The Chemical Weapons Convention: Has It Enhanced U.S. Security?

Arms Control Today

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Long before the Chemical Weapons Convention (CWC) became international law, the United States decided that the possession and use of chemical arms was not in its national interest. In November 1985, Congress mandated that the U.S. stockpile of unitary chemical weapons be unilaterally destroyed. Then, in May 1991, in the aftermath of the Persian Gulf War, President George Bush went one step further by declaring that the United States would formally forswear the use of chemical weapons for any reason, including retaliation, once the CWC entered into force.

By signing the convention in January 1993 and ratifying it in April 1997, the United States sought to ensure that other nations would also renounce the possession and use of chemical weapons, reducing the risk that U.S. civilians or soldiers would face poison gas at home or on the battlefield. The CWC requires member states to destroy all chemical weapons stockpiles and dedicated production facilities within a decade of entry into force and to renounce their reacquisition in the future. Functioning both as a disarmament and a non-proliferation measure, it is the first multilateral treaty to require the elimination of an entire category of weapons under strict international monitoring.

Although April 29 marks the fourth anniversary of the CWC's entry into force, the perceived threat of chemical weapons has not diminished significantly, raising the question of how effective the convention has been in enhancing U.S. security. That question is particularly germane now, with the arrival of a new administration in Washington. Despite the fact that the CWC was one of the major foreign policy legacies of the first Bush presidency, President George W. Bush and his advisers have generally taken a skeptical view of multilateral arms control.

The CWC may not be a panacea for the problem of chemical weapons proliferation—it must be augmented with other measures such as export controls and protective equipment—but it is a potentially powerful instrument in the U.S. policy toolkit. Compared with earlier treaties such as the Biological Weapons Convention and the nuclear Non-Proliferation Treaty, the CWC is unique in the depth and breadth of its verification mechanisms, which include national declarations, routine on-site inspections, consultation and clarification mechanisms, and state-party-initiated challenge inspections. The convention also breaks new ground in the extent to which it monitors dual-use facilities in the private sector, in this case, the commercial chemical industry.

Several key states of concern are not yet members of the CWC, but as the treaty approaches universality, it will cement a worldwide norm against the possession and use of chemical weapons. And although the convention is binding only on states, it has indirect effects on the problem of chemical-weapons terrorism because states-parties are required to pass domestic implementing legislation making the prohibitions in the treaty binding on their nationals living both at home and abroad and imposing punitive sanctions for violations.

Unfortunately, the United States has not used the CWC effectively over the past four years to benefit its own interests or to further international security. Instead, Washington has weakened the convention by not complying fully with its affirmative obligations and by failing to make use of mechanisms within the treaty, such as challenge inspections, to resolve compliance concerns.
Assessing CWC Implementation

The results of the first four years of CWC implementation have been mixed. On the positive side of the ledger, the number of states-parties has grown rapidly, reaching 143 by early 2001 and including major regional powers such as Russia, China, and Iran. Four countries—the United States, Russia, India, and South Korea—have declared chemical weapons stockpiles totaling 69,863 metric tons of chemical agents and nearly 8.4 million munitions and containers. Significantly, after many years of denials, India and South Korea decided to come clean about their chemical weapons stockpiles. All of the declared possessors except Russia have begun destroying their chemical weapons and have met the first intermediate destruction deadline in the CWC to eliminate 1 percent of their most dangerous stocks by April of last year. To date, the agency overseeing CWC implementation, the Organization for the Prohibition of Chemical Weapons (OPCW), has helped to eliminate roughly 7 percent of the world's chemical agents and 15 percent of its chemical munitions and has conducted hundreds of inspections at chemical weapons sites and relevant industry facilities. In addition, 11 states-parties have declared current or past chemical weapons production facilities, which must either be dismantled or converted to peaceful purposes.

Despite these successes, Iraq, Libya, Syria, and North Korea—all states that are of particular concern to Washington and that are thought to possess chemical weapons—remain outside the regime, with no short-term prospect for their inclusion. The nonparticipation of these states and others, such as Egypt and Israel, poses a major obstacle to achieving the treaty's fundamental goal of eliminating chemical weapons from the planet.

Other dark clouds lurk on the horizon: a serious financial crisis at the OPCW threatens to force a major cutback in verification activities; Russia is experiencing serious delays in its chemical demilitarization program; growing constraints on the intrusiveness of on-site inspections are reducing the OPCW's ability to build confidence in compliance; and a lack of political will on the part of member states to confront suspected violators by launching challenge inspections lessens the likelihood that states will use this important tool to address compliance concerns.

Unless these negative trends are reversed, they could fatally undermine the ability of the convention to achieve the security goals that the United States and other nations had in mind when ratifying the treaty. Ironically, although the United States played a key role in the CWC negotiations in Geneva and has the most to gain from a successful convention, a failure of U.S. leadership is at least partly to blame for many of the CWC's implementation problems.

