



Strengthening the norms against  
chemical and biological weapons



## **The Legal Effect of the BWC Review Conferences**

9th BWC Review Conference – Side  
Event 12. December 2022

Kristoffer Burck (Justus-Liebig University Giessen)  
Sannimari Veini (Justus-Liebig University Giessen)  
Barry de Vries (Justus-Liebig University Giessen)

# CBWNet

*Working together to strengthen  
the norms against chemical and biological  
weapons.*

The logo for the Institute for Peace Research and Security Policy (IFSH) features the letters 'IFSH' in a bold, blue, sans-serif font. The letters are contained within a white rectangular box that has a blue border and a blue horizontal line above and below the text.

**IFSH**  
*Institute for  
Peace  
Research  
and  
Security  
Policy*

The logos for PRIF and HSKF are displayed side-by-side. PRIF is on the left, with the text 'PRIF' in a bold, black, sans-serif font above 'Peace Research Institute Frankfurt' in a smaller font. To its right is a blue circular logo with a white swirl. HSKF is on the right, with the text 'HSFK' in a bold, black, sans-serif font above 'Leibniz-Institut Hessische Stiftung Friedens- und Konfliktforschung' in a smaller font.

**PRIF**  
*Peace  
Research  
Institute  
Frankfurt*

The logo for the University of Hamburg (UH) features a red square with the white letters 'UH' and a white silhouette of a building. To the right of the square, the text 'Universität Hamburg' is written in a black, sans-serif font, with 'DER FORSCHUNG | DER LEHRE | DER BILDUNG' in a smaller font below it.

**ZNF**  
*Carl Friedrich  
von  
Weizsäcker  
Centre for  
Science and  
Peace  
Research at  
University  
Hamburg*

The logo for Justus-Liebig-Universität Giessen features a shield-shaped crest with a blue 'T' on a white background. To the right of the crest, the text 'JUSTUS-LIEBIG-UNIVERSITÄT GIESSEN' is written in a black, sans-serif font.

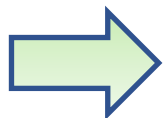
**Justus-Liebig  
University  
Giessen  
Chair for Public  
Law and  
International  
Law (Prof. Dr.  
Thilo Marauhn)**

joint research project funded by the [Federal Ministry of Education and Research](#) for four years

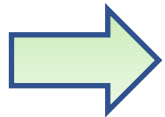
# Research Question

**Rationale for this research:**

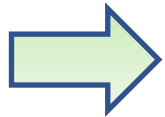
**Legal Effects of BWC Review Conferences are:**



Underestimated



Undervalued



Underdiscussed

# Review Conferences - Background

Need to ensure relevance over time



Lack of implementing organization

Periodic Review Conferences

# BWC Review Conferences – Legal Basis

## **Art. XII BWC:**

*“Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depository Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realised. Such review shall take into account any new scientific and technological developments relevant to the Convention.”*



Recommendation to hold Conferences every five years by 3rd Review Conference (1991)



Decision to follow this format by 7th Review Conference (2011)

Only exceptions to this rhythm: 2001 (lack of consensus) + 2021 (Covid19 Pandemic)

# Selected Important Decisions at BWC RevCons

## Reviewing and reaffirming the Convention and its purpose - Decisions and declarations to strengthen the BWC regime:

Agreements on the interpretation and definitions of the BWC & its specific provisions  
→ For example, the use of biological weapons “*in any way and under any circumstances*” violates Art. I (4th RevCon, 1996)

Establishment of additional bodies and mechanisms  
→ For example, Implementation Support Unit (ISU) (6<sup>th</sup> RevCon, 2006)

Setting the direction for the next five years in between the RevCons  
→ For example, Meetings of Experts and Meetings of State Parties (5<sup>th</sup> RevCon, 2002)

Additionally: For example, decisions to promote universalization of BWC and decisions regarding cooperation and assistance

Actions required from states parties to strengthen the Convention  
→ For example, Confidence Building Measures (CBMs) (2<sup>nd</sup>, 3<sup>rd</sup>, and 6<sup>th</sup> RevCon)

# Legal Basis of BWC RevCon Decisions

Art. XII

- No guidance on decision making procedures at RevCons

Prep Com

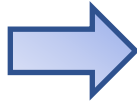
- Liberty to create appropriate rules of procedure
- Agreed by Consensus

UN Standard  
Rules of  
Procedure for  
Conferences

- Decision making in rule 28

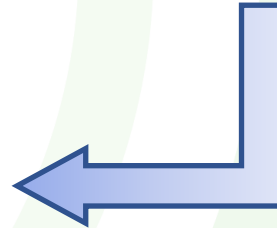
# Rule 28 BWC RevCon Rules of Procedure

**Strong Preference for Consensus** (Rule 28 para 2)  
*“every effort should be made to reach agreement on substantive matters by means of consensus”*



