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ASSESSMENT OF THE CONVENTION

by Sergey Batsanov

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Introduction

History often surprises us with coincidences. In this case, the end of 2006 marked the beginning of a whole series of anniversaries of various multilateral and bilateral treaties completely or partially dealing with security, non-proliferation and disarmament. Last September we were celebrating the 10th anniversary of the opening for signature of the CTBT (one may ask, how much is there to celebrate); this year we have the 40th anniversaries of both opening for signature and entry into force of the 1967 Outer Space Treaty; this summer there will be the 35th anniversary of the first agreement between the two major nuclear weapons states on the limitation of their strategic arsenals (SALT 1) and of the late ABM Treaty, limiting the missile defence systems in the two countries; and next year we would have celebrations around the 40th anniversary of the conclusion of the Nuclear Non-Proliferation Treaty – NPT. All of those treaties and agreements contributed to international security and helped avoid some of the worst manifestations of the arms race. However, on balance their record is rather mixed.

One anniversary, however, gives much more reason for celebration than for concerns (although there are some) and, certainly, not for condolences, and that is the anniversary of the Chemical Weapons Convention. In just a few days, on 29 April we would mark the 10th anniversary of its entry into force and of the establishment of the OPCW. Despite all the problems of the initial period, and the difficulties that transpired later on the road of the implementation, the CWC and its implementing organisation – OPCW – appear to be, so far, the most successful undertaking in the field of disarmament and non-proliferation, capable of withstanding the pressures of time and of global change. Just a few of examples – more detailed analysis will follow in the sections below.

CWC has been the fastest growing regime ever, achieving 182 states parties just 10 years after entry into force. No other regime can boast of such achievement. Only 13 states remain outside the regime, of which 6 are signatories and, hence, are under the obligation in accordance with the international law not to take actions contrary to the Convention – such as not to produce, develop, test, proliferate or use chemical weapons. Thus, an international legal norm against chemical weapons has already become a solid element of customary international law.

CWC/OPCW succeeded in launching, under severe time pressure, a most extensive and elaborate regime of verification and inspections, making an inventory of almost all CW stockpiles in the world, ensuring that the stocks are reasonably well secured and are gradually being eliminated – although not as fast as originally envisaged. To call a spade a spade, the dream of destroying all chemical weapons in 10 years did not materialise. But, at the same time, in combination with the cessation of production of CW, verified destruction or conversion of production facilities and consequential phasing out of qualified military and production cadres, as well as of CW capable

means of delivery, this already resulted in the serious decrease of the military value of remaining stocks and the risk of their use, as well as of perceived utility of traditional CW in general. Thus, confidence in the regime and among states parties has grown significantly, and risk of CW proliferation has by and large diminished.

Another notable success of the regime was the establishment, in a number of states parties, of national implementation mechanisms, adoption of a number of laws and regulations to implement the treaty and setting the stage for close cooperation among states in various areas, involving government officials, military, parliamentarians, lawyers, scientists, private sector, and NGOs. As a result, strong pro-CWC communities came to life in a number of states parties, contributing immensely to transparency and confidence building and to the stability of the regime in general.

And, finally, the success of the CWC and the OPCW has provided the humankind with an inspiring example of how it may be possible not only to outlaw one particular category of weapons of mass

destruction, but to gradually move towards its complete elimination. It is good to remember this today, also because finally we are seeing signs of the revitalisation of the Conference of Disarmament – the Mother of almost all multilateral treaties on arms control and non-proliferation and a renewed hope that the conference will again become a busily working body, as in the times of the CWC and CTBT negotiations.

It is therefore hardly surprising that the 10th anniversary of the OPCW is being widely celebrated throughout the world. There have been meetings in Europe, United States, Latin America, with more to come. They are not just mere, but also, and perhaps, more importantly, political will builders, because all the very well deserved praise notwithstanding, much remains to be done, and the treaty, together with the OPCW, should be nurtured by their owners – member states – in a careful and forward looking way.

This meeting in Rome is also very important – both from the symbolic and practical points of view. Italy played a very important and difficult role at the crucial stage of negotiations in Geneva, being the coordinator of not so easy to manage Western Group. It was one of the first to ratify the CWC and to adopt national implementing legislation, and then amending it in line with the requirements of the Convention. Italy has been displaying a lot of transparency and good will in opening up its chemical industry for verification, being ready to go further than many other countries. Italy has contributed a lot to the building and maintaining up to date the OPCW, including through a series of inspector training sessions at its facilities. The most recent course took place just a month ago in Civitavecchia for newly recruited OPCW inspectors.

OPCW - Reasons for Success

There are several important ingredients for the success of the Chemical Weapons Conventions and the OPCW.

