Fourth Review Conference, in 1996), in the same post-Cold War period that saw the Non-Proliferation Treaty — following the accession of China and France — approach the United Nations Charter in the number of States party to it. No less than 18 signatories — all developing countries — have not yet ratified the BWC.<sup>3</sup> More disturbingly, the Middle East, where some major regional powers prefer to keep their distance from the Convention, contains a significant gap in geographical coverage.

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<sup>2</sup> Non-Aligned Movement, "Cartagena 95 — Basic Documents", Colombia, 1995, pp. 61-69.

<sup>3</sup> United Nations, "List of States Parties to the BWC as of 25 November 1996", BWC/CONF.IV/INF.2, background document of the Fourth Review Conference, Geneva 1996.

The simple number of participating States, moreover, gives the impression of greater involvement on the part of developing countries in BWC affairs than is actually the case. Of the 65 States present at the April 1996 session of the Preparatory Committee for the Fourth Review Conference, only 31 were from the South. Of the 77 States present at the Conference itself, no more than 35 were developing countries,<sup>4</sup> some of which may have sent a delegate only to collect the documents. Almost all the absentees were from the South. The participation of developing countries is still less numerous in VEREX (1992-94, established by the Third Review Conference) and in the Ad Hoc Group (1995 to present, established by the 1994 Special Conference), where most of the work in developing the BWC regime has taken place. Of the 33 countries that sent experts to the latest meeting of the Ad Hoc Group, in September 1996, only seven were from the South.

As regards the voluntary confidence-building measures (CBMs) established by the Second and Third Review Conferences, total participation increased in 1995 from 42 to 51, but of the 70 States participating at least once (for instance with simple "nothing to declare" forms), only 35 are from Asia, Africa and Latin America. Important developing countries have never submitted information under the CBM regime.<sup>5</sup> There is thus nothing surprising about the conclusion that "many small nations do not consider the BWC to have any relevance to them and ignore the CBM's completely rather than utilize scarce human resources on what they see as an irrelevant issue".<sup>6</sup> Thus the BWC may be regarded as having the dubious distinction of being one of the few whose participating States constitute a multilateral forum, with universal vocation, in which developing countries are — voluntarily, it is true — in a minority.

One should not think, however, that developing countries are altogether absent from BWC discussions. There were working papers and proposals submitted to the Ad Hoc Group and the Fourth Review Con-

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<sup>4</sup> United Nations, "Fourth Review Conference of the Parties to the BWC — Final Document", BWC/CONF.IV/9, Geneva, 1996, pp. 8-10.

<sup>5</sup> I. Hunger, "Article V: Confidence Building Measures", in G. Pearson and M. Dando (eds), *Strengthening the BWC: Key Points for the Fourth Review Conference*, Geneva, 1996, pp. 78-79. See also United Nations, "Background information on the participation of States Parties in the agreed confidence-building measures (1992-96)", BWC/CONF.IV/INF.2, background document of the Fourth Review Conference, Geneva, 1996.

<sup>6</sup> A. Duncan and R.J. Matthews, "Development of a Verification Protocol for the BWC", in J.B. Poole and R. Guthrie (eds), *Verification 1996 — Arms Control, Peacekeeping and the Environment*, Westview Press/VERTIC, Boulder, USA, 1996, p. 167.

ference by Brazil, Chile, China, Cuba, India, Iran and South Africa, among others, as well as by a signatory State, Egypt.

Two important provisions in the mandate of the Ad Hoc Group resulted directly from the action of developing countries at the 1994 Special Conference. One is the inclusion, as point 4 of the Ad Hoc Group's mandate, of the consideration of "specific measures designed to ensure effective and full implementation of Article X", dealing with technological exchange and international cooperation for peaceful purposes. The second, no less important, is the inclusion of the term "non-discriminatory" in point 3, which deals with "measures to promote compliance with the Convention" or, as some would prefer, verification measures.<sup>7</sup>

Participation by developing countries in the BWC regime will certainly increase in the future, particularly if the current work of the Ad Hoc Group, due to move to a negotiating format during 1997, progresses well enough that the conclusion of a compliance protocol comes within sight. A compliance regime would have important implications, both in financial and security terms, and attention to BWC issues can be expected to rise accordingly in the foreign ministries of developing countries. Furthermore, the inclusion of Article X and other cooperative measures in the compliance regime will promote participation on the part of the national authorities, without whose active cooperation the regime would simply not work.

### ***Generalization No. 2: Biological disarmament is not important for developing countries***

It might be useful to start by showing that the converse of this statement is false, i.e. even if not all developing countries attach a great importance to the BWC, developing countries in general are certainly important to the effectiveness of the Convention, indeed more so than to that of the Non-Proliferation Treaty.

When comparing the two fields, it is safe to assume that the development of a nuclear device remains a complicated endeavor, requiring large expenditure, technological expertise, the acquisition of special materials (highly enriched uranium and/or plutonium) and a sustained

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<sup>7</sup> United Nations, "Special Conference of the States Parties to the BWC — Final Report", BWC/SPCONF/I, Geneva, 1994.

effort over a number of years. Although not impossible for a developing country with industrial capabilities (as the now-defunct South African nuclear weapons programme showed), the combination of the requirements listed above and the need to circumvent IAEA safeguards puts the nuclear option out of reach of all but a few countries. Moreover, the diminished role of nuclear weapons in present circumstances (witness the recent military defeat suffered by a State equipped with nuclear weapons) makes it likely that conventional weaponry will be preferred over nuclear weapons by almost all countries seeking to upgrade their military power.

The difference between the nuclear and the biological options can also be illustrated by the Iraqi case. Although Iraq devoted large amounts of resources to its clandestine nuclear programme, while receiving considerable foreign technological advice and equipment, by the start of the Gulf War it had still not produced even a prototype warhead. Although some elements still require further clarification and supervision, the International Atomic Energy Agency (IAEA) was able to effectively supervise the neutralization of the Iraqi programme, among other things by removing all stocks of special materials and attesting to the destruction of the industrial infrastructure needed to produce them.<sup>8</sup>

By contrast, Iraq (which was then a signatory, but had not yet ratified the BWC) was able, with smaller resources, to develop a "secret offensive biological programme" comprising "a large-scale production of biological warfare agents, the filling and deployment of missile warheads and aerial bombs with agents, as well as biological research and development activities of considerable width and depth".<sup>9</sup> Moreover, verification of the destruction of the biological stockpile and infrastructure proved to be so difficult that to this day, the UN Special Commission working to eliminate Iraqi weapons of mass destruction is not able to assure the world that "such weapons and their components do not remain".<sup>10</sup>

On the other hand, new discoveries and biotechnology now "make it possible to develop and mass-produce agents and toxins which would be

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<sup>8</sup> United Nations, "Second consolidated report of the Director of the IAEA under paragraph 16 of resolution 1051 (1996)", S/1996/833, New York, 1996, p. 11.

<sup>9</sup> United Nations, "Report of the Secretary-General on the status of the implementation of the Special Commission's plan for the ongoing monitoring and verification of Iraq's compliance with relevant parts of Section C of SC resolution 687 (1991)", S/1995/864, New York, 1995, p. 33.

<sup>10</sup> United Nations, "Report of the Secretary-General on the activities of the Special Commission established by the Secretary-General pursuant to paragraph 9(b)(i) of resolution 687 (1991)", S/1996/848, New York, 1996, p. 23.

more lethal and easier to stockpile and to weaponize".<sup>11</sup> Recent technological advances include the easier identification of virulence factors, genetic manipulation techniques, the development of cheaper large-scale agent and toxin production facilities and methods to stabilize agents for aerosol delivery.<sup>12</sup> An offensive biological capability would be within reach of many countries, as well as of certain sub-national groups such as insurgent and terrorist movements.

This is perfectly plausible in the case of newly emerging infectious diseases since in military terms, the possession of an agent unknown to the enemy constitutes a definite advantage. This fact was very well understood by Shoko Asahara, head of the Aum Shynrikyo cult, and 40 of his followers who traveled to Zaire to "help treat the Ebola patients". According to a report dated 31 October 1995 to the U.S. Senate's Permanent Subcommittee on Investigations, the real intention of the group was to obtain samples of the Ebola virus in order to use this new contagion as a devastating bioweapon.<sup>13</sup>

It is well known that the natural reservoirs of new biological agents are located in areas of the South where there is remarkable biodiversity, such as the rainforest, found mostly in the Indo-Malayan sub-region of Southeast Asia, Central and West-Central Africa and tropical Latin America. It is striking that these are the regions in which the most recent and significant episodes of newly emerging viral diseases have occurred, such as Ebola fever, Lassa fever, Rift Valley fever, dengue fever, hantaviruses and illness caused by the Rocio, Guanarito and Sabia viruses.

While there is great need for humanitarian aid and international cooperation in dealing with such occurrences, there are also clear security problems involved that raise the question of how to prevent the misuse of newly emerging contagions as biological weapons.

However, the spread of biological technology cannot be contained, since relevant biological techniques (a) are simple enough to be mastered

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<sup>11</sup> C.S. Duarte, "The Brazilian approach to strengthening the BWC: promoting cooperation and securing compliance", non-published paper presented at the Arms Control Conference of the Southern Methodist University, Dallas, 1995, p. 5.

<sup>12</sup> United Nations, "Background paper on new scientific and technological developments relevant to the BWC - Document by Sweden", BWC/CONF.IV/4/Add.1, Geneva, 1996, pp. 2-6.

<sup>13</sup> L.A. Cole, "The Specter of Biological Weapons", *Scientific American*, December 1995.

locally with limited resources and (b) are essential for health care and veterinary and agricultural activities which benefit populations all around the world. A strategy of “technological denial”, open to consideration in the sphere of nuclear power and missile production, would be both inhumane and counter-productive in the biological area.

At the same time, it is important to avoid alarmism. While a crude biological terrorist device could be produced by a clever high-school student, the development of a militarily effective biological arsenal would require some research in fields such as means of delivery, agent stabilization, protection techniques and the integration of biological capability in the overall military doctrine.<sup>14</sup> Moreover, the political fall-out from a biological attack would severely limit its strategic value.

Intelligence estimates placing in the twenties the number of countries possessing or seeking a biological arsenal may be inflated. It is no coincidence that such estimates are often published or leaked when the budgets of the intelligence agencies themselves, or of biological defence programmes, are being discussed. From the point of view of developing countries in relatively peaceful regions of the world, such as Latin America, there is an air of science fiction about the whole discussion about biological weapons, which risks engendering complacency.

