

# Verifying the Prohibition on Chemical Weapons: The Relevance of OPCW Processes to the IAEA

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Jean Pascal Zanders

## **Introduction**

The prohibitory regimes governing chemical and biological weapons (CBW) on the one hand, and nuclear weapons, on the other hand, are fundamentally different. The bans on CBW acquisition, stockpiling, and use are total. The respective disarmament treaties – the 1993 Chemical Weapons Convention (CWC) and the 1972 Biological and Toxin Weapons Convention (BTWC) – have a global reach. States party to either agreement enjoy equal, non-discriminatory rights, and all must fulfill equal obligations. While the treaties are of unlimited duration, their goals are finite and well defined: no single state can possess chemical or biological weapons under any circumstances. As weapons have been or are in the process of being destroyed, the principal challenges are to ensure ongoing confidence in treaty compliance, to expand or strengthen the tools to detect violations and restore compliance, and to adapt the treaties, including their verification or transparency-enhancing procedures, to scientific and technological innovation and ever-evolving realities of international politics and security. The BTWC, negotiated in the depths of the Cold War, has no verification machinery. Conceptions of sovereignty and national security precluded tools such as on-site inspections, whereas verification by substitution – i.e., focusing on large delivery systems, such as missiles or bombers instead of the (nuclear) warheads – or remote sensing were not an option. By the time the negotiation of the CWC was

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concluded in 1992, the internationally accepted verification toolbox had not only expanded, but was also much more diversified.

In contrast, limitations on the acquisition and possession of nuclear weapons are contained in different international, regional, or bilateral legal instruments. Regional agreements, such as nuclear weapons free zones (NWFZ), are comprehensive in scope, but do not incorporate autonomous, dedicated verification machinery. Bilateral arms control treaties between the United States and the Soviet Union/Russia include detailed verification provisions and structures, but these are of no consequence to other countries. Global treaties relating to the nuclear realm normally limit their focus to a specific aspect of the armament dynamic. The Comprehensive Test Ban Treaty (CTBT), for example, has set up a provisional implementation organization and deployed a global monitoring network to detect nuclear explosions despite not yet having entered into force. The Nuclear Non-Proliferation Treaty (NPT) prohibits non-nuclear weapon states from acquiring nuclear weapons, in exchange for the right to research and develop nuclear energy for peaceful purposes and benefit from international cooperation and technology transfers in support of these goals. Rather than equipping the NPT with its own compliance, monitoring, and enforcement tools, the negotiators entrusted the International Atomic Energy Agency (IAEA) with the role of verification regarding the non-diversion of nuclear materials in declared facilities.

Since its entry into force in 1975, parties to the BTWC have agreed to a limited set of confidence building measures (CBMs) to enhance transparency concerning certain treaty-relevant activities. These CBMs pertain to a wide range of issue areas: research centers, laboratories, and biodefense programs; outbreaks of infectious diseases; publication of research results and the promotion of knowledge; declarations of legislative and regulatory measures; past offensive and/or defensive biological research and development programs; and vaccine production facilities. (One CBM concerning the promotion of contacts among scientists and experts was dropped at the 2011 Review Conference.) However, failure to submit the annual CBM declarations cannot be sanctioned or forcibly subverted. A serious attempt to equip the BTWC with verification measures ended unsuccessfully in 2001, after which states parties embarked on so-called inter-sessional processes – sets of annual meetings between two review conferences during which experts and government representatives consider specific issues of relevance to the

convention. The CWC, in contrast, has an elaborate verification system that serves to demonstrate state party compliance with the CWC provisions and simultaneously offers reassurance to other states parties.

This chapter first briefly describes the CWC and summarizes the routine dimensions of verification, before discussing in detail the tools available to ensure and enforce compliance. It then considers the autonomy of the CWC challenge inspection process. The final part considers some implications for the nuclear realm.

