Getting Down to the Hard Cases: Prospects for CWC Universality

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When states-parties to the 1993 Chemical Weapons Convention (CWC) gather next month in The Hague for their second review conference, the plenary sessions will be unusually full, and for good reason. Since the ban on developing, producing, stockpiling, transferring, or using chemical weapons entered into force in April 1997, the CWC has won support at an unprecedented rate for a multilateral arms control agreement.

The number of states-parties has increased from 87 at entry into force to 183 now with an additional five who have signed but not ratified the convention. The CWC is thus closing in on the goal of universal membership. Only seven states have neither signed nor ratified the pact. Still, bringing these remaining holdouts into the regime will be far from easy, particularly those countries that are in the Middle East.

Given this challenge, CWC states-parties and the treaty’s implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW), need to decide how much attention to devote to winning these states’ full membership in the treaty regime as it moves into its second decade in force. After all, no international arms control treaty has ever attracted universal adherence; the nuclear Nonproliferation Treaty (NPT) is closest with only three nonmember states and a fourth state, North Korea, whose legal status is uncertain, not to mention that many CWC states-parties have yet to fully implement their commitments under the treaty. Plus, the organization faces new responsibilities and limited resources in coping with scientific and technological changes and new verification challenges.

Nonetheless, universality has rightly been a key priority during the CWC’s first decade and should be in the next. Many of the key holdouts lie in the Middle East and, given the region’s tensions and history, are among those most likely to use chemical arms. The absence of even small states from the CWC could undermine the treaty by providing safe havens or transshipment points for nonstate actors and smuggling networks. Universal adherence would strengthen the norm against chemical weapons by demonstrating that this principle is accepted in many different political, cultural, religious, economic, and legal settings. Moreover, the number of states adhering to a treaty is one criterion used to judge whether it forms a rule of international customary law and thus is binding on all states whether or not they have joined.

Status of the CWC

The CWC was opened for signature in January 1993, and initial assumptions were that the 65 ratifications required for entry into force would be deposited quickly. These hopes proved optimistic as ratification slipped off the political agenda in many countries and the drafting of new regulations and primary legislation led to inevitable delay. Instead, it took until October 1996 to gather the required ratifications. These did not include Russia or the United States, the two then-admitted and -largest possessors of chemical weapons. Indeed, it was unclear whether either of the Cold War superpowers would ratify the treaty as original states-parties before it was slated to enter into force in April 1997. In the end, the United States ratified the CWC days before it entered into force, following a protracted Senate battle, and Russia ratified it in November 1997.
Since then, membership of the CWC has increased steadily and is now approaching universality. In particular, the number of states-parties increased more rapidly after the treaty’s first review conference in 2003 approved an action plan[1] to achieve this goal: the number of states outside the CWC has fallen from 40 in 2003 to 12 in 2007.

Each of the 12 remaining holdout states has its own unique reasons for remaining outside of the CWC. Bearing this in mind, they can be grouped into the following clusters.

**Angola, Bahamas, Dominican Republic, and Guinea-Bissau**

In theory these four states (one nonsignatory and three signatories) should be the easiest to persuade to join the CWC. They are mostly fairly small countries with no history of chemical weapons possession, no serious external threats to their security, and small chemical industries. Angola differs from the other three in that chemical weapons were allegedly used during the country’s civil war, although no such use was ever confirmed. The main obstacles in these countries are now logistical and resource constraints rather than political issues. An OPCW Technical Secretariat background paper for the treaty’s first review conference identified a number of factors that have distracted attention from the CWC in such countries, including AIDS, desertification and drought, poverty, and debt.[2] OPCW Director-General Rogelio Pfirter told the 2007 Conference of the States Parties (CSP) that such countries “fully support” the CWC.[3] It is therefore likely that all four will join in the relatively near future.