Yet a degree of vigilance is needed. As technological advances make biological weapons easier to acquire and more effective, it is likely that the military incentives for the development of a biological arsenal will grow. The biological disarmament regime is currently hindered by a legal and political taboo arising from the absence of declared biological powers, the customary rule that bans the use of chemical and biological weapons, the international consensus that such use would be abhorrent and by the existence of the BWC and the Geneva Protocol. But the regime could unravel if even one State were able to use or openly deploy biological weapons and “get away with it” — exactly as the nuclear non-proliferation

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<sup>14</sup> The hurdles are similar to those encountered by a nation or movement seeking to initiate a chemical attack. As one commentator recently put it, “even the Aum Shynrikyo in Japan, which had conscientiously recruited trained scientists, held perhaps US 1 billion in assets, and conducted clandestine field trials prior to the Tokyo subway attack, was incapable of carrying out a technically sophisticated strike. The cult was only able to produce a rudimentary chemical weapon with a primitive method of dispersion.” See Leslie Rodrigues, “The emerging threat of chembio terrorism: is the U.S. prepared?”, *The Arena*, N° 6, November 1996, Washington, p. 2. On the other hand, any doubts about the contemporary military value of chemical weapons were put to rest by the effective battlefield use of chemical attacks by Iraq against Iran during the 1980s.

regime would be strained by the emergence of a sixth declared nuclear power or by the resumption of the nuclear arms race.

This brings us to a conclusion which is quite the opposite of *Generalization No. 2*. Whether they realize it or not, the effectiveness of the BWC is very important indeed for developing countries. There are three reasons for this.

The first is security. The collapse of the biological disarmament regime might result in offensive biological capabilities in regions of the world from which they are now absent, thus jeopardizing the security of all States in the affected region. The threat of weapons of mass destruction — be they nuclear, chemical or biological — from a regional or extra-regional power, could destabilize the strategic environment.<sup>15</sup> It could force other States to embark on expensive biological defence programmes (presently non-existent or ineffective in most developing countries, unlike a number of richer countries). It could lead more developing States down the dangerous path of acquiring their own biological deterrent, thus multiplying the risk of eventual use. In this case, the citizens of developing countries, where standards of health protection are often lower than in the First World, could be among the more gravely affected.

The proliferation of biological arsenals would also threaten developing countries if it happened in far-away great powers. Developing effective defences against sophisticated biological weapons — even incapacitating agents such as haemorrhagic conjunctivitis virus — would be a maddeningly difficult task. It is in the nature of the biological threat, moreover, that the spread of the disease might not be confined to the targeted troops but could also spread to the civilian population and to other countries.<sup>16</sup>

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<sup>15</sup> As the Ambassador of Egypt said to the Conference on Disarmament, to explain why his country did not ratify the BWC or sign the 1993 Convention on Chemical Weapons, “security and peace cannot coexist with an imbalance of power and serious disparities among States belonging to the same region in regard to their rights and obligations under the various instruments of disarmament”. United Nations, “Note verbale from the Permanent Mission of the Arab Republic of Egypt to the Secretariat of the Fourth Review Conference of the BWC”, BWC/CONF.IV/8, Geneva, 1996, p. 2.

<sup>16</sup> Mention should be made to the hypothesis that the Black Plague, which killed one third of Europe’s population in the 14th century, apparently originated when the disease was deliberately spread in a biological attack during the siege of Caffa, in the Crimea, launched by the Tartars against the Genoese. See SIPRI, *The problem of chemical and biological warfare, Vol. 1 — The rise of CB weapons*, SIPRI, Stockholm, 1971, p. 215. The prospect of a global epidemic resulting from the spread of a genetically enhanced agent has been the theme of movie thrillers and cheap paperbacks, but is certainly not unfeasible.

The second reason is political. The BWC has great political and symbolic value because it is the first multilateral instrument to ban an entire category of weapons of mass destruction. Together with the 1993 Convention on Chemical Weapons, it constitutes the model which non-aligned and other developing countries would like to see applied in the nuclear area: a comprehensive, non-discriminatory, universal prohibition on development, production, stockpiling, deployment and use of all weapons of mass destruction. Even if the security concerns are different in scale, failure of the BWC could postpone progress in other disarmament areas indefinitely.

The third and final reason is the increasing need for international cooperation in the fight against infectious disease in a globalized world. Pathological agents do not need passports to cross borders, and the ease of modern travel and mass transportation of goods is forcing the struggle against disease to go global if it is to be effective. The priorities for the international community, according to the World Health Organization (WHO), must therefore be the eradication of diseases for which vaccines or effective treatments already exist, the fight against re-emerging diseases which present new problems of drug resistance, and rapid action against outbreaks of new diseases. The WHO strongly recommends a global surveillance programme.<sup>17</sup>

It should be stressed that such cooperation serves the needs of all countries, including the developed world, because many of the problems it tackles — such as drug-resistant tuberculosis or AIDS — are global in nature. By contrast, a breakdown of the biological disarmament regime and the proliferation of biological weapons powers might well disturb the flow of knowledge and render unworkable the joint programmes required by global action. Besides, the poorest developing countries are comparatively more dependent upon international cooperation in meeting their health care needs, and would be more severely affected by the disruption of bilateral and multilateral exchanges.

In addition, according to the mandate of the Ad Hoc Group, the BWC compliance regime would have to include measures specifically designed to implement Article X on international cooperation. There is a growing consensus that such measures should at the same time increase transpar-

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<sup>17</sup> World Health Organization, *The World Health Report 1996*, Geneva, 1996, pp. 110-111.

ency and build confidence, while avoiding duplication and benefiting from synergy with measures, such as those advocated by the WHO.<sup>18</sup>

**Generalization No. 3: A BWC verification regime would be too expensive and cumbersome for developing countries**

It is often thought, though seldom expressed in public statements, that the expense and work involved in implementing a BWC compliance or verification regime — with mandatory annual declarations, on-site visits, several types of inspections, the need for legislative changes, etc. — would present a poor cost-benefit ratio, in particular for developing countries. The compilation of information on biological facilities and the preparation for inspections, in particular, are considered a potentially wasteful diversion of scarce human and financial resources which would be better employed, for instance, in fighting malaria or neonatal diseases. Besides, the costs of setting up and maintaining an eventual BWC organization, shared among all the member States, would by no means be negligible.

There is a grain of truth in this assessment, which also applies to other disarmament and non-proliferation mechanisms. Developing countries are being asked to increase their contributions for international organizations devoted to disarmament at a time when resources for development projects are shrinking; when leading industrial countries are withdrawing from the United Nations Industrial Development Organization; when these same countries are calling for budget cuts at the United Nations and in programmes, funds and agencies considered important by developing countries; and when donor fatigue and a generally mean-spirited mood pervade certain circles in traditional donor countries.

The prohibition on the testing of nuclear explosives, for instance, was generally welcomed by developing countries. But it soon transpired that the test ban carries a hefty price tag, to be borne not only by those actually involved in nuclear testing, but also by developing countries that were never involved in a test, never took part in a nuclear alliance and whose nuclear facilities, if any, are subject to IAEA safeguards, and that therefore would be unable to test, even if the Comprehensive Test-Ban Treaty (CTBT) did not exist. Some current estimates of the cost for the first years of the Preparatory Commission for the CTBT organization are larger than

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<sup>18</sup> R. Monteleone-Neto and J.E.M. Felicio, "Article X: international cooperation and development, exchange of equipment, materials and scientific and technological information", in G. Pearson and M. Dando (eds), *op. cit.* (note 5, above), pp. 116-117.

the 1997 budgets of five specialized agencies of the United Nations, including some whose usefulness to developing countries is more immediately evident, such as the World Meteorological Organization and the International Civil Aviation Organization.<sup>19</sup>

Similar considerations might apply to the Organisation for the Prohibition of Chemical Weapons and to the verification of an eventual fissile material cut-off treaty. After considering the alternative of not having such instruments, however, most developing countries are likely to conclude that these treaties nevertheless serve their interests by helping prevent the need for costly defence and deterrence measures. Overall, developing countries are in the process of learning how to demand value for their money in the security area, which may require keeping the budgets of some disarmament agencies within definite bounds.

The arguments outlined above against a compliance regime would be definitive had we established that the BWC offered little benefit to developing countries. It appears, however, that the opposite is true: the world in general and the South in particular would stand to lose a great deal from the collapse of the biological disarmament regime. And there is a general perception that this regime is under stress, brought about both by technological developments and by concerns about compliance.

There was a sense of disappointment when the Fourth Review Conference of the BWC failed to deal with the two cases of concern about compliance, brought to light since the Third Review Conference. One is the Iraqi case, discussed above. The other is the Soviet case, which resulted during 1992 in three specific corrective actions: the "Decree on fulfilling international obligations with regard to biological weapons" issued by the President of the Russian Federation; the Trilateral Statement, of 14 September 1992, by the three depository powers (Russia-USA-UK) following consultations under Article V of the BWC; and the declaration submitted by the Russian Federation to the United Nations under confidence-building measure Form F.<sup>20</sup>

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<sup>19</sup> Estimates being discussed prior to the resumption of the First Session of the Preparatory Commission for the CBTB organization, in March 1997, put the budget for the first two years at between 70,000,000 and 90,000,000 US dollars per year. Compare that with the budget of the specialized agencies (United Nations, "Budgetary and financial situation of organizations of the United Nations system", A/51/505/Corr.1, New York, 1996, p. 2).

<sup>20</sup> M. Dando, "Article I: Scope", in G. Pearson and M. Dando (eds), *op. cit.* (note 5 above).

The United States delegation, in its submission to the Fourth Review Conference, had proposed the following language for the final document: "the Conference notes with concern that compliance with Article I, by some States Parties, has been subject to doubt in certain specific cases (...). The Conference also notes the important decree by the President of the Russian Federation in April 1992 indicating that his country would accomplish its obligations under the Convention. The Conference expresses the hope that objectives outlined in that decree would rapidly be fulfilled."<sup>21</sup> The US proposal was not accepted, however.

Regarding the same problem, the British delegation informed the Conference that "in accordance with the provisions of Article V, the United Kingdom along with the other depositary powers (the United States and the Russian Federation) agreed in 1992 a Trilateral Statement which addresses issues arising from the Soviet Union's non-compliance with the Convention."<sup>22</sup> In the course of the Conference, however, a "corrigendum" was circulated to the effect that the commentary on Article V should read: "in accordance with the provisions of Article V, the United Kingdom along with the other depositary powers (the United States and the Russian Federation) agreed in 1992 a Russian-American-British statement on biological weapons".<sup>23</sup>

On the other hand, the submission by the Russian Federation stressed that "effective verification of compliance depends to a great extent on the presence of objective criteria, including definitions of basic terms, lists of microbiological and other biological agents and toxins and appropriate threshold quantities. In this context, the Conference notes the importance of continued work by the Ad Hoc Group on objective criteria with the aim of including them in a legally binding instrument."<sup>24</sup>

In the absence of established procedures to investigate cases of questionable compliance, and with no international organization having an independent inspectorate to carry them out, developing countries will never be able to reach meaningful conclusions on compliance issues as they lack an advanced intelligence-gathering capability. Only a BWC organization in

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<sup>21</sup> See note 4, p. 43.

