

2. Related CBW Treaties

The existing CBW governance regime is made up of many elements but three multilateral treaties – the 1925 Geneva Protocol, the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention – act as the bedrock and the normative heart around which all other elements are built. One other multilateral treaty is important, the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (the ENMOD Convention), because of its particular provisions prohibiting warfare with herbicides.

This section includes the text of the Geneva Protocol, the BWC and the ENMOD Convention and lists the States Parties, the Signatory States that have not yet ratified and the non-Signatory States to each of these agreements. The CWC is too long to be included here in full, but it is available in hard copy from the OPCW Technical Secretariat or electronically at: http://www.opcw.org/html/db/cwc/eng/cwc_menu.html. Copies of the CWC text in all official languages will also be added as additional material in the electronic versions of the *Resource Guide*.

Readers interested in aspects of control of dual-use chemicals may also wish to examine the treaties relating to the misuse of drugs. There are parallels between the regime to control narcotics and those designed to control chemical weapons -- both are based on control of materials that can have legitimate purposes. Copies of relevant treaties can be found at <http://www.unodc.org/unodc/en/treaties/>.

2.1 1925 Geneva Protocol

Full name: Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

Date of opening for signature: 17 June 1925

Date of entry into force: 8 February 1928

Depositary: Government of France

States Parties: 138

The 1925 Geneva Protocol prohibits ‘the use in war of asphyxiating, poisonous, or other gases and of all analogous liquids, materials or devices’, and it also bans ‘bacteriological methods of warfare’. It was adopted by the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War convened in Geneva by the League of Nations and builds on earlier international agreements on the laws of war, such as those from the 1899 and 1907 peace conferences in The Hague. The Geneva Protocol prohibitions are now widely considered to have entered into customary international law, making them binding on all states, whether or not they have formally joined the treaty.

On joining the Geneva Protocol, over 40 states entered reservations. These reservations upheld the right of the reserving states to use the prohibited weapons against non-parties or in response to the use of these weapons by a violating party, or against the allies of the violating party even if they themselves have not committed a violation. These reservations, which were not strictly necessary as the Protocol was expressly drafted as a contract between its parties, reinforced the fact that the Protocol was essentially a no-first-use agreement. As a result of diplomatic pressure and the entry into force of the treaties banning production and possession of these weapons (the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention), at least 17 states withdrew their reservations to

the Protocol. However, according to a non-paper distributed by France during the 2006 session of the UN General Assembly's First Committee, around 22 States Parties retain reservations that are 'often incompatible with the commitments made within the framework of the BTWC and CWC'. A list of High Contracting Parties to the Geneva Protocol and a list of those countries retaining reservations is provided in this section of the *Resource Guide*.

Since the 1980s, resolutions have been passed by both the United Nations Security Council and General Assembly, encouraging the UN Secretary-General to investigate reports of possible violations of the Geneva Protocol. A total of 12 investigations have subsequently been carried out by the Secretary-General, some under the authority of these resolutions. During the Iran-Iraq war of the 1980s UN investigators confirmed the use of chemical weapons by Iraq. In January 1989 States Parties to the Geneva Protocol and other interested states met in Paris to respond to the confirmed use of chemical weapons in the Iran-Iraq war and to support the negotiation of a chemical weapons convention. In the Final Declaration of the conference, they also reaffirmed their 'full support for the Secretary-General in carrying out his responsibilities for investigations in the event of alleged violations of the Geneva Protocol'. More detail of the Secretary-General's investigatory mechanism, and some of the relevant documents, are provided in the UN Documents section of the *Resource Guide*.

The Geneva Protocol currently has 138 High Contracting Parties. States wishing to ratify or accede to the Geneva Protocol should deposit their instrument of ratification/accession with the French Government, which is the Depositary of the Protocol. Instruments of ratification or accession should be sent to:

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Ministère des Affaires Etrangères
Sous-Direction du Désarmement chimique, biologique et de la maîtrise des armements classiques
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75700 Paris 07 SP
France

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2.2. 1972 Biological Weapons Convention

Full name: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

Date of adoption: 16 December 1971 (UN General Assembly)

Date of opening for signature: 10 April 1972 (London, Moscow, Washington)

Date of entry into force: 26 March 1975

Depositaries: Governments of Russia, United Kingdom and United States

States Parties: 167

Signatory States: 12

The 1972 Biological and Toxin Weapons Convention prohibits the development, production, stockpiling or other acquisition or retention, or transfer of biological and toxin

weapons (which are defined in Article I using a general purpose criterion) and requires the destruction of existing weapons. BWC States Parties have additionally agreed that BW use is effectively covered by the treaty's prohibitions. The States Parties have therefore renounced germ weapons in order to 'exclude completely' the possibility of such weapons being used against humans, animals or plants. States that have signed but not ratified the BWC are nonetheless obliged to refrain from acts which would defeat the object and purpose of the treaty, such as developing or using biological weapons.

The BWC was negotiated by the Conference of the Committee on Disarmament (a precursor of today's Conference on Disarmament) at a time of heightened international concern about chemical and biological weapons in the late 1960s and was the first occasion when the two categories of weaponry prohibited together in the Geneva Protocol were separated. The justification for separate treatment of the two categories of weapon was the perception that, unlike a comprehensive prohibition of chemical weapons, a ban on biological weapons did not require intrusive verification and that it could therefore be concluded quickly.

The Convention reflects the post-Second World War renunciation of biological weapons by the defeated Axis powers, as found in the 1954 Revised Brussels Treaty, as well as the subsequent unilateral renunciations by other states, particularly by the US in 1969. The BWC extends the existing regime prohibiting the use of chemical or biological weapons (elaborated in the 1925 Geneva Protocol), by explicitly banning the development, production, stockpiling and transfer of biological and toxin weapons. However, the BWC essentially makes no provision for any particular procedures or forms of international cooperation or organization to implement its rules, to verify compliance with its obligations (aside from the consultation and cooperation procedure in Article V and the complaint procedure involving the UN Security Council in Article VI) or to enforce its norm of non-possession. The Convention has been strengthened at its periodic Review Conferences and an attempt was made during the 1990s to negotiate a protocol to strengthen the BWC, although this ultimately failed in 2001.

As of January 2013 the BWC has 167 States Parties and 12 signatories with 17 states which have neither signed nor ratified the Convention. The depositaries of the BWC are the governments of Russia, the UK and the USA. States wishing to ratify (Signatory States) or accede (non-Signatory States) to the treaty should send their instrument of ratification/accession to one or more of these three countries.

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NB: The instruments of ratification or accession are deposited in Moscow upon their transmittal through the established diplomatic channels.