

Ensuring long-term adherence to the CWC: problems and perspectives

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Introduction

As we approach the fourth anniversary of the entry into force (EIF) of the Chemical Weapons Convention (CWC) and note that 140 states have now acceded to or ratified the treaty it seems an appropriate time to begin thinking about how we can ensure that these states will adhere to the convention over the long-term.

Non-proliferation policy tools

To begin this discussion a review of the main mechanisms which can be utilized in achieving this goal is important. The first of these is the norm against the use of chemical weapons (CW) or biological weapons (BW). Norms create a basis for action against states which violate them, via consensus on which activities are unacceptable and inconsistent with this norm. The norm against CW has created a basis for action against states which would develop them and has also laid the framework for the CWC.

The existence of this convention confers an additional degree of legitimacy to the pre-existing view that chemical weapons are particularly odious and unacceptable. However, the treaty *in and of itself* does not create high costs of non-compliance with this norm. These costs depend on several additional factors including: the degree to which a potential violator discounts future benefits that are jeopardized through norm violation, the probability of being detected, the extent to which a violation of the treaty can discredit the violating state, the actions taken in response to violations and the sensitivity of a regime to reputation.

The CWC is enforced by the Organisation for the Prohibition of Chemical Weapons (OPCW) and is a component of the CW security regime. A security regime is a system of principles, norms, rules and procedures regulating certain aspects of security relationships between states. The strength of any regime depends on the stringency with which its rules regulate the behaviour of the member states.

Other components of the CW regime include the 1925 Geneva Protocol, separate national export controls and legislation, regional agreements and the

Australia Group. Some states argue that the Australia Group is discriminatory and that its continued existence violates the spirit of cooperation and trade promotion found in the CWC. They assert that keeping Australia Group export controls in place for states parties sends the message that the CWC is failing to be effective.

The members of the Australia Group are adamant in their view that it is still required, partly because of its work in the BW area, and partly because not all CW-relevant technology is controlled by the CWC. They argue that the CWC does not bring an inherent right to trade in chemicals, as expected by some parties, but a right to trade which is *consistent with the convention*.

Many analysts argue, however, that export controls are far less likely to be effective in the CBW area than in the nuclear realm in view of the less complex technologies involved and their much wider global diffusion. These technologies are generally smaller, have greater dual-use potential and are often intangible. The dual-use nature of these technologies is the most important aspect which the CWC must address if it is to be effective in the long-term. Successful implementation of the general purpose criterion (GPC), contained in Article II of the CWC, is key to this task.

Benefits of CWC membership: intangible and tangible

What are the benefits of membership which supporters hope will keep states motivated to adhere to the CWC? The benefits are both intangible and tangible. The first intangible benefit falls under the heading of status or reputation. As mentioned above, there is a globally recognized norm against the use of chemical weapons. The CWC is the embodiment of this norm, a framework for its continuation and a formal reinforcement. Abiding by or violating a norm is an important indicator of identity. States which adhere to the CWC and abide by the norm are considered 'upstanding members of international society' and can accrue the benefits of status and a good reputation (which can yield economic benefits as well). States that do not abide by the norm are generally seen today as 'rogues' and suffer political and economic sanction as a result.

The downside of identifying CW as a major security threat is that this depiction of CW may have helped to legitimize and exaggerate the threat to which it was supposed to be a reaction, giving CW greater credibility and status as a source of power and threat and thereby increasing the appeal of attaining such weapons for states not concerned about violating the norm. However, this is certainly less true in the chemical than the nuclear field.

Another intangible benefit of joining the CWC is that it provides a platform or forum in which a state's security concerns can be addressed. This can be important for smaller states especially, which require the support of the international community to address their security concerns.

Finally, most states recognize their self-interest in preventing proliferation and the positive impact on international security that non-proliferation and disarmament activities have.

In terms of the tangible benefits of membership, under the CWC a state party can receive strong political support from CWC parties if it is threatened. It can also request and receive assistance and protection if chemical weapons are used against it, if riot control agents are used as a means of warfare or if it is threatened by actions or activities of a state that are prohibited for states parties by Article I of the convention. This can be especially important for small states which the OPCW asserts are most likely to be subject to such attacks or threats and which are least likely to be able to defend themselves.