<sup>22</sup> United Nations, "Background information document on compliance by States Parties with all their obligations under the BWC", BWC/CONF.IV/3, Geneva, 1996, p. 31.

<sup>23</sup> United Nations, "Background information document on compliance by States Parties with all their obligations under the BWC", BWC/CONF.IV/3/Corr. 2, Geneva, 1996.

<sup>24</sup> See note 4, p. 42.

which all member States take part on an equal footing would have the necessary credibility to establish and enforce compliance standards.

If developing countries are to support an eventual compliance regime, they would rightly insist that it be non-discriminatory, as required by the mandate of the Ad Hoc Group.<sup>25</sup> As stressed by the Fourth Review Conference, “non-compliance should be treated with determination in all cases, without selectivity or discrimination”.<sup>26</sup>

This means that no State party to the BWC, not even permanent members of the Security Council, should be able to shield its biological establishment, including its defensive capabilities, from the regime’s transparency and compliance measures, which may include validation visits, compliance inspections and investigations of alleged use or of alleged release into the environment.

These requirements are essential if we are to develop an effective and credible regime. But are they compatible with the demand for cost-effectiveness? Could the financial and political costs of a regime intrusive enough to be credible be absorbed by all? The concept of increasing access (challenge inspections) in exchange for minimizing — and maybe eliminating — routine inspection effort might be useful here.

For example, the regime needs to consider how to cope with assessments such as that made by Kathleen C. Bailey on the UN inspections in Iraq which alleged that “a non-cooperative inspectee can succeed in defeating the aims of the inspection to some extent”, and that particularly in the biological field “there are inherent difficulties in distinguishing between peaceful and military biological research”,<sup>27</sup> then are the industrialized States prepared to face a regime that by nature is very intrusive and expensive in order to be effective and credible?

These are the type of questions that each State party to the BWC, and in particular each developing State, should answer for itself while taking part in the work of the Ad Hoc Group. The shape of a possible compliance or verification regime has not yet been determined. It will be up to developing countries to ensure that its features will advance both their practical interests and those of the international community.

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<sup>25</sup> See note 7.

<sup>26</sup> See note 4, p. 16.

<sup>27</sup> K.C.A. Bailey, *The UN Inspections in Iraq — Lesson for on-site verification*, Westview Press, Boulder, USA, 1995.



**Convention on the Prohibition of the Development,  
Production and Stockpiling of Bacteriological  
(Biological) and Toxin Weapons and  
on their Destruction (1972)**

*Statement of the ICRC at the Review Conference of States Parties,  
Geneva, 25 November-6 December 1996*

The International Committee of the Red Cross is privileged to address this conference which has the task of strengthening one of the earliest prohibitions of international humanitarian law: the proscription against the use of poison as a means of warfare. This norm has its basis not only in the 1899 Hague Declaration (2) and 1907 Hague Convention (IV) but also in the rules of warfare of diverse moral and cultural systems. Ancient Greeks and Romans customarily observed a prohibition on the use of poison and poison weapons. By 500 BC the Manu Law of War in India had banned the use of such arms. A millennium later regulations on the conduct of war drawn from the Koran by the Saracens forbade poisoning.

The immediate precursor of the 1972 Biological Weapons Convention, the 1925 Geneva Protocol, was negotiated in the context of public revulsion at the use of poison. This Protocol not only reaffirmed the ban on the use of poison gas but extended it to cover bacteriological weapons. An impassioned appeal by the ICRC in 1918 concluded that if warfare by poison were accepted “we can only see ahead a struggle which will exceed in barbarity anything which history has known so far”. Those who negotiated the 1925 Protocol did so, in the words of one rapporteur, on the basis that while “from a military point of view the advisability of prohibiting gas or microbes as a means of defence ...is open to question...we take the view that humanitarian considerations should override military considerations and that all forms of cruelty should be abolished.” Since its adoption the ICRC has called upon States to adhere to and abide by the Geneva Protocol.

The norms which your predecessors so carefully constructed have now become elements of customary international humanitarian law. With few exceptions, they have been respected even in times of armed conflict. However, developments in microbiology, genetic engineering and biotechnology and the spread of knowledge in these fields are proceeding at a pace which would have been unimaginable when the Biological Weapons Convention was negotiated. Confirmed reports, since 1990, of biological weapon programmes are further reasons for concern.

Clearly there is a need for increased vigilance and much greater openness in the pursuit of biological research and development. The ICRC strongly urges States Parties to take this opportunity to decide to equip the Convention with an effective and legally binding compliance-monitoring regime which would include regular declarations of relevant activities, on-site visits and investigations of alleged use. We hope that work on such a regime can be completed by the Ad Hoc Group of Experts at an early date and adopted by a Special Conference of States Parties even before the next BWC Review Conference.

We urge full participation by States in existing arrangements for the voluntary deposit of declarations with the UN Secretary-General, the enactment of national legislation to punish violations of the Convention's provisions and increased cooperation in the use of biological knowledge for health and humanitarian purposes, as provided for under article X.

We also call upon those States which have not yet done so to adhere to the BWC and actively to participate in its existing confidence-building mechanisms. We encourage current States Parties which have maintained reservations to the 1925 Geneva Protocol to consider withdrawing them.

Biological warfare, in whatever form and by whatever party, is rightfully considered abhorrent by the public conscience and by the world's most ancient cultures. This Conference's most important task will be to reaffirm, in both word and action, that no party should even think of using biological knowledge to inflict harm and to assure anyone who does that this will not be tolerated by the international community.

**17 December 1996: six Red Cross staff killed  
in Chechnya**

*The Review continues to report on questions raised by the tragedy of Novye Atagi, Chechnya, where six Red Cross staff were killed while working at a Red Cross hospital. The March-April 1997 issue described what actually happened and outlined the initial conclusions drawn by the ICRC and their implications for the conduct of its operations.<sup>1</sup> In the present issue, the President of the Norwegian Red Cross, Astrid Nøklebye Heiberg, focuses on how a National Society which lost two of its members in the tragedy handled the situation, and what lessons have been learned for the future. In the second contribution, Dr Barthold Bierens de Haan gives a detailed account of the way the ICRC helps its delegates in the field to handle stressful situations, which can arise in any circumstances.*

**7 May 1997: Ten Zairian Red Cross volunteers killed in Kenge, Zaire**

*On the eve of World Red Cross and Red Crescent Day, ten first-aid workers of the Red Cross Society of the Republic of Zaire were killed in Kenge, a town 200 km east of Kinshasa. They were assisting people wounded in the fighting which had been raging in the region.*

*This sad announcement highlights the fact that death does not discriminate among Red Cross and Red Crescent workers. Volunteers from National Societies, expatriate (international) Red Cross delegates and locally hired staff are equally vulnerable when violence strikes those who bring aid.*

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<sup>1</sup> See *IRRC*, No 317, March-April 1997, pp. 135-155.

## **Handling the tragedy in Novye Atagi —The Norwegian Red Cross experience**

In the following pages I will give an account on how the Norwegian Red Cross reacted to the tragic killing of six ICRC delegates in Chechnya in December 1996. Then was the time for action; now is the time for reflection.

For the Movement as a whole it is vital that we now focus on the security issue as it affects our Red Cross/Red Crescent workers. At the same time, we must never let evil acts like this paralyse our ability to operate in conflict areas.

The killing of six Red Cross workers in the hospital in Novye Atagi on 17 December 1996 was not only an attack on innocent victims. It was an attack on the community of humanitarian workers worldwide, on the ICRC, on the Red Cross and Red Crescent Movement, on the emblem and, finally, on the very idea of humanitarian action. Humanitarian work will never be the same after Novye Atagi; there will always be a “before” and an “after”. We have to think about security issues in an even more comprehensive manner than previously. Recent events in Rwanda only serve to underline this point.

The Norwegian Red Cross (NORCROSS) was hit particularly hard, as we lost two delegates, Ingebjørg Foss and Gunhild Myklebust. A third delegate, Tobias Bredland, survived the attack. The six delegates lost their lives in selfless service for the victims of the conflict in Chechnya. We will never — must never — forget what they did and the price they had to pay.

From 17 December, when the tragedy happened, NORCROSS has focused on a number of key concerns covering a wide range of issues. I propose to outline those concerns and discuss how they are being dealt with by the management of our National Society. I would like, in particular, to draw attention to the lessons learned with regard to personnel management during crisis situations.

Our key concerns were the following: informing and caring for the families; informing the public; informing NORCROSS staff and other delegates; cooperation with the Ministry of Foreign Affairs; and analysing the tragedy together with the ICRC.

### **Informing and caring for the families**

The most immediate concern at NORCROSS headquarters on the morning of 17 December was to inform the immediate families and other

close relatives of the victims before we had to brief the media. Four other Norwegian delegates who had been working at the Novye Atagi hospital during the fall of 1996 were also informed during the morning.

The NORCROSS personnel office was given the task of caring for the families, in terms of providing them with information, extending invitations to come to NORCROSS headquarters, offering professional help from psychologists, ministers or counsellors, and shielding them from unnecessary pressure from the media.

Some family members were reached at their homes, some at work; and some called NORCROSS themselves when they were approached by news agencies. In line with Norwegian traditions, local ministers were also used to contact the families directly. Contact was also established with the family of the Norwegian delegate who survived. The families of both the victims were reached before any public confirmation was given by NORCROSS concerning the death and identity of the delegates concerned.

The time-lapse of four or five hours between the attack and the point at which the NORCROSS Secretary-General was informed should — ideally — have been shorter. That would have given us more time to inform the families. We have to acknowledge, however, that communication lines to Chechnya were difficult, and as it happened the delay created no particular problems for us. The experience demonstrated, however, that we have to maintain and strengthen the current system whereby key members of the NORCROSS management can be reached on a 24-hour basis, both from Geneva and from the field.

The need to keep in close contact with the families and to offer them support is a long-term commitment. Beyond bringing them the tragic news, we emphasized the families' right to know by giving them the opportunity to talk to the delegate who survived — and giving him the chance to talk to the families. This took place at the airport when the victims were brought home, during the memorial ceremony on the tarmac, during the private ceremony afterwards, at the NORCROSS memorial service on the next day, and in private meetings with each of the families in the days immediately following.

Accounts describing how the victims lived and worked at the hospital, their feelings, what they did together with other staff, what they talked about, how they were doing until the moment tragedy struck have been very important. The relatives have generally been more concerned with questions of what happened and how, rather than with the question of why it happened. For the Norwegian Red Cross it is of vital importance not

to forget the relatives of our Red Cross brothers and sisters. We must now focus on the long-term effects the killings will have on the families.

Throughout this difficult period we stressed that we — as much as the families themselves — want to find out what happened, and we have promised to keep them informed as details become available. This is a process which is not yet finished. The frustrating element, of course, is that little (if any) progress has been made of the police investigation conducted on the spot. On the other hand, we have provided information on the various initiatives taken by the ICRC in the aftermath of the events.