**Iraq**

Iraq is a special case given its previous possession and use of chemical weapons, UN verification and destruction activities, and the 2003 invasion and subsequent fruitless search for that country’s presumed chemical weapons and other weapons of mass destruction. Under Saddam Hussein, Iraq refused even to sign the CWC, but it is now very close to becoming a member state. In November 2007, the Iraqi Presidential Council endorsed a bill on Iraq’s accession, and the Iraqi Foreign Ministry announced that accession would occur in the near future.[4] It will mark the culmination of a process that began in 2004 soon after sovereignty was returned to Iraq. Since then, Iraqi officials attended every session of the annual CSP and at least two sessions of the Executive Council (the OPCW’s governing board) as observers and have participated in several OPCW regional seminars and workshops. In addition, the organization’s Technical Secretariat has organized four training workshops for Iraqi officials. Iraq has also begun the process of preparing its initial declaration to the OPCW. Iraq’s imminent accession is unlikely to lead to major shifts in the views of Egypt, Israel, or Syria on whether to join the CWC, although it will further isolate those Middle Eastern states still refusing to do so.[5]

**Lebanon, Myanmar, and Somalia**

This group is slightly disparate, but all three share varying degrees of serious internal political tensions that have delayed CWC membership. Lebanon could accede in the very near future as it is at an advanced stage in the process of accession, having completed the necessary parliamentary procedures. The current inability of the Lebanese parliament to elect a new president has slowed the process. Myanmar had been proceeding well toward ratification, but its efforts “now seem to have paused,” according to Pfirter. Allegations of chemical weapons possession and use by Myanmar have been made but remain unproven. The long-running lack of a functioning government in Somalia and the current humanitarian crisis mean that CWC accession by Somalia in the near future is probably unlikely.

**Egypt, Israel, and Syria**

The Middle East is the most serious obstacle to achieving CWC universality. Indeed, the situation seems unfavorable to any form of arms control.[6] The CWC’s prohibitions should most rapidly be extended to the region, however, given that Egypt, Israel, and Syria are all widely identified as chemical weapons possessors and that the two most recent conflicts involving these arms (Egypt’s intervention in Yemen in the 1960s and the Iran-Iraq War in the 1980s) took place in the Middle East. These factors combined with the existing tensions in the region mean that the area could witness the
use of such weapons. In addition, Iran, although a CWC member state, is suspected by some of possessing a chemical weapons capability, although this claim is unproven and Iran is subject to routine OPCW inspections.\[7\]

There have been past attempts to establish a regional arms control infrastructure. In April 1990, Egypt proposed a Weapons of Mass Destruction Free Zone (WMDFZ), and all states in the region have since committed themselves to this goal, at least in principle.[8] During the 1990s, the Arms Control and Regional Security (ACRS) Working Group met as part of the Middle East peace process. The ACRS collapsed in the mid-1990s mainly due to the dispute between Egypt and Israel regarding nuclear weapons.[9]

The main obstacle to breaking the CWC deadlock in the Middle East is the political linkage between chemical and nuclear weapons made by Arab states. Many refused to sign the CWC in 1993, although since then all Arab League states except Egypt, Lebanon, Somalia, and Syria have joined the convention, thus eroding this policy. Complicating the situation is the fact that the linkage works both ways, with some analysts citing the chemical weapons stockpiles of neighboring countries as justification for Israel’s nuclear arsenal. As Pfirter put it, in the Middle East, chemical weapons are “hostage” to nuclear weapons. The OPCW has been trying to decouple nuclear and chemical weapons, hoping to make progress on chemical arms independently and thereby building confidence that could then contribute to progress in other areas.[10] One of the key issues is which country takes the first step toward decoupling. Israel is reluctant to make the first move after its decision to sign the CWC in 1993 was not reciprocated by key Arab states, despite U.S. diplomatic pressure. If this can be overcome, Libya’s 2004 accession as a possessor state offers a possible model for others in the region to follow.

