

MESSAGE
Subject: Draft Convention
Sender: msm@wjh.harvard.edu

Dated: 9/22/98 at 18:29
Contents: 3

Item 1

FROM: msm@wjh.harvard.edu
TO: Rajesh De /Students

Item 2

ARPA MESSAGE HEADER

Item 3

Dear Raj,

Here is an long email message that will bring you up to date on refinements in the draft convention so that you can begin to work on updating the commentary. The current (21 September) text is copied as the last part of this email.

I look forward to seeing you and Philip Heymann here in my office at 10:30 Thursday morning.

Hope all is off to a good start for you this new academic year.

Matthew.

Matthew Meselson
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----- Forwarded message -----
Date: Tue, 22 Sep 1998 08:26:30 +-100
From: James Crawford <jrc1000@hermes.cam.ac.uk>
To: Julian Perry ROBINSON <J.P.P.Robinson@sussex.ac.uk>,
"Matthew S. Meselson" <msm@wjh.harvard.edu>
Cc: "Prof. Philip HEYMANN" <heyman@law.harvard.edu>,
John DUGARD <J.Dugard@Law.Leidenuniv.nl>,
"Professor James R. CRAWFORD" <jrc1000@hermes.cam.ac.uk>,
"JRC3000@aol.com" <JRC3000@aol.com>
Subject: RE: Refinement of draft covention

Dear Matthew,
Responses below in capitals. I assume you have not yet got the fax John and I sent you on Sunday: I attach the text.
James

20 September 1998

Dear Matthew,

John and I met today in Cambridge to discuss your continuing queries. I agree with everything that John says in his letter to you of 10 September 1998, including his responses on the other drafting issues you had raised.

Turning to the main issue, we face a dilemma. On the one hand there is certainly a case for making it clear beyond doubt (clearer than it is in the existing draft) that jurisdiction can be extended to other cases irrespective of whether a request for extradition has been made by a State which has jurisdiction pursuant to Article V. On the other hand, the existing draft reflects the current accepted jurisdictional framework for

"international crimes", and there are dangers in going further than this, in terms of getting a convention at all. It is the usual problem of the best being the enemy of the good.

One way we can see which might achieve at least some of what you want would be, first, to add a new paragraph (f) along the lines proposed by John, which would oblige States to prosecute in the case of an intentional use of BWC or CWC. This is surely the worst case scenario, and the extension might therefore prove generally acceptable. Secondly, a slight amendment to Article V (3) would make it clear that States may go further and establish jurisdiction under their internal law over offences listed in Article I irrespective of the limitations arguably contained in Article V.

We attach a new version of Article V containing these two amendments.

We are not in favour of any change to Article V (2), which is a well accepted provision dealing with a different problem. Such a change is unnecessary anyway in the light of our two proposals.

In short we think this takes a useful extra step with the least possible risk of "frightening the horses".

With warmest regards,

JRC

REVISED TEXT

ARTICLE V

1. Each State Party to this Convention shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article I in the following cases:

- (a) when the offence was committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when, if that State considers it appropriate, the alleged offender is a stateless person whose habitual residence is in its territory;
- (d) when the offence was committed with intent to harm that State or its nationals or to compel that State to do or abstain from doing any act;
- (e) when the offence involved the use of biological or chemical weapons and a victim of the offence was a national of that State;
- (f) when the offence involved the intentional use of biological or chemical weapons against any persons, irrespective of their nationality.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article I in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to Articles VI and VII.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law, including an internal law giving effect to Article I.

4. Jurisdiction with respect to the offences set forth in Article I may also be exercised by any international criminal court that may have jurisdiction in the matter in accordance with its Statute

From: Matthew S. Meselson[SMTP:msm@wjh.harvard.edu]
Sent: 21 September 1998 17:30
To: Julian Perry ROBINSON
Cc: Professor James R. CRAWFORD; JRC3000@aol.com; John DUGARD; Prof. Philip HEYMANN

Subject: Refinement of draft convention

Dear colleagues,

Here for your consideration and advice are some numbered questions about the draft convention, some minor, some not:

PREAMBLE

1) Donald Mahley of ACDA suggests deleting "ensuring", considering that the effectiveness of these treaties can be enhanced but probably not ensured. Should we delete "ensuring"?

