

THE CBW CONVENTIONS BULLETIN

News, Background and Comment on Chemical and Biological Weapons Issues

ISSUE NO. 79

JUNE 2008

Quarterly Journal of the Harvard Sussex Program on CBW Armament and Arms Limitation

THE SECOND CHEMICAL WEAPONS CONVENTION REVIEW CONFERENCE

Richard Guthrie
CBW Events

The Second five-yearly Review Conference for the 1993 *Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on Their Destruction*, commonly known as the Chemical Weapons Convention or CWC, was held in The Hague during 7 to 18 April 2008.¹ The CWC is the centre-piece of international efforts to prevent the hostile uses of toxic chemicals. The Second Review Conference had a significantly different atmosphere to that of the First Review Conference held in 2003.²

The Conference was a success in that it concluded a final report, but it struggled to complete this within the available time – and through a procedure that, among some, caused significant bad feeling. The length of the final report, including the 149-paragraph final declaration, means it cannot be simply summarized here. This article looks at the preparations for the Review Conference, the process that the Conference used to deal with these to reach a final declaration, the key issues that were raised, and reaches some conclusions as to what the result of the Review Conference means for the future. A table listing actions requested or recommended by the Review Conference follows this article.

The Second Review Conference was held in the World Forum Convention Centre (WFCC) – next door to the building housing the CWC's institution, the Organization for the Prohibition of Chemical Weapons (OPCW) – although many of the informal consultations were held within the OPCW building itself.

Phases of the Review Conference

Substantial preparations had been made for the Review Conference with an Open-Ended Working Group (OEWG), which first met in July 2006, subsuming the traditional 'Preparatory Committee' process that occurs in the equivalent treaties dealing with biological and nuclear matters. The OEWG, Chaired by Ambassador Lyn Parker (UK), met 23 times, primarily to conduct consultations between states parties, and in addition received input from industry and non-governmental organizations (NGOs). It prepared draft language that many hoped would form the starting point for a final declaration from the Conference, although a significant number of outstanding issues remained. This draft language became known as the 'Parker text' or 'informal text'.³

As part of the review process, the OPCW Director-General published a 108-page background document 'Review of the Operation of the Chemical Weapons Convention since the First Review Conference',⁴ which provided a valuable overview of many aspects of the Convention. Additional input into the review came from the proceedings of two dialogue events that took place in The Hague within the context of the CWC Tenth Anniversary celebrations: the OPCW Academic Forum (18-19 September 2007) and the OPCW Industry and Protection Forum (1-2 November 2007).

At the opening of the formal meetings of the Review Conference itself,⁵ Ambassador Waleed El Khereiiji (Saudi Arabia) was appointed as Chair of the Review Conference and Ambassador Benchaâ Dani (Algeria) was appointed as Chair of the Committee of the Whole (CoW) – the committee that does a considerable amount of the work in compiling the draft final declaration.

The Conference held two days worth of 'General Debate' – the chance for states parties to make statements on the public record. This was followed by the 'Open Forum' – the chance for states parties to hear directly from non-governmental and industry representatives.⁶ The Review Conference then met behind closed doors, principally as the CoW and then in what became known as the 'other meeting', in attempts to reach consensus on its report.

The Conference itself started on a positive note. Some had anticipated a clash between the US and Iran in the General Debate, however neither made direct accusations against each other. The statements by both were softer than many had expected. While numerous differences remain between the two countries, the language used on this occasion had some of the rougher edges taken off it. When

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significant disputes have happened at previous meetings related to the CWC – and of those related to the Biological Weapons Convention – the two countries have often been key players on each side of the disagreement.

