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Image: OPCW

Conference report

Chemical Weapons Convention: Third Review Conference and beyond

Monday 15 – Wednesday 17 October 2012 | WP1178

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The rapporteur is a recognised expert in the Chemical Weapons Convention. His report below reflects the discussions held in the conference sessions and also exchanges, thoughts and ideas expressed in conversations held between the conference sessions. He concludes with some expectations and encouragement to States Parties which might be pursued at the Review Conference and future work of the OPCW. The organisers hope that these will all be useful food for thought as preparations for the Third Review Conference intensify in the coming weeks.

The Third CWC Review Conference (RC-3) – scheduled for 8 to 19 April 2013 - comes at the moment when three quarters of the declared CW stockpiles have been destroyed and the workload projected to verify their complete elimination is beginning to dwindle. Although more remains to be done to complete the CWC's disarmament tasks (destruction of all remaining declared stockpiles, destruction of old and abandoned CW, bringing the remaining States not party into the realm of the treaty and eliminating any CW stockpiles and production facilities they may have), a rebalancing of implementation tasks has begun. At the same time, the external environment within which the CWC operates continues to change. Advances in science and technology and new security threats related to toxic chemicals as well as globalisation and the financial crisis all demand answers with regard to whether and how CWC implementation should be adapted to change.

The evolution of the OPCW over the next ten years: challenges, risks and opportunities

1. The implementation of the CWC is widely seen as a success; in fact it remains the only operational global disarmament treaty under strict international verification. The RC-3 will be a timely opportunity for the States Parties to take stock of what has been accomplished, and at the same time provide strategic guidance. This creates opportunities for rendering the OPCW more nimble and responsive to challenges, thereby maintaining its relevance for the future.
2. At the same time, there are also risks: chemical weapons may actually be used (e.g., in Syria) or re-acquired (e.g., one possible example of such is incapacitating chemical weapons). Such developments would challenge the strength of the regime and test the ability of the OPCW to deal with threats to the norm against chemical weapons. Also, complacency can lead to a failure to fully implement the CWC or to unwillingness to deal with compliance issues. The OPCW also must respond to challenges emanating from advances in science and technology as well as changes in the chemical industry.
3. A key issue of treaty compliance – how to deal with the delays in the destruction of the declared CW stockpiles beyond the 2012 final deadline of the CWC – has been addressed by the OPCW in 2011. With this central issue no longer preoccupying the policy-making organs of the OPCW, other issues are back up on the agenda or perhaps should be. Amongst others these include:

- Whether or how should the CWC verification system might evolve (in particular with regard to industry inspections, but also concerning challenge inspection and investigations of alleged use)?
- How can the capacity of the OPCW to respond to future demands for verification and expert advice in the CW field be maintained despite the expected thinning-out of CW-related verification capacity?
- What can be done to bring the remaining States not party into the CWC and get any CW stockpiles and facilities into the system of declaration, verification and destruction?
- What needs to be done to ensure the universal application of the CWC rules by all parties – full national implementation resulting in complete and accurate declarations as the basis for routine verification?
- How will the character of the OPCW change as the distance to the past chemical weapons programmes of the Cold War era grows? How should the balance between the different core objectives evolve whilst maintaining the OPCW's character as a disarmament and security agency?
- What are the implications of these changes for the Technical Secretariat, including in such areas as recruitment, application of the tenure policy, multitasking and preservation of institutional memory?
- How can civil society support these implementation processes and help strengthen ethical support for the goals of the CWC?
- How should the OPCW engage with other international actors that have mandates in areas adjacent to the OPCW's fields of operation?

The Third Review Conference: preparing for success and assessing opportunities

4. The RC-3 is an opportunity to reaffirm the commitment of the States Parties to uphold their basic undertakings under the CWC. That will require a constructive approach towards compliance, aiming at preventing steps that could weaken the norm against chemical weapons and responding to any lack of implementation in a way that encourages full compliance.
5. A fundamental undertaking of the States Parties is not to acquire new chemical weapons. This obligation is of direct relevance to the debate about whether incapacitating chemicals may be weaponised for law enforcement purposes. This ten-year old debate has so far largely been held outside the OPCW. Some observers and States Parties are now urging the OPCW to take up this matter to provide guidance for States Parties—guidance that respects the non-acquisition norm of the treaty.
6. The proper functioning of the CWC requires that all States Parties fully internalise the norm. This ensures that its provisions are applied in a fair and equal manner. The RC-3 could be an occasion for States Parties to restate their commitment to put comprehensive implementing legislation in place and to enforce these laws. The debate about national implementation has also shown that ethical support for the CWC and respect for its norms gain in importance as science and technology advance. This will require a constructive engagement of the OPCW and the States Parties with civil society. The RC-3 is an opportunity to renew and improve this engagement.
7. The RC-3 also creates new opportunities for the OPCW and individual States Parties to agree on new steps to promote universality. There are hopes that in the Middle East, negotiations of a zone free of all weapons of mass destruction may finally get under way. When this happens, the OPCW needs to be ready to support the process and bring its technical and political expertise to this broader regional security process.

