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**THE NON-RESPECT OF THE DEADLINE FOR THE
CHEMICAL WEAPONS DESTRUCTION AND ITS
CONSEQUENCE FOR THE CREDIBILITY OF CWC AND
THE OTHER DISARMAMENT TREATIES**

by Rein Müllerson

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The Convention on the Prohibition of the development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (CWC) of 1993 that entered into force in 1997, i. e. exactly ten years ago, is one of the most, if not the most, advanced, mature and successful of international disarmament treaties.¹ Before turning to challenges and problems related to delays in the process of destruction of CW arsenals, which is the topic of my presentation, it is necessary (and not only because today we are celebrating the 10th anniversary of the CWC but also due to the need to strike a right balance) to mention, if only briefly, some of the achievements that indeed are quite impressive.

According to the OPCW (Organization for the Prohibition of Chemical Weapons) 100% of the declared chemical weapons production facilities have been inactivated (this, of course, does not mean that there may not be any undeclared facilities or sites). These declared facilities are all, as the OPCW says, subject to a verification regime of unprecedented stringency. 100% of the declared chemical weapons stockpiles have been inventoried and verified. Almost 90%, or 58, of the 65 chemical weapons production facilities declared to the Organization by 12 States Parties, have been either destroyed or converted for peaceful purposes. Over 30% of the 8.6 million chemical munitions and containers covered by the Convention have also been verifiably destroyed. Almost 1/4 of the world's declared stockpiles of approximately 71,000 metric tonnes of chemical agents have been verifiably destroyed.²

However, notwithstanding these and other achievements (e.g., the adoption of national laws and programmes in accordance with the Convention-requirements), today the CWC nevertheless faces several challenges. The CWC has, in principle, two main pillars – the disarmament or destruction pillar, under which states party to the Convention have to declare and destroy their CW, and the non-proliferation pillar that should prevent the emergence of new weapons. These pillars are covered by a single roof, which is verification carried out by the OPCW. These pillars are interlinked, inter alia, through to this common roof. If one pillar (say, the disarmament one) faces problems and therefore calls for more attention and resources, this means that the other pillar (the non-proliferation one) receives less attention and also fewer of the always-limited resources. As the Report of the Vertic, a British verification NGO, has remarked, ‘not only are existing chemical weapons stockpiles being destroyed at a much slower rate than required by the treaty, but verification has been skewed towards monitoring this process. This has been at the expense of verifying that illicit production

¹ Kim Howells, Minister of State, FCO, stated in March 2007: ‘In my view, the convention is one of the most successful disarmament treaties in force today’ (10th Anniversary Seminar on the Chemical Weapons Convention 26 March, FCO).

² OPCW, The Chemical Weapons Ban: Facts and Figures, 13 April, 2007.

of new chemical weapons is not occurring, including in the chemical industry'.³

The CWC member states must declare chemical weapons stockpiles and production facilities, relevant chemical industry facilities, and other related information such as chemical exports and imports. According to the Convention member states that possess CW and production facilities must destroy them by April 2007. There are six states party to the CWC – Albania, India, Libya, the Russian Federation, the United States and A State Party (widely known to be South Korea) – that have declared their CW stockpiles. They are considered to be possessor states.

In addition, 12 parties have declared a total of 65 former chemical weapons production facilities, all of which must be dismantled or converted to peaceful purposes.⁴ States Parties that have declared Chemical Weapons Production Facilities (CWPFs) include Bosnia and Herzegovina, China, France, India, the Islamic Republic of Iran, Japan, the Libyan Arab Jamahiriya, the Russian Federation, Serbia, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and A State Party. Of the 65 declared CWPFs, 58 have been certified as destroyed or converted for peaceful purposes.

During the negotiation of the CWC it was clear that most of the chemical weapons to be destroyed would be the Cold War stocks of the United States and the former Soviet Union. US and Russian stockpiles do make up the bulk of the weapons now being destroyed, but other members have also declared holdings of chemical weapons. In 2003, for example, Libya confirmed its intention to give up its Weapons of Mass Destruction and join the OPCW. It disclosed to the British and American Governments quantities of chemical agents and bombs designed to be filled with chemical agents. These weapons are now being destroyed, and their destruction verified, under the terms of the CWC.

