

The first CWC Review Conference: taking stock and paving the way ahead

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When the Chemical Weapons Convention (CWC) entered into force on 29 April 1997 it marked the beginning of a new era of multilateral arms control and disarmament: the CWC is the first multilateral agreement that prohibits a class of weapons of mass destruction, provides for the verification of the elimination of the weapons, and creates a new international body, the Organisation for the Prohibition of Chemical Weapons (OPCW), to oversee the implementation of all the CWC's provisions.¹

Since the CWC's entry into force much has been achieved in regards to setting up the OPCW and implementing the core provisions of the convention. Almost 150 states have ratified or acceded to the CWC, four of these have declared actual stocks of chemical weapons (CW), and destruction of different types of CW has begun in all possessor states. Likewise, the non-proliferation dimension, i.e. the horizontal spread of CW to countries that did not previously possess them, has been put into effect through a large number of routine inspections—conducted by the Technical Secretariat of the OPCW. Furthermore, OPCW states parties have held seven Conferences of the States Parties (CSP), which according to Article VIII, paragraph 20 of the CWC are tasked with reviewing the operation of the convention.

As the CSP annually reviews the operation of the convention, one might ask what is the unique role of the Review Conference. The CWC contains two provisions that relate directly to the Review Conference scheduled to take place from 28 April to 9 May 2003. According to Article VIII, paragraph 22:

The Conference shall no later than one year after the expiry of the fifth and the tenth year after the entry into force of this Convention, and at such other times within that time period as may be decided upon, convene in special sessions to undertake reviews of the operation of this Convention. Such reviews shall take into account any relevant scientific and technological developments. At intervals of five years thereafter, unless otherwise decided upon, further sessions of the Conference shall be convened with the same objective.

In addition, Part IX, paragraph 26 of the Verification Annex contains a requirement that:

At the first special session of the Conference convened pursuant to Article VIII, Paragraph 22, the provisions of this Part of the Verification Annex shall be re-examined in the light of a

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comprehensive review of the overall verification regime for the chemical industry (Article VI, Parts VII to IX of this Annex) on the basis of the experience gained. The Conference shall then make recommendations so as to improve the effectiveness of the verification regime.

It follows from these stipulations that the Review Conference cannot but be grounded in a thorough review and assessment of the first five years of the OPCW's operation. At the same time, it must not be allowed to stop at this point. Rather, participants in the Review Conference must venture to answer how the review process translates into action for the next five-year period.

A number of important issues for the first Review Conference have already been identified.² Four of these topics will be covered in depth by other authors in this issue of *Disarmament Forum*: the review of the CWC's verification system,³ the question of universality in the CWC's membership,⁴ the scientific and technological developments of relevance to the CWC,⁵ and the development of the OPCW Technical Secretariat.⁶

The remainder of this article will give an overview of a few other issues which are of relevance for the effective implementation of the CWC and thus are likely to be subject to assessment during the Review Conference. These are: CW disarmament, international cooperation and assistance, export controls and controls on the transfers of scheduled chemicals to non-states parties, and transparency and accountability. It concludes with a brief outlook of the interim period between the first and second CWC Review Conferences.

Chemical weapons disarmament

The review of disarmament obligations undertaken by states parties will have to start with the CW declarations, CW-related facilities, and the submission of destruction plans. On the positive side one has to note that four states parties have declared the possession of CW stockpiles at thirty-three locations. Before these declarations were made, only the United States of America and the Former Soviet Union/Russia had officially acknowledged CW stocks, but not India or the Republic of Korea. Eleven states parties have declared a total of sixty-one current or past CW production facilities.⁷ Nine states parties have declared possessing old chemical weapons, and three have declared to have abandoned CW on their territory.⁸

These declarations formed the basis for inspections of CW-related facilities and sites at which old or abandoned CW are stored. Although most of the CW-related inspections were conducted without major problems, there are three areas of concern which might still have an impact on the review process.