### **Informing the public**

While not compromising the privacy of the victims and their families, the public has a legitimate right to know. We have therefore tried to work actively with the media, basing our approach on the following principles:

openness, coherence, close coordination with the ICRC, avoiding speculation about motives, rumours or unconfirmed “facts”, avoiding discussion of details which would give rise to such speculation, protecting the families, emphasizing the tasks and the mandate of the ICRC, the reasons for being in Chechnya, and the needs of the most vulnerable.

This is important, so as to place the tragedy in the proper perspective. “Security” in the absolute sense is impossible when the task and the mandate is to assist the victims, but it was tremendously important to stress that every possible step had been taken to protect the lives of the delegates.

Overall, this information strategy has worked well. There has been relatively little speculation in Norwegian news media. There has been almost no negative media coverage. The families have not been particularly targeted by the media. Family members have chosen to forward most questions to NORCROSS. Only two or three people at NORCROSS have been given permission to make statements on Chechnya to the media. We were, of course, at an advantage since NORCROSS staff had first-hand knowledge of the hospital, its establishment and its operations up until 17 December. End-of-mission reports had been filed and could be checked for facts and opinions, etc.

### **Informing NORCROSS staff and delegates**

There was an immediate need to inform the four delegates who had recently served in Chechnya, and to bring them to Oslo. They were given a chance to discuss their own experiences in the light of what had

happened. They were also encouraged to provide additional written information on events that took place during the fall of 1996, as an input for our own discussions and for the analysis undertaken by the ICRC.

From the first day, however, we were also concerned about the 45-50 NORCROSS delegates scattered around the world on various missions — for the ICRC, for the Federation or in bilateral projects. Their access to accurate information on the events was likely to be limited. Many of them were working in contexts potentially as dangerous as Chechnya was assumed to be before 17 December, and they might easily feel that they had been “forgotten” when so much attention was being focused on the tragedy in Novye Atagi.

So all NORCROSS delegates were called up or otherwise contacted by their desk officers in Oslo in the following days. The aim was to provide information, but also to establish a personal contact showing that NORCROSS takes responsibility for each and every one of them and is standing by to deal with any problem, large or small, with which they may need assistance. This was done, of course, with due regard to the operational procedures applying within the respective delegations.

As a matter of general personnel policy, NORCROSS is placing increased emphasis on briefings and debriefings of delegates, and on maintaining informal contacts while they are on mission. NORCROSS guidelines for recruitment, selection and follow-up of delegates are being reviewed and updated.

The bottom line is that when a tragedy such as the one in Novye Atagi occurs, the (participating) National Red Cross or Red Crescent Society concerned will have to answer a number of difficult questions and will have to be certain that it did take its share of responsibility for its delegates. This should in no way be interpreted as detracting from the operational responsibilities of the ICRC or the Federation. We are talking about complementary action rather than competition.

### **Cooperation with the Ministry of Foreign Affairs**

Working relations between NORCROSS and the Ministry are generally close, sound and professional, both at the administrative and at the political level. In this particular case, the Ministry had a special interest, as it had partly funded the hospital in Novye Atagi, the rest of the funding being provided by NORCROSS.

An open line to the political leadership was established from the moment the news came in, the Ministry recognizing that NORCROSS

would play the “lead role”, maintaining full control of all information and policies in the aftermath of the tragedy. The Ministry was kept informed by the ICRC directly through the Norwegian Embassy in Geneva and through the ICRC liaison group in Moscow, but also by NORCROSS. Issues relating to the future of the hospital were handled by NORCROSS in consultation with the ICRC, and the Foreign Ministry has communicated with the Russian and Chechen authorities as needed.

### **Analysing the tragedy**

Access to accurate information on the events in the hours and days following 17 December was essential.

It should be added here that NORCROSS was in a privileged position from the outset, since we had delegates on the spot when the hospital was first established, we contributed to the hospital and we had several delegates working there throughout the fall of 1996. This enabled us to retrieve the relevant information for our own immediate review of the history of the project. Additional information that became available over time served primarily to confirm our basic perceptions about the history of the operation, the challenges it faced, the incidents that had occurred and the measures taken by the ICRC.

A close working relationship was rapidly established between the top management of the ICRC and of NORCROSS in terms of reviewing the facts, analysing the context, discussing the consequences and follow-up. We were also given the opportunity to become involved in discussions on security-related issues in general.

As it happened, NORCROSS had already planned to hold an international conference entitled “Humanitarian Action in Internal Conflicts”, which took place in Oslo on 31 January 1997. Naturally, a number of the speakers, who included both the President of the ICRC and the Secretary-General of the Federation focused on the tragedy in Novye Atagi. The conference thus provided an ideal forum for further reflection and exchange of views on issues relating to the events in Chechnya.

### **Conclusion**

A tragedy on this scale and of such intensity creates extremely heavy demands, first and foremost on the families who suffered directly, and secondly on the National Society involved.

One major lesson is that, owing to the enormous media pressure generated by such crises, the Society’s entire personnel management

policy is immediately scrutinized and analysed in public, and any faults and weaknesses are exposed. This underlines the need for a consistent and carefully worked out personnel policy. No aspect of our system of personnel management — recruitment, information, briefings and debriefings, follow-up of delegates in the field, etc. — should be handled lightly or left to chance, if a National Society wants to hold its head up when a disaster strikes in the most unexpected circumstances.

A second lesson is that close ties should be established and nurtured between a National Society which seconds delegates to an operation and the agency which is operationally responsible in the field, be it the ICRC, the Federation or an operating National Society. A constant dialogue in terms of information and analysis must be maintained if a National Society is to recruit delegates for difficult missions. To be shown as lacking essential information would be devastating for the National Society should it be put under pressure by the media, and not only in the event of an accident or a serious crisis.

Difficult times are also times for reflection and learning, with a view to improving performance in the future. I have focused mainly on the ability of NORCROSS to handle a very severe crisis for our organization, but what happened in Chechnya concerns the future operational approach of the whole Red Cross and Red Crescent Movement.

Tragedies like the one in Chechnya illustrate the fact that the Movement is facing the challenge of a new pattern in the conflicts emerging after the Cold War. We are no longer dealing with a situation where two different ideologies and systems are confronting each other in the quest for world dominance and thus influencing all conflicts, whether national or international. In that “old system”, it could be argued, everybody — both the warring parties and the humanitarian organizations — knew the rules and to a large extent applied them. What we have seen over the past decade, on the other hand, is a growing number of conflicts opening up old “wounds”, not healed by but hidden by the Cold War, and these conflicts are marked by unspeakable atrocities against the civilian population. The killing of humanitarian aid workers is a feature of this new pattern.

The changed situation after the Cold War has also had a positive effect in that it has in many ways made people rethink their values. Cultural, ethical and religious affiliation, and being part of a national group, have given many people a feeling of common identity. Belonging to a certain culture or religious group with a set of ethical rules can be a basis for tolerance towards other cultures, ethnic groups or nations. It is only when

people, for whatever reason, experience a strong feeling of dissatisfaction and insecurity in their lives, that ethnic, cultural and national identity can be turned into a negative force which can ultimately lead to such atrocities as we have seen in many of today's conflicts.

We are faced with the challenge of how to respond to this new situation, how to bring protection and assistance to the victims, how to protect our own personnel and how to make the parties to such conflicts accept humanitarian action. It is a challenge because we see people suffering, people needing help, and we want to help.

These few points made with regard to post Cold-War conflicts should indicate that our future discussions must focus on how to use the unique strength we can draw from the diversity of our Movement. There are 171 National Societies representing a diversified perception of the concept of humanitarian values. Each of these Societies is by definition the most important adviser to any operation on their territory, the key factor in rising to the new challenge.

*Astrid Nøklebye Heiberg*  
President, Norwegian Red Cross

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### **Providing support for Red Cross volunteers and other humanitarian workers following a security incident or a disaster**

*In the early hours of 17 December 1996, six members of the Red Cross team working at the ICRC hospital in Novye Atagi, Chechnya, were murdered in their sleep by a group of masked men using weapons fitted with silencers. A seventh delegate was wounded but managed to escape with his life.*

#### **Providing support in the aftermath of the Novye Atagi tragedy**

On the morning of 17 December 1996 an ambulance plane took off from Geneva, bound for the northern Caucasus to pick up the wounded

delegate who had survived the previous night's massacre. On board the aircraft were three senior ICRC staff members: the Delegate General in charge of operational activities in Eastern Europe and Central Asia, the Chief Medical Officer of the Health Division, which was responsible for the surgical hospital in Novye Atagi, and myself, as the medical officer responsible for providing staff with support and advice on stress management. On the spot, these three people were to share a dual task: first, investigating the causes of the tragedy and considering the operational decisions to be taken as a matter of urgency (in particular as concerns security), and secondly, providing support for our colleagues and helping them to cope with their collective shock and grief.

We landed in Nalchik early enough to be there when our colleagues arrived from Novye Atagi. Their convoy appeared at about 10 p.m., after a slow trip of more than eight hours on a road made treacherous by snow. Christophe Hensch, the wounded team member, who had been given first aid on the spot, was seen to immediately. He gave us his eye-witness report on what had happened and was then safely installed in the ambulance plane. An hour later the aircraft took off for Geneva, where Christophe was hospitalized. The same evening, during a meal eaten together, the remaining members of the team gave us their initial account of the events of the previous night, and then everyone tried to get some sleep.

The next day we assembled all the members of the delegation so as to inform them of the aims of our mission. I then started the "emotional debriefing" of the survivors of the attack. All 13 people who had been at the hospital during the fatal night were present, together with two other team members who, exceptionally, had been away that evening. The session lasted two and a half hours; everyone had an opportunity to give his or her own account of "that night" and share the resulting emotions with the group.

In the afternoon we all went to the Nalchik mortuary, where our colleagues' bodies were placed in their coffins. Then a long convoy made up of a lorry bearing the six coffins and some 15 other vehicles set off for the airport in Mineralnyye-Vody, 100 km away. Before the remains of the deceased, the survivors and those accompanying them were flown out later that evening, a ceremony was held in one of the airport hangars. Opposite the coffins draped with ICRC flags about 100 people gathered: the survivors of the massacre, other delegates returning to Geneva, and also all the delegates who were to remain on the spot. In the freezing cold and amidst the roar of aircraft taking off and landing, a sober and moving tribute was paid to the six victims. Finally, all those present filed past the coffins in a slow procession.

A similar ceremony was held on the tarmac at Geneva Airport in the presence of members of the local authorities, members of the Committee, senior ICRC staff and representatives of the National Societies.

Meanwhile, in Nalchik, I continued my work of listening, encouraging the sharing of emotions and providing collective and individual support for the staff remaining in the field: a first group of 25 Chechen hospital employees was received on the day of national mourning, then the five staff from the Grozny delegation. Finally, there was a meeting of all the expatriate staff of the Grozny mission and of the offices in Nalchik, Khasavyurt and Nazran. All of them were given the opportunity to talk about the tragedy and to express their views on the future of the ICRC's operation in the northern Caucasus.

