

## **Conference of the States Parties**

Third Review Conference 8 – 19 April 2013

RC-3/NAT.7 3 April 2013 ENGLISH only

## ARMENIA, BELARUS, ISLAMIC REPUBLIC OF IRAN, RUSSIAN FEDERATION, AND SOUTH AFRICA

## **THE GENEVA PROTOCOL OF 1925**

- 1. The Geneva Protocol of 1925 is an important legally binding multilateral instrument prohibiting the use in war of asphyxiating, poisonous and other gases, and of bacteriological methods of warfare. After the entry into force of the Chemical Weapons Convention (hereinafter "the Convention"), the Protocol continues to play a meaningful independent role, especially in the light of the fact that five States not yet Party to this Convention are High Contracting Parties to the Protocol and as such are bound by the obligations arising from the Protocol.
- 2. The Convention in its preamble (paragraphs four and six) establishes a mutually complementary relationship between the Convention and the Protocol:

"The States Parties to this Convention, ...

Recognizing that this Convention reaffirms principles and objectives of and obligations assumed under the Geneva Protocol of 1925 ...;

Determined for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons, through the implementation of the provisions of this Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925 ...".

3. The Convention in its Article XIII, inter alia, stipulates:

"Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 ...".

4. Many States at the time of their accession to the Geneva Protocol made reservations, mainly concerning the possibility of retaliatory use in war of asphyxiating, poisonous and other gases, and bacteriological methods of warfare. In the 1990s, a process of withdrawing reservations began, and it accelerated with the opening for signature and subsequent entry into force of this Convention. Nonetheless, a number of States Parties to the Convention continue to maintain the said reservations including those

Angola, the Democratic People's Republic of Korea, Egypt, Israel, and the Syrian Arab Republic.



concerning the possibility of retaliatory use in war of chemical weapons. A list of High Contracting Parties to the Geneva Protocol and reservations retained by some of them are available on the website of the Ministry of Foreign Affairs of France, which is the depositary of the Protocol.<sup>2</sup>

- 5. At the present time, the international community clearly recognises that given the existence of the Chemical Weapons Convention and the Biological Weapons Convention (hereinafter "the BWC"), which contain absolute and unconditional prohibition of these classes of weapons of mass destruction, the retention of reservations to the Geneva Protocol made in a different period in history is inappropriate. As regards the Convention, whose review of operation is the task of the upcoming Review Conference, the retention of reservations concerning the possibility of retaliatory use of chemical weapons runs contrary to the obligations assumed by the States Parties to this Convention.
- 6. The international community's shared conviction in the necessity of seeing the withdrawal of the reservations to the Geneva Protocol is manifested by its action adopted at the relevant fora.
- 7. On 3 December 2012, the United Nations General Assembly upon recommendation of its First Committee adopted by 181 votes in favour to none against, with four abstentions, its resolution (A/RES/67/35) "Measures to Uphold the Authority of the 1925 Geneva Protocol", which in its paragraph 3 calls on "those States that continue to maintain reservations to the 1925 Geneva Protocol to withdraw them". The BWC Review Conferences since the time of the Third Review Conference in 1991 have always included in their Final Documents a consensually adopted call for the withdrawal of the reservations. In 2005, the Secretary-General of the United Nations, addressing his message to an annual meeting of the States Parties to the BWC on the occasion of the 80th anniversary of the Geneva Protocol and the 30th anniversary of the BWC, considered it "appropriate to take this opportunity to call on the countries that still maintain reservations to the Protocol to withdraw them". Some States have circulated position papers to advance their view in support of withdrawing the reservations. Representatives of civil society appeal for the same.

http://basedoc.diplomatie.gouv.fr/exl-php/cadcgp.php. To display the relevant information, select "Traités", select "Recherche dans la base", type "gaz asphyxiants" in the field "Recherche tout texte" and click "Chercher".