Efforts to reach agreement

When the Review Conference got down to the business of examining the CWC in the CoW (on the morning of its fourth day) there did not seem to be a clear agreement on what would be the best procedure. The ‘Parker text’ was taken as the starting point for discussion especially as a further iteration of this text was circulated by Cuba on behalf of ‘the NAM CWC States Parties and China’ with suggested deletions and insertions of new language.⁷ The committee met formally for only a short while before breaking into ‘informal consultations’ in a side room – considered a more flexible format than the rigidity of the main conference hall – to examine the Parker text on a paragraph-by-paragraph basis. As the consultations broke for lunch, after some two hours of discussion, paragraph 1 (out of 142 in this draft) had not yet been fully examined. After lunch the informal consultations moved to the Ieper Room in the OPCW Building where progress was made to paragraph 4. Each of these paragraphs contained many instances of bracketed text – a feature missing from the Parker text.⁸

The paragraph-by-paragraph ‘first reading’ was not completed until the second Monday evening. Despite the time taken there was a strong feeling, especially amongst NAM group states, that this effort was valuable. However, there was again a question mark on how to proceed. The following afternoon two ‘facilitators’ were appointed on the subjects of ‘general obligations’ and ‘destruction’ to try to find consensus language in these areas. The day after, four more were appointed.⁹ Each of the facilitated groups produced a revised text, although there was no time to produce a consolidated draft bringing them all together before the consultations finished just before 9pm on the evening of the second Wednesday. Considerable numbers of brackets remained in each of these revised texts.

The ‘other meeting’ and adoption of the final report

On the morning of the second Thursday, a selection of roughly 20 states parties were invited to meet separately from the CoW to try to reach agreement on some of the areas that remained in contention.¹⁰ This grouping initially met in the OPCW building during the morning but later moved to one of the side rooms at the WFCC. This rapidly became known within the OPCW building as the ‘other meeting’ although some called it the ‘expanded general committee’. The decision to hold the ‘other meeting’ had been taken in the General Committee meeting that morning.¹¹ At the same meeting, Ambassador Dani offered his resignation as chair of the CoW, but this was not accepted. The CoW continued to meet on the last two days, creating much ill will amongst delegations excluded from the ‘other meeting’ who felt all they were doing was marking time.

The ‘other meeting’ met through the day on Thursday, taking a short break around 8pm, then met in continuous session until rising at 4.10am on Friday, resuming at 9am. It then continued until 2am on Saturday morning,¹² at which

point it was announced that a text with one unresolved paragraph had been produced. It then took another two hours before a printed version of this text was available to delegates. The paragraph that was the final sticking point was the one that referred to UN Security Council resolution 1540. In the end the text simply referred to ‘the resolutions of the United Nations on combating terrorism’. After all the delegations present had a chance to quickly read the draft declaration but without any chance of amendment, the Conference adopted it, along with the rest of the final report, just after 6am.¹³ At least one State Party has publicly declared this procedure should not set a precedent.¹⁴

Issues within the Review Conference

Chemical weapons destruction

The states that declared the possession of chemical weapons at the time the CWC entered into force for them are Albania, India, Libya, Russia, the USA and ‘another state party’, not identified at its request but generally understood to be South Korea. Under the Convention, all chemical weapons should be destroyed within ten years after its entry into force, i.e., by 29 April 2007. The CWC allows this deadline to be extended by five years, but no further. Many delegations felt that it is premature to come to judgement on whether the possessor states would meet the 2012 deadline. Others believed that unless maximum pressure is placed as soon as possible on the possessor states – particularly the USA and Russia, the two with the largest holdings – there is less chance this deadline will be reached as the required resources will not be allocated otherwise. Privately most delegates assumed the deadlines were not likely to be met. Albania is the only declared possessor to have completed its destruction. The language in the final declaration on this subject was relatively weak.