Financial Crisis at the OPCW

Each CWC member state is obliged to contribute to the OPCW's $55 million annual budget. About two-thirds of states-parties have failed to pay their regular assessments, however, while others, including the United States, have not reimbursed the organization for the full costs of verification activities on their territory, as required by the convention. Compounding this problem is the unwillingness of many member states sitting on the OPCW's governing body, known as the Executive Council, to punish states for nonpayment of dues—apparently because they, too, are in arrears. As a result of these shortfalls, the organization is facing a serious financial crisis.

In February 2001, OPCW Director-General José Bustani warned that budgetary constraints threaten to cripple the operations of the organization. Unless this situation is remedied, the OPCW may have to reduce its verification activities at operating chemical weapon destruction facilities in the United States, India, and South Korea, and to cut the number of industry inspections from the 140 it conducted last year to 25. The longer the OPCW faces an acute shortage of funds, the more profound will be the consequences for the effective implementation of the organization's mandate.
Russian Chemical Demilitarization

Russia's vast stockpile of chemical weapons inherited from the Soviet Union, totaling 40,000 metric tons, is the largest in the world. The cost of destroying this stockpile has been estimated at roughly $6 billion, which Moscow cannot afford. Indeed, after Russia acceded to the CWC in November 1997, a lack of funds from domestic and international sources was a major reason it was unable to begin destroying its chemical weapons. Other impediments included political and bureaucratic infighting, disagreements between the Russian federal authorities and leaders of the six regions where the weapons are stored, and public concerns about the environmental impact of chemical weapons destruction. Given the current financial situation, it is extremely doubtful that Moscow will meet the CWC's deadline for the destruction of its entire stockpile even if it is granted a one-time, five-year extension that would give it until 2012 to finish the task.

A recent reorganization of the Russian bureaucracy in charge of the chemical demilitarization program has cast a ray of hope into this dark picture. The Putin administration transferred responsibility for the program from the Ministry of Defense to a new civilian body called the Russian Munitions Agency, led by a seasoned bureaucrat named Zinoviy Pak. In March 2001, Pak proposed overhauling the 1996 federal plan, which called for building separate destruction facilities at each of the seven depots where chemical weapons are stored. Instead, the number of future destruction facilities would be scaled down to three: one near the town of Shchuch'ye to destroy munitions filled with nerve agents and two near the towns of Gorny and Kambarka to destroy blister agents stored in bulk tanks that are in danger of leaking and cannot be moved. Chemical weapons from the other four storage sites would be transported to Shchuch'ye for destruction, significantly reducing costs. The main obstacle facing the proposed plan is that the transportation of chemical weapons among Russian regions is prohibited by a 1997 federal law and by local legislation. Whether these laws can be rescinded is an open question.

Fallout From U.S. Implementing Legislation

In drafting the domestic legislation to ratify and implement the CWC, Congress and the Clinton administration included three unilateral exemptions that have undermined the multilateral treaty by creating a separate set of rules for the United States. The most damaging provision allows a U.S. president to refuse an on-site inspection by the OPCW on the grounds that it could pose a threat to national security. A second exemption prohibits the removal of chemical samples from U.S. territory for detailed analysis at independent laboratories overseas. The third exemption sharply limits the number of U.S. chemical facilities subject to declaration and routine inspection. These unilateral U.S. provisions have been serious impediments to effective implementation of the CWC, both because they violate the nondiscriminatory spirit of the treaty and because they set a bad example that other countries have begun to follow. Although Clinton administration officials sought to play down the impact of the exemptions, they have clearly had a corrosive effect. Several foreign governments have taken note of the provisions and some, such as India and Russia, have initiated steps to duplicate them. Even if a future U.S. president never invokes the national security waiver to block a challenge inspection, another country, such as Iran, might well decide to exploit this loophole. In that case, Washington would be in a weak position to criticize.

Beyond its flawed implementing legislation, the United States did not submit its declaration of relevant chemical industry facilities to the OPCW until early May 2000, three years after the deadline in the CWC. This delay, attributable to difficulties in passing the required implementing legislation and a squabble within the executive branch over which agency would have the lead for treaty implementation, seriously disrupted the industry inspection process. Because of Washington's extreme tardiness in preparing its industry declaration, U.S. chemical companies were unavailable for routine inspections for three years, forcing the European Union to bear the brunt of the industry inspection regime. The European states finally rebelled in 1999 and refused to accept additional CWC inspections until the United States came into compliance. Moreover, other countries that were
late in filing their own declarations, including Iran, were only too happy to hide behind the U.S. example. Paralyzed by its own failure to comply with the letter of the treaty, Washington was in no position to point a finger at Tehran for technical—or even substantive—noncompliance.

