

THE CBW CONVENTIONS BULLETIN

News, Background and Comment on Chemical and Biological Weapons Issues

ISSUE NO. 58

DECEMBER 2002

Quarterly Journal of the Harvard Sussex Program on CBW Armament and Arms Limitation

“LAW ENFORCEMENT” AND THE CWC

Any chemical comes under the prohibitions of the CWC if, “through its chemical actions on life processes it can cause death, temporary incapacitation or permanent harm to humans or animals” — unless it is “intended for purposes not prohibited” under the Convention, and only as long as “the types and quantities are consistent with such purposes”.

Among the “purposes not prohibited” are “law enforcement including domestic riot control purposes”. As for “domestic riot control”, the very term restricts it to activities in conformity with the domestic jurisdiction of the state party preparing for or conducting it. More than that, the Convention goes on to require that chemicals held for riot control be restricted to those “not listed in a Schedule, which can produce rapidly in humans irritation or disabling physical effects which disappear within a short time following termination of exposure”. And the chemical name and structural formula of each such chemical must be declared in advance to the OPCW.

In contrast to these provisions regarding domestic riot control, the only specific exclusion the Convention places on the identity of the chemicals that may be used for other law enforcement purposes is that they not be in Schedule 1. Neither is there any requirement for declaration to the OPCW. Nevertheless, two of the fundamental restrictions the Convention places on all chemicals apply equally to those intended for law enforcement.

No chemical may be developed, produced, otherwise acquired, stockpiled, transferred or used as a method of warfare that is dependent on its toxic properties (Article II.9(c)). It is prohibited, for example, for a state to use weapons dependent on the toxic properties of chemicals in a civil war, claiming that the opposing forces are violating its national law or to use such weapons in a civil war in another state, with or without that state’s permission.

Furthermore, any chemicals intended for law enforcement, along with their associated munitions or other delivery devices, must be of types and quantities consistent with such purposes (Art. II.1(a)). The development, production, or stockpiling of chemical howitzer projectiles would hardly conform to the notion of “law enforcement”.

But what in the context of the Convention is “law enforcement”? Important guidance may be found in the term itself. First, there must be applicable law, as in a nation’s penal code or as specifically provided under the authority of the United Nations. Second, there must be jurisdiction to enforce such law. Thus, it is recognized in

international law that a state may enforce its own laws on its own territory or against its own citizens, but it may not enforce its national law in the territory of another state without that state’s consent. And third, no law can be considered valid if it contravenes international humanitarian law or the established laws of war. It would be prohibited, for example, for a state to use toxic chemicals to inflict death, temporary incapacitation or permanent harm on a national minority.

The foregoing principles are encapsulated in a guideline proposed in an article that appeared in the March 1997 issue of this *Bulletin*:

The term “law enforcement” in Art. II.9(d) means actions taken within the scope of a nation’s “jurisdiction to enforce” its national laws, as that term is understood in international law. When such actions are taken in the context of law enforcement or riot control functions under the authority of the United Nations, they must be specifically authorized by that organization. No act is one of “law enforcement” if it otherwise would be prohibited as a “method of warfare” under Art. II.9(c).

Even with these several requirements under the CWC and the suggested guideline defining law enforcement, there is inadequate constraint against the misuse of chemicals for “law enforcement”. This appears to have originated in the requirement of one state to protect its practice of using toxic chemicals to inflict capital punishment as a means of law enforcement. But that does not account for the lack of any provision for at least declaring the identity of chemicals held for law enforcement. Rather, it appears that what kept the negotiators from including a declaration requirement was shortage of time under the pressure of the agreed August 1992 negotiating deadline for completion of the Convention.

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What would be accomplished by advance declaration to the OPCW of the identity of chemicals held by a state for law enforcement? Secrecy in chemical weapons matters has a special potential to evoke the sort of dread and suspicion that undermines public confidence in the Convention and may fuel renewed state interest in chemical weapons. An example of such suspicion was seen before the powerful chemical used in hostage rescue operations in Moscow in October was identified as an opioid of the fentanyl group — a class of compound that has long been of interest to US and other armed forces for possible use as

calmatives (i.e., incapacitants). A declaration requirement could help avert the erosion of public and official confidence in the Convention, and remove a possible stimulus to government chemical weapons programmes risked by excessive secrecy.

With the approach of the First CWC Review Conference, scheduled for April 2003, the states parties have an opportunity to think carefully of measures the Conference might recommend to preclude the damage to the Convention that would result from not attending to the problem of law enforcement.

Provisions of the CWC regarding chemicals that may be used for domestic riot control or for other law enforcement purposes		
Relevant provision	“domestic riot control”	other “law enforcement” purposes
Types and quantities must be consistent with such purposes	Article II.1(a)	Article II.1(a)
Must not be used or intended as a method of warfare dependent on its toxic properties	Article II.9(c)	Article II.9(c)
Must not be in Schedule 1		Verification Annex VI.2
“Any chemical not listed in a Schedule which can produce rapidly in humans irritation or disabling physical effects which disappear within a short time following termination of exposure.”	Article II.7	For law enforcement chemicals other than “riot control agents” there is no such specification of properties
Chemical name and structural formula must be declared	Article III.1(e)	no declaration requirement

Forthcoming events

9 January, Washington DC — National Academies and Center for Strategic and International Studies meeting “Scientific Openness and National Security”, details on national-academies.org

28 February–2 March, Wiston House, Sussex — Wilton Park conference on *Meeting the Threat of Biological Terrorism*, details on www.wiltonpark.org.uk

18–21 March, The Hague — Thirty-Second session, OPCW Executive Council. Further sessions — EC-33: 24–27 June; EC-34: 23–26 September; and EC-35: 2–5 December.

26–27 April, The Netherlands — 19th workshop of the Pugwash Study Group on Implementation of the CBW Conventions

28 April–9 May, The Hague — CWC First Review Conference

11–16 May, Bucharest — CBMTS–Pharmaceutical I, contact info@asanltr.com

20–22 May, Prague — CWD2003 [International CW Demil Conference], contact dmil@dstl.gov.uk

15–18 June, Jyväskylä, Finland — Association of Finnish Chemical Societies symposium “Nuclear,

Biological and Chemical Threats — A Crisis Management Challenge”, details on www.nbc2003.org

7–12 September, Dubrovnik, Croatia — CBRMTS – Industry III [World Congress on Chemical, Biological, Radiological Terrorism], details on www.asanltr.com

10–12 October, Wiston House, Sussex — Wilton Park conference on *Chemical and Biological Weapons: the Threats of Proliferation and Use*, details on www.wiltonpark.org.uk

20–24 October, The Hague — Eighth session, OPCW Conference of the States Parties