Industry verification

Article VI of the Convention deals with inspections of industrial facilities – for both those producing chemicals listed on the Convention’s schedules and those producing non-scheduled chemicals. The latter of these, known as ‘Other Chemical Production Facilities’ (OCPFs) are currently the subject of particular attention. While the number of facilities handling scheduled chemicals is in the hundreds, the number of declared OCPFs is now over 4500 worldwide and it has been suggested that the geographical spread of OCPF inspections needs revision. For example, the Slovenia/EU statement said ‘the number of OCPF inspections should be increased where necessary’ and ‘verification resources should be used in accordance with the risk posed to the Convention’. The final declaration ‘confirmed that any changes in the frequency of OCPF inspections, if required, should take into account any refinements to the OCPF inspection regime or improvements in site selection methodology, and should be based on a thorough discussion and a decision of the policy-making organs’.

Riot-control agents and incapacitants

How the Convention relates to riot-control agents, has remained controversial since the negotiation of the CWC.¹⁵ Attempts by Switzerland, amongst others, to raise such subjects during the First Review Conference were effectively blocked by the USA and others. This time the issue was raised overtly in some statements, most simply noting the

prohibition on riot control agents as a method of warfare. Switzerland stated it 'fears that the uncertainty concerning the status of incapacitating agents risks to undermine the Convention. A debate on this issue in the framework of the OPCW should no longer be postponed'. The Swiss also put forward a formal national paper on the subject, the first time this has been done at a CWC Review Conference.¹⁶ Referring specifically to riot-control agents, Iran deplored 'the recent use of such non-lethal weapons as a means of warfare' without giving details of what it was alleging.

However, the final report makes no mention of incapacitants, even though draft language is said to have been prepared. It is also notable that Switzerland was not one of the invitees for the 'other meeting'.

Universality

Few specifics were offered on how to encourage 'difficult cases' to join the Convention. A few statements made reference to encouraging Israel to join the nuclear Non-Proliferation Treaty (NPT) as a step to encouraging regional uptake of the CWC in the Middle East. When the universality Action Plan was adopted in 2003, there were 40 countries identified as not party to the Convention; this is now down to 12, some of which are in the process of ratifying or acceding. For the first time, the states non-parties were named in the final document – Angola, the Bahamas, the Democratic People's Republic of Korea, the Dominican Republic, Egypt, Guinea-Bissau, Iraq, Israel, Lebanon, Myanmar, Somalia, and the Syrian Arab Republic.¹⁷ Guinea-Bissau deposited its instrument of ratification to the CWC on 20 May, shortly after the Review Conference.

National implementation

Some states made remarks about the Action Plan on National Implementation Measures and the improvements that had been made under it. Some made reference to specific measures they had introduced in their own countries. A few states specifically mentioned the benefits of incorporating the 'General Purpose Criterion' (GPC) into national implementing legislation. The GPC was nearly edited out of the final declaration, however the text in paragraph 22 (paragraph 9.22 in the final report) reads: 'The Second Review Conference considered the impact of developments in science and technology on the Convention's prohibitions. The definitions contained in Article II, in particular, of the terms "chemical weapons", "chemical weapons production facility", were found to adequately cover these developments and to provide for the application of the Convention's prohibitions to any toxic chemical, except where such a chemical is intended for purposes not prohibited by the Convention, and as long as the types and quantities involved are consistent with such purposes'.

Non-Proliferation

Some states parties wanted to see more emphasis on destruction issues over 'non-proliferation' in the period before destruction is complete. However, the NAM mark-up of the informal text struck out every reference to 'non-proliferation', seemingly at the suggestion of Iran. Other delegations noted that there is a significant difference between de-emphasising the concept and its total deletion from the text. Two references to the term remained in the final declaration.

Economic development

As with the parallel agreements on nuclear and biological matters, the balance between the provisions restricting transfers of materials and technology that might assist hostile uses and the provisions promoting peaceful uses was a source of controversy.

Threats from terrorism

The threat posed by terrorists or other non-state actors gaining access to toxic materials was raised by many delegations. While the CWC was widely recognised as not being an anti-terrorism treaty, the contribution to reducing this threat through effective controls on relevant materials and technologies, both nationally and internationally, was also widely recognised. Capacity building through the CWC was seen as valuable by many delegations.