First, compliance with the destruction deadlines spelled out in the CWC is more than questionable. The delays in the Russian CW destruction efforts may well be just the tip of the iceberg. The timely completion of the American destruction programme can no longer be taken for granted and the Republic of Korea was given an extension of one of the intermediate destruction deadlines during the seventh session of the Conference of the States Parties in October 2002.⁹

The second area of concern relates to the budgeting and late reimbursement to the OPCW of verification costs by CW possessor states. Delays in reimbursement substantially contributed to the organization's financial crisis in the first half of 2001. The success of the measures taken to address the underlying problems remains to be seen.¹⁰ There appear to be differing views among the CW possessors as to the best way to tackle the reimbursement problem: will a quicker reimbursement suffice, or should CW possessors make a payment to the OPCW before the actual invoicing is done? Thus, the Review Conference might not be able to just take note of the financial crisis as a 'historic' event, but instead will find substantial issues left to be addressed.

Lastly, the question of conversion requests for CW production facilities might come up at the Review Conference. Certainly, some states parties perceive the high number of such requests to run counter the letter and the spirit of the convention, which stipulates conversion requests as the exception, not the rule. It remains to be seen whether the adoption of positive decisions on Russian conversion requests during the last CSP actually settles the matter.

CW disarmament is one of the cornerstones of the CWC, yet intermediate deadlines are being moved back and even the deadline for the eventual elimination of all CW stocks is no longer sacrosanct. A renewed commitment by all parties involved is clearly required. A special responsibility, however, falls on the CW possessor states who will have to carry the largest part of the burden and cannot expect to externalize their responsibility onto the community of all CWC states parties.

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International cooperation and assistance

The OPCW Technical Secretariat has divided its implementation of CWC Articles X and XI into three categories. First, to provide and coordinate assistance and protection in the event that a state party falls victim to chemical weapons. Second, to promote economic and technological development in the peaceful uses of chemistry and cooperation with other international organizations with related mandates. Third, to support the National Authorities of states parties in their efforts to implement the convention at the national level—including through the provision of legal assistance in the drafting of implementing legislation.

The Technical Secretariat runs workshops, seminars, training sessions, conferences and convenes expert-level meetings on the various aspects of international cooperation and assistance. It also coordinates the offers made by states parties under Article X, which take the form of contributions to a voluntary fund for assistance or offers of equipment and/or personnel on a bilateral or unilateral basis. However, despite the fact that the convention requires states parties to make declarations to the Technical Secretariat of their national programmes related to protective purposes and to offer assistance in some form, a minority of states parties has done so to date. So far, no request has been made to the OPCW for assistance against the use or threat of use of CW.

In addition to conducting training courses, the OPCW has held seminars and workshops worldwide for National Authority staff, medical personnel and inspectors. The Technical Secretariat has established a database of laboratory equipment, facilitated bilateral cooperation agreements, assisted in the drafting of implementing legislation, set up an expert-level protection network, and sought to conclude cooperation agreements with such organizations as the World Customs Organization and the United Nations Office for the Coordination of Humanitarian Affairs. In October 2001 the Technical Secretariat released a paper detailing the 'assistance response system', a strategic concept for the provision of emergency assistance in response to deliberate or accidental use of CW. In addition, it has published papers on its web site outlining the role and capabilities of the OPCW in preventing, responding to and combating CW use by terrorists.¹¹

International cooperation and assistance activities of the OPCW have received a considerable boost with the recent budgetary increases. However, this was one of the areas which suffered considerably during the financial impasse and therefore lost ground has to be regained with respect to international cooperation and assistance efforts of the OPCW.¹²

Export controls and transfers of scheduled chemicals

Controls on the transboundary movement of scheduled chemicals to non-states parties come in the form of a layered transfer regime, as spelled out in different parts of the CWC's Verification Annex. Accordingly, trade in Schedule 1 chemicals with non-states parties is prohibited altogether.¹³ For Schedule 2 chemicals there was a three year grace period starting at entry into force for trade in these items.¹⁴ For Schedule 3 chemicals, the CSP had five years after entry into force to decide whether trade in these chemicals should continue with the reporting requirements foreseen in the CWC.¹⁵

One of the key elements established in Parts VII and VIII of the Verification Annex concerns the requirement for end-use certificates when trading with non-states parties. Yet, the type and issuing authorities of these certificates were hotly contested among states parties for quite some time. Although the matter was solved on paper during the third session of the CSP, the degree to which the agreement is actually implemented is still viewed as questionable by some states parties.