The role for civil society in the evolution of the OPCW

8. Many of these CWC implementation processes cannot be accomplished by the action of governments alone—they need a broader governance approach. The debate should not be about *whether* civil society should contribute to CWC implementation and the preparations for the RC-3 but *how* it can best contribute.

9. Historically, civil society and chemical industry were important—some would argue essential—partners for the CWC negotiators. They provided information and expertise to help negotiators develop workable verification provisions. Civil society and industry supported ratification in many countries and helped with practical preparations for the entry into force, for example by supporting the training future OPCW inspectors. But civil society can also be a driver for change. At a point when transition is beginning to shape the agenda of the OPCW, that potential can be very important.
10. Civil society can fill a number of roles for CWC implementation: providing expertise, helping to shape policies, undertaking horizon scanning to identify issues that need the attention of the policy-making organs, taking on the role of an informal compliance watchdog, raising awareness and providing education including through scientist – to – scientist conversations. It can also help with the preservation of institutional memory in the OPCW.
11. The OPCW has been hesitant in the past to fully engage with civil society. The relationship with the chemical industry has been given a boost in a recent informal meeting with industry representatives, and there are expectations that this will lead back into more regular and problem-oriented conversations. Expectations in civil society are also framed by the experience of the intersessional BWC process where industry associations, NGOs and individual experts are invited to actively contribute. The engagement in the CWC context will be different given the differences between the two treaty processes but that does not mean that civil society cannot make meaningful and appropriate contributions to the CWC review. States Parties would be ignoring a rich intellectual source if they were to keep civil society at arms length. At the same time, representatives of civil society should be encouraged to articulate more precisely what they can bring to the debate, and should perhaps be more proactive in pressing for deeper engagement.
12. The CWC process could benefit from some of the experience of the BWC intersessional process, with regard to creating an open discussion environment to address issues at the conceptual and strategic level. Examples such as sessions that are open to NGOs or an Internet-based “think zone” illustrate what can be done without compromising the roles of the States Parties, the policy making organs or civil society.
13. Another form of engagement where civil society can help much with the implementation of the CWC is its involvement with National Authorities as well as with regional centres/organisations that are relevant to the CWC. Examples include the work of certain NGOs in support of States Parties adopting implementing legislation, the support for education and outreach activities in industry, research and educational institutions, or the provision of expert advice to national implementing bodies.

Scientific and technological change: can the CWC adapt?

14. The two previous review conferences have undertaken reviews of advances in science and technology (S&T) including changes in the chemical industry, but little progress has been made to adapt the verification system to the changing environment. Adaptation to S&T developments is essential for the proper functioning of the CWC in the future. There remain different views among States Parties, however, about whether and how the CWC verification system should evolve.
15. Reviews undertaken by the OPCW’s Scientific Advisory Board (SAB) as well as by the International Union of Pure and Applied Chemistry (IUPAC) have shown that with regard to “traditional” chemical warfare programmes, the S&T context has changed little. The implementation and verification systems of the CWC were designed with these past programmes in mind, and by and large can be relied upon also today. There may be a need for minor adjustments in the Schedules of Chemicals to take account of implementation experience as well as of information now available with regard to certain types of novel agents that were not considered when the Schedules were

agreed, but no dramatic alterations seem to be necessary otherwise.