In addition, the CWC also provides a mechanism for resolving any doubts about a state party's compliance with the CWC via requests for information, clarification requested (on the state's behalf) by the Executive Council or an on-site challenge inspection.

The CWC also provides for the promotion of trade in chemicals in keeping with the treaty, and states which do not join do not have access to Schedule 1 and 2 chemicals and eventually will not have access to Schedule 3 chemicals from states parties.

Finally, the Technical Secretariat of the OPCW can provide expert advice and assistance to a state party in the development and improvement of its protection programme against CW.

Current issues with possible long-term implications

Before describing potential future problems, there are current problems with potential long-term implications which should be noted. The first is that only about 50 states currently have the necessary national implementation measures/legislation in place to ensure that the CWC is implemented effectively. (Article VII of the convention addresses the issue in two ways: national legislation and national authority.) Putting in place legislation can be a lengthy and complicated process. Several states which have such legislation have found it necessary to enact legislation in as many as 14 areas additional to those required by the convention.

A second major obstacle is the delay in the destruction of existing stockpiles—especially in Russia and the United States, which possess the bulk of the global stocks. Hundreds of millions of dollars have already been pledged for destruction of CW in Russia yet destruction is only just beginning. It is estimated that the total cost of destroying Russia's arsenal will be approximately US \$6 billion, so a great deal more money will have to be allocated to this purpose.

It is unclear whether the United States will meet the 'five years after EIF deadline' for destruction and highly unlikely that Russia will—it may not even meet an extended deadline. Despite these delays, however, Russia's commit-

ment to destruction appears genuine and it is in compliance with the demands of the regime. It can be argued that the chemical stockpiles are more of a threat to Russia's citizens than to the international community. It is essential that environmentally safe methods are found for the destruction.

A third difficulty currently facing the treaty and the OPCW is of an operational nature. Solutions must be found to problems such as the way that industry declarations are made, so that all states parties are on a 'level playing field', and to the high cost of the on-site presence of inspectors at destruction facilities. If these problems are not resolved in the near future they could have the detrimental effect of slowing the momentum of treaty implementation and possibly leading to dissatisfaction and a decrease of commitment among states parties.

Finally, a fourth problem which may have long-term effects is the lack of commitment to cooperation of the advanced states. One of the main reasons behind CW proliferation concerns is that most of the technology, equipment and knowledge in CW is dual-use in nature. The CWC has attempted to address this via the GPC, its Schedule system and end-user certificates, but these measures do not appear to have allayed all of the concerns of developed states about technical cooperation.

Potential future problems

One: lack of will/commitment

The potential future problems discussed below overlap in many ways, but for the purposes of discussion then have been divided into six areas of concern. In describing the first potential future problem it is useful to refer back to the norms described above. The reluctance to use CW or the existence of a norm against such use is a relatively recent phenomenon (post-Hague Declaration IV(2) 1899). It was circumvented in World War I but has gained strength since then. The strength of this norm depends greatly on how the international community responds to violations of it.

A norm is intangible and subject to erosion. It, and the CWC, require constant reinforcement if they are to remain strong. The future of the CWC depends upon the sustained political support of all parties. Success also depends on the will of the parties to act in support of the CWC in cases where this action may be in conflict with their other interests.

As *the* major global player, the USA, in particular, can weaken the regime if it continues to reserve the option of unilateral actions, including the use of force. Its exhibited lack of trust in the arms control/non-proliferation regime does not inspire confidence in other states and leads potential targets of punitive US actions to believe that they cannot rely on the CWC to ensure their security so they must retain all weapon options. The US tendency to compensate for arms control/non-proliferation regime deficiencies through

military/technological means (rather than trying to strengthen the regime) also creates a tension within the regime among states which do not approve of such policy measures and view them as destabilizing and divisive.

Moreover, if the CWC and the norm against CW that it embodies are to remain strong, the CWC will have to be adaptable enough to remain relevant under unforeseen circumstances in a constantly changing global environment.