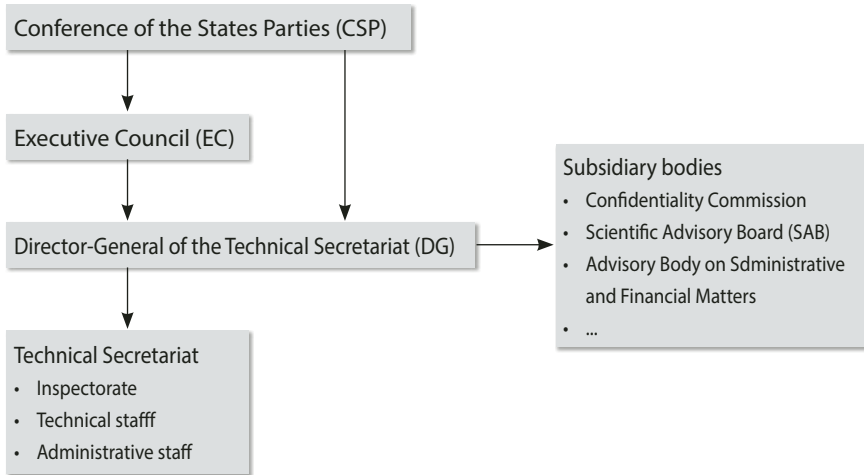
### **Organizing for Verification**

The CWC is a disarmament treaty. It calls for the total elimination of all chemical weapons (CW), and thereby also removes the weaponry from the military doctrines of states: never, under any circumstances – including time of war – can a party to the CWC arm itself with CW, or use or threaten another state with CW, even for the purpose of deterrence. As no party to the convention can develop an advanced CW capacity and assimilate it into its military doctrine (which implies weapons testing and training of large military formations) without detection, universality of the CWC is therefore a major guarantor of disarmament. Indeed, verification generates the confidence that a party should never face a major chemical threat as an instrument of war or a tool for political blackmail.

In the first instance, verification has two primary components: first, certifying the destruction of declared weapon stockpiles, related equipment, and infrastructure (storage sites and production facilities), or the conversion of former production plants to peaceful purposes; and second, assuring present and future non-development and production of CW, which covers activities in the (civilian) chemical industry and international commerce, as well as the creation and strengthening of various types of barriers to illicit activities. To serve these primary goals, the CWC established the Organisation for the Prohibition of Chemical Weapons (OPCW), an international organization based in The Hague. It consists of two decision making bodies and the Technical Secretariat (figure 1).

The Conference of the States Parties (CSP) comprises all states that have ratified or acceded to the CWC. It is the highest decision making body of the OPCW. It elects the Executive Council (EC) and appoints the Director-General of the Technical Secretariat (DG). The CSP usually meets in regular session once a year to consider and adopt the annual report, program, and

budget submitted by the EC. It also meets at the request of a state party supported by one-third of all OPCW members or at the request of the EC. The CSP convenes as a Review Conference every five years and may be called as an Amendment Conference.<sup>1</sup> It decides procedural matters by simple majority and matters of substances by two-thirds majority. In practice, the CSP strives for consensus decision making.<sup>2</sup>



**Figure 1.** OPCW Organizational Structure

The Executive Council consists of 41 states parties elected by the CSP for a term of two years. Candidates are proposed by their respective regional groups. It has contractual authority on behalf of the OPCW with respect to international organizations (e.g., its cooperation with the UN regarding the investigation of CW use in Syria and the removal of CW from Syria in 2013) and states parties (e.g., agreements concerning inspections or special verification modalities, as has been the case with Syria after becoming a party to the CWC in October 2013). The EC bears special responsibilities in matters relating to compliance and non-compliance.<sup>3</sup>

The Technical Secretariat serves as the implementation body of the OPCW. It provides administrative and technical support to the decision making organs and subsidiary bodies.<sup>4</sup> It consists of the Director-General (DG), inspectors, legal, scientific, and other technical experts, and administrative staff. The large pool of international inspectors has expertise covering the

whole spectrum from munitions destruction and investigation of alleged use to industry manufacture and processing of toxic chemicals.

Finally, three subsidiary bodies function on a continuous basis:

1. The Confidentiality Commission considers disputes relating to breaches of confidentiality involving both a state party and the OPCW.<sup>5</sup> This includes confidentiality matters pertaining to the verification procedures. Thus far, it has never been required to consider any such dispute.
2. The Scientific Advisory Board enables the DG to provide specialized advice to the CSP, EC, or states parties in areas of science and technology relevant to the CWC.<sup>6</sup>
3. The Advisory Body on Administrative and Financial Matters examines and reports on the draft program, the annual budget, and any other budgetary or financial matters.<sup>7</sup>

In addition, the DG can establish temporary ad hoc advisory panels, such as the Advisory Panel on Future OPCW Priorities, which after four meetings in 2010 and 2011 issued its report in July 2011.<sup>8</sup>

### **Routine Verification Activities**

The CWC verification system functions on both the international and national levels. Although each level has its own sets of instruments, they are interconnected and mutually reinforcing.<sup>9</sup>

On the international level, the tools are: declarations to be submitted by the states parties to the Technical Secretariat, and routine inspections conducted by inspectors of the Technical Secretariat to validate the declarations and confirm that no illicit activities take place. The Technical Secretariat addresses ambiguities or omissions.