The CWC is, probably, the most “democratic” disarmament regime. It is “non-discriminatory” in that it treats all member states equally, regardless of whether or not they possess chemical weapons, and it explicitly combines disarmament and non-proliferation functions. In contrast, the Nuclear Non-Proliferation Treaty (NPT), concluded in 1968, created two categories of states - “nuclear weapons states” and “non-nuclear weapons states”. This distinction was further reinforced in 1995 by the indefinite extension of the NPT (originally concluded for a period of 25 years to deal with the newly emerged possessors of nuclear weapons, like India and Pakistan). Furthermore, CWC is different from its predecessor treaties, as well as from the later produced CTBT in that it does not give special rights to any individual parties, including the conditions for the entry into force or the permanent seats on the executive body. Of course, more powerful nations have a bigger say, but this right is not legally guaranteed for them.

The CWC regime is “reasonably” verifiable, with verification system covering both weapons with their related facilities and legitimate chemical activities, whereas the BWC has only embryonic verification measures, subject to a decision by the UN Security Council. OPCW on-site inspection procedures monitor the elimination of all inventories of chemical weapons and former CW production facilities, and include routine inspections of a large number of commercial chemical facilities. These inspection activities are far more intensive and diversified than those conducted by the IAEA, whose verification mandate covers, as noted above, only safeguards and not other aspects of NPT compliance.

The CWC is the only treaty with the “matching” implementation and verification mechanism - the OPCW, which is responsible, at least in theory, for all aspects of compliance with and implementation of the CWC. The 1972 Convention on the Prohibition of Biological and Toxin Weapons (BWC), in contrast, lacks any formal mechanisms for implementation or compliance, and the International Atomic Energy Agency (IAEA) is responsible only for safeguards on nuclear materials but not for

compliance with the other elements of the Nuclear Non-Proliferation Treaty (NPT) or with the treaty as a whole. This last point is of particular importance since it makes the CWC “a living organism”, and gives it a variety of tools to adjust to new geopolitical realities and to deal with inevitable implementation problems.

Many, if not all the basic provisions of the CWC are built around, often explicitly, sometimes implicitly, on the idea of cooperation among parties. This message is clearly visible in verification and compliance provisions, and, as the first decade of implementation shows so well, was applied by states parties to a range of other activities, from national implementation to the destruction of chemical weapons, even though the latter is defined by the CWC as the responsibility of respective possessor states.

The provisions of the Convention, detailed as they are, give significant powers to the Executive Council and to the Conference of States Parties – the main organs of the OPCW with regard to specific implementation situations. That, in turn, involves a number of states parties in the decision-making process on the regular basis, and thus reinforces their attention to the CWC and their political will to make it work.

These features definitely helped the CWC and the OPCW to manage better in a turbulent period of transition from a bi-polar world to a new, yet to be defined system of international relations, which at present can be characterised as a strange mix of unipolarity and multipolarity.

CWC and Changing Global Environment

The CWC and the OPCW were products of the final phase of the Cold War and could not have emerged in a different historic environment, either several years earlier or later. Since then, the global political environment has undergone rapid and profound changes which are illustrated, inter alia, by the fact that the Comprehensive Test Ban Treaty, negotiated in the mid-1990s, still cannot be brought into force 10 years after being opened for signature, by the crisis of the nuclear non-proliferation regime, by the collapse of negotiations on the BWC verification protocol and by the decade of continued hibernation of the Conference on Disarmament in Geneva.

The current phase in international relations is a transitional one, with the intensive processes of geopolitical reconfiguration, emergence of new centres of power gravity and the consequential crisis of traditional international institutions and erosion, or, perhaps, evolution of norms of international law. Globalisation, and more specifically, gradual re-distribution of the powers of nation-states in favour of super-state and sub-state (or non-state) actors adds to an increased sense of insecurity, as does the emergence of new threats, including that of terrorism.

As a result, more and more states, large and small, are manoeuvring to secure or improve their geopolitical situation, obtain or preserve access to vital natural resources and

look for better protection against external influences or pressures. Regrettably, despite the mounting evidence that military power cannot solve today's problems, the complexity and the unpredictability of the present world pushes many political leaders in the direction of military build-up and often makes them reluctant to consider limitations on existing and potential military programmes. Among many political victims of these dangerous tendencies are often arms control, non-proliferation and disarmament, as well as multilateralism in general.

The CWC was lucky to be affected less than other regimes, but it is not immune to these challenges, and many specific problems of chemical disarmament, such as insufficient funding for CW destruction resulting in a slower than expected pace of chemical disarmament, can be partially explained by the lack of political will or attention, stemming from the general malaise in the area of disarmament (see the section on CW destruction).

There are no treaty-specific remedies for this category of challenges, at least in the direct sense. Two points should be made, however. The first is that CWC/OPCW remains a bright spot on the otherwise grim map of multilateral disarmament, and so far the problems of chemical disarmament have not become insurmountable; the only

requirement is to identify them in time and deal with them in an open, cooperative manner, without losing sight of the fact that much more than narrow technical issues are at stake. The second is that the synergy between the Convention and the OPCW is in itself a powerful antidote against the general deterioration of the state of affairs in disarmament, since the organisation, which brings together states parties and the secretariat, is capable of generating many new ideas and collective political will.

