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Legal Issues Associated with Formally  
Charging the Soviet Union with Violation  
of the BWC  
(as well as the Geneva Protocol of 1925  
and Related Rules of Customary International Law)

SUMMARY: With respect to the Sverdlovsk incident, a violation of the Biological Weapons Convention (BWC) would be demonstrated if the following elements were established: (1) that the Soviets were in possession of anthrax organisms or spores; and (2) that the quantities involved were not possessed for prophylactic, protective or other peaceful purposes, or were possessed in quantities exceeding that which would be justifiable for such purposes. Interagency review of the intelligence has concluded that there clearly is a basis for concern that activities not permitted by the Convention may have been conducted at Sverdlovsk. With respect to the possible use of toxin weapons in Afghanistan and Southeast Asia, a violation of the BWC by the Soviet Union would be demonstrated if any of the following elements were established: (1) that Soviet forces used or possessed toxin weapons in Afghanistan; (2) that the Soviets supplied toxin weapons, or quantities of toxins for weapon purposes, to any of the forces in Afghanistan or Southeast Asia; or (3) that the Soviets assisted any of these forces in producing, acquiring or using toxin weapons, or quantities of toxins for weapon purposes. The intelligence community has concluded that toxin weapons have been used in Laos and Kampuchea, and perhaps in Afghanistan, and that the only hypothesis consistent with all the evidence is that the toxins involved were developed in the Soviet Union, provided to the Lao and Vietnamese, either directly or through transmission of technical knowhow, and weaponized with Soviet assistance. These two cases are, of course, only two parts of the more important overall question of whether the Soviet Union has decided to disregard the BWC as a constraint on its military programs, and has begun development, production and/or use of biological weapons.

Article V of the BWC obligates each party to consult and cooperate in solving compliance problems, and the 1980 BWC Review Conference affirmed that any party had a right to request a consultative meeting of parties pursuant to this Article; there is no specification of how such a meeting would be convened or organized, no requirement that a violation of the BWC be charged, and no limit on the character of evidence presented. Article VI of the BWC provides that any party may lodge a complaint of BWC violations with the UN

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SECRET

UNCLASSIFIED

# UNCLASSIFIED

SECRET

- 2 -

Security Council; the Council has no rules of evidence or rules on the burden of proof, but it is likely that a complainant would at least be expected to present clear and convincing evidence in support of its charge; in view of the veto right of permanent members of the Council, a decision by the Council on the substantive merits of a BWC complaint against the Soviet Union is probably unobtainable, although it may be possible to institute a limited fact-finding inquiry through creation of a subcommittee of the Council. (Alternative possibilities might in theory include seeking a resolution of the U.N. General Assembly requesting that an investigation be initiated or recommendations be made for the correction of the situation, or seeking an advisory opinion from the International Court of Justice.) Finally, under the general international law of treaties a state has the right to terminate or suspend the operation of a treaty in whole or in part in response to a material breach by another party; there are no rules on the strength or character of evidence required to support such an action, but clearly the U.S. would be expected to present a clear and convincing explanation of the basis for any conclusion that Soviet material breaches had occurred.

It will be important to assess the strength of current evidence of Soviet BWC violations on the basis of information which has been or could be made publicly available, since our allegations would of necessity be judged on that basis in any of the international contexts discussed above.

## DISCUSSION:

This paper considers the legal issues associated with charging the Soviet Union with violations of the Biological Weapons Convention (BWC). It examines, in particular, issues raised by the Sverdlovsk incident and the possible use of toxin weapons in Afghanistan and Southeast Asia. (For completeness, the paper also deals in passing with issues related to possible violations in this context of the Geneva Protocol of 1925 and related rules of customary international law, and to possible violations by Soviet clients and allies.)

### 1. What would constitute violations of the BWC?

Article I of the BWC prohibits the development, production, stockpiling, acquisition or retention of "microbial

SECRET

UNCLASSIFIED

# UNCLASSIFIED

SECRET

- 3 -

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" or of "weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict." These prohibitions apply "in any circumstances", including armed conflict.<sup>1/</sup> Article II further prohibits any transfer of such items "to any recipient whatsoever, directly or indirectly," and any assistance, encouragement or inducement to any State, group of States or international organizations to manufacture or otherwise acquire any such items.