On the national level, verification tools include legislation, data collection, and the National Authority. States parties must adopt the CWC provisions into their national legislation. Besides criminalization and penalization, implementation legislation must also enable the state to collect the relevant data from public and private actors in order to fulfill its reporting obligations to the Technical Secretariat. States parties must establish a National Authority, which acts as a focal point between the Technical Secretariat and the government of the state party, and other states parties. Among the National Authority's principal responsibilities are escorting OPCW inspections of relevant industrial or military sites; submitting initial and annual declarations; assisting and

protecting those states parties that are threatened by, or have suffered, chemical attack; and fostering the peaceful uses of chemistry.<sup>10</sup>

Over the past 17 years the OPCW devoted a considerable part of its activities to overseeing the destruction of CW and related equipment and installations. These activities included declarations of CW stockpiles, production and storage facilities, CW abandoned on the territory of another state party, and old CW,<sup>11</sup> and their verification by the Technical Secretariat. Given the requirement that international inspectors must be on site at all times during destruction activities (rather than relying on remote monitoring), these types of inspections have consumed most of the inspector hours and verification budget.

Industry verification is growing quickly in relative importance. The activities of the chemical industry are monitored through declarations and on-site inspections. The nature of an industrial facility's obligations depends on the types and quantities of chemicals it produces, possesses, transfers, and consumes. Reporting requirements, monitoring activities, and routine inspections are organized around three lists of chemical warfare agents and their precursors based on a weighing of their threat to the CWC and commercial importance (the so-called "schedules"). The CWC also sets forth reporting requirements concerning firms that produce specific quantities of discrete organic chemicals that do not appear on any of the schedules, as well as special requirements for firms that manufacture more than a specified amount of unscheduled discrete organic chemicals with the elements phosphorus, sulfur, or fluorine. The number of industry inspections has been capped, and the number of such inspections that a state party may expect per year are calculated according to complex formulae weighing different factors.

### **Ensuring Compliance under the CWC**

The CWC contains additional types of verification procedures. Although they may seem to suggest a hierarchy in terms of increasing stringency or steps in an escalatory process, they can run in parallel and one procedure is not necessarily a prerequisite for the next. Central to the understanding is that the OPCW, as an independent international organization dedicated to overseeing the implementation of the CWC, also provides a forum for consultation and cooperation among states parties in matters concerning compliance.<sup>12</sup> The different procedures are:

1. *Consultation concerning anomalies*: The CWC does not detail what consultations should entail, but views and encourages them to take place together with information exchanges as one of the early (or low key) diplomatic exchanges among states parties to resolve doubts or ambiguities regarding compliance.<sup>13</sup>
2. *Clarification of compliance concerns*: If in doubt or concerned about compliance, a state party may seek clarification.<sup>14</sup> A state party will address the initial request for clarification to another state party, which must reply within ten days. Although not stipulated in the convention, a degree of expectation exists that the latter would supply supplementary information (i.e., beyond what is available from, for instance, annual declarations or routine inspections) to address the concern.

In case the reply does not resolve the concern, the requesting state party may request assistance from the EC, which must use its authority to lend weight to the request, including by forwarding the request within 24 hours. Here too the state party to whom the clarification request is addressed has up to ten days to respond. If the replies still do not satisfy, the requesting state party may then issue a request to the EC to obtain further information, in which case it may (i.e., not “must”) decide to convene a group of experts to examine all available information and reports and submit a factual report. Although the group of experts can draw on previous inspection reports, it is in no position to launch its own inspection procedure.

After either of the two previous steps, the requesting state party may call for a special session of the EC, which then has the decision authority to “recommend any measure it deems appropriate to resolve the situation.” Although not stated explicitly in CWC Article IX, those measures would presumably include obtaining further information or persuading the targeted state party to resolve the presumed violation in accordance with the CWC. If the requesting state party still remains unsatisfied with the response, it may call for a special session of the CSP 60 days after the submission of the request for clarification to the EC. The CSP is to consider and may take any measure, which, as in the case of the EC, remains unspecified in the convention.

Note that an individual state party with specific concerns may call for a clarification procedure to be launched, while routine inspection reports may trigger additional requests for information. In addition, the



procedures described above do not affect the requesting state party's right to request a challenge inspection, nor are they affected by the conduct of a challenge inspection.

Again, the CWC does not prescribe mandatory courses of action. The sources of ambiguity may be multiple and often unintended. As an instrument of cooperative security, the entire compliance monitoring and enforcement system in the convention seeks to resolve issues at the lowest level of confrontation, as suggested by the drive to use bilateral consultations first and the possibility to initiate a formal clarification procedure without the involvement of the OPCW decision making organisms. The wide leeway for the EC to decide on remedies to reconcile anomalies or restore compliance can also be viewed as means to avoid automatic or mandatory courses of action that might lead to the path of major confrontation.