YES

ARTICLE I

1) Should we follow the example of Article 8.1 of the ICC Statute by limiting our definition of crimes to those actions "committed as a part of a plan or policy or as part of a large-scale commission of such crimes."? Without such limitation the draft convention covers even minor uses of biological and chemical weapons, such as spouse-poisoning, preparing a Mickey-Finn, etc.

Specifically, should we revise ArtI.1 of the draft convention to read: "Any person commits an offence who knowingly and as a part of a plan or policy or as part of a large-scale commission of such crimes:"

NO. IF THERE IS A PROBLEM IT LIES IN THE BROAD DEFINITION OF CHEMICAL WEAPONS (THERE IS NO PROBLEM WITH BIOLOGICAL WEAPONS WHERE THE DEFINITION IS MORE CLEARLY RELATED TO "WEAPONS" IN THE NORMAL SENSE. I DO NOT THINK WE SHOULD DEPART FROM THE EXISTING CONVENTIONAL DEFINITIONS; MINOR CASES WILL NOT IN PRACTICE PRESENT PROBLEMS (AND THE ACTS YOU ENVISAGE ARE STRAIGHTFORWARDLY CRIMINAL ANYWAY). THE ISSUE MIGHT PERHAPS BE DISCUSSED IN THE COMMENTARY BUT I WOULD LEAVE THE TEXT ALONE.

2) Do we agree to add as Art.I.1(g) "threatens to use biological or chemical weapons"?

A POSSIBLE PROBLEM IS THAT THIS WOULD COVER THE LOONY WHO DOES NOT HAVE BWS OR CWS, IS KNOWN NOT TO HAVE THEM BUT NONETHELESS "THREATENS" TO USE THEM.

ON THE OTHER HAND A TERRORIST ORGANIZATION OF UNKNOWN TECHNICAL CAPACITIES WHICH ISSUES SUCH A THREAT IS IN A DIFFERENT POSITION. IN EFFECT WHAT WE WANT IS TO LIMIT THE TEXT TO CREDIBLE THREATS (WHICH ARE NONETHELESS ILLUSORY IN FACT, BECAUSE IF THE PERSON HAS EVEN ATTEMPTED TO ACQUIRE THE WEAPONS HE/SHE WILL ALREADY BE GUILTY OF AN OFFENCE). ON BALANCE I WOULD INCLUDE THE PROPOSED PROVISION; IT COULD BE SAID THAT A THREAT KNOWN NOT TO BE CREDIBLE IS NOT A THREAT, AND THERE ARE CASES WE WOULD WANT TO COVER.

ARTICLE II

1) A serious problem arises in Art.II.1. As worded, it could be read to mean that the use of biological weapons is not prohibited. This is because the BWC does not explicitly prohibit use. (During its negotiation, some states argued that to do so could call the authority of the Geneva Protocol into question.) This problem with Art.II.1 would be only partly solved by adding the Geneva Protocol to the present list of BWC and CWC. This is because the Protocol prohibits "use in war", but not other use. Moreover, the Protocol prohibits "bacteriological methods of warfare", but makes no reference to other biological agents that the broader language of the BWC covers. We need language to deal with this problem.

One solution might be to state that "for purposes of this Convention the prohibitions of the Biological Weapons Convention are understood to include the use of biological weapons". If this solution is adopted, just where should the words be integrated into the text?

A different and perhaps cleaner solution, suggested by Don Mahley, would be to revise the chapeau of ArtII.1 to read: "Nothing in this Convention shall be construed as prohibiting activities that are not prohibited under or are not contrary to the object and purpose of:

How should Article II.1 be revised?

I SEE THE PROBLEM BUT I AM NOT ENTHUSIASTIC ABOUT EITHER PROPOSAL FOR SOLVING IT. I DO NOT THINK WE SHOULD "INTERPRET" THE BWC RETROSPECTIVELY,

AS IT WERE. AND THE LANGUAGE "CONTRARY TO THE OBJECT AND PURPOSE OF" IS TOO VAGUE FOR A CRIMINAL PROVISION. ANOTHER OPTION IS TO SAY, INSTEAD OF "NOT PROHIBITED UNDER", "PERMITTED UNDER". CAN IT REALLY BE SAID THAT THE USE OF BWS IS PERMITTED UNDER THE BWC? I WOULD BE INTERESTED IN REACTIONS FROM THOSE WHO KNOW THE CONVENTIONS BETTER THAN I DO.