Similarly, although the procedures for trade in Schedule 3 chemicals have been hammered out in a number of steps, with the latest decisions adopted at the seventh session of the CSP, these decisions have yet to be implemented. The fact that states parties have allowed themselves until the beginning of 2004 to begin implementing the most recent decisions is not going to help create a 'level playing field' soon.¹⁶

Related to the CWC transfer regime is a debate on the appropriateness for OPCW states parties to maintain other export control regimes for trade among themselves. Criticism in this regard is directed against the existence of an informal group—the so-called Australia Group—of thirty-two industrialized states, all states parties to the CWC, who continue to coordinate their export control policies

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independently of the convention. Critics of the Australia Group contend that these actions contravene the spirit of the convention and its goal of promoting free trade and international development. At the third session of the CSP at the end of 1998, some countries of the Non-Aligned Movement brought up the issue of export control mechanisms outside the CWC. The Conference tasked the Executive Council with consideration of the matter; it has remained an item on its agenda ever since. It should not come as a surprise if this issue is brought up again during the first Review Conference.

The unsatisfactory state of affairs from the point of view of some CWC states parties becomes clearer if one considers the position taken by the Australia Group during the endgame of the CWC negotiations: the then Australian ambassador to the Conference on Disarmament announced that the Australia Group would review its operation in light of CWC implementation. Implicit in this statement was the possibility that CWC states parties in good standing could receive preferential treatment in terms of the transfer of scheduled chemicals. After the terrorist attacks of late 2001 in the United States, the trend seems to point in the opposite direction. This is not to argue that the Australia Group should start dissolving; rather it is a call to revisit its promise to review its operation in light of CWC implementation. The first CWC Review Conference might present a good opportunity for the presentation of the results of such a reconsideration.

Transparency and accountability

One other important set of issues for the Review Conference that—predictably, one might say—has not featured prominently on the agenda of those preparing the Review Conference revolves around

questions of transparency and accountability of the OPCW vis-à-vis civil society. As someone who has followed the implementation of the CWC from its very beginning, the author clearly remembers the fight for every single conference document during the first three regular sessions of the CSP. It is understandable that it was a new international organization that needed time to get established and whose staff was not primarily employed to service NGOs, civil society groups or academics. Yet one would have hoped that states parties had realized by now—more than five years later—that those interested parties who continue to follow the activities of the OPCW are concerned with seeing the goals embodied in the CWC realized and try to make a meaningful contribution to this end. Indeed, the invitation issued by the chairman of the OPCW's Executive Council in 2002 for NGOs to submit written contributions to the organization seemed to signal just that. It was greeted by the NGO community as the beginning of a new phase in the OPCW's relationship with civil society. However, looking at the current practice of not making available the reports of the working group that is preparing for the Review Conference, one wonders whether such a new era is really imminent or whether—quite to the contrary—one is back in square one of OPCW public relations as it was prevalent during the organization's operation in 1997–1998.

Conclusion—the first Review Conference and the way ahead

Much has been achieved in implementing the CWC in its first five years, the financial crisis of 2001 seems to have been overcome and the leadership change in the Technical Secretariat in the first half of 2002 appears to have resulted in a more positive atmosphere within the OPCW. But states parties must not be complacent with the current state of affairs, as it still lags far behind an optimal performance of the OPCW and its states parties.