16. Advances have been striking, on the other hand, in chemistry and the life sciences at large. New insights have been reached in the neurosciences, in nanotechnology, systems and synthetic biology and related fields. More broadly speaking, the different disciplines that make up the life sciences are converging, bringing together concepts and investigation methods from biology, chemistry, information technology, mathematical modelling and engineering. Like with any other interdisciplinary cross-fertilisation, this convergence is likely to revolutionise the underlying science. The beneficial applications are countless, ranging from new medical treatments to better means of pest control, food and energy production and many more. These advances, however, could also be misused for chemical warfare.
17. Convergence between chemistry and biology is not a futuristic possibility; it is happening today. The implications for the regimes that govern chemical and biological weapons disarmament are yet to be fully understood. The RC-3 creates an opportunity to discuss how the OPCW could improve both its internal science and technology advice (better interaction between the SAB and the policy-making organs, stronger science advice by the Technical Secretariat, relationships with external expert bodies such as IUPAC and the Inter-Academy Panel) and its interaction with the BWC community. For example, issues of common interest (or that depend on a shared knowledge base) could be taken up jointly with the BWC expert community.
18. New knowledge about the properties and action of toxic chemicals does not by itself, however, lead to new chemical weapons. Whilst S&T advances increase the *potential* for new chemical warfare agents or more effective CW production methods, the acquisition of a new chemical weapon requires political decisions and practical steps in development and manufacturing. This is why it matters that the States Parties reaffirm their commitment to prevent steps that could lead to chemical weapons re-acquisition.
19. The debate among States Parties continues about whether these S&T advances should be reflected in changes in the Schedules. Any such amendment certainly would need good reasons. Questions raised in this context include: are the potential risks associated with certain unscheduled toxic chemicals such that their inclusion in the Schedules would be justified? Would their inclusion actually result in the declaration and verification of additional facilities given the existing thresholds for declaration and inspection? Would the declaration and inspection of such facilities add to the dependability of the CWC's verification system?
20. The CWC makes provision for amending technical and administrative provisions in the Annexes of the Convention through the "change" procedure of Article XV. This procedure has been used twice since the entry into force of the CWC to correct unintended consequences of certain technical provisions. According to the CWC, changes to the Schedules are always to be made in this way. This was meant to make it easier for the States Parties to adapt the verification system to experience and new requirements. But the views vary among States Parties about whether the Schedules should be adapted.
21. Beyond the reach of the Schedules, it is the "General Purpose Criterion" (GPC) that protects the CWC against misuse of S&T for chemical warfare purposes. It provides a legal barrier to prevent the development, production and use of new types of chemical weapons. To be effective, it needs to be anchored in legislation *and enforced*, and it must be reflected in the investigative capabilities of the OPCW (for example the databases used for on-site inspection purposes). The views among States Parties vary with regard to accepting verification techniques that reach outside the Schedules. Some observers point out that the reluctance to include non-scheduled chemicals into verification databases can become a hindrance to providing credible assurances of treaty compliance, particularly when it comes to challenge inspections and investigations of alleged use.

22. In this context, it is worth noting that the OPCW's capability for sampling and analysis has improved in recent years, in particular with regard to trace analysis and the analysis of biomedical samples. There remain certain gaps including with regard to attribution – an issue that was less relevant in the past when State programmes were the focus of verification but that has become more relevant in today's security environment. The OPCW would be in a strong position to coordinate international efforts to develop such a capability and the RC-3 may be an opportunity to encourage further work in these areas.
23. In such investigations, the OPCW would have to interact with other international organisations and mechanisms (e.g., the UN Secretary Mechanism for investigations of alleged use of chemical and biological weapons or INTERPOL). First steps have been taken by the Technical Secretariat to develop coordination mechanisms with such partners but for these to work well, they need to be exercised and refined.

What to do about industry verification post-destruction? Overcoming competing objectives and assessments of risk

24. The CWC verification system is generally portrayed as working well. Its long-term utility will depend on how relevant threats associated with "traditional" CW programmes will be in the future and how the verification system can be adapted to take account of new threats and changing conditions.
25. Some States Parties and observers have noted a risk that the CWC verification system could become stale over time. It is primarily being used as a means of verifying CW destruction, and for checking the accuracy of declarations of chemical industry facilities. No challenge inspections or investigations of alleged use have been conducted. As part of the review of the functioning of the verification system, it may therefore be useful to start from first principles: what is the purpose of verification of compliance; does the current system create confidence among States Parties; does it provide added value to the collective security of the States Parties; would the system actually be capable of detecting a violation had one occurred? The review, one could argue, should not merely be about numbers of inspections that are deemed appropriate but also about the quality of the verification processes.
26. Looking back at the state of implementation today, as well as further ahead, there are other challenges to the CWC's verification system. The RC-3 may not be in a position to resolve any of them but could set in motion mechanisms to address and resolve them in the future. Questions that were raised in this regard included:
- What can be done to ensure that all States Parties that have declarable facilities actually submit declarations?
 - What steps are needed to ensure that declarations are being submitted in a complete, accurate and timely fashion?
 - How can the effectiveness of the industry verification regime be improved and in particular, what can be done to enhance the OCPF verification regime?
 - What needs to be done to further perfect inspection methodologies (e.g., sampling and analysis, site selection mechanisms and the like)?
 - How can the Technical Secretariat ensure that inspectors are not only technically competent and politically sensitive but also inquisitive?
 - Is it possible to lower the threshold for challenge inspections and investigations of alleged use?
 - How can the capacity of the verification system in the area of data monitoring and evaluation be enhanced?
 - What can be done to ensure effectiveness, efficiency and appropriate resource provision and utilisation for verification purposes?
 - How can political will be generated to adapt the verification system to changing circumstances and requirements?
27. The answers will of course have to be found within the legal framework of the CWC itself. But the potential that exists within the CWC has by no means exhausted. There