Adjusting to New Realities

The specific circumstances, concerns, and perceptions that made it possible for the CWC to be born and start functioning more or less successfully, also imposed certain limitations on the organisation and its operations. It was simply not feasible at the time of the CWC negotiations to anticipate certain aspects of today's world to which the OPCW must respond. One example is the treaty's excessive emphasis on the verification of CW destruction at the expense of certain types of industry inspections, the explanation being extreme mutual mistrust between the two superpowers and the lack of reliable information about the respective stockpiles, which prevailed in the 1980s. Other examples of the changed circumstances include a noticeable evolution of the perception and prioritization of major threats. Although the threat posed by WMD has not gone away, its perceived importance has diminished relative to other threats, such as the spread of communicable diseases. The perception of the nature of the chemical threat is also different today: it's not being seen that much as coming from the superpowers' arsenals as from terrorists and from a small number of states which refuse to join the CWC. But, it may well be argued, the latter is also largely a result of the CWC.

Equally, the provisions of the Chemical Weapons Convention regarding assistance and protection against the use of chemical weapons, earlier perceived as a means of assuring non-chemical weapons states against possible attack by CW possessors, may be losing some of their relevance with the dramatic growth of the number of CWC States Parties and the gradual reduction of existing arsenals; yet other threats, including those of chemical terrorism and chemical calamities, are growing in relative importance. At the same time, the chemical industry and science have been undergoing important changes, including the introduction of new technologies, equipment and processes, as well as new business and organisational approaches; the trade in chemicals has grown considerably; new chemical compounds and mixtures, some of them of potential relevance to the CWC, have become available, both for industrial and counter-terrorism purposes, and, especially during the last several years, there has been a real revolution in the means of protection against and detection of chemical agents.

It is also noteworthy that, while in the past it was considered more effective to treat different types of WMD separately from one another, in today's world many of those issues have become much more interrelated and interdependent. While the technical differences remain strong, political problems of WMD proliferation often overlap; and the new risks, such as terrorism with WMD cannot be handled by any state or even any intergovernmental organisation single-handedly.

Finally, the over-all success story of the CWC highlighted a certain number of miscalculations or imbalances, built into the treaty due to insufficient information available during negotiations or simply with the intention of papering over difficult issues that had been delaying the conclusion of the treaty. Today, some of the problems that had been “put aside”, are coming to the surface and need to be addressed by the organisation, that in the meantime has proven its problem-solving capability.

More importantly, the new realities, together with the progress in the CWC implementation, underline the need to identify new security interests of states parties that the CWC and the OPCW should be able

to take care of. In other words, it's now the right time to start asking questions about what is there in the Convention to guarantee its attractiveness to states parties in future, and how the OPCW should look in a chemical weapons-free world.

Implementation Problems

The most immediate challenges to the well-being of the Convention and to the future of chemical disarmament in general are related to the slow or, otherwise, insufficient progress in the achievement of what the vast majority, if not all of the states parties still believe to be the priority implementation tasks of the CWC. These include the destruction of chemical weapons, achievement of ~~the~~ universal participation in the Convention and its proper implementation on the national and international levels. There are some lingering, but not really acute concerns about compliance with the CWC by some of the States Parties, occasional complaints about what some nations believe to be less than satisfactory implementations of certain articles, such as Article VI (Activities, not Prohibited by the Convention) and Article XI (Economic and Technological Development), differences in interpretation of certain provisions, as well as some of not so serious house-keeping difficulties that are normally found, in one form or another, in any international institution.

CW Destruction

As the CWC is approaching the 10th anniversary since its entry into force, both the achievements and difficulties in this area are becoming increasingly evident, especially in the light of the fact that most of the CW possessor states will not be able to comply with the 10-year deadline, established in the Convention for the final destruction of their stockpiles. It is clear now that the CWC deadlines turned out to be unrealistic, and procedures for their modification – too rigid. Of course, the main difficulties emerged with chemical warfare agents, and not with munitions. On the other hand, the world has witnessed new and very positive examples of international cooperation in the area of destruction, not envisaged in the convention. Although the treaty states clearly that the costs of destroying CW and of related verification must be borne by the possessor states, in fact more than one of them has asked for and received financial or technical

assistance with CW destruction (and, in the case of Albania, with meeting verification costs as well).

At the beginning, it seemed that Russia would be the only possessor state having difficulties with the timely destruction of its chemical arsenals. Russia's problems became obvious even before the conclusion of negotiations on the CWC, when at Moscow's request the already agreed treaty provision, requiring complete destruction of CW stocks in ten years, was reopened and renegotiated in 1992, so as to allow for the 5-year extension of the final deadline.

For most of the first decade after the entry into force, the delays with the CW destruction in Russia, caused by insufficient funding, was, perhaps, the only disquieting signal of what may happen when the destruction deadline approaches. But once the financing of the Russian destruction program improved, both due to national funding and international assistance, things started to improve. The destruction rate is rapidly increasing. While it took Russia 9 years to destroy the first 10 per cent of its 40 thousand agent tons stockpile, the second 10 per cent was done just in a bit more than half a year – between August 2006 and April 2007. As of today, Russia has surpassed an important 20 per cent benchmark.