Although the US has now destroyed over 40% of its stockpile, and Russia has started to make significant progress towards destroying 20% of its CW arsenal, both face major challenges in meeting the final deadline of 2012. This notwithstanding that many states are working with the Russian Government to help the Russians to destroy weapons at their seven destruction sites. In September 2006 Russia opened near Maradikovsky in the Kirov Region (300 miles NE of Moscow) its third major facility for the destruction of its CW stockpiles, which is the first to destroy nerve agents. Paul Walker, Legacy Program Director at Global Green USA, then commented: “Global Green USA congratulates the Russian Federation on destroying over 2,200 tons of deadly chemical agents over the past four years. The start-up of a third destruction facility this month will now help Russia to accelerate their CW stockpile destruction and potentially meet the April 2007 deadline of the Chemical Weapons Convention for 20% stockpile elimination. However, deadlines must not trump safety and protection of public health,

³ Getting Verification Right. Proposals for Enhancing Implementation of the Chemical Weapons Convention, Vertic, 2002, p. 3.

⁴ The 12 CWC states-parties that have declared former chemical weapons production facilities are Bosnia and Herzegovina, China, France, India, Iran, Japan, Libya, the Russian Federation, Serbia, South Korea, the United Kingdom, and the United States. Of 65 declared former production facilities, 57 have been certified as destroyed or converted to civilian use.

and we urge Russia to be extremely cautious as they move forward with this dangerous process.’⁵

Special attention of the organizers of this Conference to the issue of deadlines and extensions may have caused also by the fact that on 8 December 2006 the Conference of the State Parties granted extensions for practically all states that had requested extensions and all of the possessor states had done it. The Conference extended the deadline for A State Party (South Korea) until 31 December 2008; it set 31 December 2009 as the date for completion of the destruction by the Russian Federation of 45% of its Category 1 chemical weapons stockpiles; established for the Libyan Arab Jamahiriya the following dates for the intermediate deadlines for the destruction by of its Category 1 chemical weapons stockpiles: phase 1 (1%), to be completed by 1 May 2010, phase 2 (20%), to be completed by 1 July 2010, and phase 3 (45%), to be completed by 1 November 2010 (on the understanding that, up until 29 April 2007, the Libyan Arab Jamahiriya shall keep the Council informed, at each alternate regular session and with supporting documentation, of the status of its plans to implement its destruction obligations); the Conference also called upon the Libyan Arab Jamahiriya to complete the destruction of its Category 2 chemical weapons as soon as possible, but in any case no later than 31 December 2011; it granted an extension of the deadline by which India must destroy all of its Category 1 chemical weapons stockpiles, subject to the several conditions, including that India complete the destruction of its Category 1 chemical weapons no later than 28 April 2009; the Conference established 29 April 2012 as the date by which the United States of America must destroy all of its Category 1

chemical weapons, subject to certain conditions; it set 29 April 2012 as the date for completion of the destruction by the Russian Federation of 100% of its chemical weapons stockpiles; the Conference granted Albania extensions of the phase 1, 2, and 3 intermediate deadlines for the destruction of its Category 1 chemical weapons, and established the following new interim deadlines for the destruction by Albania of its Category 1 chemical weapons: phase 1 (1%), to be completed by 15 January 2007; phase 2 (20%), to be completed by 31 January 2007; and phase 3 (45%), to be completed by 28 February 2007.

What are the reasons for delays? Insufficient financing has caused delays with the Russian CW destruction programme, especially at the earlier stages of its implementation. To a great extent they were specifically related to the 1998 financial crises in Russia. Financial woes have been a major obstacle for Russia. As the title ‘It is cheaper to produce than to destroy’⁶ of an article by two Russian experts indicates, destruction, especially destruction which is environmentally safe, verifiable and without delays (and these are all interrelated and important conditions), of CW stockpiles is indeed a very expensive business. The country has redesigned its chemical weapons destruction programme in the hope of destroying its entire 40,000-metric-ton stockpile by April 2012. By April 2006, however, it had destroyed less than three percent. Russian officials have said they will need international financial assistance to meet their

⁵ ‘Global Green USA Welcomes Start-up of New Russian Chemical Weapons Destruction Facility, Urges Safety and Transparency, News Center, CommonDreams.org, September 7, 2006.

⁶ O. Lisov, N. Krasov, ‘It is cheaper to produce than to destroy’, *Military-Political Problems. Observer* (in Russian), 2003, No. 11.

goal. Yet, even with international aid, it is unclear whether Russia will be able to destroy its stockpiles by the 2012 deadline. Today destruction of CW arsenals looks like a hangover that today's generation is suffering after the Cold War arms race led by the US and the USSR. Of course, earlier generations had made their own contribution.