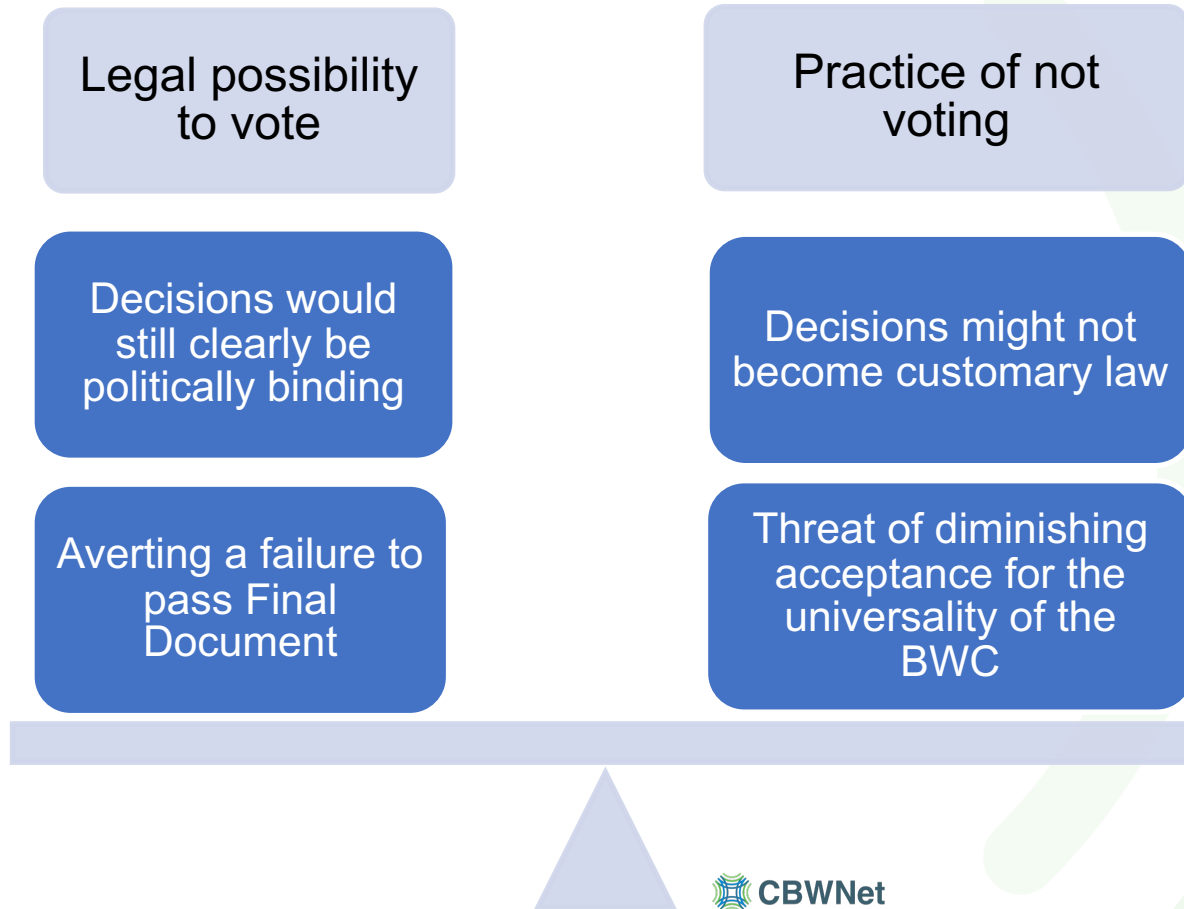
**Possibility of deferment for 48 hours** (Rule 28 para 3)  
*“the President shall defer the vote for 48 hours and [...] shall make every effort [...] to facilitate the achievement of general agreement”*

**Possibility for voting with two thirds majority** (Rule 28 para 4)  
*“If by the end of the period of deferment the Conference has not reached agreement, voting shall take place and decisions shall be taken by a two thirds majority of the representatives present [...]”*