remain mechanisms in the OCPF verification regime, for example, that have either not been used at all (proposals by States Parties as part of the OCPF site selection process), or where the scope of application has been significantly restricted (the weighting factor of “information available to the Technical Secretariat” has been limited to information submitted in declarations). There are also questions about whether and how inspectors may negotiate access beyond the delineation of declared facilities to resolve ambiguities, and how the Technical Secretariat can use relevant authoritative information that is in the public domain.

28. Outside the CWC verification context, there are other national and international inspections carried out in the chemical industry for such reasons as compliance with ISO standards or quality control. Certain companies are applying internal compliance systems or use codes of conduct and other governance tools. But can the verification system of the CWC take account of such assurances? Can such mechanisms be “peer-reviewed” so as to provide broad acceptance of their relevance for CWC verification purposes? Would the Technical Secretariat have access to such information and what use could it make of it? How do control processes outside the CWC context affect the risk assessments under the CWC? There are no easy answers to these questions but they should be raised to rationalise some of the policy choices for improving the industry verification system of the CWC.
29. That leads to the question of whether the CWC can (and should) accommodate forms of “public verification”. Although not alluded to in the CWC (and a misnomer given the context of “verification” in the CWC), there have been situations when information about possible non-compliance has been brought to the attention of the Executive Council by individuals / NGOs. The Council, of course, has a statutory responsibility to promote compliance with the CWC, but responding to such submissions may well require it to take action outside its comfort zone.
30. At the practical level, there remain a number of issues that the RC-3 could take further. How can the OPCW cut bureaucracy, including with regard to verification? How can the Technical Secretariat facilitate a horizontal debate to enable the sharing of experience and best practices across the inspection and verification staff? How can micromanagement be avoided? In short, how can the verification system evolve within an institutional framework that encourages learning and the sharing of experience, problem resolution, initiative and independent thinking? It is important to review from time to time institutional policies (recruitment, personnel, tenure, and the like) that can either obstruct or facilitate the accomplishment of these goals.
31. There is also a need to conduct occasionally external evaluations of the CWC’s verification system. Sharing experience with other agencies that perform verification functions can be an effective way of finding out what can be improved. External evaluations, despite the problems that they may have with regard to metrics and evaluation criteria, can help to identify shortcomings and devise ways to overcome them. Such evaluations are particularly relevant to tasks that are non-routine and that depend on problem resolution skills.

The Convention’s non-verification challenges

32. Promoting international cooperation in the field of peaceful uses of chemistry and providing assistance and protection to victims of chemical warfare remain key objectives of the OPCW. Their implementation is important to ensure that all States Parties can reap benefits from their participation in the CWC and enhance their capacity in the field of peaceful uses of chemistry. Whilst the emphasis during the first 15 years of CWC implementation was on ensuring the safe, timely and verified elimination of the declared chemical weapons stockpiles and production facilities, the balance is now shifting in favour of other activities. Many feel that these will be equally important for the success of the CWC in the long run. In these areas of activity, the

OPCW finds itself as one among many actors on the international scene.

