

The Chemical and Biological Weapons Conventions

Shmuel Limone

This essay analyzes the current status of the chemical and biological weapons conventions. The two conventions aim at the elimination of a whole category of weapons of mass destruction, but differ markedly in form, content, and efficacy.

The biological convention¹ is a very short document, containing fewer than 1400 words, some of which deal with procedural issues – how to complain about violations, how to withdraw from the convention, how to approve amendments, and the like. Although this is an international convention having 151 member states and another 16 signatories who have not ratified it, it is in fact a gentleman's agreement lacking any of the essential ingredients of a modern weapons control convention. It contains no reporting requirements as to past activities regarding biological weapons or even as to their destruction; it has no verification or enforcement mechanism, no requirement for domestic

legislation, and no provision for the establishment of a national authority. It has no related organizational structure and it sets no penalties for non-compliance. Astonishingly, the convention does not even include an explicit provision that prohibits the actual use of biological weapons, although the intent is implied in the document.

The biological convention was signed in 1972 during the Cold War, which suggests that it was made possible only because it did not jeopardize any vital interests of member states or provide for a detection of violations. At present experts and diplomats meet once a year in order to discuss various aspects of the convention, but it is no secret that these meetings have no real value.

In contrast, the chemical weapons convention is the product of an entirely different generation. If the biological convention was too simple, the chemical convention is too complex. It contains 54,286 words, nearly forty times more than the biological convention, and includes all that is lacking in the biological convention: an administration, a budget, detailed commitments, supervision, routine and spot inspections, a central labo-

ratory, procedures for every issue, an approved list of equipment, intricate bureaucracy, timetables, and penalties. This is not merely a convention, but a veritable international organization. With the recent accession of Libya, Chad, and Rwanda, member states now number 162.

The biological convention came into force in 1975, and the chemical convention in 1997. The attempt to strengthen the biological convention by formulating a compliance protocol, an effort that lasted seven long years, failed because of the opposition of the US. At the end of the negotiations the US claimed – and this remains its position today – that the protocol was too intrusive, thus encroaching on confidential business information of American pharmaceutical companies, while at the same time it was insufficiently intrusive to prevent violations. In essence, the US position reflected its conviction that the convention was basically unverifiable and its fear that the establishment of a verification apparatus was thus liable to produce an unjustified sense of security (known as a “false positive” in weapons control jargon) among members of the convention.

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ons conventions are two of twenty-five core treaties identified by the UN Secretary-General as reflecting the fundamental aims of the United Nations. The link between international terrorism and illegal trafficking in lethal chemicals was recognized in Resolution 1373 passed by the Security Council after the September 11 terrorist attacks. Nonetheless, the two conventions do not enjoy equal status; the steady expansion and routine implementation of the chemical convention contrasts sharply with the stagnation of its sister biological treaty. Therefore, the following essay will focus on the Chemical Weapons Convention (CWC).

Chemical Weapons Convention

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Production, as it is officially known, is a global convention for the dismantling of chemical weapons and the prevention of their proliferation. A Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (OPCW), based in The Hague, supervises the implementation of the convention. The organization has 470 employees, including about 200 inspectors and another 100 personnel, who process the reports and declarations of state parties. The organization's annual budget is approximately \$72 million.

April 2004 marked the seventh anniversary of the chemical convention. All countries possessing significant chemical industries are members

of the convention. Of the noteworthy countries missing from the list, those forming the red spots on the green map of member states issued by the OPCW, are Middle East states – Egypt, Syria, Lebanon, Iraq, Somalia, and Israel – as well as North Korea, small island states, and some African countries. Thus, this is a nearly universal convention whose provisions create a reality of an international practice, if not of customary international law.

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The Director-General of the OPCW, Rogelio Pfirter, an Argentinean of Swiss extraction, summarized the political significance of this reality at the eighth national conference of members of the convention held in May 2003: "Even in areas of tension States not Party should realize that the chemical weapons option is out of the question and will never be legitimized by the international community, even in the exercise of the right of self-defense. No one can expect a sympathetic understanding of an ambivalent attitude toward chemical weapons which have been stigmatized by the international community."