## a. Sverdlovsk

With respect to the Sverdlovsk incident, a violation of the BWC would be demonstrated if the following elements were established: (1) that the Soviets were in possession of anthrax organisms or spores; and (2) that the quantities involved were not possessed for prophylactic, protective or other peaceful purposes,<sup>2/</sup> or were possessed in quantities exceeding that which would be justifiable for such purposes. The first element is a question of fact; the second involves, in addition, a judgment as to what purposes are permissible under the BWC and what quantities might be justifiable for such purposes. Permissible purposes include activities related to the protection of the human body from the effects of organisms or substances to which an individual might be exposed, including diagnosis, therapy and immunization, and related research; they also include the development of protective equipment to prevent or minimize exposure, including decontamination systems, protective masks and clothing, air and water filtration systems, and detection and warning devices.<sup>3/</sup> The development of stocks for retaliatory or deterrent purposes, however, would not be permissible.<sup>4/</sup>

Neither the BWC nor its negotiating history defines what quantities of various agents would be permissible for these purposes. The U.S. stated only that "laboratory quantities" might be required for protective research and testing.<sup>5/</sup> Therefore, in the Sverdlovsk case, a judgment would have to be made as to what quantities of anthrax would be justifiable to support Soviet research, immunization and treatment programs to deal with natural anthrax outbreaks, or to support the development of protective or prophylactic

SECRET

UNCLASSIFIED

# UNCLASSIFIED

SECRET

- 4 -

systems to deal with the possible use of anthrax weapons against the Soviet Union.

Interagency review of the intelligence has concluded<sup>5A/</sup> that: (1) the Soviet explanation of the incident (as a natural anthrax outbreak of limited scope) appears to be inconsistent in a number of respects with the information available to the USG; (2) the number of deaths and the medical information available point to inhalation anthrax as the probable cause of the incident; (3) for various reasons, Military Cantonment No. 19 in the Sverdlovsk area appears to be a plausible source of the infection; (4) U.S. source strength calculations suggest the presence of quantities of anthrax spores beyond those retained in the U.S. for purposes permitted by the Convention, although because of the large uncertainties in these calculations, the possibility that the outbreak resulted from airborne contamination produced by an accident related to permissible activities cannot be ruled out; and (5) there clearly is a basis for concern that activities not permitted by the Convention may have been conducted at Sverdlovsk.

## b. Toxins

With respect to the possible use of toxin weapons in Afghanistan and Southeast Asia, the production or possession of toxins for use as weapons in armed conflict is obviously not permissible under the BWC, regardless of the quantities involved. Therefore, a violation of the BWC by the Soviet Union would be demonstrated if any of the following elements were established: (1) that Soviet forces used or possessed toxin weapons in Afghanistan;<sup>6/</sup> (2) that the Soviets supplied toxin weapons, or quantities of toxins for weapon purposes, to any of the forces in Afghanistan or Southeast Asia; or (3) that the Soviets assisted any of these forces in producing, acquiring or using toxin weapons, or quantities of toxins for weapon purposes. (Similarly, a violation of the BWC by Afghanistan, Vietnam, or Laos would be demonstrated if use or possession of toxin weapons by their forces were established.<sup>7/</sup>)

The prohibition of the 1925 Geneva Protocol against the use in war of bacteriological and chemical weapons (including toxin weapons),<sup>8/</sup> has become a rule of customary international law and that rule (but for technical reasons, not the Protocol itself)<sup>9/</sup> would be violated by Soviet use of such weapons in Afghanistan, or by Vietnamese use of such

SECRET

# UNCLASSIFIED

UNCLASSIFIED

SECRET

- 5 -

weapons in Kampuchea (or Soviet assistance in such use). Neither the possession nor transfer of such weapons, nor assistance to other States in their acquisition, would by itself be a violation, in the absence of involvement in the use of such weapons.)

The intelligence community has concluded<sup>9A/</sup> that: (1) Lao and Vietnamese forces, assisted by Soviet logistics and supervision, have used lethal chemical agents against H'Mong resistance forces and villages since at least 1976, and trichothecene toxins have been positively identified as one of the classes of agents used; (2) Vietnamese forces have used trichothecene toxins on Democratic Kampuchean troops and Khmer villages since at least 1978; (3) the only hypothesis consistent with all the evidence is that the trichothecene toxins were developed in the Soviet Union, provided to the Lao and Vietnamese, either directly or through transmission of technical knowhow, and weaponized with Soviet assistance in Laos, Vietnam and Kampuchea; and (4) Soviet forces in Afghanistan have used lethal and casualty-producing agents on Mujahedin resistance forces and Afghan villages since the December 1979 invasion, perhaps including trichothecene toxins, although no specific agents have been identified through sample analysis.