The opposite tendency has manifested itself in the US – the second largest possessor of chemical weapons. The US had started destruction before the CWC entered into force, and until recently was running ahead of the CWC schedule. But this initial success created a sense of complacency and, together with the general atmosphere of indifference towards disarmament, led to a situation where military and technical experts were left alone to deal with constantly emerging problems, often of a political nature, without the proper oversight. As a result, the construction of several destruction facilities suffered long delays. In April 2006 the United States not only requested the maximum extension of five years, but announced that it might fail to complete destruction even by the 2012 deadline. Moreover, according to some reports, it may take the US as long as 11 more years - until 2023 - to complete the destruction¹.

Against this background, the difficulties of lesser magnitude, experienced by other possessor states with smaller arsenals, could not significantly affect the general situation. The fact remains, however, that the CWC negotiators had seriously underestimated the technological complexity, huge financial burden and the whole bunch of other issues (environmental regulations, evolving by their own logic, local concerns and politics, etc), associated with CW destruction.

The XI Conference of States Parties, the highest policy-making body of the OPCW, which met on 5-8 December 2006, adopted several decisions, extending the final destruction deadlines for 5 out of the 6 possessor states². The United States and the Russian Federation were given the maximum extension possible under the CWC – until 29 April 2012. Libya (which joined the convention at a very late stage) was given until the end of 2010 to complete its destructions program, while India was granted a reprieve till the end of April 2009. The fifth possessor state, which prefers not to be named

¹ (*Global Security Newswire*, 22 November 2006)

² (*OPCW Press Release* 11 December 2006)

publicly as such, will have to destroy its last weapons by the end of 2008. Only Albania, which was also late to start its destruction, declared its intention to do the job by April 2007, although it asked for and received extensions of the intermediate deadlines.

Under the circumstances it would be premature to discuss now, what would happen if one or more CW possessor states fail to meet the April 2012 deadline, but in reality this debate has already begun. Some experts contend that an amendment to the CWC (and hence the convening of a formal Amendment Conference) will be necessary. Others believe that this approach would be disruptive, as it could open the treaty to attempts to renegotiate other important provisions, and hence hope to resolve such a fundamental issue through some sort of a “technical amendment”.

Another, more elegant approach would be to make use of a series of provisions of the CWC, regarding consultation, cooperation and fact-finding, as well as measures to redress a situation and ensure compliance (Article IX, paragraphs 1-7, and Article XII). The authors of the Convention have deliberately put emphasis on the need for the Executive Council and the Conference of States Parties to decide first on measures, necessary to remedy, within a specified time, a situation that contravenes the provisions of the Convention, while avoiding hasty rulings on compliance and punitive actions. Perhaps, on this basis a more workable legal solution, short of amending the treaty (even in the form of a technical change), could be found. That said, the worst case scenarios for 2012 can be only speculative, and at this point efforts should be concentrated on ensuring compliance with the new deadlines just approved by the OPCW.

It is therefore of utmost importance to ensure that the CW possessors, and in particular the two biggest ones, display the necessary political will and high-level attention to this problem, needed to ensure adequate funding, effective inter-agency coordination and an imaginative search for solutions to remaining technological and local political issues.

From the technical point of view it might be attractive to concentrate efforts on degrading the CW agents, rendering them militarily useless and economically unattractive for reversion into CW agents (chemically that would always be possible, but at a great cost, and with unproven technologies). The contentious issue of determining the end-point of chemical weapons destruction would come into play here. Greater flexibility on this and other technical issues might make it possible to accept the completion of destruction at an earlier stage and thus meet the extended deadlines. After all, according

to the CWC, the destruction is understood to be a process by which chemicals are converted in an essentially irreversible way to a form unsuitable for the production of chemical weapons. If any toxic waste still remains by the expiry of the final deadline in 2012, it would be much easier to deal with it both from the political and legal points of view.

Finally, it appears necessary to proceed with the development of the new vision of the OPCW in the chemical weapons free world – not only because such a vision is needed

to address new challenges, but also because it would help build both the conviction that chemical weapons would soon disappear from earth, and the political will to make that happen.

Universality and National Implementation

To make a chemical weapons-free world a reality, one very important condition must be met – the achievement of ~~the~~ universal participation in the CWC. Universality is both one of the best OPCW success stories and a challenge. Much has been done in this direction; in fact, so far the CWC has been that fastest growing global disarmament treaty, as far as its membership is concerned. With 182 states parties, the CWC encompasses over 90% of the world's population. The comprehensive, non-discriminatory nature of the CWC has played a positive role in promoting its international acceptance. Another significant factor has been the mutually reinforcing relationship between the CWC and the OPCW. The organisation has played an important role in supporting the treaty by convincing non-parties to join and applying pressure on states that are already parties to behave better than they otherwise would have. Other global WMD treaties do not enjoy comparable institutional support. In a departure from the experience of “older” multilateral arms control treaties, and having overcome the initial criticism for that, the OPCW has played a highly proactive role in persuading new states to join and helping them to develop domestic implementing legislation and regulations, while taking into account their specific political, legal, and economic conditions. These achievements have been the result of long-term planning, analysis, non-traditional diplomacy (including coalition-building), effective adaptation to changing circumstances, and continuity of effort—a combination that individual states with their diverse foreign policy priorities usually cannot not sustain. It goes without saying that assuming this role, earlier reserved for governments, OPCW had to play skilfully and with at least the tacit support of important member states – something which should not always be taken for granted and, on occasions, has to be convincingly engineered.