ARTICLE V

1) Don Mahley suggests that Article V.1 be expanded to include additional places under the control of a state (occupied territory, space stations, etc?). Article VII of the CWC uses the language: "on its territory or in any other place under its jurisdiction as recognized by international law" and also "any place under its control". The same point comes up in Article VIII of the draft convention. How should Articles V and VIII be revised?

I THINK WE ONLY NEED THE ADDITIONAL WORDS IN ART V; ART VII IS A DEEMING PROVISION AND DOES NOT NEED THEM. SO I WOULD ADD THE WORDS TO ART V (I) (a).

2) Can the present language of Article V.2 of the draft convention be reasonably interpreted to mean that each state party shall establish jurisdiction over the offences set forth in Article I when the alleged offender is present on its territory even when there is no other nexus to that state party?

If the above interpretation is not sustainable for an alleged offender who is not a national of a state party to the proposed convention, would it nevertheless be sustainable for a national of a state party? This has relevance to the passage at pages 254-255 of the Third Restatement copied below.

We have discussed the argument that Art.V.2 must be triggered by an extradition request. Where within the draft convention is the basis for this argument? Where is it given elsewhere? All I have found is the possible restriction that the alleged offender be a national of a state party, as implied by the passage of the Third Restatement cited above.

John has suggested the replacement of Art.V.1(e) with "when the offence involved the use of biological or chemical weapons against the nationals of any state". If no other changes are made, would this replacement imply that states parties are NOT obliged to establish the broad jurisdiction described in the first paragraph of (2) above for offences other than actual use?

If the present text cannot reasonably be interpreted to do so, what revision of the draft convention would make clear that states are obliged to establish jurisdiction when the alleged offender is found on their territory even if there is no other nexus?

SEE THE FAX SENT ON SUNDAY REFLECTING JOHN DUGARD'S AND MY VIEWS ON THIS ISSUE.

ARTICLE VI

(1) Does the present wording oblige the custodial state to notify the state of nationality that the alleged offender is in its custody even if the state of nationality is a non-party? If not, should the wording be modified to accomplish this?

YES. ART VI DISTINGUISHED BETWEEN STATES AND STATE PARTIES, AND DOES SO APPROPRIATELY. THE TEXT IS CLEAR.

(2) Do we agree to add ArtVI.3(d) "be treated in accordance with international human rights standards."

NO. IT IS NOT THE FUNCTION OF THE CONVENTION TO DUPLICATE THE PROTECTION OF HUMAN RIGHTS, AND THE PROVISIONS RE NOTIFICATION ETC ARE NOT EXHAUSTIVE OF THOSE RIGHTS.

ARTICLE XIII

(1) Should words be added so that even a non-party state is notified of the final outcome of a prosecution of one of its nationals?

NO. IT IS REASONABLE AND SUFFICIENT TO GIVE CONSULAR TYPE NOTIFICATION TO

ANY STATE AT THE TIME OF ARREST; THAT STATE CAN FOLLOW UP SUBSEQUENTLY THROUGH CONSULAR CHANNELS IF IT WISHES TO. WE SHOULD NOT UNDULY PRIVILEGE NON-PARTIES.

KRUTZSCHT COMMENTS

Please consider the comments of Walter Krutzscht copied below and propose any revisions of the draft convention they may suggest.

NO PARTICULAR COMMENT BUT I WOULD BE HAPPY TO REVIEW ANY SPECIFIC PROPOSALS KRUTZCHT MAY MAKE IN TH ELIGHT OF THE NEW TEXT. SOME OF HIS POINTS ARE OF COURSE COVERED ABOVE.

POSSIBLY RELEVANT US AND UK COMMENTARY, CASE LAW AND STATUTES

RESTATEMENT OF THE LAW THIRD, VOLUME 1, Adopted and Promulgated by the American Law Institute, May 14, 1996, section 404

page 254: "A state has jurisdiction to define and prescribe punishment for certain offences recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the bases of jurisdiction indicated in para 402 is present."

pages 254-255: "Universal jurisdiction over the specified offenses is a result of universal condemnation of those activities and general interest in cooperating to suppress them, as reflected in widely-accepted international agreements and resolutions of international organizations. These offenses are subject to universal jurisdiction as a matter of customary law. Universal jurisdiction for additional offenses is provided by international agreements, but it remains to be determined whether universal jurisdiction over a particular offense has become customary law for states not party to such an agreement."