Reflections

In general terms, the five-yearly Review Conferences of the other major arms control treaties are the key political decision-making bodies as other meetings of the states parties do not have the power to take substantive decisions. The situation is different with the CWC as most of its key decisions, such as the budget, are taken at the regular annual session of the Conference of the States Parties (CSP). The Review Conference, while technically a special session of the CSP, takes no budgetary decisions, although a decision in the final document could have budgetary influence. There were moments during the Second Review Conference in which issues raised might have been better handled by a regular CSP, or even by the Executive Council, leaving the Review Conference to focus on strategic issues that fundamentally affect the future of the regime to control chemical weapons.

Measuring 'success' or 'failure'

Before the Sixth Review Conference of the Biological Weapons Convention (BWC) held at the end of 2006 there were a number of academic/NGO articles written about what would constitute a 'success' or a 'failure' of that Review Conference. This was prompted in part by the failure and suspension of the BWC Review Conference in 2001. Very little, however, was written about what might constitute success or failure for the CWC equivalent. Perhaps this reflected an expectation that the 2008 CWC Review Conference would be an uncontroversial success.

With many of the subjects discussed at the CWC Review Conference being controversial, it was a measure of success that a final declaration was agreed.

If the Review Conference had not agreed a final document, what would the consequences have been? The OPCW would still exist and its activities would continue. If, however, the only document that might be achievable was one that was much weaker than that coming out of the First CWC Review Conference, would this be better or worse than having no document at all?

It could be argued that, in the 12 months before the Review Conference, the CWC and the various contexts it operates within were thoroughly examined. Events such as the Academic Forum and the Industry & Protection Forum allowed for the frank exchange of views about how the Convention interacts with the real world. The OEWG discussed all of the key areas

of the Convention's work. The Director-General's review document (see note 4) was a wide-ranging examination of substantive issues. The lack of a final declaration would not, therefore, have meant lack of review. The lack of a final declaration would, nonetheless, have been seen as a political failure. It would have been taken as a sign of lack of political commitment at a time when more progress around the world is both desired and needed on subjects such as universality and national implementation.

The changing nature of groupings in the CWC

Much of the work of Review Conferences is done through regional groups.¹⁸ The CWC has five such groups for which the titles are given within the Convention: Africa; Asia; Eastern Europe; Latin America and the Caribbean (GRULAC); and Western European and Other States (WEOG), although the CWC itself does not define which states fall within which group.¹⁹ In both the First and the Second Review Conference the only CWC regional group to have made a collective statement was the African group.

It is clear that a number of states find it more productive to carry out policy coordination through NAM arrangements rather than through the regional structures of the CWC. This is mirrored by continuing activity in the WEOG. The European Union is also emerging as a more significant collective entity with most of its members in the WEOG, but with some (including Slovenia, the then holder of the EU Presidency) outside. With only two effective operational groupings in the Conference, any issues that NAM and WEOG members disagreed upon became polarized relatively quickly

Conclusions

The Review Conference succeeded in reviewing the Convention and concluding a final declaration, but it did so with a struggle. In the aftermath of the event, it is worth asking how could a Conference with so much preparation end up in such a situation? Answering this will be vital to prevent a repeat of what happened this time. Some delegates, from the NAM group in particular, suggested that the text that was presented at the start of the Review Conference emerged from a process in which they did not have full participation. Delegates from Western states held the opposite perspective, believing that NAM views expressed in the preparatory process were fairly reflected in the Parker text. This disparity in perception was a key contributor to the divide between states parties in the early stages of the Conference. The use of small groups to hammer out agreed text in areas of contention is a tactic used in many negotiating situations. However, this is normally done on discreet subjects with only those states with particular interest in each subject participating and usually only during the penultimate evening of the meeting. The 'other meeting' was different to this – the invited states debated all of the subject areas in the final declaration for some 30 hours – leaving the states not invited to feel left out of the process. While there was also a small group of states that met privately to help finalize the declaration of the First Review Conference, this did not cover so much of the text.