In the course of this work, the OPCW has also overcome the conventional wisdom that a state's decision to join a security-related treaty is strictly an internal, sovereign matter. Instead, the OPCW has worked proactively to influence internal governmental decision-making. Specific achievements in this area include the decisions to join the CWC by Sudan, Serbia and Montenegro, Afghanistan, Libya, and several of the former Soviet republics, particularly in Central Asia.

Today only two geographical areas remain of serious concern with respect to the universality and non-proliferation value of the CWC, namely North Korea and a few countries in the Middle East, in particular, Syria, Egypt, Lebanon and Israel (the latter signed the CWC, but is showing little willingness to ratify it). Given the difficulty of these hold-out cases, however, creative political strategies and strong support by major world powers will be necessary to gain their adherence.

Having as many countries is important, but clearly insufficient if many parties are not implementing complicated requirements of the treaty. Moreover, a well-organised and

transparent system of national implementation strongly reinforces the CWC compliance mechanism and provides an additional level of assurance to other parties regarding the compliance of the country in question. In fact, the above observations are not only applicable to the chemical weapons ban but also to other

weapons of mass destruction (WMD), counter terrorism, environmental protection, human rights, and post-conflict reconstruction.

The OPCW has pioneered in providing assistance to member states with national implementation, including the preparation and adoption of domestic legislation and administrative regulations and setting up functional National Authorities. Once again, an old assumption had to be tactfully overcome, namely that law-making is strictly the internal business of individual states.

Despite serious progress in CWC national implementation still leaves much to be desired. This disappointing result can be attributed in part to the complexity of the subject and the slow pace of work of many parliaments. It would also be useful to work closer together with other international organisations that help with the national implementation of other relevant regimes or arrangements (such as IAEA, for example), and regional bodies like the African Union. A very useful initiative, both in terms of universality and national implementation, was the adoption by the European Council in December 2005 of the Joint Action on support for the OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.

Verification and Compliance

On balance, the system of routine on-site inspections of treaty-relevant military and commercial facilities has worked quite well. By the end of 2006 the OPCW had conducted more than 2500 inspections at almost 1000 sites in 70-plus countries. Over time, imbalances in the design of the verification regime have come to light, such as the extremely heavy emphasis on the verification of CW destruction (85% of all inspector-days) at the expense of certain types of industry inspections. These imbalances resulted in some cases from lingering Cold War assumptions and in other cases from the absence, at the time of negotiations, of correct information about relevant facilities. For example, it turned out that most of the declared Schedule 1 facilities were, in fact, small laboratories that did not warrant the heavy verification regime prescribed by the CWC. Conversely, a large number of industrial plant-sites producing discrete organic chemicals (DOCs) remain practically untouched by routine visits. OPCW is taking steps to address these imbalances, such as efforts to reduce the number of inspectors at CW destruction facilities in the United States, Russia, and—to a lesser extent—India. As noted above, the current level of confidence, coupled with the experience accumulated during numerous CW inspections over almost ten years have eased security concerns about declared and slated for destruction chemical weapons. This, in turn, reduces the need to spend the lion's share of the OPCW inspector resources on the verification of CW destruction.

But whether this should automatically lead to increased intensity of industry verification is a totally different question. This question must be addressed not in isolation but rather in the context of the rapid managerial, organisational, and technological changes taking place in the chemical industry today. Mobility and flexibility in production techniques, nanotechnology and micro-reactors, the shrinking size of production and business units, new capabilities to produce an ever-wider range of toxic chemicals and blurred boundaries between chemistry and biology - all of these developments will undoubtedly affect the future of industry inspections

There is probably not much that needs to be done to improve the effectiveness of verification at Schedule 1 and Schedule 2 facilities. The intensity of such inspections has been adequate; moreover, given the actual global inventory of Schedule 1 facilities, which turned out to be less dangerous than it was assumed during negotiations, the OPCW decision in favour of a modest reduction of inspections there was quite appropriate, as was the introduction, in 2006, of on-site sampling and analysis at Schedule 2 facilities – an important procedure which had been envisaged by the CWC but for several reasons not initially applied.