THE YUNIS CASE

Record of the US District Court, District of Columbia, 12 Feb 1988: "Our Circuit has cited the Restatement with approval and determined that the Universal principle, standing alone, provides sufficient basis for asserting jurisdiction over an alleged offender

Record of the US Circuit Court, District of Columbia Circuit, on appeal, Abner Mikva Chief Judge. Decided 29 Jan 1991: "Aircraft highjacking may well be one of the few crimes so clearly condemned under the law of nations that states may assert universal jurisdiction to bring offenders to justice, even when the state has no territorial connection to the highjacking and its citizens are not involved."

THE UK CHEMICAL WEAPONS ACT OF 1996 (1996 Chapter 6), as summarized at Section 3..1 of the White Paper presented to Parliament by the President of the UK Board of Trade, July 1, 1988.

"The Chemical Weapons Act 1996 (CWA) which implemented the Chemical Weapons Convention in the United Kingdom made it an offence for any person in the UK or any UK person overseas to develop, produce, use, possess or participate in the transfer of a chemical weapons anywhere in the world or to engage in military preparations or preparations of a military nature, intending to use a chemical weapons anywhere in the world. It is also an offence at common law to aid, abet, counsel or procure such activity, but not if that activity is carried out by a foreigner to undertake such activity overseas." This appears to mean that the UK presently asserts jurisdiction over any person found in the UK who develops, produces, uses etc., even when there is no nexus to the UK. The 1998 White Paper proposes that jurisdiction be extended to "make it

an offence for anyone in the UK or a UK person abroad to aid, abet, counsel, or procure a foreigner overseas to develop, produce or use a chemical weapon. The White Paper goes on to state that there is a "strong case in principle" for creating prohibitions in relation to biological and nuclear weapons which are equivalent to the current prohibitions in the CWA and the extension outlined above. This is on the basis that biological and nuclear weapons (with the exception of those in the five official nuclear weapons states) are, like chemical weapons, subject to international agreements outlawing them."

FURTHER RELEVANT MATERIAL

Phil's August 10 summary of "What this treaty accomplishes":

A number of states now prohibit their nationals or anyone acting within their borders from acquiring or developing biological or chemical weapons. But in the absence of such laws and in situations where the state does not choose to enforce the prohibition, other states remain threatened. Consider four examples.

1. If State A develops biological or chemical weapons and threatens their use against its neighbors B and C, the leaders of A and anyone working on this weapon program will be subject to prosecution in B and C and extradition to either of these states from any state party to the convention.

2. Any seller of materials or expertise in State D who knowingly provides assistance to A in its development of such weapons will similarly be subject to extradition from a party state for prosecution in a state threatened by A's weapons. B and C need not rely on the state benefitting from such sales (State D) to punish its own nationals.

3. If State E's use of biological or chemical weapons, even within its own borders and targeted on its own citizens, harms any citizen of any other state, the state whose national was injured may prosecute and punish all of those associated with the use and seek their extradition from any party state.

4. Terrorists seeking to acquire biological or chemical weapons and tolerated by the state of their residence will become subject to punishment by any state whose territory they secretly used as part of their effort and by any state targeted by that effort. They must be extradited to such a state by any party to the convention.

In each of these important ways, the proposed convention will add significant protections to those already present under international or domestic law.

COMMENTS FROM WALTER KRUTZSCHT OF FEBRUARY 1 1997
(Krutzscht was present during the negotiation of the CWC, has worked in the legal division of the OPCW, and together with Ralf Trapp has authored a detailed commentary on the CWC.)