It is likely that this recognition, which likewise reflects pragmatic, rational considerations of the high costs involved in the possession of chemical weapons relative to their marginal benefit, explains not only why Libyan leader Qaddafi decided to abandon his chemical weapons program, but also why Saddam Hussein apparently did so before him. Despite suspicions that Iran is in breach of the convention, the convention's fundamental purpose and objective, preventing the possession and use of chemical weapons, still exists, perhaps because of the world's growing awareness of the danger of the acquisition by sub-national groups of chemical weapons.

Five sets of opposing interests came to the fore in the negotiations on the convention and subsequently on the formulation of its detailed procedures. These interests, at issue even today, provide a useful backdrop for an analysis of the current status of the convention. The matters addressed are: destruction of existing chemical weapons – obligations vs. reality; the conflict between the obligation of verification and the need to preserve confidentiality (including matters of national legislation); the conflict between the need to prevent proliferation and the principle of free trade; the required balance, incorporated in the convention, between members' demands for technological assistance and their obligation to prevent illicit traffic of dangerous chemicals and know-how; and the manner of running the convention vs. the expectations of its state parties.

Destruction of chemical weapons and the facilities for their production is the supreme aim of the convention. Seven member states have declared that they possess chemical weapons: Russia (totaling more than 42,000 tons); the USA (30,000 tons); India; an unnamed former Yugoslavian country; Albania, which reported a small fifteen ton stockpile of chemical weapons, and Libya. Unofficial information indicates that South Korea too has declared the possession of chemical weapons.

Large quantities of old, abandoned chemical weapons still exist in China. (The Chinese reported that in 2003 one person was killed and dozens were injured from inhalation of poisonous chemicals that leaked from an old World War II Japanese shell.) Other countries such as Iran, France, and Britain have declared weapons programs that were discontinued. Libya declared the production and storage of over twenty tons of mustard gas. It is likely that a recognized Iraqi government will also wish to join the convention, as did the government of Afghanistan.

The convention states that in the seventh year after its establishment, i.e., on April 29 of this year, the chemical weapons possessor states must have destroyed 45% of their stocks. This target was not achieved and the prevailing view is that chemical weapons throughout the world will therefore not be eliminated within the period of ten years set by the convention. The US is executing a systematic program of destruction (at a cost, estimated by the US General Account-

ing Office, of \$24 billion). It announced that it would not be able to meet the target date of April 2007 for completion of its destruction program and requested a short extension. There are two huge destruction facilities in the US, the construction cost of each reaching \$500 million, as well as three other facilities in an advanced stage of construction. The delay stems from the fact that the US began with the difficult destruction of its more dangerous and unstable chemical weapons and from difficulties associated with the need to meet extremely stringent environmental standards.

Russia poses the most complex practical problem of the convention. Russia's first modern destruction facility was inaugurated in Gorny only last year, and even it would not have been completed had European countries and the US not assisted in its construction. By April 2004 Russia was supposed to have completed the destruction of close to 20,000 tons of chemical agents, but as of October 2003 it had destroyed only 600 tons in bulk (namely, not in a weaponized) form. It is likely that even after an extension of five years, Russia will be unable to meet the new deadline (2012) for the destruction of all the chemical weapons in its possession. Some analysts regret that the Russians never entertained destroying their entire stock of chemical weapons in a nuclear explosion (which could then have been described as a true peaceful atomic blast) in their old Arctic testing site in Novaya Zemlya. The Russians have estimated that the program for destroying all their chemi-

cal weapons will exceed \$10 billion. The cost of the Japanese program for the destruction of the weapons abandoned in China is about a billion dollars.

These enormous costs are presented here to illustrate the old barb, heard in the Soviet Union and later in Russia, that after defeating it the armament race, the West was intent on doing so again in the disarmament race. These high costs are expected to retard the rate of destruction in the coming years. One way or another, up to now only about 12% of chemical weapons stocks declared by the various countries have been destroyed. Nevertheless, there is a universal consensus that this state of affairs does not reflect an attempt to preserve a chemical option, but rather objective budgetary and technical difficulties.

Verification obligations and the needs of confidentiality have been one of the greatest sources of contention in the negotiations on the convention and its procedures. The expectations of maximum transparency, expressed by the British-articulated demand for inspection "anytime, anyplace, with no right of refusal," was opposed by other countries such as China, Iran, and even France that wished to block any possibility of disclosure of other national assets. Inspections conducted until now have demonstrated that initial apprehensions that the convention would be used to reveal non-related national secrets were highly exaggerated. Issues that were hotly debated during the formulation of the inspection procedures virtually disappeared

during the practical implementation of the convention. Conversely, some countries such as the US that advocated considerable openness during the negotiations have displayed much greater caution when it came to the inspection of their own facilities.