The tendency towards complacency manifests itself in two forms, which in all likelihood will also account for the fact that the Review Conference will not tackle the concerns identified in this issue of *Disarmament Forum* in their entirety. First, time constraints will seriously undermine the most effective outcome of the Review Conference. This constraining factor will affect both the preparation of the Review Conference and its actual conduct. As a report of a workshop held in mid-2002 involving both governmental representatives and NGOs noted, 'the states parties do not yet seem engaged or interested in the review process.'¹⁷ As many national bureaucracies have to deal with both chemical and biological weapons issues, it is safe to assume that this attitude has changed only very recently, if at all, after the conclusion of the fifth Biological Weapons Convention Review Conference. This considerably limits the time available for agreeing on the outcomes of the CWC review. If however, as a number of observers have already urged, there is no 'pre-cooked' agreement on the issues and goals of the Review Conference, the likelihood is decreasing that a meaningful outcome will be achieved during the two-week conference, which commands a wide-ranging consensus among CWC member states.

Here, the second factor comes into play: the political will by states parties to take on the difficult issues and to compromise in order for consensus to be reached. In light of the past performance of both the CSP and the Executive Council and the 'culture of deferral' that one could notice with respect to decision-making by these two bodies, expectations should not be raised too high for what can realistically be achieved at the Review Conference.

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As a result, the most likely outcome of the first CWC review is that in the five-year period leading to the second Review Conference, a two-track strategy will have to be pursued: the first track will

encompass CWC implementation as foreseen by the convention text, while on the second track the CWC control regime will have to be adapted to the evolving 'real world', which the CWC tries to govern.

Related to this second track, the biggest challenge to the CWC's continued relevance to CW controls is presented by technological developments that go well beyond the question of so-called non-lethal weapons, as discussed in the article by Malcolm Dando in this issue of *Disarmament Forum*. A report that was recently produced by the International Union of Pure and Applied Chemistry (IUPAC) identifies six technical challenges to the CWC, all of which are related to the non-proliferation dimension of the CWC, and none of which is likely to be addressed comprehensively by the first Review Conference.¹⁸

Thus, during the first inter-review period the OPCW and its states parties will have to accomplish nothing less than walking the tightrope between traditional CW controls on one hand and coming to terms with the challenges posed by the merger of modern biotechnology and chemical synthesis on the other.

This will be made even more difficult as this latter task falls into the 'grey area' between the chemical and the biological realm. Consequently, those who were critical of the BWC Protocol negotiations and instrumental in their failure can be expected to object anything that looks like compensating for the lack of control mechanisms in the biological weapons field through expansion of activities under the CWC. Yet, the case can be made convincingly that these new technologies already fall under the CWC's general purpose criterion (GPC). What is needed therefore is a mechanism to agree on the practical rules and procedures to implement the GPC in the evolving scientific and technological environment. Whether this can be achieved through the reorientation of the current system of routine inspections (as described by Daniel Feakes in his contribution to this issue) is uncertain and merits further analysis.

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Therefore the Review Conference could task the OPCW's Scientific Advisory Board (SAB)—through the Director-General of the Technical Secretariat—to analyse the adaptability of the routine inspection system to the technological challenges identified in the IUPAC report and make recommendations on specific measures to be submitted to the 2004 CSP. Alternatively, the Executive Council might be tasked to set up an open-ended working group on this issue for which states parties could nominate technical experts. However, as a usable structure in the form of the SAB already exists, and this second option therefore amounts to a duplication of available infrastructure, it is less desirable. In light of the fast pace of scientific and technological progress, deferring the issue to be reconsidered by the second Review Conference in 2008 cannot be considered an option.