Two: unsatisfactory response to violations

Violation of a norm does not mean that the norm no longer exists or that it ceases to have an impact on social behaviour. What matters is how the violation is interpreted and acted upon by states parties. If there are continued allegations of violations by states parties which are not addressed, this will erode the CWC. In addition, if there is a major violation which is addressed in a way that is perceived as biased, this will erode the CWC. It is important to recognize that, despite assertions to the contrary, verification and monitoring are not purely technical matters but are also political. Monitoring and verification are substitutes for trust which are performed on a case-by-case basis. It is impossible to define purely objective standards of monitoring and verification, but the CWC will strive to come as close as possible to this ideal.

There can be drawbacks to nearing perfect detection capability, however, in that:

1. Intrusive monitoring can be used politically (i.e., if a state calls for a challenge inspection without grounds in order to embarrass, pressure or inconvenience a state for non-CW reasons).
2. Intrusive monitoring increases the chances that inspectors obtain information not CWC related, such as proprietary information, and the risks of disclosure of this information increase.
3. There is an increased risk of false alarms. Intrusive monitoring can increase the likelihood of mistakenly believing a violation has occurred. The OPCW works to avoid undue intrusion and has gone to great efforts to ensure neutrality of staff, and so on.

The manner in which the allegations and violations of states parties are addressed is particularly important. There have already been allegations from the USA, for instance, that Iran is violating its commitments, but no challenge inspection has been requested. If such allegations are allowed to continue unaddressed this will erode the convention. It is possible that if such incidents continued that the CWC could actually become a liability to non-proliferation as it would limit actions outside the treaty and then either the lack of action or the reversion to unilateral or multilateral action could erode the norm or the treaty.

There is a definite danger that states could join the convention in order to obtain information which could allow them to develop weapons and better

protect themselves against attack while avoiding suspicion and accruing the political benefits of membership. Effective monitoring and verification are essential to address the problem of such ‘cheaters’.

Three: failure to address proliferant motivations

A third area in which long-range problems could emerge is in the failure to address proliferant motivations. The CWC cannot be relied upon alone but should be seen as one element of a larger strategy which includes addressing the political situation which motivates proliferants, the demand-side of the proliferation equation. Supply-side measures may decrease the rate of proliferation, but they do not eliminate it. They treat the symptoms rather than the disease.

Identifying the motivations of states for pursuing weapon capabilities and then addressing these motivations via the constructive engagement of these states, and a rejection of a superficial ‘rogue doctrine’ which does not recognize the multitude of differences in the states lumped into that category, is an approach which should be given greater effort and resources. In addition, the huge US investment in CBW defence is viewed with suspicion by states which suspect that its activities are not entirely defensive. Moreover the dual-use nature of the technologies means that even if the current purpose of research is defence, the research has offensive applicability. Transparency is very important in addressing states’ motivations as a form of confidence-building measure (CBM). Some states have incorporated transparency mechanisms into their ‘necessary measures’. Various other CBMs are important in bringing ‘outsiders’ into the international community. If they can be engaged in the international community, they will have greater interest in ensuring its stability.

In light of these factors, engagement efforts which address proliferant and proliferator motivations seem a more realistic long-term approach. The current approach of isolating potential threats serves only to increase their motivations to arm because they view themselves as threatened by the international community. A state that is treated as a rogue is more likely to behave like one. Isolating states reduces the policy options available for dealing with those states. By engaging states, their involvement in the international community is increased and as a result their interest in preserving its stability is also strengthened. Engagement efforts should be undertaken in addition to the activities of the arms control, disarmament and non-proliferation regime.

In this vein, recent US advances in this area with countries such as Iran and North Korea should continue and expand. However, if the USA continues to pursue these avenues while simultaneously keeping in place isolationist measures, these countries may doubt US sincerity and commitment to engagement. If engagement does not occur and the states of primary proliferation concern remain outside the international community and the CWC, there may be a feeling among states parties that the CWC cannot guarantee security and states

parties may wish to withdraw from the CWC and pursue other security options, including CW.

Finally, it is essential that the non-discriminatory nature of the regime is preserved and that this is demonstrated to potential proliferants and states parties.

Four: failure to achieve universality

A fourth issue which may pose problems for long-term adherence is the failure to achieve universality. The achievement of universality of the treaty has been delayed by states which, for a variety of reasons, have not joined or ratified. Some of these reasons include: a feeling that the treaty is irrelevant to their interests, a reluctance to give up a weapon option for security reasons and insufficient financial resources to enable participation.