**Weakening of Verification Measures**

The negotiators of the CWC sought to achieve a reasonable balance between two conflicting objectives: on the one hand, providing sufficiently intrusive verification to build confidence in compliance, and, on the other hand, protecting non-treaty-related trade secrets and national security information. Over the past four years, states-parties have increasingly shifted this delicate balance by giving precedence to protecting confidential information over transparency concerns, with the unfortunate result of eroding the intrusiveness of the CWC verification regime.

During inspections at industry sites, for example, states-parties have begun to adopt a number of practices that clearly diverge from the intent of the treaty negotiators. On the grounds of protecting proprietary or national security information, countries hosting inspections have sought to limit the access of OPCW inspectors to plant sites and facility records, preventing them from obtaining the data they need to accomplish the aims of their inspection mandate. Also, CWC members have approved procedures giving host governments the right to confiscate and retain any piece of recording equipment that host officials claim has not been satisfactorily cleared of data unrelated to treaty compliance.

Even more egregious, OPCW inspectors are currently required to allow host officials to copy all of the information in their notebooks, laptop computers, electronic cameras, and video recorders before they depart from an inspected industry site. This new policy clearly conflicts with provisions in the CWC guaranteeing the inviolability of inspection records so that the inspectors can perform their duties without undue interference from hostile government officials or plant managers. So far, the United States has been either unable or unwilling to block these negative developments.

Inspections at U.S. industrial plants that produce, process, or consume treaty-controlled chemicals provide another example of how CWC implementation has become less intrusive than the treaty negotiators intended. When hosting industry inspections, U.S. government officials have narrowly defined the perimeter of the plant site and restricted the access of OPCW inspectors to the point that they have been unable to verify the absence of prohibited chemicals. Although U.S. officials acknowledge the importance of this verification objective, they argue that inspectors cannot use it as justification to gain access to all parts of a facility or to visit undeclared chemical plants on the same plant site without specifying a particular "ambiguity," or compliance concern. If widely adopted by other countries, the restrictive practices endorsed by the United States would diminish confidence in the effectiveness of industry inspections.

The campaign to weaken the intrusiveness of the CWC verification regime also extends to "challenge inspections," which provide a safety net to detect, and thereby deter, the clandestine production of chemical weapons. Under the convention, a member state has the right to request the OPCW to conduct such an inspection of any site—declared or undeclared—on the territory of another state-party for which some evidence of noncompliance exists. The CWC stipulates that a state-party can request a challenge inspection at any time and that the inspection will proceed unless a three-quarters majority of the OPCW Executive Council votes within 12 hours to stop it on the grounds that it is frivolous, abusive, or beyond the scope of the convention.

Recently, however, China, Cuba, India, Iran, Pakistan, and Russia have argued that a state-party can request a challenge inspection only after all bilateral and multilateral consultative procedures for resolving compliance questions have been exhausted. Although it is true that the CWC provides for such consultative mechanisms, the treaty makes clear that these methods are alternatives to, and not prerequisites for, a challenge inspection. Reinterpreting the convention to curtail the right to launch a challenge inspection would seriously weaken a key element of the verification regime.

Despite the low probability that a challenge inspection would uncover "smoking gun" evidence of a
treaty violation, such as undeclared chemical munitions, using this measure when appropriate would help to deter would-be cheaters. During the first four years of implementation, however, not a single state-party has invoked the challenge inspection provisions of the CWC, even though suspicions have been raised that some member states are in substantive noncompliance with the convention.

The United States, for example, has asserted publicly that Iran continues to produce chemical weapons in violation of its treaty obligations. U.S. intelligence officials have testified before Congress that Tehran still possesses “several thousand metric tons of weaponized and bulk agent” including nerve, blister, choking, and blood agents, and has sought assistance from Russia, China, and other countries to become more self-sufficient in chemical weapons production. For reasons that remain unclear, however, the United States has never followed up these allegations by requesting a challenge inspection in Iran. Perhaps Washington is reluctant to disclose the sensitive intelligence information on which its assessment of Iranian noncompliance is based or fears a retaliatory Iranian challenge inspection on U.S. territory.

Whatever the reason for its inaction, if the United States continues to raise questions about CWC compliance without requesting a challenge inspection, this powerful tool will lose all credibility. The longer the challenge inspection mechanism remains unused, the more politically charged the process will become and the greater the burden of proof the requesting state will have to bear. Thus, if no challenge inspections are launched in the near future, there is a real risk that the states-parties could lose this critical instrument for promoting the goals of the CWC.