Little is known publicly about the chemical weapons programs of Egypt or Syria and the internal thinking behind either country’s policy toward the CWC. Both are widely assumed to possess such capabilities,[11] and Egypt is alleged to have used chemical arms in the 1960s in Yemen and assisted Iraq’s chemical weapons program in the 1980s.[12] Egypt was an active participant in the CWC negotiations and was widely expected to join the CWC. Egypt was instead the most vocal proponent of the linkage policy and, along with Syria, refused to sign the CWC in 1993. Neither state has officially confirmed that they possess chemical weapons, but both are likely to view such stockpiles as a strategic counterbalance to Israel’s nuclear weapons. During the 1990s, Egypt held firmly to the linkage policy by not joining consensus on the annual CWC resolution in the UN General Assembly and preventing the Organization for African Unity from calling for CWC universality. Syria adopted a similarly standoffish approach to the CWC. Since 2003, however, both countries have become more engaged with the OPCW while maintaining their concerns about the regional security situation. Egypt and Syria have since sent participants to OPCW regional workshops and have participated in recent universality seminars. Egypt attended the 2006 CSP as an observer, and in April 2007, Pfirter visited Cairo. In October 2007, he told the UN First Committee that Egypt (and Israel) had kept the door open “for a constructive dialogue.”[13]

Like Egypt and Syria, little is known publicly about Israel’s chemical weapons capability and whether it still remains active.\[14\] Much more is known about the domestic debate surrounding Israel’s policy toward the CWC. Unlike Egypt and Syria, Israel is a CWC signatory, binding it politically to the treaty’s objectives and purposes. Its status also allowed Israel to participate in the meetings prior to the treaty’s entry into force, which it did actively. Despite its participation, Israel decided in 1997 not to ratify, following a lengthy internal political debate. Israel’s reluctance is based on its perception of the security situation in the Middle East and its requirement for verifiable arms control regimes and normalized relations with its neighbors. Unilateral ratification was considered in 1997 but rejected, despite the potential for damage to the Israeli chemical industry from the CWC’s trade restrictions if Israel did not join. Instead, security concerns dominated the debate. Israel likely views such possession in terms of retaliation-in-kind for chemical weapons attacks by others and as an intermediate deterrent between its conventional and nuclear options.[15]

Israel also has concerns about the CWC’s on-site verification regime, presumably due to fears of a challenge inspection at one of its nuclear facilities.[16] Indeed, during the preparatory meetings, Israel strived to water down the on-site inspection procedures. As a CWC signatory, Israel has remained engaged by sending observers to the CSPs and participating in regional workshops and
seminars. Israel’s engagement has increased since 2003, with a visit from the director-general in April 2006 and participation in recent universality seminars. Senior Israeli delegations have also twice visited OPCW headquarters in The Hague, most recently and most interestingly the day after Pfirter had visited Cairo.

**North Korea**

Even less is known publicly about the chemical weapons capability of North Korea, but it is widely suspected of possessing a substantial program.[17] Whereas the OPCW has been able to make contact with other nonmember states, North Korea has not responded to any OPCW overtures. This issue has been overshadowed by the ongoing negotiations over North Korea’s nuclear weapons, especially since its nuclear test in 2006 and the ongoing disablement of its nuclear program. If the nuclear question is satisfactorily resolved, however, attention could turn to Pyongyang’s chemical weapons program, although North Korean officials might oppose extending the process to such arms. Perhaps the fact that South Korea is a declared chemical weapons possessor and is destroying its stockpile in accordance with the CWC could have some influence on the North.[18] The adoption of UN Security Council Resolution 1718 in October 2006 may also have increased the likelihood of international attention, as it not only requires the North to abandon its nuclear program but also “all other existing weapons of mass destruction and ballistic missile programme in a complete, verifiable and irreversible manner.” These other programs are not specified, but the best way for North Korea to abandon its suspected chemical weapons program in a complete, verifiable, and irreversible manner would be to join the CWC as a possessor state as Libya did in 2004. For that to happen, it would probably require a lengthy process of secret negotiations and diplomatic pressure from key countries, such as China and the United States.