The second emotional debriefing was held six weeks later, bringing together the 14 survivors from the hospital, this time including the wounded man who had not been able to take part in the debriefing in Nalchik, a nurse and myself. This series of interviews consolidated the work of offering support and preventing post-traumatic stress disorder (PTSD), while favouring the grieving process.

### **Support offered in the case of collective trauma caused by the death of one or more members of a Red Cross team**

When a serious incident involving the death of one or more members of a Red Cross team occurs, the trauma experienced by the survivors makes a special type of support necessary. In such a case a whole series of measures must be implemented or at least envisaged.

- A “*rescue*” team must immediately be sent to the scene. This team should comprise the person from headquarters responsible for the geographical zone in question, who will take the necessary operational decisions, and a person whose sole concern is to help the survivors manage their emotions and grief. In a manner of speaking, these two people, unscathed and not directly involved in the incident, represent and symbolize the response which an organization's headquarters should offer to staff in the field when a tragic event is likely to temporarily weaken everyone's resistance and affect the leaders' management capacities. These “rescuers” are sufficiently far removed from the tragedy; moreover they have experience of similar situations.
- The *emotional debriefing* (*critical incident stress debriefing* — *CISD*) should be carried out in the two or three days following the event. It preferably takes the form of a group session, assembling all the sur-

vivors of the disaster in a quiet room on the delegation's premises. A *group leader* (in this case the doctor from headquarters) lays down two rules: everyone is free to express his or her feelings and everything that is said will remain confidential. The group leader also underlines his prime concern: to allow everyone to give his or her own version of the incident and share his or her feelings with the whole group. Progressing stage by stage, the leader then seeks to obtain a precise and detailed account of the facts, everyone's recollections and reflections, and a description of the emotional reactions and symptoms that persist after the trauma (such as disturbed sleep, states of anxiety or nervousness, repeated flashbacks). Finally, the group leader emphasizes that these stress reactions are entirely normal and describes how he sees the future of the entire group. This may mean the continuation of activities, a period of rest or a return to headquarters. One advantage of such an exercise is that it makes it possible to identify staff members who might need individual support.

- A *funeral ceremony in the presence of the coffins* is essential and should not be overlooked. Such a ceremony gives the group of survivors, those close to the deceased and the accompanying personnel a sense of solidarity and togetherness. It helps each of them to start the grieving process, favours the continued sharing of emotions and introduces an indispensable spiritual or religious dimension.
- The *rapid return of the survivors* together with their colleagues' remains on board a specially chartered aircraft is an important symbol for survivors and families alike. This concludes the first phase of the support programme and the emergency action taken by headquarters.

### **The stress-management and support programme for staff on mission**

Most governmental and non-governmental humanitarian organizations are currently setting up stress-management and support programmes for staff on mission. The emotional burden and the various forms of stress to which these staff members are exposed are so great that their health, safety and operational efficiency might suffer in the long term. In addition to the arduous nature of humanitarian work (*cumulative stress*) and the problems of personal relations that may arise within any human group (*basic stress*), staff may have to cope with *traumatic stress* reactions associated with the dangers of war, terrorism and insecurity.

These three types of stress must be examined in the field and managed according to the same principles.

- The stress reactions observed in the field are normal. They are an indication not of pre-existing mental instability but of a crisis situation which everyone must learn to control. This crisis manifests itself in different ways in each individual and is the result of abnormal critical events which are the source of sometimes violent trauma experienced in varying degrees by volunteers on mission. Each individual remains responsible for his or her emotions.
- The management or control of these stress reactions is the responsibility of the head of delegation (or the person responsible for the operation), who proposes measures of support for the people concerned, based on attentive listening, an emotional debriefing and/or the granting of a period of rest. These measures should be proposed immediately, on the spot, in all simplicity and in the hope of achieving a rapid return to normality.

The stress-management programme comprises three phases: a briefing *before* the assignment, support *during* the assignment and protection *on return* from the field. Different people are involved in the different phases: trainers during courses preceding departure to the field, leaders on the spot during the assignment, and finally, on return, those responsible for planning human resources.

The programme requires the cooperation of all members of staff: everyone, whether in the field or at headquarters, must feel concerned. Although the doctor in charge of stress management is responsible for drawing up the programme, giving advice to various sectors of the organization and providing support for senior staff in the field, it is the latter who have to put these measures into effect. The magnitude of the disaster — involving the death of staff members or otherwise — is therefore the factor that determines whether action by ICRC headquarters is required.

Favouring a pragmatic approach which does not depend on medicine or psychiatry, this programme is essentially based on a good team spirit and reliable leaders who are aware of the problem of stress among staff and are trained to control it. The programme should benefit from the sense of solidarity that prevails within the International Red Cross and Red Crescent Movement. This should be especially true in the case of a disaster on the scale of the Novye Atagi killings. A tragedy such as this calls the work of the entire Movement into question, undermines its fundamental principles and leaves humanitarian agencies and volunteers in total disarray.

The aim of the programme is not to help people tolerate the intolerable or to inure volunteers to the stress inherent in field operations, but rather

to enable all members of staff to share their feelings with sympathetic listeners and so be given a chance to recover without suffering any after-effects; in other words to provide a form of consolation.

*Dr Barthold Bierens de Haan*  
ICRC Medical officer  
responsible for stress management

## **New members of the International Committee of the Red Cross**

At its meetings on 4 July 1996 and 24 April 1997, the Assembly of the International Committee of the Red Cross elected three new members of the Committee:

Mr. Jean-Roger Bonvin

Mr. Peter Arbenz

Mr. Jakob Nüesch

This brings the membership of the Committee to 21 members.

**Jean-Roger Bonvin**, Swiss citizen, was born in 1934. He has a doctorate in economics from the University of St. Gallen. He worked for UNESCO's International Institute for Educational Planning and was then sent by the Swiss Development Cooperation Agency to head the Economics Faculty of the University of Burundi, a position which he held from 1970 to 1979, while serving as Swiss Honorary Consul in the country. In 1980 Mr. Bonvin joined the Organisation for Economic Co-operation and Development (OECD) in Paris, where he ran the research programme on North-South relations; he was subsequently appointed Director of the OECD Development Centre, and became its President in 1994. He has also given lectures in development economics at the Universities of Paris V, Lille and Lausanne.

The mandate of Mr. Bonvin as a member of the ICRC began on 1 August 1996.

**Peter Arbenz**, Swiss citizen, born in 1937, holds a degree in economics. He served as a member of the ICRC from 1983 to 1986, when he was appointed Swiss Federal Council Delegate for Refugee Affairs and

Director of the Federal Office for Refugees. In 1993 Mr Arbenz became Adviser for Strategic and Enterprise Development. In his capacity as brigadier-general in the Swiss Army, he served as an inspector with UNPROFOR in the former Yugoslavia in 1994, and in 1996 was appointed personal adviser on Bosnia-Herzegovina to the Chairman-in-Office of the Organization for Security and Co-operation in Europe (OSCE).

Mr Arbenz is chairman of the Zurich branch of the Swiss Red Cross.

The mandate of Mr Arbenz as a member of the ICRC begins on 1 January 1998.

**Professor Jakob Nüesch**, Swiss citizen, born in 1932, holds a degree in agricultural engineering (1958) and a doctorate in technical sciences from the Federal Institute of Technology in Zurich (1960). In 1972 he was awarded a post-doctorate teaching degree in microbiology by the University of Basel and taught there as a lecturer, becoming Professor of Microbiology in 1978. Since 1961, Mr Nüesch has been working for Ciba. Initially head of microbiological and biochemical research, he became a director of Ciba-Geigy in 1987 and has since been in charge of the biotechnology department and pharmaceutical research. In 1990 the Swiss Federal Council nominated Professor Nüesch as President of the Federal Institute of Technology in Zurich.

The mandate of Professor Nüesch as a member of the ICRC begins on 1 July 1997.

## ***In the Red Cross and Red Crescent world***

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*The Final Declarations recently adopted by two Regional Red Cross and Red Crescent Conferences are reproduced below.*

- ***Kampala Declaration***, adopted at the 4th Pan African Conference, on 27 September 1996, in Kampala (Uganda)
- ***Copenhagen Declaration***, adopted at the 5th Regional European Conference, on 20 March 1997, in Copenhagen (Denmark)

### **Kampala Declaration**

The 4th Pan African Conference was convened in Kampala, Uganda, from 23 to 27 September 1996 with delegates from 46 African National Red Cross and Red Crescent Societies in attendance.

Under the theme of “Together for Africa’s Future” the Conference focused on key issues of particular relevance to the African continent, namely:

- the challenge of assisting refugees and internally displaced people;
- the building of strong National Societies;
- the future of Africa and the role of the Red Cross and Red Crescent Societies in that future.

***After a week of analysis and discussion, the Conference:***

*notes that of Africa’s 800 million people a significant percentage are unable to meet their basic needs; that there are 30 million pre-school children who are severely malnourished; that Africans have the lowest life*

expectancy in the world; that the AIDS pandemic increases the vulnerability of populations throughout the continent; and that a significant proportion of the population do not have access to basic health services and safe drinking water;

*acknowledges* that Africa has seen striking successes in the past few years. There has been an increase in the number of representative governments, an end to major long-running conflicts, and economic growth and development in some regions. However, the continent still faces a more challenging future than any other region of the world. The prevailing serious socio-economic and political conditions may give rise to renewed instability and population displacements, and a further deterioration of the situation of the most vulnerable;

*recognizes* the major role women play in Africa in food production, child rearing and maintenance of the health of families whilst noting with concern their unequal status and marginalization, and the violence perpetrated against women;

*acknowledges* that the International Federation, by adopting its Strategic Work Plan for the Nineties, is committed to direct its collective efforts towards meeting the challenge of improving the situation of the most vulnerable. This will form the framework for shaping the priorities and programmes of the Federation's Secretariat and the network of National Societies into the 21st century;

*acknowledges* that the humanitarian challenges facing the Red Cross and Red Crescent Movement in Africa are immense, that conflicts and forced population movements, brought on by socio-economic degradation and ethnic and political tensions, have increased at an alarming rate during the past few years, resulting in a total of 7 million refugees and 20 million internally displaced people on the continent today;<sup>1</sup>

*is* concerned about the legacy of armed conflicts; the proliferation of landmines; child soldiers and other children affected by armed conflict; the abuse of women; and the problems associated with demobilization;

*recognizes* that African National Societies must respond in a prominent way to meet the needs of the most vulnerable despite diminishing resources, the proliferation of humanitarian agencies and the poor economic basis of many African countries;

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<sup>1</sup> Figures provided by the Organization of African Unity

*agrees* that the ultimate aim of development is to improve the quality of life of Africa's people, with special attention to the most vulnerable, through sustainable community-based programmes which build on their capacities and reduce long-term dependency on external assistance;

*highlights* the strength of the Movement and its unique advantage of being one of the largest and most comprehensive humanitarian networks on the continent. There are now 53 National Societies in Africa with nearly 2.5 million volunteers donating their time and energy, supported by 7,000 professional staff;

*is* committed to the Fundamental Principles of the Movement and its humanitarian mission; is dedicated to working as the International Federation in Africa and to sharing expertise and resources in promoting workable solutions in partnership with populations at risk.