The Sverdlovsk and toxin use cases are, of course, only two parts of the more important overall question of whether the Soviet Union has decided to disregard the BWC as a constraint on its military programs, and has begun development, production and/or use of biological weapons.

## 2. Procedural aspects of charging violations

There are a number of different international contexts in which the U.S. might charge the Soviet Union with BWC violations, some prescribed by the BWC and others not.

### a. Consultation under the BWC

Article V of the BWC provides that BWC parties "undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention." The BWC does not specify how such consultations among parties are to be conducted, nor is there any requirement that

SECRET

UNCLASSIFIED

UNCLASSIFIED

SECRET

- 6 -

the party seeking consultation charge or establish that a violation has occurred; rather, Article V establishes a general obligation to consult and cooperate in a reasonable manner, bilaterally or multilaterally, in response to any reasonable request by another party with respect to possible compliance questions. (The U.S. and U.K. have, of course, already requested such consultation and cooperation on a bilateral basis with the Soviet Union concerning the Sverdlovsk incident, and have been refused.)

Similarly, Article V notes that "cooperation and consultation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter." The Final Declaration of the 1980 BWC Review Conference stated that these procedures "include, inter alia, the right of any State Party subsequently to request that a consultative meeting open to all States Parties be convened at expert level." Once again, there is no specification of how such a meeting would be convened or organized, nor is there any requirement that the party or parties seeking it charge or establish that a violation has occurred. The U.S. would be free, at such a meeting, to present any evidence or reports of Soviet violations which it wished, and to characterize them in any way it wished, including a direct charge of Soviet violations; if it wished, the consultative meeting could attempt to draw conclusions about such evidence or charges, or it could decline to do so.

b. Security Council

Article VI of the BWC provides that any party "which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity . . . ." Thus, unlike the procedures described in Article V, this Article contemplates that a State which uses this procedure must make a formal complaint of a breach of obligations and must include "all possible evidence" in support. The Council's procedures contain no formal rules of evidence or rules on the burden of proof; however, in light of this language, it is likely that a complainant would at least be expected to

SECRET

UNCLASSIFIED

# UNCLASSIFIED

SECRET

- 7 -

present clear and convincing evidence in support of its charge. Article VI goes on to require each Party to cooperate in any investigation which the Council may initiate in accordance with the provisions of the U.N. Charter.

Article VI does not prescribe the manner in which the Security Council is to act on such a complaint; the Council would rely on the procedures specified in the U.N. Charter and its own rules. Under Article 27 of the Charter, decisions on non-procedural matters are taken by the affirmative vote of nine of the fifteen Council members but are subject to veto by any of the five permanent members. In the case of decisions under certain provisions of the Charter, a "party to a dispute" is required to abstain,<sup>10/</sup> but in practice this "obligatory abstention" provision has rarely been invoked, and those who follow the Council's work have generally thought it unlikely that the Council (particularly under a hostile or ambivalent chairman) could be expected to force through such a decision in the face of determined Soviet obstruction.<sup>11/</sup> On the other hand, the Council has, on occasion, created subcommittees to examine the facts presented by a particular matter before the Council, and the creation of such subcommittees has been treated as a procedural matter not subject to the veto.<sup>12/</sup> Thus it may be possible to institute a limited fact-finding inquiry under the authority of the Council,<sup>13/</sup> although a decision by the Council on the substantive merits of a BWC complaint against the Soviet Union is probably unobtainable.

### c. UN General Assembly

Alternatively, the question of BWC violations might in theory be raised in several other international bodies not specifically referred to in the BWC itself. Any UN member might bring the matter to the attention of the U.N. General Assembly (UNGA), requesting that an investigation be initiated or that recommendations be made for the correction of the situation.<sup>14/</sup> (Such recommendations would not be binding.) This, of course, has in effect already been done in the case of possible use of toxin weapons, since the ongoing UNGA investigation into reported use of chemical agents in Afghanistan and Southeast Asia encompasses the use of toxins as well as traditional chemical agents.<sup>15/</sup> The UNGA Rules of Procedure contain no rules of evidence or rules on the burden of proof, and a member requesting UNGA action may base its request on any evidence it deems suitable.