Documents BWC/CONF.III/23, BWC/CONF.IV/9, BWC/CONF.VI/6, and BWC/CONF.VII/7 are available on the website of the BWC's Implementation Support Unit at <a href="https://www.unog.ch/bwc">www.unog.ch/bwc</a>. The Final Document of the BWC's Fifth Review Conference held in 2001-2002 did not include an article-by-article review of the operation of the Convention and therefore did not contain a call for the withdrawal of the reservations to the Geneva Protocol.

A non-paper by France circulated in 2006 in the First Committee of the United Nations General Assembly is available at <a href="http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com/6/docs/frenchnonpgenoct11.pdf">http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/6/docs/frenchnonpgenoct11.pdf</a>; a joint document by France and Switzerland, BWC/CONF.VI/INF.7, circulated in 2006 at the Sixth Review Conference of the BWC, is available at <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/654/15/PDF/G0665415.pdf">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/654/15/PDF/G0665415.pdf</a>?OpenElement.

<sup>3</sup> http://www.un.org/ga/search/view\_doc.asp?symbol=A/RES/67/35

<sup>5</sup> http://www.un.org/News/Press/docs/2005/sgsm10247.doc.htm

- 8. Against this backdrop, it is disappointing that in the recent years the process of withdrawing reservations has been stalling, and this unfortunate situation is reflected in the reports by the Secretary-General of the United Nations to the 67th, 65th, 63rd and 61st sessions of the General Assembly. Therefore, it is considered timely and important that for the sake of achieving the purpose of the Convention—to exclude completely the possibility of the use of chemical weapons—the Third Review Conference should impart additional momentum to the process of withdrawing the reservations to the Geneva Protocol.
- 9. To achieve that, it is proposed to include the following text, whose elements are based upon the consensually approved United Nations General Assembly resolution "Measures to Uphold the Authority of the 1925 Geneva Protocol" and the Final Document of the Seventh Review Conference of the BWC held in 2011, into the Report of the Third Review Conference of the Convention under its section "The role of the Chemical Weapons Convention in enhancing international peace and security and in achieving the objectives as set forth in the preamble of the Convention".

## Proposal for the report language of the Third Review Conference of the Convention

10. The Third Review Conference acknowledged that the 1925 Geneva Protocol, which prohibits the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, and the Convention are mutually reinforcing. It appealed to all High Contracting Parties to the 1925 Geneva Protocol to observe strictly its principles and objectives and called upon those States Parties that continue to maintain reservations to the 1925 Geneva Protocol related to the Convention to withdraw them and to notify the Depositary of the 1925 Geneva Protocol accordingly. The Third Review Conference invited the Director-General to avail himself of the Notes by the Secretary-General of the United Nations to be submitted to the United Nations General Assembly in accordance with its resolution "Measures to Uphold the Authority of the Geneva Protocol of 1925", and to transmit them, when they become available, to the regular sessions of the Conference of the States Parties.

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See, for example, "Article VIII: Geneva Protocol Obligations and the BTWC", by Nicholas A. Sims, Graham S. Pearson, and Angela Woodward, in *Strengthening the Biological Weapons Convention: Key Points for the Seventh Review Conference*, edited by Graham S. Pearson, Nicholas A. Sims and Malcolm R. Dando, at <a href="http://www.brad.ac.uk/bioethics/media/ssis/bioethics/KeyPoints7.pdf">http://www.brad.ac.uk/bioethics/media/ssis/bioethics/KeyPoints7.pdf</a>.

Documents A/67/115, A/65/95, A/63/91, and A/61/116. The most recent withdrawals of the reservations to the Geneva Protocol took place in 2002, as reported by the Secretary-General to the General Assembly in A/59/179, dated 23 July 2004. The above Notes by the Secretary-General are available on the United Nations website at <a href="https://www.un.org">www.un.org</a>.

Document BWC/CONF.VII/7 is available at <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/600/60/PDF/G1260060.pdf">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/600/60/PDF/G1260060.pdf</a>?OpenElement.

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