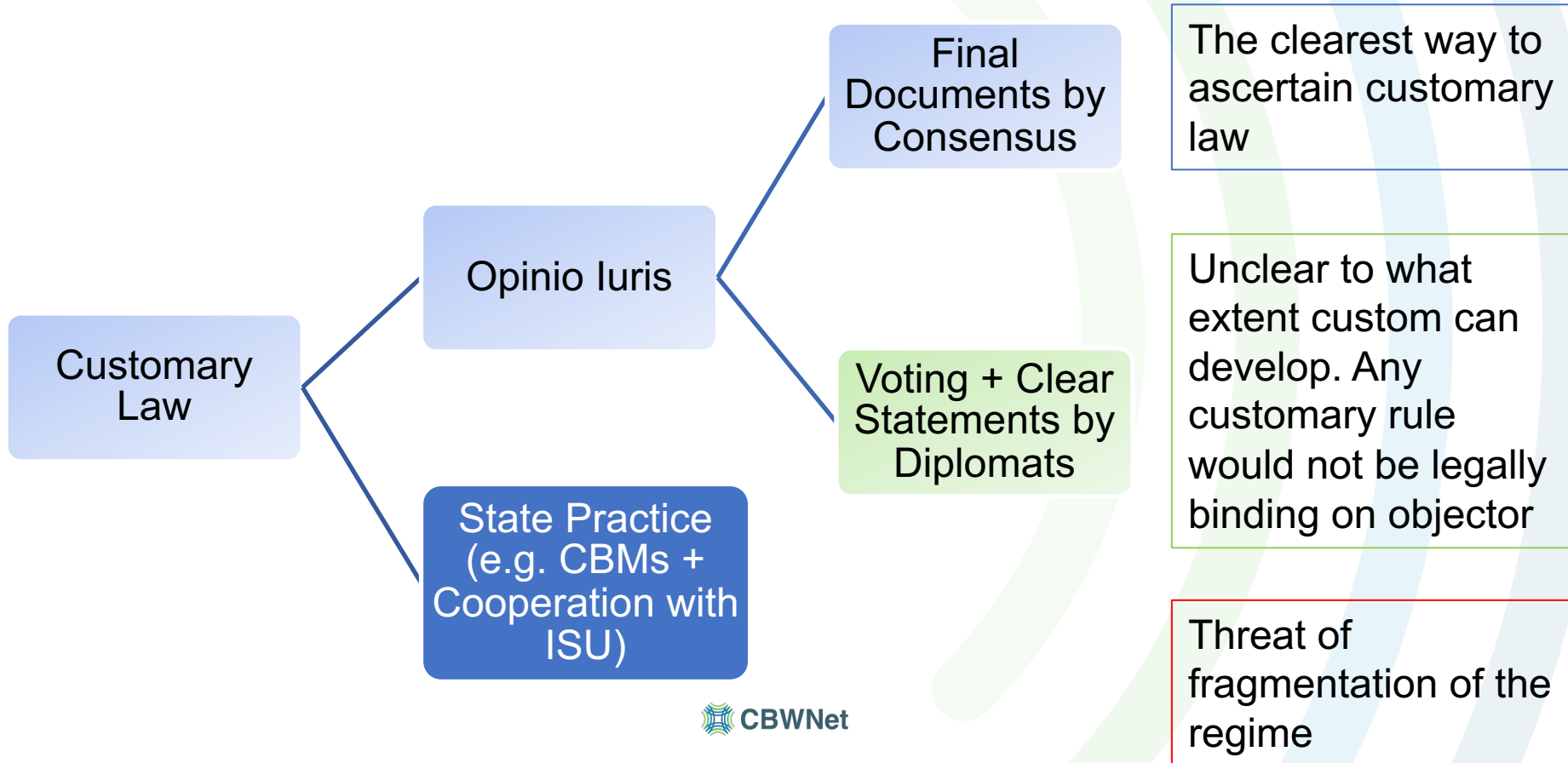




# Legal Possibilities and Conference Practice



# Formation of Customary International Law



# Legally Possible – Politically Desirable?

## **Votes by Majority Legally Possible**

But: implications for formation of customary international law

## **Political decision →**

„opening pandora´s box“ (fragmentation, threat of reduction of acceptance)

**vs.**

Danger of official standstill for the next five years (no ISU, MSPs+MXs and no agreed language)

# The Binding Nature of Review Conference Decisions

Legally  
Binding

**vs**

Politically  
Binding

What is the difference?

How do we identify either?

# The Binding Nature of Review Conference Decisions

Generally:

Politically  
Binding

NOT  
Legally  
Binding

But: Exceptions such as  
implied powers

# Indirect Legal Effects

## Treaty Interpretation

- RevCon Final Documents are subsequent agreements
- Authoritative interpretation
- Not applicable in case of voting

## Customary International Law formation

- Can be evidence of *opinio iuris*
- Effect not or at least less applicable if decisions reached by voting

# Subservient Bodies

## Practice of Developing Subservient Bodies at RevCons

- Ad-Hoc Groups
- MSPs, MXs

RevCon can only delegate powers it possesses

- RevCon mainly politically binding decisions

Exceptions:  
implied  
powers

- Legally binding decisions can only be based on implied powers

# Subsequent Review Conferences

- Review Conferences generally don't seek to bind future RevCons
- While practically important, previous RevCons do not bind subsequent RevCons



# What will the BWC Regime Look like Without a Final Document?

## Continuity

- BWC will still be in force
- Interpretations from former RevCons will continue to provide framework

## Disruption

- No updated and most current interpretation of BWC available to states
  - ISU will lose its mandate and will stop to function
  - No Intersessional Process and no official MSPs or MXs
- No progress within the framework of the BWC for the next five years

# CBWNet Working Paper Series

**WP No. 1:** Launching the Competence Network CBWNet: Achievements of the Chemical Weapons Convention and Future Challenges (May 2022)



**WP No. 2:** The Legal Effect of the BWC Review Conference (November 2022)



**WP No. 3:** International Biosecurity Governance Evolution within the Biological Weapons Convention (November 2022)



CBW Challenges Radar Newsletter:



<https://cbwnet.org/publications/newsletter>

*Working together to strengthen  
the norms against chemical and  
biological weapons.*

**Thank you for your attention.  
Please feel free to share any  
questions and comments**

Geneva, 12. December 2022

<https://cbwnet.org>