**The OPCW Approach to Universality**

Even if a government is inclined to join the CWC, doing so is not a simple matter. In most countries, initial consideration of whether to join takes place within the foreign ministry. The foreign ministry then consults with other ministries and domestic stakeholders, such as the chemical industry, and recommends a course of action to the executive. In some countries, the executive can then deposit the instrument of ratification or accession; in others, prior parliamentary approval is required. This whole process can be extremely prolonged, with delay at any stage, whether due to interdepartmental opposition, crowded parliamentary agendas, national elections, changes in government, or bureaucratic politics. Of the 12 remaining nonmember states, some are at an advanced stage in this process, while others have not yet begun.

The OPCW Technical Secretariat and member states undertake a range of activities to encourage holdouts to complete this process, part of an innovative OPCW approach to universality that has since been imitated by other organizations. At the time that the treaty was signed, the conventional wisdom was that “a state’s decision to join a security-related treaty is strictly an internal, sovereign matter.”[19] The slow progress toward entry into force, however, led to a more proactive approach. Sergey Batsanov, who was deeply involved in the process, said the OPCW departed from “the experience of ‘older’ multilateral arms control regimes” and took “a hands-on 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.”[20]

Regional seminars were and still are an essential tool in raising awareness as well as providing information on CWC implementation requirements. The OPCW also uses bilateral meetings with officials from nonmember states, and when possible, Pfirter visits such states to press the case for CWC membership. On occasion, the OPCW has also been involved in behind-the-scenes negotiations with, for example, Afghanistan, Libya, Serbia and Montenegro, and Sudan, and it made a low-profile contribution to the successful ratification processes in the United States and Russia.[21] Consecutive CSPs since 1997 have urged full universality, particularly for those states believed to possess chemical weapons. The OPCW has also been able to count on the active support of the United Nations and its secretary-general, who acts as depositary of the CWC.

Alongside the Technical Secretariat, OPCW member states have been equally active in promoting universality through demarches, visits and meetings, and action within international and regional
organizations. Individual member states have also made voluntary contributions supporting the OPCW’s universality activities or have sponsored or hosted events such as regional seminars. The OPCW has developed strong working relationships with regional organizations that have in turn promoted CWC universality in their own specific contexts. The European Union has provided significant financial and diplomatic support. Assistance from member states is most useful when they have historical, cultural, or linguistic links with a nonmember state or when they carry a significant influence due to economic or other relations. For example, the EU has drafted a nonproliferation clause for insertion into its bilateral trade agreements, including some that are not CWC member states. The clause commits its signatories to take “steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments.”

Besides the activities of the Technical Secretariat and member states, the CWC itself also contains incentives for states to join, most explicitly the treaty’s restrictions on chemical trade with nonmember states. These were first proposed by President George H. W. Bush in 1991 to “provide tangible benefits for those states that join the Convention and significant penalties for those that fail to support it.” Trade with nonmember states in two of the CWC’s three categories of controlled chemicals is already banned, and trade in the third category could also be banned.

The ability of states-parties to request assistance and protection in the event of a chemical weapons attack is the flip side of the universality coin. The CWC attempts to negate the risk that, in forgoing a chemical weapons option, states could put themselves at a strategic disadvantage vis-à-vis other states. The CWC does this by giving each state-party the right to request assistance and protection if it believes chemical weapons have been used against it or their use is being threatened. Another incentive is provided by the CWC’s provisions aimed at economic and technological development under which member states are supposed to be able to participate in the fullest possible exchange of chemicals, equipment, and scientific and technical information. To meet this goal, the OPCW has supported internships, research projects, and laboratories in developing member states, although such programs do not go far enough for some developing countries.