The opposite picture has emerged with regard to inspections at plant sites producing Discrete Organic Chemicals, alias Other Chemical Production Facilities. While the chemicals themselves are of little

danger to the convention, the plant sites are normally huge, often multi-functional especially with the modern technology, are packed with easily re-adjustable equipment. States parties are required by the CWC to provide very limited information about these sites; moreover, they themselves are often having difficulties identifying such sites on their own territory for the purposes of reporting to the OPCW. In 1998 (the first full year after the entry into force) about 3300 such sites have been identified; in 2006 this number increased to more than 5000, largely as a result of a special assistance program to member states, run by the OPCW. In the meantime the intensity of inspections at the OCPF sites was running between 1 and 2,5% per year, thus offering no real deterrent value, no accumulation of experience and practically guaranteeing that most of the sites would not be inspected for decades. The selection criteria for inspections have not been adopted either, while several states parties still feel uncomfortable about even modest increases in the number of such inspections. Some of these problems also apply to Schedule 3 inspection, but a lesser degree. There is no short magic formula to correct the situation, but its preservation would keep undermining the credibility of the CWC industry verification regime. It is clear, however, that a lot of work is needed to be done by the OPCW, its member states and, last but not least, by the chemical industry, in order to find the way forward.

Besides routine inspections, the CWC has created the most radical verification tool — the right to request a “challenge” inspection of any facility suspected of violating the treaty, without right of refusal, which is available to any state party. Although this powerful instrument has not yet been used, the OPCW Director-General and relevant parts of the OPCW Technical Secretariat are preparing the inspectorate to mount a challenge inspection as soon as a request is received. There exists a body of opinion that the absence of a challenge inspection so far is another sign of weakness of the CWC verification system.

This view, however, does not take into account the fundamental difference between the challenge inspection and other means of verification envisaged by the CWC. The former was designed both as a deterrence and as an ultimate guarantee for a state party having serious concerns about compliance by another state, that even if it is not a member of a powerful coalition, it could still have means at its disposal to have its concerns addressed. On the other hand, the challenge inspection procedures have been carefully calibrated to contain a complex mix of checks and balances, and, indeed, represent a double-edge sword that must be used very carefully to avoid major political embarrassment for a requesting party. So, the absence of challenge inspection requests rather demonstrates that no state party had such serious suspicions, that it would feel compelled to resort to challenge.

Another aspect of compliance is the fact that the CWC verification mechanism is spread rather unevenly among the various prohibitions and obligations. Major elements of the treaty that have a direct impact on its non-proliferation potential, such as the prohibitions on assisting or encouraging other states to acquire chemical weapons, as well as not transferring such weapons to anyone, have been largely neglected. In theory, the absence of specific verification provisions in the CWC for monitoring these obligations does not preclude the OPCW from developing additional procedures to address the problem (similar to how the IAEA is regularly enhancing and broadening the safeguards system), but the political will has been lacking. As a result, this lacuna in the CWC regime is now being filled by ad hoc measures outside the treaty framework, such as the Proliferation Security Initiative (PSI).

The OPCW should also have greater flexibility to make improvements in the verification system consistent with the treaty, either through targeted decision-making by the Conference of States Parties or, in specific cases, through the budgetary process. For example, CWC provisions designed to prevent the proliferation of chemical weapons and related technologies, such as export controls, could be strengthened. To start with, one should return to the pending issue of applying export control to Schedule 3 chemicals (if not outright prohibition, then at least reporting requirements). Some thought could be given to developing non-obligatory guidelines on national measures to implement the non-transfer and non-assistance obligations under Article I of the convention. It would be of interest to know how Parties are implementing these obligations, which legal basis exists for that and whether any of the best practices could be identified. Possibility of voluntary visits to facilities that play an important role in preventing illegal shipments of weapons and technology, like major sea ports, may also be an option – perhaps, one or another Party can consider hosting such a visit. Further down the road a need for a more formal document could be examined.

Newly Emerging Risks and Challenges

In the new global situation, problems related to different types of WMD and their proliferation have become much more interdependent. Despite the specificity of the chemical, biological, nuclear, and missile control regimes, new forms of combating the spread of WMD have sought to address these various categories of weapons under the

same framework (again, PSI is a good example). This interrelation was not envisaged when the CWC was being negotiated.

Also unexpected at the time of the CWC's adoption was the growing threat of terrorist use of WMD. Even when this risk became more obvious, many governments were reluctant to explore the potential of the OPCW and similar organizations to combat WMD terrorism. Just as in the area of non-proliferation, efforts to prevent the terrorist use of WMD cannot be effective if governments continue to maintain firewalls between the various types of WMD.

There is a dilemma here: on the one hand, the OPCW can hardly count on maintaining its relevance and "market value" indefinitely if it stays away from these new cross-boundary problems; on the other hand, it cannot pretend it can address such problems in their entirety. Hence, the question before the CWC states parties is about properly defining the role and place of the new and very capable mechanism they have created in the global efforts to address these new problems and phenomena.