When mention was made of the difficulties of coming to agreements on elements of text, the name of the delegation that came up more often than any other was that of Iran.

However, the activities of this delegation were not the only factors in making this Review Conference the way it was. This Conference was more politicized than earlier meetings, which found pragmatic solutions to real problems. Perhaps this comes from realisation that the destruction period is coming to an end – although not rapidly enough for some – and that the OPCW will be inevitably changed because of this.

References and Notes

1. The OPCW has a web page dedicated to the Second Review Conference which can be found at <http://www.opcw.org/rc2/>. An NGO resources page can be found at <http://cwc2008.org/>. The author's daily reports from the Review Conference can be found at <http://www.cbw-events.org.uk/cwc-rep.html>. An additional blog on relevant issues can be found at <http://fas.org/blog/cw/>.
2. A report of the First Review Conference appears in *The CBW Conventions Bulletin*, 60 (June 2003), pp 1-5.
3. The Parker text was circulated to states parties as OPCW document RC-2/CRP.1, dated 31 March 2008. This is not considered to be a public document and so is not available on the OPCW website.
4. The Director-General's review was circulated as document RC-2/S/1, 31 March 2008.
5. The Review Conference was preceded by a legally separate meeting, meaning that it did not start until Monday afternoon. Each CWC Review Conference is legally a 'special session' of the Conference of the States Parties (CSP). In order to ensure fair allocation for officers of sessions of the CSP, these officers – such as Chairman, Vice-Chairmen, etc. – are taken from the five regional groups in strict rotation. CWC Article VIII, paragraph 15 requires 'At the beginning of each regular session, [the CSP] shall elect its Chairman and such other officers as may be required. They shall hold office until a new Chairman and other officers are elected at the next regular session'. Thus, Ambassador Noureddine Djoudi (Algeria), having been appointed Chairman of the Seventh Session of the CSP held at the end of 2002, was Chairman of the 2003 Review Conference. Once the pattern of annual regular sessions of the CSP was established, rotating CSP chairmanship between five regional groups would have led to successive five-yearly Review Conferences being chaired by members of the same regional group. This would have breached the spirit of 'equitable geographical distribution'. Amending the rules of procedure to make the rotation of appointments of officers of Review Conferences ('Special Review Sessions' in the words of the rules) distinct from rotations for the regular sessions of the CSP resolves this difficulty. This was done in the separate session held on Monday morning.
6. On Wednesday afternoon the Review Conference was suspended to allow the Open Forum to take place in the Ieper Room of the OPCW building. Three themes were followed – 'Creating a more secure world through the Chemical Weapons Convention', 'Peaceful chemistry' and 'The impact of science and technology on the CWC verification regime'. The presentations are available via the NGO resources website (see note 2). The Open Forum was a chance for NGOs to address delegates in somewhat the same manner as happens in the NGO side events during the BWC meetings in Geneva. Indeed, the Open Forum had more attendees than is usually possible in the Geneva lunchtime meetings. An NGO lunch with the Director-General provided a useful opportunity for interaction of a sort

