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Prohibition of chemical and biological weapons under international criminal law

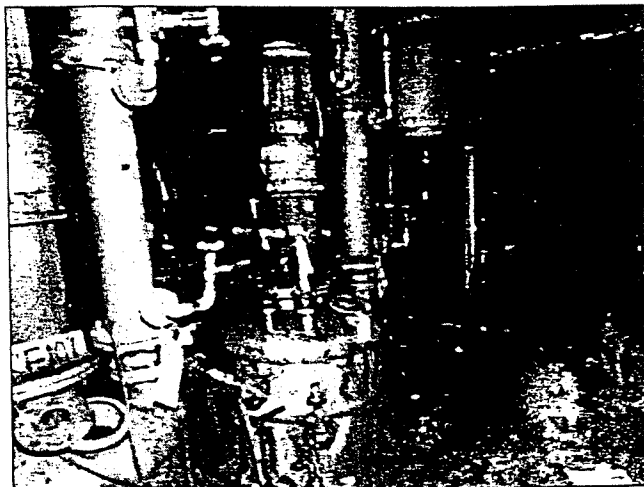
- by Matthew Meselson and Julian Perry Robinson

Article VII of the Chemical Weapons Convention (CWC) requires each state party to enact penal legislation prohibiting persons on its territory or any other place under its jurisdiction from undertaking any activity prohibited under the Convention. Each state party must also extend its penal legislation to such activities undertaken anywhere by persons possessing its nationality. These obligations, and model legislation for their implementation, are discussed in a Note by the Director-General to the Conference of the States Parties at its Third Session (C-III/DG.1/Rev.1, dated 17 November 1998), which may be found on the OPCW website (<http://www.opcw.org>).

Similarly, Article IV of the Biological Weapons Convention (BWC) requires each state party to prohibit violations of the Convention committed in any place under its jurisdiction or control.

Notwithstanding the importance of achieving full compliance with Article VII of the CWC, and with Article IV of the BWC, neither treaty makes a violation an international crime, i.e. a crime over which states have jurisdiction wherever it is committed, and regardless of the nationality of the offender. International crimes defined by recent

Drawing on these existing treaties as models, the Harvard Sussex Program (HSP) on CBW Armament and Arms Limitation and an international group of legal authorities have prepared a draft convention that would make violations of the CWC and BWC crimes under international law. Like other treaties that define international crimes, the proposed convention would oblige each state party: (i) to establish jurisdiction with respect to the specified crimes extending to all persons present on its territory, regardless of the place where the offence was committed or of the citizenship of the offender, and (ii) to prosecute or extradite any such offender found on its territory or in any



Interior of the alleged Sarin Production Facility of the Aum Shinriky Sect, Japan (currently in court proceedings).

Editor's Note: Under the HSP draft Convention, incidents such as the Tokyo subway sarin attack of 1995, would be defined as international crimes.



Alleged Sarin Production Facility near Mt. Fuji, Japan

treaties now in force include aircraft hijacking, crimes against internationally protected persons, hostage taking, theft of nuclear materials, torture, and crimes against maritime navigation.

other place under its jurisdiction. Any person who commits any of the prohibited acts anywhere would face the risk of prosecution or of extradition should that person be found in a state that supports the proposed convention.

The proposed convention would make it an offence for any person, regardless of his or her official position, to order, directly or knowingly render substantial assistance in the development, production, acquisition, stockpiling, retention, transfer or use of chemical or biological weapons or to threaten to use such weapons, or to create or retain



The clean-up operation in the Tokyo subway

facilities intended for their production. Chemical and biological weapons are defined as in the CWC and the BWC, on the basis of the general purpose criterion. A prohibited act is defined as a crime only if it is committed knowingly, and it is an admissible defence that the accused person reasonably believed that the conduct in question was not prohibited. States parties would be required to cooperate in investigations and to provide mutual legal assistance in the adjudication of offences. Decisions regarding sentencing, including consideration of the severity of the offence and of any mitigating circumstances, would be left to individual states parties. A draft of the proposed convention may be found in the December 1998 issue of *The CBW Conventions Bulletin*, and on the HSP website (<http://www.fas.harvard.edu/~hsp/>).

Widespread adherence to such a convention would create a new dimension of constraint against chemical and biological weapons by applying international criminal law to hold individual offenders responsible and punishable wherever they may be, and regardless of whether they act under or outside of state authority. Such individuals would be regarded as *hostes humani generis*, enemies of all humanity. The norm against chemical and biological weapons would be strengthened, deterrence of potential offenders would be enhanced, and international cooperation in suppressing the prohibited activities would be facilitated. •

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A visit by NATO Senior NBC officers to OPCW headquarters

Inspections completed

A breakdown of the 569 inspections in 30 states parties
Status as of 1 November 1999

	<i>Inspections</i>	<i>Inspector Days</i>
Abandoned chemical weapons sites	10	250
Chemical weapons destruction facilities	127	24,060
Chemical weapons production facilities	130	2,494
Chemical weapons storage facilities	88	3,551
Old chemical weapons facilities	25	538
Schedule 1 facilities	52	945
Schedule 2 facilities	110	3,413
Schedule 3 facilities	27	496
Total	569	35,747