In the case of terrorism, it is not enough to say that the OPCW role is limited to destruction of chemical weapons so that the terrorists could no longer be able to steal them (stealing chemical weapons for terrorist purposes is an unlikely proposition in any case). Yet, the role of the organisation can be only limited. Despite the fact that chemical terrorism is a threat, not to be ignored, there are no terrorist organisations or groups which are specifically "chemical"; and the OPCW should not be in the job of fighting terrorism as a whole. But it has enough intellectual and material capacity to contribute to better definition of the threat, to assess the relative risks presented by certain chemicals and processes in this context and serve as a forum of consultation and cooperation among states parties on a wider range of issues of chemical security, an issue that has an important development dimension and, thus, could be of interest to a majority of the CWC parties. There are no reasons why the OPCW should not look at expanding international cooperation in the peaceful uses of chemistry in a way that does not create new proliferation risks, as well as improving the safety of chemical industry against terrorist attacks and natural disasters. The final document of the First Review Conference included some rather modest remarks on the protection of chemical industry facilities against terrorist attacks. Since then, the United States and other Western countries have made efforts to improve the physical security of their chemical plant sites. One should give serious thought to how this experience can be shared to benefit the safe development of the chemical industry in the developing world. In other words, how can we find synergies between Article X (on protection against chemical weapons) and Article XI (on international cooperation in the peaceful uses of chemical technology)?

A further factor affecting the health of the CWC regime is the potential risk associated with the research and development of new chemicals and production processes. Although a good deal of such R&D will lead to innovations unrelated to the object and purpose of the CWC, a relatively small segment of such activities might affect the treaty. A good example is the area of "non-lethal" incapacitants, which are of growing interest to several countries for counterterrorism operations. Although such developments exploit the "law enforcement" exemption in the CWC, they are increasingly being applied for paramilitary purposes. In theory, the OPCW has the

necessary instruments to address this problem, such as the Scientific Advisory Board, yet this topic has been considered too sensitive even to be raised in meetings of the organization.

Sooner or later, an in-depth review of the implications for the CWC of advances in chemical science and technology will be in order. As to the problem of “non-lethal agents” one should recall that the CWC covers incapacitating agents (non-lethal agents) and not just agents designed to kill. According to Art. II, para 2, “Toxic Chemical means... any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans and animals...” If a state has riot-control agents, it must declare the types and may not use them as a method of warfare. In that sense, despite deliberately vague language defining non-prohibited purposes (“law enforcement, including domestic riot control”. Thanks to the General Purpose Criterion, there seems to be no gap in the CWC coverage of various chemicals. Since September 11, however, the fight against terrorism has led to intensified research on new chemical compounds with very rapid incapacitating or irritant effects, along with the development of new means of delivery and dispersal. According to press accounts, in several instances same delivery systems have been designed in different versions for law-enforcement and battlefield use. Such development work is eroding the boundary between the permitted use of riot-control agents for law enforcement purposes and the CWC’s prohibition on their use as a method of warfare.

At the same time, a frontal at the “non-lethal problem” may not be productive. One should bear in mind that the negotiators of the CWC deliberately created ambiguity in the treaty text about the meaning of the term “law enforcement, including domestic riot control.” It is therefore important to develop greater understanding of the issue and explore ways of providing greater transparency. As a first step, one could explore the possible exchange of information about national legal and administrative norms governing research and development in the area of incapacitating agents to ensure that the integrity of the CWC is not at risk. National implementation, an important safeguard against abuse, is very relevant in this case as well. Indeed, Article VI .2 requirement that “Each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under this Convention.”, if properly complied with, will take care of much of the problem.

Second Cwc Review Conference - The Forum to Address Challenges and a Challenge Itself

A good opportunity to address future challenges to the CWC and the OPCW will come at the Second Review Conference, which has been scheduled for April 2008. The Executive Council of the OPCW has already set up an open-ended working group (OEWG) under UK chairmanship to prepare for the review conference. The OPCW established a similar OEWG before the First Review Conference, and the decision to do so again reflects the organisation’s special role and comprehensive mandate for treaty implementation.

The Second Review Conference will be an important event that, ideally, will contribute to strengthening the CWC regime and the political commitment of the states parties. Nevertheless, the nature of several problems of treaty implementation requires that they be worked on before, during, and after the Review Conference, so limiting analysis to what should happen at the conference itself might leave a number of important questions unanswered.

The preferred outcome would be a short, dynamic political declaration expressing strong support for the CWC and its effective implementation, supported by a longer text that addresses various important issues, including the progress in CW destruction, verification and compliance, universality and national implementation, counter-terrorism, economic and technological development and chemical security. Without necessarily trying to resolve all these issues for once and for all, the Review Conference should chart the course of work over the next five-year inter-sessional period and, wherever possible, introduce the required innovations.

Hopefully, the Conference would be able to send around a convincing message that chemical disarmament is well on track and that states parties feel assured of its ultimate success. To reinforce this message, the Review Conference would be well advised to develop a preliminary vision of the OPCW in the chemical weapons free world. To this end, the conference should address future priorities and structural reforms that will be needed once all of the declared CW stockpiles have been destroyed. Even if no detailed or final decisions can be taken at that early stage, the Review Conference could still instruct the Executive Council to begin systematic work on those issues.

Can the Cwc Still Be a Trailblazing Treaty?

