

**Formal Consultative Meeting of the States Parties
to the Convention on the Prohibition of the
Development, Production and Stockpiling
of Bacteriological (Biological) and
Toxin Weapons and on Their Destruction**

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Item 6 of the agenda

**Respective outstanding questions by the Russian Federation
to the United States and to Ukraine concerning the fulfilment
of their respective obligations under the Convention in the context
of the operation of biological laboratories in Ukraine**

**Statement to the Article V Consultative Meeting
Under the Biological and Toxin Weapons
Convention By Samuel W. McDonald, Legal
Adviser to the U.S. Delegation**

Submitted by the United States of America

Mr. Chairman,

1. In addition to the false allegations Russia has made about activities in Ukraine, it has recycled purported concerns about a patent issued by the U.S. Patent and Trademark Office for a “toxic mosquito aerial release system,” which we addressed conclusively in a bilateral exchange several years ago, in 2019. The published patent broadly discloses a device for aerial release of mosquitoes carrying any chemical, biological component, bacterium, virus, immunological agent, or other material having an influence on humans. We will put aside the question of whether such a device would have any practical application and focus on what U.S. government approval of this patent means and does not mean. The United States can assure you that it does not constitute a violation of the BWC.

2. First, we should point out that, as is the case with many patent applications, this one was filed by a private entity and not on the behalf of the United States government. Second, as my government informed Russia in 2019 in response to its bilateral inquiry about this patent, under U.S. law, patents do not confer a legal right or authorization to make or produce an invention, and they do not allow someone to produce something that would otherwise be illegal to make. They simply give a patent owner the legal means to exclude other parties from taking certain actions – such as making, using, offering for sale or selling – with respect to that invention. This aligns with international standards on the rights conferred in relation to patents, which are set out in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. *See e.g.*, Article 28, TRIPS: AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS. U.S. patent law and practice conform to such international standards. Additionally, contrary to the suggestion contained in Russia’s June 13 Aide Memoire, the United States has no requirement that a prototype of an invention actually be produced before a patent is awarded, nor a requirement that the person granted the patent make or use the patent once it is issued. Further, after subsequent investigation into the matter, it is clear that the device as described in this patent was not in fact ever made or produced by the patentee or related entities. Finally, the text of the patent itself (in column 1, lines 36-50) acknowledges that the BWC would bear on the production and use of such an invention as a weapon.



3. The United States takes seriously its obligations under the BWC and has a comprehensive domestic legal regime to implement its obligations under Article IV. These U.S. laws make clear that, *inter alia*, the development and production of a biological weapon is prohibited, and any violation is punishable by penalties ranging from fines to imprisonment. The laws are vigorously enforced by the Federal Bureau of Investigation and other law enforcement agencies, and violations are prosecuted by the Department of Justice. Therefore, while an individual or entity may be able to hold a patent for an invention of the type discussed here as a domestic legal matter, production of such an invention for use as a weapon would violate the relevant laws implementing the United States' obligations under the BWC and be punishable by fines and/or imprisonment. The mere decision to issue such a patent does not violate U.S. obligations under the BWC and does not imply that the U.S. Government condones the inventors' claims of possible uses.

4. In our 2019 reply to Russia, the United States also pointed out that several other States Parties to the BWC, including Russia itself, have issued patents or published patent applications for devices designed for delivery of toxins, biological or chemical agents, or insects that might raise questions like the one Russia has raised in this case. For example, our search for patents of this sort has identified, among others, those granted by the Russian Federation in 2000 for a "fluid filled weapon for enemy defeat with poisonous substances" and in 2016 for a "weapon with shell containing a chemical payload," as well as a 2016 patent application published by Russia for "biological active bullets, systems, and methods." My Delegation can provide details on these patents at the request of other delegations. When the United States found these patents, we did not rush to accuse Russia of non-compliance with the BWC. Instead, noting this practice in multiple States Parties, we suggested to Russia that it could be valuable to share best practices for identifying and handling patent applications for inventions that may raise security concerns.

5. Mr. Chairman, I request that this statement be an Official Document (and Working Paper) of this Article V meeting, and that it be posted by the Implementation Support Unit on the UN Geneva public website.

Thank you, Mr. Chairman.