Dear Matthew, dear Julian,

Thank you for your good wishes. My new e-mail capability was effective in time to familiarize me with results of your creative end-of-the-year work. Perhaps I had told Julian that I was going to elaborate something about penal jurisdiction in the CW field. Therefore I was not completely unprepared with the problems of your draft. Here my first observations on it:

1. The subject you have focussed on is an important one. I think, without credible penal sanctions, it might become even more difficult to prevent a situation in which those positive, but in relation to the task, small results in the disarmament field will become insignificant. The preparation work of the Commission revealed not only trends to overcomplicate and hamper the practical work of the Organization but also to portray its verification activity and the inspectors and other staff as the real danger for the States Parties. The case of the spying inspector was the only one under which delegations in The Hague had been ready to discuss implementation of paragraph 1 of Article IX of the Convention. Since the implementation legislation of some Countries from which I got notice looks partially quite better as this discussion, is comforting. Therefore activities in this field might be timely and effective. But choosing the kind and framework of such activities requires analysis and discussion. I doubt that the proposal of a new convention would be the best choice.

2. A comparison of the material basis in the two conventions, the BWC and the CWC, reveals a rather great number of differences between them. To melt them into one Article of a new Convention will create not only juridical problems but also highly welcome opportunities for those who feel uncomfortable with any disarmament agreement. Only to mention a few of those problems: BW does not prohibit use, does not obligate any production facilities to be destroyed. According to the CWC preventing the destruction of a CWPFF shall be a criminal offence. Your draft includes "use" under the activities prohibited, which means an amendment of Article I BWC. The CWC extends obligations concerning weapons and production facilities to those a State Party owns or possesses anywhere, not only to those that are under its jurisdiction and control, as in the BWC and in your draft. The BWC does not contain any express obligation to penalize any prohibited activity, the CWC for any prohibited activity committed on its territory or under its jurisdiction and control and to its nationals anywhere. The draft intends to make any action in Article I, committed by whomsoever anywhere, an international crime. With regard to this group of offences it has to be added, that some signatories of the CWC made the possession of CW by anybody a crime in order easier to fight misuse by terrorists.

3. Since the CWC has a comprehensive implementation mechanism, the relevant provisions contain rather a lot of prohibitions which might need penal sanctions. One group concern the functioning of the verification regime and the activities of the international mechanism of the Organization: The position of staff as international officers, the safeguarding of confidential information by them, the protection of their official activities, the protection of confidential information given to States Parties etc. Another group relates to obligation concerning the handling of sensitive dual-use chemicals, especially those contained in Schedules 1 and two, the prohibitions or limitations of transfer, the true and complete declarations by people in charge (civil and military). Not each and every prohibited activity needs penal sanction. Some countries have developed interesting concepts for that. This has to be analyzed and a discussion commenced in order to achieve common standards at least between States Parties with significant chemical industry.

4. The CWC contains the obligation to cooperate and afford the appropriate form of legal assistance in this field. The cooperation and assistance provisions of the BWC are only general. To elaborate and agree on a workable fabric of provisions in this field might be the most important and also the most difficult. The ILC agreed last year on such provisions in the light of the establishment of an international criminal court. A first glance on them gave the impression that they might be more cautiously drafted (which does not mean that they are better) than those proposed in your draft. Another problem is, that the CW Organization should play a role in the whole system of prosecution, which would be, of course no point in the case of BW. I have yet no

complete oversight for a distinct opinion on this problem. I have only the firm impression that States Parties (perhaps not the US) are rather reluctant when it comes to those questions, if also their courts and their citizens might be involved. The Yugoslavian precedent might therefore not be very helpful.

5. I am sorry to have so many "ifs" and "buts" for your initiative. I only wish to avoid counterproductive results for an idea, that I welcome in principle. Of course, I will be ready for further discussions..

COMMENTS FROM WALTER KRUTZSCHT OF SEPTEMBER 21 1998

Dear Matthew,

Thank you and Julian very much for sending me the 15 August version of the bcw criminalization draft.

When I got the paper at our holiday place in Slovakia it was only one week before we returned to Berlin. Since the communication time is still much longer from there, I preferred to send my answer from Berlin. Excuse, please, for the delay.

I think the Articles I to V are significantly improved. But I have still some problems with the provisions in Article VI, paragraph 5 and Articles XII and XIII. They all have in common, that they concern activities which are covered by relevant provisions of the CWC:

Article VI, paragraph 5 of the draft foresees a notification of other States through the Secretary-General of the UN, as appropriate. The CWC has an organ, the Technical Secretariat, established, inter alia, to 'address and receive communications on behalf of the Organization to and from States Parties on matters pertaining to the implementation of this Convention' (Article VIII, paragraph 38 (d) CWC). The cooperation under Article VII, paragraph 2 is part of this implementation. Information on the same subject over two different channels will create practical, legal and political problems.