The relevance and the future of international agreements depend, to some degree, not only on the difference they make in the specific areas they are supposed to regulate, but also on their impact on activities and processes in other fields. When the Chemical Weapons Convention was adopted by the Conference on Disarmament in 1992, it was often hailed as an example for future agreements on arms control and disarmament. Indeed, in the 1990s it served as at least an inspiration for the 1997 Model Additional Protocol to the IAEA Safeguards Agreements (INFCIRC 540), which significantly improved the safeguards system, and - in a much more direct way - as a model for negotiations on the verification provisions of the Comprehensive Test Ban Treaty (CTBT) and on the Protocol to the Biological and Toxin Weapons Convention.

Attempts to use CWC as a model were not entirely successful. In 2007, the CTBT, concluded in 1996, is still very far from entering into force, although for reasons that have little to do with verification. All that notwithstanding, it may be claimed that the CWC has already played an important role in disarmament areas, beyond its "direct sphere of responsibility", and that the problems encountered in the cases of the CTBT and the BWC have more to do with the general attitudes towards disarmaments, rather than with the deficiencies of the CWC model.

So, the question remains – can the CWC or, rather, the approaches built into it, provide an example to follow for other arms control areas? The response, it seems, could be cautiously positive, with the understanding that under no circumstances can a treaty, or its individual provisions, be automatically copied to resolve issues for which this treaty was not intended.

Perhaps, the most promising in this sense could be a set of approaches that the CWC offers in the area of verification and compliance (barring, of course, technicalities that are very specific to chemical weapons or chemical industry and certain implementation aspects where the OPCW performance leaves something to be desired). Among these approaches the following are of particular relevance:

a) almost comprehensive coverage by the verification system, coupled with an international mechanism (organisation with both political and technical arms) responsible for the whole range of compliance issues;

b) a mix of cooperative and more forceful verification techniques, with the general emphasis on the former;

c) diversity of tools available to initiate inspections, depending on the degree of sensitivity – from the Technical Secretariat to individual member states;

d) diversity of the types of inspections with varying intrusiveness, depending on the risk posed to the CWC regime by respective chemicals, facilities and activities, as well as on the need to reduce as much as possible inconveniences to legitimate activities and to insure protection of confidential information;

e) combination of routine inspections with a potential threat of challenge inspections, the latter representing a politically charged double-edge sword and a powerful deterrent, realistically available to any state party, but with a set of disincentives against abusive or irresponsible use and, in terms of implementation procedures, relying on the managed access to help the inspected party in demonstrating its compliance without compromising unrelated sensitive information;

f) important role in ensuring compliance and in building over-all transparency and confidence, assigned to procedures, other than inspections, including assistance to member states in compiling correct and comprehensive declarations, intensive cooperation with national authorities which are responsible for the CWC implementation on the national level (including training of national authorities' personnel), and to putting in place comprehensive systems of national legislation to empower respective governments to police the CWC on a national level, to deter and punish not only the violators, but also those who, by omission or intentionally complicate the verification activities by the OPCW;

g) and, finally, a very innovative, multi-optional approach to dealing with suspected or presumed violations, which is focused, in the first place, on the need to guarantee compliance and reverse the negative situation, rather than on labelling and punishing suspected violators in situations that may not be crystal clear. In other words the logic of the CWC compliance provisions is first to impose on a suspected violator very specific measures it should perform in order to return to the state of compliance (e.g. declare a certain facility, accept a special investigative visit there, remove certain elements of the facility or close it down – all depending on the circumstance of the case). And only if the prescribed measures are not carried out within certain time frames, will a judgement on non-compliance will be passed.

Apart from the above mentioned approaches, which could be applicable, with necessary tuning, to a number of arms control and disarmament measures, there are some less obvious features of the CWC regime that can be of some relevance as well. For example, the gradual introduction of the verification measures (not immediately after the entry into force). In the CWC this approach is used in relation to inspections of the OCPFs on the assumption that the first step had to be the establishment of some sort of a database of inspectable facilities. This element is somewhat obscured by the fact that in general the CWC verification and implementation regime, as negotiated in Geneva, turned out to be excessively “front-loaded” – that is to say that too many activities were expected both from the individual member states and from the OPCW immediately after the entry into force of the Convention. (In reality this front-loading resulted in a number of cases of “technical non-compliance”, due to the fact that many states were simply not able to adopt in time complicated legislation, necessary to implement correctly all the provisions, especially with regard to industry verification.) This incremental approach to verification may prove useful with regard to a number of possible arms reduction steps, where immediate full compliance may be a difficult objective to achieve. Retrospectively, it might have been wiser to use this approach also with regard to some other types of the CWC inspections, including challenge inspections.

In short, there are a number of lessons, both from the negotiations and from the implementation of the CWC that have a significant value for other arms control, disarmament and non-proliferation efforts, including even nuclear disarmament. However, the main question is, whether the international community is able to overcome its current nihilistic attitude towards serious disarmament measure – something which must be done sooner or later in order to prevent not just a bilateral arms race of the kind we had been observing during the cold war, but a multiple, not always symmetrical, arms race with several protagonists, which would be much more difficult to bring under control.