***Recognizing the critical situation of the African continent, the Conference declares:***

- i. as National Societies we will set our own agendas to put the Fundamental Principles of the Movement and the Mission statement of the International Federation into practice. We will define our own priorities based on a thorough identification of the most vulnerable and the reasons for their vulnerabilities;
- ii. as well as taking action to alleviate suffering, we will ensure respect for human dignity and humanitarian values. We will do more to advocate on behalf of the most vulnerable, speaking from our experiences and without compromising our Fundamental Principles;
- iii. we will participate in community-based development with a special emphasis on health care;
- iv. we will ensure gender equality and proportionality in the governance and management of our Societies, and a gender perspective in our programme design and implementation;
- v. we will enable our youth to assume responsibilities in the decision-making and management processes of our Societies, at the national and international level;
- vi. in order to be respected we will create a credible, transparent and honest image for the National Society. We will establish standardized and sound administrative and financial procedures for our assistance programmes. This will be backed by a communication

- strategy which guides and builds our communication with the world outside our Society;
- vii. in our relief efforts we will strengthen our own human resource base and provide relief in a way that builds upon the capacities of the affected population and integrates developmental activities;
  - viii. we will decentralize authority in the National Society to the branches whilst maintaining strong systems of accountability. We will improve our accountability to our membership, those we assist and those from whom we receive assistance;
  - ix. where government services and the rule of law and order have broken down, National Societies will continue to provide humanitarian services regardless of the absence of a functioning government;
  - x. we will commit to developing local sources of income for self-sustainability;
  - xi. many of Africa's challenges and opportunities cross national boundaries. We will strengthen regional cooperation between National Societies, making full use of the facilities of the Federation's regional delegations;
  - xii. we are committed to being effective members of the International Federation, to contributing to policy development and to identifying and training competent African individuals to act as delegates within the International Federation's programmes, particularly within Africa. We will make our past and present statutory contributions in full to the International Federation;
  - xiii. we recognize that there are clear and complementary roles for the governance and the management functions of our National Societies. We will build governing structures with integrity and management structures with the necessary professional skills to run our organizations. We will clearly define the relationship between governance and management functions;
  - xiv. in providing assistance and ensuring respect for human dignity, our prime resource is our people. We will strengthen our human resource base of both volunteers and employees;
  - xv. in working as the International Federation and cooperating with the ICRC, we will define the nature of our relationships, particularly focusing on issues of integrity, cooperation accountability, roles and responsibilities, and mutual respect;

- xvi. we declare our commitment to implement our adopted plan of action, in partnership with the most vulnerable people, and call upon the Federation Secretariat, the ICRC, sister Societies, governments and other partners to support our efforts whilst respecting our priorities and plans.

*In committing ourselves to this declaration and action plan, we call for the following relations with our partners:*

**from our community:**

participation in setting our priorities;  
feedback on the quality of service we are delivering;  
volunteers to provide service to their communities;

**from the Movement:**

understanding that the provision of relief and community services are the responsibility of the National Society;  
respect for our priorities and plans;  
commitment to supporting our capacity-building in development and relief;  
refraining from undermining our capacity through independent action;

**from our governments:**

respect for our auxiliary and independent role;  
promotion of National Society development and appropriate financial support;  
action to follow up commitments made at the 26th International Conference of the Red Cross and Red Crescent (Geneva 1995), in particular with regard to:

- protecting the civilian population in times of war;
- promoting the principle of non-recruitment and non-participation in armed conflict of children under the age of 18;
- moving towards a total ban on landmines;
- encouraging the use of the Code of Conduct for the International Red Cross and Red Crescent Movement and non-governmental organizations;

- permitting relief operations of a strictly humanitarian character in States under sanctions;
- recognizing the specific role of their countries' National Society in disaster response activities;
- helping create a beneficial environment for the overall development of their National Society;

**from external agencies:**

understanding and respect for our independence;

partnerships in common causes, including adoption of the Code of Conduct for the International Red Cross and Red Crescent Movement and non-governmental organizations.

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## **The Copenhagen Declaration — Action and advocacy**

adopted by the 5th regional European Red Cross and Red Crescent Conference, on 20th March 1997

*“The people of Europe and their governments have a high expectation that you, the Red Cross and Red Crescent, will use your unique position of neutrality, impartiality and independence to be a key force in promoting positive change in the situation of the most vulnerable. You are challenged to be the social conscience of the new Europe.”*

Quote from key-note speaker

The Conference has provided an opportunity to learn from expert speakers, the media round table and each other. We have risen to many of the new challenges but we must continue to seize the opportunity to

renew our commitment to change and to constantly search for ways of improving the effectiveness of our action with the most vulnerable people.

### **How the Red Cross and Red Crescent sees Europe today**

Europe is changing dramatically. It has more democracy — but less order, more free markets — but less employment, reduced fear of international war — but greater insecurity for the individual.

Violence — and the deprivation and suffering associated with it — touch the lives of millions. Armed conflicts are once again part of the European reality. Internal strife with no clear distinction between the combatants and non-combatants. Wars where the rules and norms of international humanitarian law are flagrantly disregarded. Individuals, families and communities flee within their own countries or across borders. For many, this is today's reality.

In past years the State played a key and direct role in providing safety nets and services. Today, many welfare systems in Europe are being radically altered or swept aside. In many States, governments are looking for organizations and commercial undertakings to deliver services to the most vulnerable people, often providing the legislative and financial resources to help them do so. Civil society and non-profit-motivated organizations are increasingly important in providing support to the most vulnerable people.

Many people in Europe face a deterioration — maybe an imminent crisis — of health and well-being not seen on the continent for 50 years. Life expectancy is decreasing in many countries whilst communicable diseases and those related to life-style are on the increase.

In our countries, vulnerability is individualized and changes over time. Not all elderly people are vulnerable, but many isolated and poor ones are. Not all ethnic minorities are vulnerable, but asylum seekers and migrant workers may be so. Not all children are vulnerable, but those affected by armed conflict or fleeing violence are. Men and women suffer differently in disaster and have different vulnerabilities.

### **The challenge for Europe's National Societies**

The mission of the Red Cross and Red Crescent is to improve the situation of the most vulnerable. We believe that individuals are vulnerable

when they are at risk and when they have neither the personal, family, community nor public resources to ensure their continued good health and well-being.

The challenge for Europe's National Societies is to identify those who are the most vulnerable people and to be the social conscience for their plight. We will go on to develop appropriate strategies for working with them in the most accessible, effective and efficient manner. These services will be focused on decreasing the suffering caused by both creeping and acute attacks on people's health and well-being.

At the same time, European National Societies will not lose sight of their international obligations inside and outside of Europe. Provision of assistance to the most vulnerable people in other countries, through their National Societies, is also a priority.

### **Services and action in the community**

We believe in, and will campaign for, the values of the Red Cross and Red Crescent. The Fundamental Principles and the Federation's mission to assist the most vulnerable — which form the basis of these values — will underlie all our work. As National Societies we will be seen to live these values through our work.

We will vigorously champion the rights and interests of the most vulnerable, carefully choosing our main areas of advocacy, then building our cases on high-quality data, our experiences, the Fundamental Principles and Federation policies.

We will target our services to the most vulnerable people, when they are most vulnerable. To do this, each National Society will assess, on a continuing basis, who the most vulnerable are in their country, and what services the Society is most suited to deliver. In particular we will seek to play a role in the prevention of conflicts, health crises and other grave assaults upon human dignity.

We will provide the services the most vulnerable need most urgently, services which provide direct physical assistance, services that support them emotionally and psychologically, services that give them information, or use information to lobby for their needs. We recognize that addressing vulnerability in this way will have a profound effect on all National Societies.

Wherever possible we will involve vulnerable people in the delivery of services, building on their capacities and recognizing the skills they can bring to the Red Cross and Red Crescent.

We will promote international humanitarian law and respect for the emblem, and the spirit that lies behind them. We will encourage the full implementation and understanding of that law in our own countries.

We will continue to support the actions of the ICRC and all components of the Movement in favour of victims of armed conflict and violence.

### **Platform for action in the Red Cross and Red Crescent**

We will always link action to ideals. People coming into the National Societies should be inspired by our values and given the opportunity to put them into practice by providing vital services to the most vulnerable.

As National Society leaders we are the guardians of our mission. We recognize the need to constantly adjust our organizations and their services to meet the needs of the most vulnerable people and to demonstrate responsibility in ensuring that our activities are in conformity with the Fundamental Principles and the Federation's Strategic Work Plan.

We are committed to high-quality leadership and recognize the need for leadership training in governance and management.

We will increase the awareness and commitment of National Society leadership to the need to integrate a gender perspective into our governance, management and actions.

We will encourage the participation of young people in the development of national plans of action, and are committed to the involvement of youth at all levels of our Societies.

We are committed to carrying out local and national vulnerability and capacity assessments and to sharing with one another our experiences of such assessments and their methodologies. We call upon the Federation's Secretariat to develop additional tools for carrying out such assessments and we commit ourselves to carrying out our own national assessments within the next five years.

We call upon the Secretary-General of the Federation to systematically develop the Secretariat's role as the architect of cooperation, thus supporting us in our endeavour to work as a Federation, and in establishing long-term, mutually beneficial partnerships.

We will build partnerships between National Societies in Europe, partnerships based upon shared needs and support, not the one-way flow of finance. In particular, we will support the initiatives of the National Societies of the Commonwealth of Independent States to form partnership systems based on the Almaty Declaration.

We request the Secretary-General of the Federation to develop within the next six months a plan of action for the European National Societies and the Federation to address the impending health crisis in Europe. The plan of action should be presented to the Societies of the region through whom resources for its implementation will be secured.

### **Working with others**

We will use our unique relationship with the governments of Europe to promote the interests of the continent's most vulnerable people and we will continue to appeal to the European Union to develop its funding mechanisms in favour of the most vulnerable people.

We need to clarify and understand the nature of our auxiliary role with governments today and the nature of our independence. All National Societies need an appropriate legal basis — in accordance with the principles of a well-functioning National Society — an active and appropriate volunteer base, good management, and responsible governance (the voluntary, elected governing body). We commit ourselves to thoroughly reviewing our legal status, volunteer base, management structures and governance mechanisms in the next five years.

Reliance on public and government donations to fund our work is no longer sufficient. We must rapidly seek new sources of revenue and be willing to explore commercial as well as non-commercial avenues of financial support, even though we recognize that there are risks in such a process. We must also develop and support global fund-raising initiatives from which all National Societies can benefit.