- that is available in Geneva through the NGO dinners with the Chairman/President; however, there is always the challenge that this sort of interaction is most productive when there is a relatively small number of participants. Nevertheless, there is still much that could be done to make the CWC/OPCW more 'NGO-friendly'.
7. The NAM/China mark-up of the Parker text was circulated to states parties as OPCW document RC-2/CRP.2, dated 8 April 2008. This is not considered to be a public document and so is not available on the OPCW website. Owing to the short time that was available to prepare this mark-up, it was not possible to make it a consensus text of the NAM member states as opposed to a compilation of proposed amendments.
 8. A traditional method of international negotiation is to put text for which there is no agreement between square brackets and there can sometimes be multiple versions of texts in brackets. A difficulty can be that, once there is one pair of brackets in a text, they can proliferate quickly.
 9. The full list of facilitators was: General obligations, Amb. Maarten Lak (Netherlands); Destruction, Amb. Jorge Lomónaco Tonda (Mexico); Articles X and XI, Amb. Luiz Filipe de Macedo Soares (Brazil); Article VI, Amb. Abu Algasim Idris (Sudan); Functioning of the organisation, Mr Martin Strub (Switzerland); and National implementation, Amb. Werner Burkart (Germany).
 10. The known 'invitees' were: Brazil, Canada, China, Cuba, Czech Republic, France, Germany, India, Iran, Japan, Mexico, Netherlands, Pakistan, Russia, Slovenia (EU Presidency), South Africa, Sudan, UK and USA. The meeting was chaired by Saudi Arabia as it held the chair of the Review Conference. Algeria, as it held the chair of the Committee of the Whole, also participated (although Ambassador Dani stayed in the meetings of the CoW), as did the OPCW Director-General.
 11. The General Committee is the body that takes administrative decisions for the Conference.
 12. A brief plenary session just before midnight on Friday formally 'stopped the clock' so that the meeting would still officially finish that day. The times given here are local times rather than official Conference times.
 13. *Report of the Second Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (Second Review Conference) 7–18 April 2008*, OPCW document RC-2/4, dated 18 April 2008. The final declaration is the section under agenda item nine.
 14. Philippines, *Statement by the Republic of the Philippines at the Second Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (Second Review Conference)*, OPCW document RC-2/NAT.21, dated 18 April 2008.
 15. Riot-control agents are a subset of what were called "incapacitating agents" during the negotiation of the CWC: see *Health Aspects of Chemical and Biological Weapons: Report of a WHO Group of Consultants*, Geneva: WHO, 1970, p.12, and *Public Health Response to Biological and Chemical Weapons: WHO Guidance*, Geneva: WHO, 2004, pp.143-4 and 180-83. The key difference between incapacitants and riot-control agents is that RCAs cause effects that encourage those exposed to try to move away from the source while incapacitants can so disable those exposed that they are unable to remove themselves from the source, leading to uncontrolled doses of the agent being received with possible unintended consequences.
 16. Switzerland, *Riot Control and Incapacitating Agents under the Chemical Weapons Convention*, OPCW document RC-2/NAT.12, dated 9 April 2008.
 17. The list is the non parties that are also members of the United Nations.
 18. A number of international treaties have their own arrangements for regional groups, through which many of the administrative arrangements of meetings are carried out. For example, in the cases of the 1972 BWC and the 1968 nuclear Non-Proliferation Treaty (NPT) the regional groupings are: Western European and Other States (WEOG); Eastern European States; and the Non-Aligned (NAM). The regional groups for the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) are: Africa; Eastern Europe; Latin America and the Caribbean; the Middle East and South Asia; South-East Asia, the Pacific and the Far East; and North America and Western Europe. In most cases, regional groupings are primarily constituted to assist in assigning rotations of official positions and to separate voting for regional representatives on committees, etc, rather than as forums for aggregating views on substantive matters.
 19. The titles of these groups are given in Article VIII, paragraph 23 in order to ensure 'equitable geographical distribution' for membership of the OPCW Executive Council. These regional groups are then used for similar purposes in other aspects of CWC implementation. The CWC was concluded in the immediate post-Cold War era when there was a general perception that the eastern bloc, western bloc and non-aligned groupings traditionally used in arms control agreements were going to be a thing of the past.

This article draws on the author's daily reports from the Review Conference that were made possible with financial support from the Ploughshares Fund www.ploughshares.org. Copies of the daily reports are available on the CBW Events website at www.cbw-events.org.uk/cwc-rep.html and cwc2008.org.