Article XII of the draft is, compared with the implementation and verification obligations under the CWC not appropriate for the scope of the CWC.

The same must be said with regard to Article XIII of the draft. The implementation obligations in paragraph 1 of the draft are either identical with those of the CWC or cover the same subject and are, partially, more specific as those of the CWC. To offer in paragraphs 2 and 3 the Secretary-General the function of an information pool in the prosecution of international crimes against the prohibitions of the CWC is not a good idea. It means to create a kind of organ which interferes, as far as the scope of the CWC is concerned, directly in the prerogatives of the OPCW. But what is more, it is the OPCW which has the professional competence to fulfil this function.

The result is: the marriage between the two conventions which are so differently elaborated create also in the procedural field significant problems. What is more: The relationship between the OPCW and the UNO is still an unresolved problem. In the present situation it would be detrimental to add more matter for dispute. Finally, should we provide now for a longer period in which States not parties to the CWC would adhere to the 'Criminalisation convention'? When this will be the prospect, then also the criminalization convention would not prevent further CW. Therefore, I will try to venture some drafting proposals. I hope I can send them to you in the next future.

With my best regards,

Walter

[Draft 21 September 1998]

DRAFT CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF DEVELOPING, PRODUCING, ACQUIRING, STOCKPILING, RETAINING, TRANSFERRING OR USING BIOLOGICAL OR CHEMICAL WEAPONS

PREAMBLE

The States Parties to this Convention,

Recalling that States are prohibited by the Geneva Protocol of 1925, the Biological Weapons Convention of 1972 and the Chemical Weapons Convention of 1993, and other international agreements, from developing, producing, stockpiling, acquiring, retaining, transferring or using biological and chemical weapons, and that these prohibitions reflect a worldwide norm against these weapons;

Recognizing that any development, production and use of biological or chemical weapons is the result of the decisions and actions of individual persons, including government officials, and that these activities are within the capability not only of States but also of other entities and of individuals;

Affirming that all persons and entities should be prohibited from engaging in these activities, and should be subject to effective penal sanctions, thereby enhancing the effectiveness of the Geneva Protocol, the Biological Weapons Convention and the Chemical Weapons Convention;

Reaffirming that any use of disease or poison for hostile purposes is repugnant to the conscience of humankind;

Considering that biological and chemical weapons pose a threat to the well-being of all humanity and to future generations;

Resolving that knowledge and achievements in biology, chemistry and medicine should be used exclusively for the health and well-being of humanity;

Desiring to encourage the peaceful and beneficial advance and application of these sciences by protecting them from adverse consequences that would result from their hostile exploitation;

Determined, for the sake of human beings everywhere and of future generations, to eliminate the threat of biological and chemical weapons;

Have agreed as follows:

ARTICLE I

1. Any person commits an offence who knowingly:

- (a) develops, produces, otherwise acquires, stockpiles or retains any biological or chemical weapon, or transfers, directly or indirectly, to anyone, any biological or chemical weapon;
- (b) uses any biological or chemical weapon;
- (c) engages in preparations to use any biological or chemical weapon;
- (d) assists, encourages or induces, in any way, anyone to engage in any of the above activities;
- (e) orders or directs anyone to engage in any of the above activities;
- (f) attempts to commit any of the above offences;
- (g) threatens to use biological or chemical weapons.

ARTICLE II

1. Nothing in this Convention shall be construed as prohibiting activities that are not prohibited under:

(a) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972, or

(b) the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993,

or that are directed toward the fulfillment of a State's obligations under either Convention and are conducted in accordance with its provisions.

2. In a prosecution for an offence set forth in Article I, it shall be a defence that the accused person reasonably believed that the conduct in question was not prohibited under this Convention.

3. It is not a defence that a person charged with an offence set forth in Article I acted in an official capacity, under the orders or instructions of a superior, or otherwise in accordance with internal law.