Notes

1. See Michael Bothe, 1998, *The Chemical Weapons Convention: a general overview*, in M. Bothe, N. Ronzitti and A. Rosas (eds), *The New Chemical Weapons Convention—Implementation and Prospects*, The Hague, Kluwer Law International, pp. 1–15.
2. This process found its expression within the OPCW through the establishment of an open-ended working group on preparations for the Review Conference in late 2001. This working group has gone about creating a formal framework and guidelines for the review process. It has also identified nine substantive clusters of issues that could structure the Review Conference. On the details of this see Pamela Mills, 2002, *The First Review Process of the*

- Chemical Weapons Convention, an Update*, paper presented at the 17th Pugwash CBW Workshop 'The Impending First CWC Review', Oegstgeest, The Netherlands, 15–16 June.
3. See the contribution of Daniel Feakes, 'Evaluating the CWC verification system', on page 11.
 4. See the contribution of Jean Pascal Zanders, 'The Chemical Weapons Convention and universality: a question of quality over quantity?', on page 23.
 5. See the contribution of Malcolm Dando, 'Scientific and technological change and the future of the CWC: the problem of non-lethal weapons', on page 33.
 6. See the contribution of Maurizio Barbeschi, 'Organizational culture of the OPCW Secretariat', on page 45.
 7. These states parties are Bosnia and Herzegovina, China, France, India, Iran, Japan, Republic of Korea, Russia, United Kingdom, United States, and the Federal Republic of Yugoslavia.
 8. The nine old CW possessors are Belgium, Canada, France, Germany, Italy, Japan, Slovenia, United Kingdom and United States, while China, Italy and Panama have declared abandoned CW on their territory.
 9. See *Decision: Request by a State Party to Grant An Extension of its Obligation to Meet the Intermediate Phase 2 Deadline for the Destruction of Category 1 Chemical Weapons Stockpiles*, OPCW Document C-7/Dec.4 of 11 October 2002, available at <http://www.opcw.org/html/global/docs_frameset.html> .
 10. For a more detailed account of the financial difficulties and the proposed remedies see A. Kelle and P. Mills, in press, *The Chemical Weapons Convention—Its Scope and Application*, in M. Chevrier et al. (eds), *Implementation of the Protocol to the Biological Weapons Convention*, Amsterdam, IOS Press.
 11. See *Initial Considerations Regarding the OPCW's Contribution to the Global Struggle Against Terrorism*, OPCW Document S/277/2001 and *Possible Responses to Global Terrorist Threats*, OPCW Document S/292/2002. Both available at <http://www.opcw.org/html/global/docs_frameset.html> .
 12. According to the press release issued after the conclusion of the seventh CSP, the international cooperation and assistance budget increase for 2003 amounts to 12.4% over the 2002 budget, compared to an overall increase of around 10%. See *Seventh Session of the Conference of the States Parties to the Chemical Weapons Convention Concludes*, OPCW Press Release Number 65, The Hague, 15 October 2002, available at <http://www.opcw.org/html/global/docs_frameset.html> .
 13. See Verification Annex, Part VI, paragraph 3, available at <http://www.opcw.org/html/db/cwc/eng/cwc_frameset.html> .
 14. See Verification Annex, Part VII, paragraph 31, available at <http://www.opcw.org/html/db/cwc/eng/cwc_frameset.html> .
 15. See Verification Annex, Part VIII, paragraph 27, available at <http://www.opcw.org/html/db/cwc/eng/cwc_frameset.html> .
 16. See *Decision: Guidelines Regarding Declarations of Aggregate National Data for Schedule 2 Chemical Production, Processing, Consumption, Import and Export and Schedule 3 Import and Export*, OPCW Document C-7/Dec.14 of 10 October 2002, available at <http://www.opcw.org/html/global/docs_frameset.html> .
 17. See the report of Pugwash Meeting no. 270 on 'The Impending First CWC Review', written by Pamela Mills, June 2002, available at <<http://www.pugwash.org/reports/cbw/cbw17.htm>> .
 18. See International Union of Pure and Applied Chemistry, 2002, *Impact of Scientific Developments on the Chemical Weapons Convention*, November, available at <<http://www.iupac.org/reports/2002/Report-to-OPCW.pdf>> .

