

# **Future and CWC**

## *Allegations of CW Use and Their Impact on the Treaty*

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# An unfortunate reality

- **BTWC**

- 41 years old
- No international organisation to oversee compliance
- No verification regime
- Fatalities from deliberate disease since 1975: **< 100**
  - Mostly use of toxins
  - Most incidents have been criminal

- **CWC**

- 19 years old
- Has an international organisation to oversee and enforce compliance
- Has extensive tools for verification and investigation
- Fatalities from CW attacks since 1997: **1,000 >< 2,000**

# Implications for the OPCW

- **Insurgent use of CW: Awkward problem from a legal perspective**
  - Use of CW by **a non-state actor against another non-state actor** on the **territory of a State Party** that is **not in control of that territory**
  - Problems for
    - Investigation of allegations
    - Attribution of responsibility
    - Sanctioning perpetrators (domestic penal law; international criminal law)
    - Scope of action for States Parties to CWC; UN Security Council
- **Near-universality of the CWC**
  - Risk that States Parties, nationals from States Parties or entities operating from the territory of States Parties play a role in the acquisition of CW and preparations for their use by insurgents ***is not beyond imagination***
    - Already several allegations to that effect related to the Syrian civil war since late 2012
  - This problem needs to be characterised, assessed, and if necessary, addressed by OPCW
    - For the future of the treaty regime, clear ***refutation*** is as important as confirmation

# Opportunistic use of industrial toxic chemicals

- **Basic characteristics**

- No autochthonous development or production of the toxic agent
- Usually obtained from industrial production plants or storage sites
  - AQI also hijacked lorries transporting liquid chlorine from Jordan and Syria to Baghdad and then rigged the vehicles with explosives
- Attacks end after stockpile of toxic agent has been depleted

- **Other scenarios**

- Other types of attack have involved sabotaging storage facilities, deliberate release into the environment (industrial action), or deliberate targeting of such installation by artillery (e.g., around Sarajevo)
- In criminal or terrorism cases, occasionally off-the-shelf poisons (e.g., rodent exterminators) or caustic substances (e.g., acid attacks) have been applied
- More toxic substances than usually considered as warfare agents become a possible weapon
  - E.g., in the Middle East *phosphine* – a chemical belonging to the nerve agent family – is widely used as a rodent pesticide and for fumigation in agriculture

# Addressing public perceptions of chemical warfare

- **Victims in war zones perceive chemical warfare differently from outside observers**
  - Victims view chemical warfare as one nuisance among many
    - Experiences from 1<sup>st</sup> World War
    - Also in testimonials from Syrian civil war
  - In most circumstances, chemical attacks are far fewer than ones with explosives
    - However: denial of shelter has profound psychological impact
- **Statistical simplicity versus international law**
  - Often asked: Why does international community respond to CW attacks, but remain indifferent to general war atrocities?
    - E.g., Ghouta: several hundreds of fatalities versus 120,000 war dead at the time
  - Outsiders respond to emotional images (on social media) in isolation from totality of war atrocities
    - Impulsive calls for humanitarian intervention, including military strikes
    - Tendency to ignore existence of CWC and opportunities it offers
  - What public discourse does the OPCW have to counter such challenges of perception?

# Implications for protection and assistance

- **OPCW preparedness**
  - Many (preventive) activities & training within OPCW framework
  - Public communication of such activities
- **However, how are the preparations translated into action in case of acute need?**
  - Does the public know of triggers and procedures?
  - How can the OPCW overcome political sensitivities in the pursuit of effective humanitarian action?
  - Rise of the non-state actor as target of chemical attacks
    - How do these victims get access to (elementary) protection & assistance?

# A corrosive challenge for the OPCW

- **Problems of chemical warfare present themselves in the present, but may have long-term consequences for CWC regime**
  - Matters cannot be ignored
  - Armed conflicts do not start or end in clear-cut ways anymore
    - Toxic chemical incidents may continue after main fighting has abated
- **Urgent need for:**
  - Effective action against CWC violators (particularly Article XII measures)
  - Effective communication strategies
    - Explain treaty framework, procedures and legal options to lay audiences
    - Engage early with stakeholder communities immediately concerned
    - Develop a clear and timely (even pro-active) narrative of actions on the ground
    - Challenge gross inaccuracies in public reports and narratives
    - Address any serious allegation or refute them in the clearest possible way
- **Need for speedy adaptation to new realities**
  - OPCW must address the issues head-on
  - Adaptation of treaty regime and political action by community of States Parties
  - Public cannot accept national political expediency over core CWC goals



# THE TRENCH

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