Conclusions and Recommendations

Taken as a whole, these implementation shortcomings pose a serious threat to the viability of the CWC and, by extension, to the security benefits that the convention could provide to the United States. Although the fact that a few countries have begun destroying their chemical weapons stocks and production facilities means that the United States is marginally safer than it was four years ago, the treaty has yet to live up to its promise, in large part because of a lack of U.S. leadership. The vast majority of the 143 states-parties lack any experience with arms control implementation, and most of them face no immediate threat of chemical attack. Because the United States is one of the countries at greatest risk from the spread of chemical arms, Washington’s rhetorical support for chemical disarmament and non-proliferation must be turned into effective action. Although the OPCW possesses the necessary tools to monitor and enforce compliance, the real question is whether the states-parties, in particular the United States, have the political will to implement the CWC in a way that strengthens non-proliferation norms and reduces the security threat posed by chemical weapons.

To take the lead in strengthening CWC implementation, the United States should take the following actions:

Address the financial crisis at the OPCW. The United States should help put the organization’s fiscal house in order by reimbursing in full the cost of verification activities conducted on its territory. (As of February 28, Washington owed nearly $1.7 million for these activities.) At the same time, Washington should urge the OPCW Executive Council to punish those member states that have failed to pay their assessments for the past two years by stripping them of their voting rights, as provided for by the convention.

Minimize the impact of unilateral exemptions in the U.S. implementing legislation. The United States should help to restore the integrity of the CWC’s verification regime by repealing or otherwise mitigating the three unilateral exemptions in the U.S. implementing legislation, which have seriously weakened the treaty. Although the Clinton administration was reluctant to attempt to modify legislation that it had accepted as part of a deal with Senate leaders to secure CWC ratification, the Bush administration starts with a clean slate and thus has more room to maneuver. Given the probable resistance to changes from conservative members of Congress, it is unlikely that the
administration could remove all three exemptions from the legislation. But it may be possible for
President Bush to pledge that he will not invoke the "national security waiver" during his time in
office. That step would enable Washington to launch a challenge inspection without risk that the
challenged country would invoke the same "right" to refuse an inspection on national security
grounds.

Restore funding for Russian chemical weapons destruction. To facilitate the construction and
operation of the Shchuch'ye nerve agent destruction plant, Washington should strive to restore the
financial support that the U.S. Congress eliminated for fiscal years 2000 and 2001. Congress' decision to eliminate all $125 million slated for the project was based largely on the premise that, in
the words of Senator Pat Roberts (R-KS), "Chemical weapons pose more of an environmental threat
to Russia than a security threat to the United States." In fact, Russian chemical munitions are in
good condition, portable, and could easily be stolen by terrorists. Although security measures at the
seven chemical weapons depots have been improved, only destroying the entire stockpile will
remove the threat.

Resolve conflicts with the OPCW over industry inspections. Sharp differences of interpretation
between the U.S. government (notably the Department of Commerce) and the OPCW over the extent
to which the CWC authorizes inspectors access to chemical industry plant sites have led to an
impasse. Although the inspected companies have generally been prepared to compromise with the
inspectors, U.S. government officials have dug in their heels and refused to budge. The OPCW has
retaliated by subjecting the inspected firms to multiple inspections at the same sites. Instead of
forcing industry to bear the brunt of this dispute, the U.S. government should seek to clarify this
issue within the policy-making forums of the OPCW.

Launch a challenge inspection within the next year. In order to strengthen the credibility of the CWC
verification regime, the United States should plan to launch a challenge inspection of a country
suspected of a substantive violation or assist a close ally with initiating such an inspection. To this
end, the U.S. intelligence community should build a compelling case for noncompliance and be
prepared to share the necessary supporting information with the OPCW. At the same time, the U.S.
government should prepare to host a challenge inspection that might be requested as a form of
retaliation by the challenged country.

During more than two decades of arduous negotiations at the UN Conference on Disarmament in
Geneva, the CWC's framers successfully designed a treaty that could eliminate chemical weapons
and give member states confidence that the threat of chemical warfare would gradually diminish and
finally disappear. Non-proliferation treaties are only effective, however, when given adequate
resources and political support by law-abiding states and when violators are punished. For this
reason, the CWC requires strong leadership if it is to be a useful instrument of non-proliferation that
significantly benefits U.S. security.

Over the past four years, Washington's general lack of interest and confidence in the treaty has
unfortunately created a vicious circle in which ineffective implementation has weakened the regime
further, making it even less capable of inspiring confidence. If this downward spiral is not reversed
soon, the CWC may not recover, and the United States will have lost a potentially valuable tool for
reducing the threat of chemical weapons.

NOTES

1. Statement by John A. Lauder to the Senate Committee on Foreign Relations, October 5, 2000;
statement by A. Norman Schindler to the Proliferation and Federal Services Subcommittee, Senate
Governmental Affairs Committee, September 21, 2000.
2. Some U.S.-funded design work has continued at Shchuch'ye with money from earlier
appropriations.

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