SECRET

UNCLASSIFIED

UNCLASSIFIED

SECRET

- 8 -

d. International Court of Justice

One might in theory consider the possibility of presenting the question of Soviet BWC violations to the International Court of Justice (ICJ). However, the prospects of obtaining an ICJ decision would be problematical. Article 36 of the ICJ Statute grants jurisdiction to the Court in all cases referred to it by the parties to the dispute (but the Soviets would be highly unlikely to consent), in any matters in which ICJ jurisdiction is specially provided for by international agreement (but no such provision exists in the case of BWC violations),<sup>16/</sup> and in any case where the parties have generally accepted the Court's jurisdiction under Article 36(2) (but the Soviets have not). Alternatively, Article 65 of the ICJ Statute empowers the Court to give an "advisory opinion" (which would not be binding on the parties) on any "legal question" at the request of any body authorized by the U.N. Charter to do so. (The Security Council and General Assembly are so authorized.) However, this would require an affirmative decision by either of these bodies, which would be subject to the procedural questions described above; furthermore, the Court would not be required to render such an opinion, and it is not clear whether it would choose to do so in a dispute which would in all likelihood turn not on the legal interpretation of the BWC but on questions of fact which would probably depend on expert judgments and on-the-scene investigation.

In any event, unlike the bodies previously mentioned, the ICJ functions as an adjudicatory body with formal judicial proceedings, rules and opinions. Its rules make provision for formal pleadings, the submission of documentary evidence, affidavits and testimony by witnesses, oral argument by the parties, and the possibility of special enquiries, expert opinion or requests for information from other international organizations. The rules do not specify what types of evidence are admissible (aside from references suggesting that evidence must be "relevant" to the matters at issue)<sup>17/</sup> but evidently the Court's practice suggests that it does not favor hearsay evidence and prefers not to rely on circumstantial evidence.<sup>18/</sup> In any event, any allegations of Soviet BWC violations in the ICJ would have to be based on clear, complete and cogent evidence, preferably evidence consisting of physical evidence whose source and handling can be documented and attributed, and affidavits or testimony from experts and direct witnesses to the events in question.

SECRET

UNCLASSIFIED



UNCLASSIFIED

SECRET

- 9 -

e. Suspension or termination

Finally, allegations of Soviet BWC violations might be raised by the U.S. in the context of the hypothetical exercise of unilateral remedies under the general international law of treaties. Specifically, a state has the right, under the general law of treaties (as reflected in Article 60 of the Vienna Convention on the Law of Treaties), to terminate or suspend the operation of a treaty in whole or in part in response to a "material breach"<sup>19/</sup> (defined as a repudiation of the treaty or a "violation of a provision essential to the accomplishment of the object or purpose of the treaty"). (In the case of the BWC, such an action would presumably be only rhetorical in character, since the U.S. would not actually take action inconsistent with the provisions of the BWC in any event.) There are no rules in the Vienna Convention or general treaty law on the strength or character of evidence required to support such an action, but clearly the U.S. would be expected to present a clear and convincing explanation of the basis for its conclusion that Soviet material breaches had occurred.<sup>20/</sup>

It will be important to assess the strength of current evidence of Soviet BWC violations on the basis of information which has been or could be made publicly available, since our allegations would of necessity be judged on that basis in any of the international contexts discussed above. (Of course, the other classified information in our possession is nonetheless of great importance in judging whether to proceed with a charge of Soviet violations, and in convincing our allies privately of the legitimacy of our allegations.)

SECRET

UNCLASSIFIED

# UNCLASSIFIED

## NOTES

1. The phrase "never in any circumstances" was specifically added to Article I of the BWC for this purpose. Secretary of State Rogers' official report on the BWC states that "since war would obviously be one of the 'circumstances' referred to, the phrase 'never in any circumstances' emphasizes the intention of the Parties that this Convention remain in full force and effect in time of war." Executive Q (92d Congress, 2d Session), August 10, 1972, p.3.
2. The language of Article I refers to agents or toxins of types and in quantities "that have no justification" for the permitted purposes. The United States has interpreted this as precluding the possession of any quantities of agents or toxins for hostile purposes, even if the quantities held could hypothetically have been justified for peaceful purposes. See Executive Q, note 1 above, p. 23. This is the only sensible interpretation.
3. The U.S. interpretation on these points is documented in Executive Q, note 1 above, p. 23. These interpretations are consistent with the negotiating history of the BWC, and neither the Soviets nor any other participant in the negotiations appear to have taken issue with these interpretations.
4. Secretary Rogers' report stated that "in order to avoid any possible ambiguity, it was made clear during the negotiation of this Convention that the terms 'prophylactic' and 'protective' are not intended to convey any broader meaning which would in any way permit possession of biological agents or toxins for weapons purposes on the theory that such weapons were for 'defensive' warfare, retaliation or deterrence." Executive Q, note 1 above, p.3.
5. See Executive Q, note 1 above, p.3. The U.S. has never specified what "laboratory quantities" might be.
- 5A. Working Paper on the April 1979 Disease Outbreak at Sverdlovsk, USSR, September 2, 1980; Study on Chemical and Biological Weapons Arms Control, July 8, 1981.
6. The language of the BWC does not directly mention use of biological weapons (evidently because some parties to the BWC negotiation did not want to appear to be superseding the 1925 Geneva Protocol). However, as Secretary Rogers' report stated:

While this Convention does not explicitly ban the use of biological weapons, no Party to the Convention would be permitted to possess such weapons even in wartime. There is no possibility that a Party could use biological or toxin weapons without being in violation of Articles I and II of this Convention.

Executive Q, note 1 above, p.3.

# UNCLASSIFIED

# UNCLASSIFIED

- 2 -

The BWC prohibition applies to all toxins, whether naturally or synthetically produced. This was made clear in the text of the BWC, its negotiating history, and in the U.S. submission to the Senate. See Executive Q, note 1 above, p.3.

7. The BWC was ratified by Afghanistan on March 26, 1975, by Vietnam on June 30, 1980, and by Laos on March 20, 1973. Kampuchea has signed but not ratified.
8. The Protocol itself prohibits the "use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices" as well as "bacteriological methods of warfare". Most major powers, including the U.S. and the Soviet Union, have made reservations at the time of ratification preserving a right to retaliate in kind against any use of CW against themselves or their allies; many of these countries have likewise reserved a right of retaliation with respect to BW as well, but the United States has not.
9. The Geneva Protocol was ratified by the Soviet Union on April 5, 1928, and by Vietnam on June 20, 1980; neither Afghanistan, Laos nor Kampuchea have ratified. Furthermore, the Protocol by its own language only applies as between parties to it, and many countries (including the Soviet Union and Vietnam) have made reservations reiterating that they are not bound with respect to non-parties; therefore the Protocol itself would not apply to Soviet or Vietnamese use against Afghanistan, Kampuchea or Laos.

Nonetheless the U.S., the Soviet Union and the great majority of the international community have taken the position that the prohibition stated in the Protocol has, since 1925, become a part of the customary international law of armed conflict as a result of general adherence to the Protocol, the practice of States in refraining from CBW use in subsequent major wars and the declarations of international organizations; as such, the prohibition would apply to all States, whether parties to the Protocol or not, with respect to use in conflicts with any other State, whether party to the Protocol or not. (A few parties, apparently including the UK and France, have not accepted this proposition, evidently because of general concerns about the creation of new customary law in this general area.)

There is an additional difficulty with respect to the application of the Protocol to the situation in Laos. The Protocol by its own language applies to use "in war", and it has usually been assumed that both the Protocol and the

UNCLASSIFIED

# UNCLASSIFIED

- 3 -

related rules of customary international law apply only to international armed conflicts. The conflicts in Afghanistan and Kampuchea, which involve foreign invasion and occupation, clearly qualify as international armed conflicts (although the Soviets have denied this and will presumably continue to do so). However, it can be argued that the Laotian situation is not an international conflict, given the fact that Vietnamese Forces appear to be in Laos with the Government's consent, that the opposition elements are tribal groups and not retreating forces of a government formerly in power, and that any fighting which has occurred is of a much more localized and sporadic character.

(These points are discussed and documented at greater length in memoranda prepared by the State Department Legal Adviser's Office, and are available from L/PM.)

- 9A. Special National Intelligence Estimate, 27 January 1982.
10. This "obligatory abstention" provision applies to decisions under Chapter VI of the Charter (relating to the "pacific settlement of disputes") and to decisions under Article 52(3) (relating to the settlement of local disputes by regional agencies).
11. In theory, a complaint under Article VI of the BWC could be cast in the form of a decision under Chapter VI (which authorizes the Council to investigate any dispute or situation which might endanger the maintenance of international peace and security, and to make recommendations for the settlement of the dispute); and the question of a BWC violation by the Soviet Union could be characterized as a "dispute" to which the Soviets are a "party". However, this "obligatory abstention" provision has not been invoked in recent times, apparently has never been used to deprive a permanent member of its vote against its will, and has been ignored in practice on occasions where it would seem clearly to apply. The Soviets would be likely, if necessary, to resort to a "double veto", that is, a veto on the preliminary question of whether the "obligatory abstention" provision applies to the decision being taken. Analyses of the complicated history of all of this can be found in the files of the State Department Legal Adviser's Office (L/UNA).
12. In the Corfu Channel Case a subcommittee was appointed in the Security Council "to examine all the available evidence . . . and to make a report to the Security Council . . . on the facts of this case as disclosed by such evidence." Prior to voting on this resolution, the U.K. delegate asked