Washington also faces its share of setbacks that include financial constraints, political resistance, as well as technical challenges. Like Russia, the United States seems unlikely to meet the new extended deadline. One of the most pessimistic estimates is that the United States will not be able to get rid of its CW arsenal, which still totals some 28,000 metric tons, until 2023. To date, destruction has been completed at only two of seven storage depots. Efforts to destroy the chemical weapons stockpiles have been stymied by technical problems, such as unanticipated heavy-metal contamination and fires at destruction sites. Political resistance at the state and local level also has slowed progress, with local communities raising concerns about health and safety. Finally, limited funding has contributed to slowing down of destruction at US Army CW disposal sites in Pueblo, Colorado, and Blue Grass, Kentucky.

Taking this all into account, the Conference of Member States of the Organization for the Prohibition of Chemical Weapons in December 2006 in The Hague granted both the United States and Russia a five-year extension to a 2007 deadline for destroying their chemical weapons stockpiles. However, it is widely believed that both countries will likely need even more time and therefore one cannot exclude further requests for deadline extension.

At the beginning of my presentation I already mentioned one of the negative consequences of delays in the destruction of existing CW arsenals – other purposes of the CWC, such as verifying that new weapons are not produced, new facilities opened, receive less attention and resources. Another threat that delays of destruction of stockpiles of CW increases is the danger that terrorists may get hold of some of the most deadly weapons that today are possessed only by some states. Recent developments in several parts of the world manifest that terrorists of different kinds actively seek and do not hesitate to use chemical weapons, at least until nuclear weapons become available. Finally, delays of destruction of CW may increase threats to environment; though, it is necessary to acknowledge that environmental concerns are one of the factors that cause at least some of the delays. In that respect too, the two pillars of the CWC are interlinked. It has to be emphasized

that though environmental concerns are one of the factors that cause some delays in destruction of CW, they are weightier than deadlines. Although keeping deadlines is important, safety, both human and environmental, should prevail over the need to meet deadlines.

So, how to be with deadlines and with potential need to consider further extensions?

When the text of the CWC was negotiated and then in 1993 adopted, the state parties already envisaged that there may be difficulties with meeting the deadlines established by the Convention. Therefore, in Annex on Implementation and Verification

(Verification Annex, Part IV) they provided that ‘if a State Party, due to exceptional circumstances beyond its control, believes that it cannot achieve the level of destruction specified for Phase 1, Phase 2 or Phase 3 of the order of destruction of Category 1 chemical weapons, it may propose changes in those levels’ (para. 21) and that ‘if a State Party believes that it will be unable to ensure the destruction of all Category 1 chemical weapons not later than 10 years after the entry into force this Convention, it may submit a request to the Executive Council for an extension of the deadline for completing the destruction of such chemical weapons’ (para. 24). Notwithstanding these escape clauses, today it is clear that initial deadlines for the destruction of CW arsenals of all states that possessed them and especially those of the two biggest possessor states – the Russian Federation and the United States, foreseen in the 1990s, were unrealistic and expectations were too high.

Should the Conference of the State Parties or individual states parties take any measures against those who will not keep these new extended deadlines? This is as much legal as it is a political question. Article XII of the CWC provides for measures to ensure compliance, including sanctions. In cases of serious damage to the object and purpose of the Convention or in cases of particular gravity of breaches of the Convention the Conference of the State Parties may bring the issue to the attention of the UN General Assembly or the Security Council.

Under international law measures or sanctions should depend on the nature of non-compliance, i.e. the principle of proportionality applies, though one cannot completely exclude even Chapter VII sanctions in cases when the Security Council finds that non-compliance constitutes a threat to international peace and security. However, such extreme measures are hardly practicable in cases of a state missing deadlines, even if such a miss were due to the state not making all the efforts to meet the deadline. Something else has to be present, e.g., *dolus malus* to hide and keep parts of one’s chemical arsenal.

In contradistinction to nuclear weapons CW have a stigma; it is difficult to imagine a state, whether we call it a part of the axis of evil or a pariah state, which would proudly declare its chemical weapons programmes. The West has succeeded in outlawing ‘poor man’s WMD’, while trying to keep up respect for ‘rich man’s weapons’ – nuclear weapons. This may not be very nice but such a general revulsion towards CW as poisons, treacherous means of warfare means that the implementation of the CWC, including the non-observance of destruction deadlines, especially if such non-observance is due the lack of political will, is dependent on the transparency of the process of implementation of the CWC. This means that one has to resort to the force of public opinion to move towards a non-chemical-weapons world. Cooperation and engagement are more effective means of achieving the objectives of the Convention than sanctions; this may be true in many other areas of international law and politics and it’s certainly true in creating a CW-free world.

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