As of January 2004 more than 1600 routine inspections have been held in fifty-eight countries, 950 in facilities related to the production, storage, or destruction of chemical weapons, and the rest in factories producing chemicals prohibited or restricted by the convention. The inspection equipment, whose approval stretched over endless discussions in the preparatory committee, has been utilized almost without problems. New tools have replaced old ones and modern equipment has entered into service. Procedures governing reporting and confidentiality have become routine and inspectors have gained experience. Bitter disputes on these matters, which once threatened the very functioning of the convention, have all but disappeared. However, four clusters of issues still merit special attention:

■ *Challenge inspection*, which entitles a state to demand a surprise inspection with minimal advance warning – perhaps the most notable invention of the CWC – has never been put into practice. Despite frequent references to the need to make use of the procedure, despite the European Union's declarations that it must not remain a dead letter, and despite the United States' open accusation that Iran had violated the convention, no challenge inspection has ever been launched. Political problems, coupled

with the failure to find weapons of mass destruction in Iraq, deter countries from resorting to this inspection instrument. In reality challenge inspection is still regarded, at least by the nonaligned countries, as a punitive rather than an investigative measure. Therefore, the defensive provisions devised in the convention for managed access and for deterring abuse of challenge inspections have not yet been employed. The unease

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associated with the possibility of removing suspected samples from an inspected country – the sole reservation that President Clinton added to the US instrument of ratification of the CWC – was never put to a test. The probability of putting the challenge inspection into practice thus remains low. In point of fact, political problems that deter a potential challenger are still greater than those likely to deter a potential violator.

■ *National legislation*. The convention mandates that its parties enact specific laws in order to implement its provisions. Nevertheless, only 40% of member states have done so thus far.

■ *Reports and declarations*. Most of the countries that do not possess chemical weapons or significant chemical industries do not report the quantities of chemicals that they have produced or exported. Though all are required, only a third do so regularly. There are also discrepancies between the data regarding the export of restricted chemicals and the data of the imports of the very same chemicals. However, it is widely accepted that these technical failures do not impinge on the overall positive performance of the convention.

■ *Trends in inspection*. One of the developments that was not foreseen when the convention came into force was the increasing importance attached to the need for inspection of facilities manufacturing primary chemicals, otherwise known as PSF (potassium, sulfur, fluoride), which are related structurally to the first list (that defines the chemical warfare agents themselves). These chemicals belong to the category of discrete organic chemicals (or, as experts call it, the "fourth schedule" of chemicals requiring reporting and inspection). Many Western countries, as well as the Technical Secretariat of the OPCW, today believe that changes in equipment and processes of production may permit simple conversion of the facilities manufacturing these chemicals to facilities capable of producing prohibited chemicals. It is these factories, rather than those used in past production of chemical warfare agents, that may more readily be used for illicit purposes. The current plans, therefore, envisage an increase the

number of inspections in hundreds of civilian plants producing these primary chemical substances, even at the expense of inspections in factories associated with "hard core" scheduled chemicals.

Prevention of proliferation vs. free trade has been an additional source of conflict. The nonaligned countries have claimed for many years that the major, if not the sole, reason for their accession to the convention was the incentive promised them regarding their right to gain full access to all chemicals through free trade. In addition, other states, headed by Iran, also demand that export of certain chemicals be denied to states not party to the convention. Seven years after the convention came into force, no substantive change has registered in the following important fields:

- The Western countries have not halted, and do not intend to halt, the activities of the Australian Group, which restricts the sale of chemicals and equipment permitted by the convention, even to state parties.

- The state parties have not prohibited the transfer of chemicals appearing in "Schedule Three" of the convention (dual purpose chemicals used frequently for civilian purposes but also in the manufacture of chemical weapons), even though they could have done so already in May 2002. The matter no longer receives support from important member countries of the convention.

Technical cooperation. Here too the Western countries have overcome the

nonaligned countries' expectations to receive various kinds of technical assistance by virtue of their membership in the convention. The rich members, which underwrite most of the organization's budget, have been opposed to financing activities (such as the encouragement of trade or technological cooperation) they regard as secondary to the salient purpose of the convention, namely disarmament and control of proliferation. The budget

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allotted to international cooperation in the convention is thus minimal. It provides a striking example of the fact that the chemical convention organization is dominated by the interests of the developed world. The convention was and remains first and foremost an instrument of the large "chemical countries."