The Second Review Conference and Beyond

The not too distant future could see the CWC reach a stage similar to that of the NPT, with perhaps only four nonmember states—Egypt, Israel, North Korea, and Syria. However, achieving this status will require continued, intensive work by the OPCW and its member states. The upcoming review conference could usefully urge the remaining nonmember states to join as soon as possible and instruct the Technical Secretariat and member states to continue providing assistance. The conference should also commend the 2002 action plan and its achievements to date and renew its mandate for as long as required. Targeted pressure and bilateral assistance should be maintained on Angola, the Bahamas, Dominican Republic, Guinea-Bissau, Iraq, Lebanon, Myanmar, and Somalia until they complete their ratification or accession processes. Getting all of these states into the CWC will further isolate and highlight the remaining nonmembers. States remaining outside of the CWC by this stage will be leaving themselves open to serious suspicions that they possess chemical weapons at a time when, given the almost universal nature of the CWC, possession is seen as entirely illegitimate and in contravention of international customary law.

The Middle East is likely to remain the key sticking point, leaving total CWC universality dependent on a resolution of the wider political and security situation in the region. There are intermediate steps that the OPCW and its member states could encourage that might contribute to a wider political solution. These would depend on further progress in the OPCW’s attempts to decouple consideration of chemical and nuclear weapons, which would likely require support from key actors, such as the United States or the EU. Arab efforts to link these issues have already largely eroded, and if Egypt and Syria remain its only adherents, enough diplomatic and economic pressure could be put on both states to encourage them to accede. In that situation, Israel would have little remaining justification in not ratifying. Israel could also be encouraged to join by OPCW member states.
agreeing to actively consider a trade ban on Schedule 3 chemicals. CWC adherence by all three states could be undertaken in a carefully stage-managed, reciprocal process modeled on Libya’s accession in 2004 or the 1968 Syrian and 1969 Israeli accessions to the 1925 Geneva Protocol. Such a process would require high-level support and involvement from key states in cooperation with the OPCW, but it could make a significant contribution to confidence building in the region, as well as efforts to create a WMDFZ.

The second review conference may find it useful to strengthen the link between universality and national implementation. Many new member states find that they need advice and assistance to implement the treaty nationally while others draft their national implementing legislation prior to joining and therefore require assistance with ratification, accession, and national implementation before joining. Rather than maintaining a distinction, Batsanov suggests an integrated approach, perhaps through a combined task force.[25] There are also clear overlaps with UN Security Council Resolution 1540, which requires all states to implement a variety of domestic measures to prevent nonstate actors from acquiring weapons of mass destruction, their means of delivery, and related materials. The conference should encourage continued collaboration between the OPCW and the 1540 Committee. It is important to remember that “universalism comprises more than just numbers of states parties.”[26] Getting a state to join the CWC is only the start of a long-term process. CWC adherence counts for little if states then do not follow through on their obligation to effectively implement the treaty domestically. Even in a world of universal CWC membership, the threat of safe havens will remain unless all states enact implementing legislation. So, although complete CWC universality would be a significant step on the road toward a world free of chemical weapons, even if that goal is achieved, much work will remain to be done.

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ENDNOTES


18. There are five remaining declared chemical weapons possessor states in the OPCW: India, Libya, Russia, the United States, and an unidentified country known in OPCW publications as “A State Party.” This is widely acknowledged to be South Korea. A sixth possessor, Albania, completed destruction of its stockpile in July 2007.


20. Ibid.

21. Ibid.


restrictions were detailed in a subsequent U.S. working paper tabled in Geneva. See “Measures to Ensure Universality,” CD/CW/WP.357, August 8, 1991.

24. Trade in Schedule 1 chemicals with nonmember states was banned starting with the entry into force of the CWC. These chemicals have been developed or used as chemical weapons, pose a high risk to the object and purpose of the CWC, and have little or no use for other purposes. A ban on trade in Schedule 2 chemicals came into force in 2000. These chemicals pose a significant risk to the object and purpose of the CWC, can be used as precursors for Schedule 1 chemicals, and are not produced in large commercial quantities. A ban on Schedule 3 trade has been possible since 2002, but member states have not reached consensus on this issue. Jonathan B. Tucker, “Strengthening the CWC Regime for Transfers of Dual-Use Chemicals,” The CBW Conventions Bulletin, March 2007, p. 2.


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