ARTICLE III

For the purposes of the present Convention:

1. **Biological weapons** means:

- (a) 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;
- (b) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

2. **Chemical weapons** means the following, together or separately:

- (a) toxic chemicals and their precursors, except where intended for:
 - (i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
 - (ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
 - (iii) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
 - (iv) law enforcement including domestic riot control purposes. as long as the types and quantities are consistent with such purposes.
- (b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;

(c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

3. **Toxic chemical** means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

4. **Precursor** means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system, that is to say, the precursor which plays the most important role on determining the toxic

properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

5. ~~Person~~ means any natural person or, to the extent consistent with internal law as to criminal responsibility, any legal entity.

ARTICLE IV

Each State Party shall adopt such measures as may be necessary:

- (a) to establish as criminal offences under its internal law the offences set forth in Article I;
- (b) to make those offences punishable by appropriate penalties which take into account their grave nature.

ARTICLE V

1. Each State Party to this Convention shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article I in the following cases:

- (a) when the offence was committed on the territory of that State or in any other place under its jurisdiction as recognized by international law;
- (b) when the alleged offender is a national of that State;
- (c) when, if that State considers it appropriate, the alleged offender is a stateless person whose habitual residence is in its territory;
- (d) when the offence was committed with intent to harm that State or its nationals or to compel that State to do or abstain from doing any act;
- (e) when the offence involved the use of biological or chemical weapons and a victim of the offence was a national of that State;
- (f) when the offence involved the intentional use of biological or chemical weapons against any persons, irrespective of their nationality.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article I in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to Articles VI and VII.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law, including an internal law giving effect to Article I.

4. Jurisdiction with respect to the offences set forth in Article I may also be exercised by any international criminal court that may have jurisdiction in the matter in accordance with its Statute

ARTICLE VI

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article I may be present in its territory, a State Party shall take such measures as may be necessary under its internal law to investigate the facts contained in the information.

2. If it is satisfied that the circumstances so warrant, a State Party in the territory of which an alleged offender is present shall take that person into custody or shall take such other measures as are necessary to ensure the presence of that person for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) be visited by a representative of that State;

(c) be informed of that person's rights under subparagraphs (a) and (b);

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, provided that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to the present article, has taken a person into custody, it shall promptly notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article V, paragraph 1, and, if it considers it advisable, any other interested States Parties, of the fact that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform those States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

ARTICLE VII

1. The offences set forth in Article I shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties.

States Parties undertake to include those offences as extraditable offences in every extradition treaty subsequently concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of the offences set forth in Article I. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article I as extraditable offences as between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth under Article I shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of Article V.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in Article I shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

ARTICLE VIII

The State Party in the territory of which the alleged offender is found shall, if it does not extradite such person, be obliged, without exception whatsoever

and whether or not the offence was committed in its territory, to submit the case without delay to competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

ARTICLE IX

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article I, including assistance in obtaining evidence at their disposal which is necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their internal law.

ARTICLE X

None of the offences set forth in Article I shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

ARTICLE XI

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article I or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE XII

States Parties shall cooperate in the prevention of the offences set forth in Article I, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
- (b) exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent commission of those offences.

ARTICLE XIII

1. Each State Party shall inform the Secretary-General of the United Nations of the legislative and administrative measures taken to implement this Convention. In particular, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 3 of Article V. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
2. Each State Party shall, in accordance with its national law, promptly provide to the Secretary-General of the United Nations any relevant

information in its possession concerning:

(a) the circumstances of any offence over which it has established its jurisdiction pursuant to paragraph 1 of Article V;

(b) the measures taken in relation to the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

3. The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

4. Each State Party shall designate a contact point within its government to which other States Parties may communicate in matters relevant to this Convention. Each State Party shall make such designation known to the Secretary-General.

ARTICLE XIV

Any dispute between States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice.

ARTICLE XV

1. Ten years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Secretary-General of the United Nations, a Conference of States Parties shall be held at [Geneva, Switzerland], to review the operation of the Convention with a view to assuring that the purposes of the preamble and the provisions of the Convention are being realized.

2. At intervals of seven years thereafter, unless otherwise decided upon, further sessions of the Conference may be convened with the same objective.

ARTICLE XVI

1. This Convention shall be open for signature by all States from [DATE] until [DATE] at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XVII

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the [NUMBER] instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the [NUMBER] instrument of ratification,

acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

ARTICLE XVIII

The Articles of this Convention shall not be subject to reservation.

ARTICLE XIX

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on [DATE].

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