Special attention needs to be paid to the opportunities for the National Societies of Central and Eastern Europe. There, the corporate sector has grown to a level where it should be ready to contribute to humanitarian funding.

We will seek to ensure that our fund-raising work is carried out in the context of the code of ethics currently being developed for this purpose.

We will continue to vigorously support our sister Societies in other countries beyond Europe, with their institutional development and programmes for the most vulnerable.

The Conference requests the Secretary-General to investigate the practicality of organizing an annual high-level round table for media leaders, editors and journalists to share our common concerns on humanitarian issues.

### **Monitoring follow-up**

We commit ourselves to taking this Declaration back to our own Societies and to working on its implementation.

The Conference requests the European members of the Executive Council to form a committee to monitor the follow-up of the Declaration.

We further request that the Conference Organizing Societies and the Secretary-General of the Federation put in place a plan of action and an appropriate support mechanism which will report to the monitoring committee on the follow-up of the Declaration.

## **Current problems and challenges relating to international humanitarian law in Japan**

Seminar held at Tokyo University, 19-20 February 1997

On the initiative of the ICRC and with its cooperation, the Japanese Red Cross Society organized a seminar at the University of Tokyo on problems and challenges relating to international humanitarian law in Japan. The meeting, held with the support of the Japanese Ministry of Foreign Affairs, took place on 19 and 20 February 1997.

The seminar was opened by the Vice-President of the Japanese Red Cross, Tadateru Konoe, and by the ICRC Delegate General for Asia and the Pacific, Jean-Michel Monod. It brought together some 60 people concerned with international humanitarian law, from universities, Ministries (in particular the Ministries of Foreign Affairs and Justice and the Defence Agency), several non-governmental organizations and the National Society. The proceedings were divided into four sessions, dealing with the following topics:

- *The impact of the international system of legal protection for the individual*, presented by Professors Hisakazu Fujita (Tokyo University) and Yozo Yokota (Tokyo University). The ICRC Regional Delegate for East Asia, Christophe Swinarski, also presented a paper.
- *The applicability of international humanitarian law in Japanese law*, chaired by Professor Ribot Hatano (University of Gakusyu-inn). This topic was covered by Professors Shigeki Miyazaki (Meji University), Kimio Yakushiji (Ritsumeihan University), Toshio Okuhara (Kokushikan University), Yoshiro Matsui (Nagoya University) and Izumi Okada (Nauzan University). A report on the applicability of international humanitarian law in the Philippines, Indonesia and Cambodia was presented by the ICRC Delegate General for Asia and the Pacific.
- *Current problems facing international humanitarian law*, chaired by Professor Masayuki Takemoto (Kansai University), with papers

presented by Professors Michihiro Yamashita (Fukuoka University), Kazuhiko Higuchi (Ryukyu University), Seigo Iwamoto (Suzuka Kokusai University) and Terumi Furukawa (Housei University), and by Christophe Swinarski;

- *Peace-keeping and international humanitarian law*, chaired by Professor Shigeru Kozai (Osaka University). Professors Tatsuro Kunugi (International Christian University), Tetzuo Sato (Hitotsubashi University), Toshiki Mogami (International Christian University) and Akira Mayama (Kohnan University) presented papers on this topic.

This important event — the first of its kind in the Japanese archipelago — was held within the framework of celebrations marking the 120th anniversary of the Japanese Red Cross and coincided with the 100th anniversary of the Japanese Society for International Law. It opened up new prospects for the dissemination of international humanitarian law in the country, and concluded with a call for Japan to ratify the Protocols additional to the Geneva Conventions, together with an undertaking by the National Society and the experts present to work towards that goal. Furthermore, pursuant to the decisions of the 26th International Conference of the Red Cross and Red Crescent, a proposal was put forward to set up an interministerial committee for the implementation of international humanitarian law in Japan.

The proceedings of the seminar will be published by the National Society in Japanese.

*Christophe Swinarski*  
ICRC Regional Delegate  
for East Asia

## **Books and reviews**

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**Isabelle Vonèche Cardia, *L'Octobre hongrois: entre croix rouge et drapeau rouge. L'action du Comité international de la Croix-Rouge en 1956*, Brussels, Éditions Bruylant, 1996, xvi + 183 pp.**

The history of the ICRC is well recorded up to the end of the Second World War. The whole period of the Cold War, however, which both impeded the work of the ICRC by placing major or even insurmountable obstacles in its way and provided the framework for an unprecedented expansion of its activities, has not yet been adequately studied. This book by Isabelle Vonèche Cardia, which reviews the operation mounted during the dramatic events that shook Hungary in 1956, is an important contribution to the history of the ICRC during the Cold War. Her account of that operation, which was one of the rare occasions when the ICRC was authorized to intervene directly in the Eastern bloc, reveals the problems that stemmed from the incompatibility of the Red Cross mandate with Communist ideology, from involvement in a highly propagandistic environment and from the difficult relations with the Soviet Union, which was extremely distrustful of anything from the West. The operation was also exceptional in terms of the scale of the assistance provided at a time (from the post-war years to the 1960s) when the ICRC generally had great difficulty in raising funds. The enthusiastic response of donors clearly demonstrates how much was at stake in this particular humanitarian initiative, which was the only way in which the West could support the Hungarian insurgents.

Thanks to painstaking historical research based on contemporary sources and archival material, the book recreates the entire operation so that we relive in vivid detail the problems as they were perceived by the delegates and by members of the Committee (the ICRC's governing board), the choices that arose and the action that was taken. The author begins by setting the scene, describing the constraints imposed on the ICRC by its tense relations with the Soviet Union and the latter's relationship as a Great Power with Hungary. The subsequent account of the operation itself is divided into three periods, according to the form as-

sumed by the ICRC presence in Hungary and the different types of activity undertaken. This approach brings out a basic contradiction: whereas the Kremlin had adopted an attitude of rejection and outright defiance vis-à-vis the Red Cross, it nevertheless accepted its assistance and hence its presence in Hungary. However, its approval remained strictly limited inasmuch as the ICRC was not authorized to carry out its traditional protection activities.

Reacting very swiftly to the appeal launched by the Hungarian Red Cross in the early days of the unrest in Budapest and taking advantage of the immediate influx of relief supplies to Vienna, the ICRC was very rapidly able to channel a substantial amount of aid into Hungary and distribute it there. Although the borders were closed to it after the second Soviet intervention, it was authorized to resume its work once the situation had been brought under control. Attempts by the ICRC to provide protection, which had been difficult from the start owing to the confusion prevailing in the party's decision-making bodies, were stonewalled by the newly installed authorities. However, its approaches met with some success among the insurgents, who allowed the delegates to visit their civilian detainees and welcomed their initiatives. This disparity probably reflects the fundamentally contradictory expectations vis-à-vis the ICRC of the parties involved in that the insurgents needed the very type of legitimization and international support that could be conferred by Western assistance.

Once order had been restored by Soviet tanks (although the country's economic and social situation remained precarious), the ICRC's work focused on responding to the needs of the civilian population. Abiding firmly by its principles, the institution managed to ensure that the strictly humanitarian nature of its operation would be guaranteed. As for its practical implementation, although the author concludes that the Hungarian authorities did not obstruct the ICRC's work (page 54), her analysis tends to leave the reader with the impression of a gradual but irresistible takeover of the institution's activities by the authorities. Once the Hungarian Red Cross had been brought to heel and affiliated to the authorities (by May 1957), and once the ICRC delegation had been reduced (by June 1957) and its means of action curtailed (access by road was closed to it in March 1957 and visas became more difficult to obtain, etc.), the ICRC's role was confined strictly to that of a purveyor of aid, a role moreover that the Hungarians sought to turn to maximum account.

As in the initial phase, the ICRC was thus unable to carry out its protection work during the period from November 1956 to October 1957, either on behalf of political detainees, deportees or former members of

the Hungarian Red Cross and health care personnel (accused of having helped the counter-revolutionaries) or with regard to the highly politicized issue of reuniting displaced persons. Left without information in these respects by the authorities, it abandoned the idea of adopting an overall strategy and opted for a pragmatic approach, seeking to settle cases on an individual basis. The book is to be commended for giving a full account of the criticism voiced by some delegates of this decision to tread carefully. The ICRC cited in self-defence its long-term goal of winning the confidence of the Soviet authorities so that it could continue to operate in the Eastern bloc and be authorized to pursue its mission in the event of a third World War — which was viewed as highly probable at the time. Reminiscent of earlier similar choices, this strategy looked like a repetition of some of the mistakes of the Second World War and laid the ICRC open, as the Committee was aware, to the same reproaches. Although the book does not enlarge on this debate, it shows how a similar attitude adopted in two separate situations can be judged in different ways by the international community.

The last period studied, which begins in June 1957, mainly shows the consistency of the behaviour of all concerned: while the ICRC continued to provide assistance in the hope of maintaining a presence in Hungary at all costs, no progress was made in the area of protection save for a few purely episodic concessions. The author clearly explains the reasons that led the ICRC to persevere against all odds and to remain in Hungary. She suggests that its determination to gain Soviet confidence bore fruit during the Cuba crisis, when the Great Power accepted its services as a neutral mediator. On the other hand, an attempt to elucidate the ambiguous attitude of the Kremlin to the ICRC would have been appreciated. Although the problem of access to archives makes interpretation difficult, it should at least have been possible to move beyond Communist rhetoric and advance a few theories which are intimated in the book itself. For example, it may have been the desire to regain control over the population that prompted the Hungarian authorities to accept the aid offered since, as demonstrated elsewhere and particularly in the case of the Soviet Union,<sup>2</sup> relief supplies can prove an effective means for a government of recovering a certain measure of legitimacy, rallying the people to its cause and enhancing its control over the population. This theory seems all the more

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<sup>2</sup> During the 1921-1922 famine, the Bolshevik government seems to have realized very quickly the advantages to be gained from receiving large-scale Western assistance over which it exercised strict control. See Jean-Christophe Rufin, *Le piège humanitaire*, Paris, Jean-Claude Lattès, 1991, pp. 39-41.

plausible in view of the Soviet leadership's growing awareness of the need to make some allowance, however slight, for the expectations of civil society and to provide it with a certain standard of living, which was one of the ambitions of the "new course", the liberalization policy launched in 1953. This could explain why, after the ICRC was able to step into the breach, as it were, in 1956 because of the prevailing confusion, the new authorities allowed it to continue with its work.

This research, which covers a little known and unfamiliar area of humanitarian assistance, is enlightening on more than one account. The book is well documented, written in a lively style and sets the ICRC's work in its historical context. It also describes an aspect of the institution that usually remains concealed: the decision-making process, the different suggestions made by delegates or Committee members, the various options envisaged, the steps finally taken, etc. It is interesting, for example, to be informed of the many occasionally circuitous means devised and in some cases adopted in an attempt to visit the prisoners at last. To sum up, the book is not only an incisive portrayal of an exceptional operation but also sheds broader light on the activities of the ICRC, and will be of interest to all who wish to know more about its operational procedures.