The absence of certain Middle Eastern and North-East Asian states as parties to the CWC is a significant drawback, and it seems unlikely that the states in question and the states of most concern will join the CWC in the foreseeable future.

Compromises have been made in the convention in order to achieve universality, primarily in terms of offering the benefit of cooperation. Whether or not universality is essential is an assumption that should be examined: the CWC as it stands has been fashioned in such a way as to require universality for full effectiveness. Universality is assumed to be essential in order to reduce the relative gains that a state might get by defecting from the treaty regime. If it does not achieve universality, its effectiveness may diminish over time.

One of the ways that the CWC has attempted to address states' concerns and lack of motivation to join is through the cooperation clauses of the treaty contained in Article VI. Inherent in the CWC is a bargain, a limitation of sovereignty for increased security *and* for economic and technological benefits via cooperation. However, as noted above, the more developed states have shown a reluctance to follow through on cooperation requirements because of proliferation concerns.

Multilateral or unilateral responses to proliferation and disarmament should not be disregarded simply because they are not universal. However, they should be undertaken only after consideration of how they will impact on the existing regime and the CWC in particular.

Five: failure to protect proprietary information

A fifth problem which has been the subject of a great deal of discussion is the potential that the CWC/OPCW will fail to protect proprietary information. As competition grows in the age of globalization, governments will have less control over the flow of information and technologies, which could have serious proliferation consequences. Rapid industrialization and innovation and an increasingly global trade in high-technology goods, virtually all of which have

potential military applications, may have rendered impossible total effectiveness in curtailing access.

A lack of uniformity in how much control governments have and their ability to regulate these issues could create tension among the CWC parties. If states are to rely on the CWC for their security, they will expect greater transparency and verifiable assertions that the CWC is being adhered to, not just vague assurances. Many states argue that governments must be as permissive as possible in terms of inspections, monitoring and verification in order to avoid the perception of secrecy and resulting uncertainty. It is possible in this context that US congressional 'reservations' could be damaging in the long run (for example, the reservation that the president can refuse a challenge inspection). This kind of insistence on special rights and privileges for one state party contravenes the basic spirit and orientation of multilateralism of the treaty. Following the USA, India has now also passed legislation allowing the prime minister to refuse a challenge inspection.

At the same time, global competition may lead to greater corporate secrecy and decreased transparency and willingness to share information. If the OPCW cannot guarantee the protection of proprietary information there will be less willingness to cooperate. It should be noted, however, that there have been no complaints in this area thus far and the chemical industry has been very supportive of controls and of 'anytime, anywhere' inspections.

Six: failure to meet cooperation expectations

The sixth potential problem is the reluctance of developed states to meet the cooperation expectations of less-developed states. At the moment, the CWC is functioning primarily as a disarmament treaty and the emphasis of its activities is on the destruction of existing stockpiles. Once this destruction is complete, there will be a shift in focus to issues of cooperation. States parties are obligated to facilitate exchange and refrain from maintaining restrictions or controls that impede legitimate trade and the promotion of technological development in chemistry. National laws are to be made compatible with the convention's purposes.

If the developed states do not comply with the cooperation clause or if they approach these 'obligations' in an uncooperative way, this will set a bad precedent and could erode the commitment of those who joined because of the desire for increased cooperation and trade. In terms of a general cooperative attitude towards the treaty, the United States' lengthy technical non-compliance with the CWC could have set a bad behavioural precedent.

As competition grows in the age of globalization, governments will have less control over the flow of information and technologies making them more difficult to control. At the same time, this may lead to greater corporate secrecy and decreased transparency and willingness to share information.

Conclusions

As time goes on, if states do not see positive security, economic and political dividends emerging in return for the sovereignty which they have relinquished they will become dissatisfied and less committed to the CWC and their obligations. This is especially true for states which did not join for non-material benefits such as security, prestige, status and solidarity but for the material economic benefits to be derived from cooperation.

It is important that already at the First Review Conference the potential problems for long-term adherence are discussed and that the states parties attempt to address these problems before they endanger the convention.