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The Meaning of "Hostile Purposes" in the BWC

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Article I of the Biological Weapons Convention obliges its states parties:

never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbiological 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 restriction to "prophylactic, protective or other peaceful purposes" following the injunction "never in any circumstances" at the beginning of Article I must certainly apply not only to the purposes of a state as regards another state but also to the purposes of a state as regards a population or group on the territory of that state or otherwise under its jurisdiction or control.

To take an example, the "prophylactic, protective or other peaceful purposes" in (1) certainly cannot include the purpose of a state in producing a biological agent or toxin in order to kill or otherwise harm or coerce the population of a village on the territory of that state. There is no way in which such a purpose could be considered to be prophylactic, protective or peaceful. The production by a state of a biological agent for such a purpose would obviously be a grave violation of Article I of the Convention.

By the same logic, the development, production, stockpiling or other acquisition of "weapons, equipment or means of delivery designed to use" a biological agent or toxin for such a purpose, dealt with in (2), would also be a grave violation of Article I.

Accordingly, the term "hostile purposes" in (2) must include hostile purposes of a state regardless of whether such hostile purposes are directed against another state or are directed against a population or group on the territory of that state or otherwise under its jurisdiction or control.

It is surprising therefore to find in the Procedural Report of the 13th Session of the Ad Hoc Group under Article II, DEFINITIONS, the following:

"[4. Hostile purposes mean

The use of bacteriological (biological) or toxin weapons or biological agents by a State (States) to [destroy] [cause death, disease and incapacitate] human beings, animals or plants in a State (States) which is (are) not engaged in a military conflict with the former State (States) with a view to inflicting military, economic or moral damage.]

The above misguided interpretation of "hostile purposes" narrows the prohibition against "weapons, equipment or means of delivery designed to use such agents or toxins" to include only those actions undertaken by a state in order to harm another state. This would exempt actions undertaken by a state to harm a population on its own territory or otherwise under its jurisdiction or control. A state could develop, produce, stockpile or otherwise acquire or retain biological or toxin weapons so long as the hostile purpose was not to harm another state. Such actions would grievously violate the unequivocal intent of the framers of the Convention, as expressed in its preamble, to "exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons".

Fortunately, as indicated by the square brackets surrounding it, the above definition has not found general or perhaps even widespread favor in the Ad Hoc Group. Surely, when its inimical implications for the entire BWC regime are fully appreciated, neither it nor any other exemption for hostile internal state purposes will appear in the Protocol.