

**Tackling ambiguities:
lessons for the Review
Conference from the Chemical
Weapons Convention
negotiations**

Richard Guthrie
<http://www.cbw-events.org.uk>

Be thankful for the complications that come
with your work ...

... otherwise someone with half your ability
would be doing your job for half the money

Many challenges

Some CWC terms

- 'law enforcement'
- 'as a method of warfare'
- 'domestic riot control'

- So how did these ambiguous terms end up
in the Convention?
- Was this poor drafting or clever drafting?

Reaching consensus

- Consensus for a treaty has to be for the
complete text
- Cannot be reliant on majority vote
- 6 methods for achieving consensus, only 5
useful for a treaty
- 'Some say this, some say that' unsuitable

1. Persuasion

- Convincing others of the correctness of a
position – rational argument

- *Note:* can include deception and inclusion
of inaccurate information!

2. Bargaining

- If you do this, we'll do that
- Can include elements outside of the policy area under discussion
- *Note:* can also include threats/coercion!

3. Deletion

- If you can't agree to a section, delete it!
- Can require an assertive chair

4. Deferral

- Best used for technical issues – 'defer to implementation'
- Often used to deal with subjects for which no consensus is yet reached, but for which there are no fundamental differences

5. Ambiguity

- Creation of text that means different things to different people
- Each perspective can return home claiming they got what they wanted

"When I use a word", Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean, neither more nor less".

- Lewis Carroll, *Through the Looking Glass*, 1872

Could the highlighted issues have been resolved by ...

- persuasion?
- bargaining?
- deletion?
- deferral?

so all that was left was:

- ambiguity
- = clever, not clumsy, negotiation

CWC timeline

- After decades of negotiation, there was only a small window of opportunity to conclude a convention
- Not just question of momentum – how long would key bilateral relations be friendly in this area? [NB possessor pays!]
- Sense that if no treaty text by end of 1992 then no treaty at all.

- Without inclusion of the highlighted issues there was no possibility of agreement of a CWC
- Positive benefits of CWC only possible as a consensus text had been agreed and adopted, even with ambiguities
 - global CW destruction
 - non-proliferation measures
 - Article XI / TC&A

Case study – Country A

- Declared in 1984-85 that it would not introduce export controls unless there was a global CWC
- Discovery in late 1980s that significant dual-use chemical trade growing with states having possible CW programmes
- Difficulty of resolving these positions if no CWC had been agreed by end of 1992

Case study – Country B

- Discovery that religious group was manufacturing and using toxic chemicals as a terror weapon
- Domestic controversy over controls on religious groups
- Legislative framework based on CWC by-passed controversies

So ...

- Clear benefits of CWC consensus in 1992
- Therefore positive benefits of the ambiguities in the negotiations – no CWC without them

But is ambiguity ...

- a small price to pay for consensus?
 - a ticking time-bomb with potential to blow apart the Convention?
 - a source of slow decay that might undermine the Convention?
 - a question of juggling so the 'balls' remain in the air?
- or a combination of all four ... ?

Tackling ambiguities

- Unambiguous compliance needs unambiguous obligations
- Ideal solution might be instant resolution of all outstanding ambiguities
- Unlikely in near-term
- Hazard that a quick decision could be made on short-term priorities

Measures of worst

- No 'best' option
- Worst option = do nothing, accepting possible undermining of the Convention
- Need to explore what might be 'least worst' option

Medium-term approach

- Resolution of ambiguities preferable through persuasion rather than bargaining
- Reduce scope of ambiguities where possible
- Encourage action to prevent ambiguities getting worse – prevent irreversible actions

Lethal law enforcement

- One interpretation is that chemicals for law enforcement use should be non-lethal
- Further interpretation that LE chemicals can only be those falling within RCA definition
- Legality of lethal injection? – CW = 'any chemical, which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals'

Death penalty issues

- Realm of national politics – not suitable subject for the Review Conference itself
- However, national actions could have international benefits
- introduction of the term 'law enforcement' in bilats coincided with Council of Europe actions to remove death penalty
- Discussion seen by some as distasteful

Virtue out of necessity?

- US Supreme Court review of lethal injection started this month, result expected in June
- Possible hesitation in introducing new injection protocol if judgement requires it
- However, additional countries now using lethal injection

2nd RevCon

- Need for space to have basic discussion – ignoring issue is counter-productive
- Use of non-decision-making issue cluster to discuss issues about which consensus is not likely to be reached, akin to BWC
- Introduction of 'some say this, some say that' text in RevCon report?

Possible text (part 1 of 2)

The Conference recognised that certain terms used in the text of the Convention such as "law enforcement", "as a method of warfare" and "domestic riot control" are subject to differing interpretations between States Parties.

The Conference noted these differing interpretations have existed since the negotiations for the Convention and that ambiguity in such terminology contributed to achieving consensus.

Possible text (part 2 of 2)

The conference encouraged States Parties to inform themselves of the differing interpretations that exist when considering their own interpretations

and requested States Parties to consider with care any activities that might make future resolution of the ambiguities more difficult.

Conclusions

- Ambiguities = clever, not clumsy, negotiation
- Ambiguities = a price to pay for consensus
- 'Balls in air', 'slow decay' & 'ticking time-bomb' elements must be addressed at some stage
- Urgent need is to prevent irreversible steps

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