33. With regard to preparedness for and response to chemical incidents, a range on UN and other international organisations as well as NGOs have mandates and/or pursue capacity building programmes. The OPCW needs to define its place in this international framework based on the CWC and its technical competencies and resources, and develop mechanisms for effective collaboration and coordination.
34. A similarly complex framework exists in the field of international cooperation for peaceful uses of chemistry. Sound chemicals management is an important environmental and safety issue and essential for economic development. A wide range of agencies as well as the chemical industry contribute to enhancing capacity in this field, brought together under international programmes such as the Strategic Approach to International Chemicals Management (SAICM).
35. In addition, the pattern of international cooperation in the form of North-South collaborations is less and less predominant in today's economic and technological environment. South-South and regional collaborations, the diffusion of chemical technology and the migration of chemical industry to new production locations and markets are increasingly changing the context within which international cooperation in chemistry is happening.
36. The OPCW needs to be aware of these international frameworks and initiatives and clearly define its own contribution based on its competencies and capabilities. There is no suggestion that the OPCW should convert into an environmental or development agency, but it can become a sought-after partner for collaborations at the nexus of chemical safety and security. Such a focus on security would play to the strength of the OPCW.
37. For example, the enhancement of technical capabilities in States Parties that are required for CWC implementation, such as the development of laws and regulations, the enhancement of laboratory capacity and other technical infrastructure, and the training of personnel involved in CWC implementation also support measures related to the control of chemical inventories and the substitution of hazardous materials. CWC compliance has already been linked by the chemical industry with its Responsible Care® initiative, and there are obvious synergies with SAICM. These links create opportunities for the OPCW to develop partnerships and increase the impact of its ICA programmes.
38. This association between safety and security has been pursued for many years in the BWC context. It required systematic work with and through a large number of stakeholders including from industry, the research community, academia and educational institutions. The benefit of associating safety and security has become apparent to many observers, and there is no reason why a similar process could not be pursued under the CWC.
39. An important task will be to strengthen the ethical norm against chemical weapons and to work more effectively on awareness raising and education in support of the CWC. This must be a long-term commitment that brings the OPCW and National Authorities closer to where chemistry is taught, as well as to professional associations and societies. This interaction should aim at promoting CWC compliance by all who work with chemicals, beginning with students (the next generation) and extending to practicing chemists and engineers as well as civil society. The RC-3 is an opportunity to energise activities in this field.

Conclusions

40. The First CWC Review Conference in 2003 succeeded largely because it helped re-establishing a sense of common purpose amongst States Parties. The Second Review Conference in 2008 was able to agree on a substantive outcome document but left a

bad taste with regard to how this was accomplished. The Third Review Conference should aim to be different.

41. Buy-in and broad participation in the preparatory work of the OEWG as well as the RC-3 itself will be critical. A key hurdle that could have derailed the review process has been overcome with last year's decision on the extension of the final chemical weapons destruction deadline. The atmosphere in the OEWG is constructive and expectations are being expressed that the review process will be smoother this time. There is hope – perhaps against experience and better judgement - that surprises can be avoided at RC-3. But as always, the devil is in the detail.
42. The number of States Parties that have actively engaged with the preparatory work remains fairly limited. Also, there is as yet little input from capitals. The work on a draft text of the material that the chairperson of the OEWG intends to pass on to the RC-3 has yet to begin—only when this material has been issued and delegations have started working their way through it will it become clearer what the main issues for debate at the RC-3 will be.
43. There also remain different views about what format the outcome document should take. Should this be an Article by Article review, or a review of operational aspects of implementation (as the text of the CWC may suggest), or an attempt to agree on a strategic vision for the OPCW? Or a bit of all of these? Should the aim be to again develop a detailed record of assessments and decisions or should the RC-3 aim at agreeing on a more succinct, strategic outcome document to set priorities and provide policy guidance and leadership? The latter may be more appropriate and useful but the OEWG has yet to agree on a common approach.
44. Equally important is it to think about how the results that the OEWG should be transferred into the RC-3 context and processes. The future chair of the RC-3 has yet to be nominated but an early engagement of the designated office-holders of the review conference would be important to ensure continuity between the preparatory process and the work of the review conference itself.
45. It is expected that the OEWG will soon move from thematic discussions to substantive work on a draft outcome document. Rather than getting hung up on procedural issues, a “triangular” approach may be useful to conceptualise the review process. The kinds of questions to be asked might be:
 - What is the state of CWC implementation and how did we get here?
 - What needs to be done next?
 - Where do we need to shift direction?
46. In this undertaking, it will be important to keep in mind the difference between a review conference and the regular sessions of the Conference of the States Parties. Review conferences are not a conduit for taking decisions on issues that have already been taken up in the regular work of the policy making organs. Rather than attempting some sort of “augmented” routine decision making, it ought to engage in a strategic exercise to provide guidance on longer-term issues.
47. The RC-3 will be a critical milestone, held at a junction when the balances and priorities of the different treaty provisions and implementation activities are beginning to shift in response to the change in workload related to the CWC's disarmament undertakings. As this rebalancing takes place, the OPCW needs to be able to see itself as part of a larger architecture where chemical weapons disarmament is not the only issue that matters. To retain its relevance, the OPCW needs to evolve into a recognised multilateral centre of expertise in all chemical weapons and related security matters. The RC-3 is a golden opportunity to develop such a common vision among the States Parties and to devise a strategy to achieve it.

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