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**Olivier Paye, *Sauve qui veut? Le droit international face aux crises humanitaires*, Collection de droit international No. 31, Éditions Bruylant/Éditions de l'Université de Bruxelles, Brussels, 1996, 315 pp.**

This interesting book of some 300 pages by Olivier Paye, a lecturer at the Social, Political and Economic Sciences Faculty of the Free University of Brussels and the Law Faculty of the Facultés universitaires de Saint-Louis (Brussels) and a member of the academic staff of the International Law Centre of the Free University of Brussels, is devoted to the relationship between contemporary international law and activities whose purpose is to provide humanitarian relief.

The study is divided into two parts on the basis of a wholly appropriate distinction: the first analyses the legal rules governing humanitarian assistance and the second those governing humanitarian intervention. The issues dealt with in the book's eight sections are viewed in the light of existing rules and recent legal trends; during his examination of the latter Olivier Paye identifies broad lines of development in legal norms and considers the validity of certain opinions expressed in that regard. Several aspects of what the author calls, quite aptly, the "*revendication ingériste*" (interventionist demand or claim) are subjected to rigorous criticism so that, as Pierre Michel Eiseman notes in his preface, the book readily lends itself to a comparison, in terms of clarification of the debate, with the previous study by Olivier Corten and Pierre Klein.<sup>1</sup>

The first part, on the legal rules governing humanitarian assistance, deals with the responsibilities of States in a humanitarian emergency and then the conditions and procedures for implementing international humanitarian assistance. In his introduction, the author presents the method used as follows: "The first step, therefore, in determining the rules governing international humanitarian assistance is to look at inalienable human rights in order to draw general conclusions whose content will subsequently be confirmed and refined through an examination of international humanitarian law, which contains more detailed provisions in that regard. Where these provisions are equivalent to customary obligations or general principles of humanitarian law, they may also be taken as constituting a general rule that is valid in all circumstances, since it would be unreasonable or even absurd to suggest that human life and dignity can be better protected in times of armed conflict than in times without conflict." (Pages 23 and 24).

We feel that this approach calls for some comment. In our opinion, international humanitarian law, defined as a set of rules applicable in situations of armed conflict, and international human rights law must each preserve its own momentum — derived from the specific nature of the problems they set out to solve — in order to ensure the best possible protection for the individual. Thus, rather than inferring from Article 3 common to the four Geneva Conventions a right to life of non-combatants with the same consequences as the right to life established under human rights law, i.e. that would create an obligation for the State to come to

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<sup>1</sup> Olivier Corten and Pierre Klein, *Droit d'ingérence ou obligation de réaction?*, Éditions Bruylant, Brussels, 1992. See book review "The right to intervene or the obligation to react", in *IRRC*, No. 298, January-February 1994, pp. 83-84.

the aid of the population under its jurisdiction (see the author's arguments, pp. 59 to 64), we find it preferable to consider that the obligations created by the right to life do not cease to exist in times of armed conflict — insofar as they are compatible with the derogations authorized by international human rights law by virtue of their conformity with international humanitarian law. For example, in a situation of non-international armed conflict, rebel combatants capable of fighting, whose life can be taken in the course of military operations without any infringement of humanitarian law and hence without any violation of human rights, would not enjoy a right to relief supplies. Conversely, interpretation of human rights in the light of humanitarian law seems to us to be legitimate when seeking to identify the obligations of a State which, faced by an emergency situation, is finding it difficult to discharge its duties under international human rights law; humanitarian law can then be regarded as a substitute law in cases where the protective machinery of domestic legislation, supplemented or adjusted if need be by international human rights law, is lacking.

After a wide-ranging analysis of all the implications of the right to life in international human rights law (which, thanks notably to the work of the Human Rights Committee, extend to such diverse areas as the fight against illiteracy and unemployment and the raising of living standards), Olivier Paye concludes that the State with territorial jurisdiction has an obligation to provide assistance in a humanitarian emergency. As he sees it, this obligation is based on international law regarding the right to life and, in the event of armed conflict, on international humanitarian law. Identical premises lead him to conclude that foreign States have a right *and* a duty (*"droit-devoir"*) to provide humanitarian assistance where the State with territorial jurisdiction fails to do so. With regard to the implementing procedures for humanitarian assistance, a subject dealt with in Chapter II of the first part of the book, the author argues that States have an obligation, derived from general international law and humanitarian law, to obtain the consent of the receiving authorities, and that the receiving authorities likewise have an obligation, stemming from the right to life and humanitarian law, to refrain from arbitrary refusal of international humanitarian assistance.

It should be noted that the obligation to obtain the consent of the receiving authorities is incumbent on States, the author having made clear in his introduction that he is concerned solely with the role that States or *inter-State* organizations can assume in humanitarian assistance (p. 24). On the other hand, he gives a certain amount of attention to the relationship between Article 3 common to the four 1949 Geneva Conventions, which mentions the services that can be offered by "an impartial humanitarian

body” and Article 18, paragraph 2, of 1977 Protocol II, whose reference to “the High Contracting Party” conveys the impression that only a State’s governmental authorities are required to give their consent for relief action. Taking the view that the provisions of common Article 3 prevail over those of Protocol II, he nevertheless concludes that this interpretation, which would enable a relief operation to be envisaged as soon as the party controlling the territory on which it would take place consents to it, applies only for the impartial humanitarian body referred to in common Article 3 (p. 92). The author does not, however, expand further on the meaning that should be given to the latter term.

The titles of the two chapters forming the second part of the study, which deals with the legal rules governing humanitarian intervention, provide a key to some of the author’s conclusions. The chapters are entitled, respectively, “[the] prohibition on action by foreign States to terminate a situation of non-provision of humanitarian assistance by force of arms” and “[the] right of the United Nations to terminate a situation of non-provision of humanitarian assistance by force of arms”.

Chapter III of the book reaffirms, in essence, the argument steadfastly advanced by Olivier Corten, Pierre Klein and a great many other writers that international law prohibits armed action by States to terminate a situation of non-provision of humanitarian assistance, except with the validly given consent of the authorities with territorial jurisdiction, and “that recent legal trends provide (...) hardly any grounds for a looser interpretation of [this] traditional prohibition” (p. 179). Of particular interest in this chapter are the passages in which the author takes a critical look at the argument concerning the disappearance of the State which has been advanced, for example, in connection with the absence, at least temporarily, of any governmental authority in Liberia and Somalia. Drawing on a number of considerations in support of his view, Olivier Paye concludes that the principle of equal rights of peoples and of their right to decide for themselves is incompatible with the use of force by foreign States to terminate a situation of non-provision of humanitarian assistance.

Section 2 of the fourth and last chapter is probably one of the most instructive in the book. After showing in the first section that the Security Council is increasingly inclined to regard certain situations of gross violation of basic human rights or international humanitarian law as constituting *as such* “threats to peace” within the meaning of Chapter VII of the Charter of the United Nations, the author presents us, in the section entitled “[the] right of the Security Council to take centralized or decentralized armed action”, with a full-scale review of operations conducted

by the United Nations itself or under its auspices since its establishment. Precedents of peace-keeping operations ranging from the Congo to Bosnia-Herzegovina and Rwanda and including *inter alia* Cyprus, Lebanon, Cambodia, Mozambique and Somalia are analysed in terms of the type of mission and the conditions of consent and legitimate defence. An examination of recent legal trends reveals, in particular, the increasing incorporation in such missions of an explicitly humanitarian dimension, a "limited degree of emancipation from the customary substratum of consent" (pp. 225-226) and, in the case of legitimate defence, a broadening of its scope and authorization by the Security Council to use force in specific circumstances. Of particular interest is the author's meticulous dissection of the various types of intervention by the Council in Somalia through both centralized and decentralized action, a subject to which two subsections are devoted.

The precedents of North Korea and Southern Rhodesia are addressed in the subsection entitled "[the] right to subcontract armed action to Member States", while the analysis of recent legal trends focuses on the cases of Bosnia-Herzegovina, Somalia and Rwanda. The author concludes that "interventionist writers are absolutely right to emphasize the innovative character of the authorization to use force which States have been given by the Security Council in order to end certain recent humanitarian crises" (p. 266); he notes, however, that these decentralized operations are accompanied, in accordance with the wishes of the Security Council itself, by close coordination between the Secretary-General and the States or regional bodies concerned, a circumstance that should allay any doctrinal reservations about the principle of delegating armed action of this kind to States.

At the end of this essentially descriptive section dealing with current practice with regard to humanitarian intervention, the reader begins to wonder why Olivier Paye chose such a provocative title<sup>2</sup> for his book. The answer lies in the overall conclusion, particularly as reflected in the final pages of his study. Questioning the standpoint according to which humanitarian intervention establishes the moral foundations for international law, the author implies that a fundamental consequence of the reference to ethical principles is the obligation incurred by supporters of intervention

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<sup>2</sup> Translator's note: The book's title *Sauve qui veut?* (literally "save as save will") is a wordplay on the term *Sauve qui peut* (literally "save as save can"), which means "every man for himself". Thus the literal English translation of the title would read: *Save as save will: International law faced by humanitarian crises*.

to engage in discussion, to reveal their deep-seated motives and to lay them open to criticism. This approach, which he calls the “ethics of discussion”, is guaranteed in the author’s opinion by the current (limited) potential for military-humanitarian action, which can be decided only after a debate has taken place with the authorities who represent territorial sovereignty and with the members of the Security Council (pp. 278-279). This relative optimism is tempered, however, by the finding, on which the book closes, that politicians are increasingly inclined to conceal some of their less admissible choices behind the screen of humanitarian action, “as evidenced, in their disparate ways, by interventions that may be described as ongoing in Iraq, contained in Bosnia-Herzegovina, belated in Rwanda and incomplete in Somalia” (p. 280).

Olivier Paye has produced a work that allies the rigour of a legal mind and the accuracy of an historian with political sensitivity, bringing a breadth of knowledge to his subject that seems certain, in our opinion, to appeal to any reader with an interest in the development of international relations.

*Denise Plattner*  
ICRC Legal Adviser

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# **International Committee of the Red Cross**

## **ANTI-PERSONNEL LANDMINES — FRIEND OR FOE?**

### **A study of the military use and effectiveness of anti-personnel mines**

Geneva, 1996

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The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

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The *International Review of the Red Cross* is published six times a year, in five languages:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

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Internet: [review.gva@icrc.org](mailto:review.gva@icrc.org)

SUBSCRIPTIONS: one year, 30 Swiss francs or US\$ 18

single copy, 5 Swiss francs

Postal cheque account No. 12 - 5527-06 Geneva

Bank account No. 129.986.0, Swiss Bank Corporation, Geneva

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INTERNATIONAL  
**REVIEW**  
OF THE RED CROSS



ISSN 0020-8604