UNCLASSIFIED

# UNCLASSIFIED

- 4 -

whether he was entitled to vote, pointing out that, if the appointment of the subcommittee was non-procedural, he, as a party to the dispute, was barred from voting by Article 27(3) whereas, if the appointment was procedural, no such limitation applied. Although the Soviet delegate asserted that the proposed subcommittee was for the purpose of conducting an investigation and that its establishment, therefore, could not be a procedural matter, the President ruled that the U.K. delegate might participate in the voting, since the function of the committee was not an investigation. The Australian proposal was adopted by eight affirmative votes, including that of the U.K. with three abstentions. (U.N. Security Council, 2d Year, 111th Meeting, p. 364-365, 425 (1947).)

Similarly, in the case of the Council's consideration of the Laotian situation in 1959, the U.S., U.K. and France introduced a resolution calling for the appointment of a subcommittee "to examine the statement made before the Security Council concerning Laos, to receive further statements and documents and to conduct such inquiries as it may determine to be necessary and to report to the Security Council as soon as possible" Before voting on the resolution, the Council decided (over an attempted Soviet "double veto") that the resolution was procedural in character. The President ruled that the negative Soviet vote on the preliminary question did not have the effect of making the resolution before the Council a non-procedural one. The resolution appointing the subcommittee was then adopted by procedural vote. (U.N. Security Council, 14th Year, Official Records, 848th Meeting, p. 42-43, 78.)

Thus, the Security Council has asserted the right to ascertain facts under its general procedural powers as well as under Article 34. Fact-gathering under the general procedural powers of the Security Council does not invoke the veto or compulsory abstention provisions of Article 27.

13. In view of the ongoing UNGA investigation, which the U.S. supports, it is also prudent to keep in mind Article 12 of the UN Charter, which provides that the General Assembly shall not make any recommendation with regard to a dispute or situation while the Security Council is dealing with it; this provision has fallen into disuse, but might conceivably be raised by the Soviets against further UNGA action if a complaint is brought before the Council.
14. Under Article 18(2) of the Charter, decisions on "important questions" (including "recommendations with respect to the

UNCLASSIFIED

# UNCLASSIFIED

- 5 -

maintenance of international peace and security") are taken by a two-thirds majority of the members present and voting. (Other decisions are taken by majority vote.)

15. Toxin weapons, although explicitly covered by the BWC, are also covered by the 1925 Geneva Protocol. The U.S. has maintained that toxins should be treated as chemical agents for the purpose of a CW Convention.
16. By way of contrast, the Court's jurisdiction in the Iranian hostage case rested on provisions of several bilateral agreements which specifically referred disputes between the U.S. and Iran to the Court.
17. See ICJ Rules of Court, 14 April 1978, Articles 49-50.
18. See Rosenne, *The International Court of Justice*, p. 404-410.
19. More specifically, Article 60(2) of the Vienna Convention provides that a party "specially affected by the breach" may invoke it as a ground for suspending the operation of the treaty in whole or in part "in the relations between itself and the defaulting State;" and any party other than the defaulting State may invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself "if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty."  

. . . . .

These rights are, of course, separate from and in addition to the right of a BWC party under Article XIII(2) of the BWC to withdraw from the Convention "if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country."
20. Article 65 of the Vienna Convention would require that a party which intends to terminate or suspend the operation of a treaty notify other parties of its intentions, give them an opportunity to object, and then attempt to resolve any objections through negotiation or other peaceful means before proceeding with the termination or suspension. Unlike most other provisions of the Vienna Convention (to which the United States is not yet a party), these provisions are not considered to be codifications of existing treaty law; rather they are considered to be additional

UNCLASSIFIED

UNCLASSIFIED

- 6 -

rules which will bind a State when and if it ratifies the Convention, and (in accordance with Article 4 of the Convention) only with respect to treaties concluded after the Convention's entry into force with respect to that State. Thus these provisions do not and will not apply to U.S. actions concerning the BWC.

UNCLASSIFIED