The independence of the administration vs. the member countries would not have been mentioned here were it not for the fact that the chemical convention is the sole international organization established after the Second World War that saw its Secretary-

General dismissed by its member states. The dismissal reflected the tension existing in many international organizations between their civil servants and their state parties, which in effect constitute the real source of authority in the organization. Such tension has been particularly apparent in the OPCW. Members that demanded to be actively involved in the management of the organization were rebuffed by the Director-General who opposed what he labeled as "micro-management" of the organization's day to day life. In the OPCW, matters came to a head when José Bustani, the Brazilian Director General, was fired from his post at the initiative of the US in a 2002 special session of the conference of state parties. According to the Americans, the reason for the dismissal was the arrogant and supercilious behavior of the director, who defied the directives of his board of governors. The director claimed that he was acting in an objective and courageous manner in the face of arbitrary attempts to dictate policy by the American superpower.

The leadership crisis that ensued prior to and following Bustani's dismissal ended with the appointment of a new director-general, the aforementioned diplomat from Argentina, Rogelio Pfrter, who has seemed to neutralize the militant approach, the support for nonaligned countries, and what was regarded by some senior officials in the OPCW as the capricious, Napoleonic management style of his predecessor. However, others in the organization believe that the calmer atmosphere introduced by

Pfirter has dulled its spirit and made its agenda too subservient to the interests of the US. The dismissed Director-General's revenge has taken the form of a ruling issued by the International Labor Organization in his favor on the manner of dismissal. The OPCW, whose budget is largely financed by the US, was ordered to pay Bustani the unprecedented amount of 550,000 euros in compensation for being unduly dismissed in violation of the terms of his contract with the organization.

Israel and the Chemical Convention: A View from The Hague

Israel was actively involved in the negotiations that preceded the ratification of the convention and acquired considerable recognition for its contribution. Its representatives participated in several major working groups and Israel was one of the few countries whose national laboratory successfully passed the tough accreditation examinations for recognition as an approved laboratory. Israel is now one of the twenty-one countries that have signed but not joined the convention. It continues to attend the annual conferences, and it continues to attract steady interest from foreign representatives in The Hague.

Israel's official position regarding the possibility of joining the chemical convention has not changed since it was presented by then Foreign Minister Shimon Peres at the signing of the convention ceremony in 1993, and

by the Israeli ambassador to Holland in a speech delivered at the first session of the conference of state parties in 1997. Israel has maintained that the security situation in the region prevents it from joining the convention. At the same time, Israel has also declared that "favorable changes to the security climate in the Middle East would positively influence its stand on ratification of the convention." Hence its affirmation that "after all countries in the region join the convention it will strive to ratify it, subject to regional concerns, legal constraints, and its legislative timetable."

In the political tradition that has emerged in debates in The Hague, member states emphasize the importance of all countries joining the chemical convention. However, Israel has rarely been mentioned specifically by name, nor has it been accused of engaging in activities in contravention of the convention's intent and purpose. Ironically, in the organization dedicated to the destruction of chemical weapons, Islamic states have preferred to demand that Israel join the Nuclear Non-Proliferation Treaty (NPT). Although Israel does not belong in the category of "states of concern" often referred to by Western countries in the annual CWC conferences, it can be expected that as more countries, particularly from the Middle East, join the convention, demands of Israel to do so as well will increase.

Conclusion

The chemical weapons convention is a complex convention, the last of its kind to be formulated and ratified in the world. Implementation of the convention proceeds relatively smoothly, although achieving its objectives, as in the case with every international organization of its kind, is dependent on the good will, transparency, and cooperation that member states are prepared to offer. The underlying principle of the chemical convention – namely, that the possession and particularly the use of chemical weapons is becoming a widespread international taboo – is gaining acceptance as a universal norm. Furthermore, the different views among the convention's members do not detract from the routine work of inspection and reporting as stipulated in the CWC. Its execution so far has thus justified the opinion voiced by Russia that "the convention is functioning as an efficient mechanism for mutual reduction of threats." As such, in the words of the Director-General of the OPCW, the convention indeed represents "a success story."

Note

- 1 "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction"; known as the Biological and Toxin Weapons Convention (BTWC).