3. *Challenge of non-compliance*: Challenge inspections, the third tool outlined in CWC Article IX, consist of a short-notice inspection at any site (irrespective of whether it has been declared or not) in a state party. Once the OPCW has authorized the challenge inspection, the targeted state party has no right of refusal, but it can invoke the technique of managed access, whereby OPCW inspectors may be denied access to certain parts of the site. Managed access cannot be implemented in such a way that inspector access to the site as such is denied. However, irrespective of the outcome of the managed access negotiations between representatives of the challenged state party and the OPCW inspectors, the latter retain full right to interview any site staff member (and thus possibly obtain relevant information about the areas to which they have been denied access). Although a challenge inspection can be requested at any stage of consultation of clarification processes, the CWC encourages states parties to view the tool as an instrument of last resort.<sup>15</sup>
4. *Investigation of alleged use*: Part XI of the Verification Annex details the process of investigating the alleged use of CW or the alleged use of riot control agents as a method of warfare. In case the alleged use involves a state not party to the CWC, then the DG will closely cooperate with the UN Secretary General.<sup>16</sup>

Since the CWC entered into force in April 1997, the Executive Council has not received any requests for clarification and no state party has requested



a challenge inspection. Several states parties have used the consultations mechanism to their overall satisfaction.<sup>17</sup>

### **Autonomy of the Challenge Inspection Process**

Of any weapon control arrangement currently in force, the OPCW is unique in the sense that it has autonomous responsibility for detecting non-compliance and restoring compliance. While it can report non-compliance to the United Nations, this is not an automatic outcome of an escalating breach of compliance, but rather the result of a conscious decision to be taken by the OPCW's policymaking organs. Referral to the UN, either by the EC or the CSP, is not just to the Security Council (UNSC), but also to the General Assembly (UNGA).<sup>18</sup> Reference to the UNGA adds political weight to the non-compliance matter without the risk of a veto block. UNGA conclusions may bestow further legitimacy on any actions the OPCW may subsequently decide upon. They may also reduce the likelihood of a veto in the UNSC if a proposal for non-military measures (e.g., economic sanctions) submitted by the OPCW is to be considered.<sup>19</sup> Furthermore, a dispute between CWC states parties can be referred by mutual consent to the International Court of Justice (ICJ), or the CSP or EC (subject to the authorization from the UNGA) can submit a serious dispute to the ICJ.<sup>20</sup> The relationship between the OPCW and the United Nations (including the ICJ) is the subject of a bilateral agreement, which entered into force in 2001 following approval by the CSP and UNGA.<sup>21</sup>

Embedding the CWC in the broader framework of international law and organizations considerably strengthens the power of the OPCW's autonomous decision making processes with regard to non-compliance. This contrasts strongly with the IAEA, which has no choice but to report any compliance concern relating to its mandate under the NPT (safeguards) to the UNGA and UNSC.<sup>22</sup> The IAEA is not an organ created by the NPT (and also has a different membership than the NPT) and its responsibilities do not cover all possible NPT compliance questions. It is rather difficult to envisage the emergence of an international crisis regarding the CWC that is similar to the challenge posed by Iran's nuclear activities: the UNSC cannot simply ignore the complex set of internal compliance mechanisms of the OPCW, nurture a parallel mechanism of negotiations (such as the P5+1), or adopt further sanctions based on the violation of its own resolutions, leaving the international organization (i.e., the IAEA) hanging between the accused

state and the UNSC. Furthermore, the CWC suggests certain measures, but does not limit its decision making bodies to them. Endorsement by outside sources adds legitimacy to whatever course the OPCW decision making organs choose to take. At the same time, if anything else fails, it becomes politically much harder for any state – the five permanent members of the UNSC, in particular, since they are parties to the CWC – to dissent or abstain if serious coercive measures to rectify non-compliance with the CWC must be considered. The legitimacy bestowed by the UNGA at earlier stages of the OPCW process will also bear heavily on the UNSC deliberations.

Occasionally people will refer to the type of intrusive inspections imposed on Iraq based on UNSC Resolution 687 (1991). Inspectors from the IAEA and the UN Special Commission on Iraq (UNSCOM), established after Iraq's military expulsion from Kuwait, had unlimited access to installations, documents, and personnel. The inspection process was backed up by a web of economic and other sanctions. The overall context was one of coercive disarmament following the military defeat of a belligerent. However, unlike with nuclear weapons and considering that the CWC was still under negotiation, the process was not supported by an autonomous international organization for CBW. As time wore on, consensus in the UNSC on the reported findings and unresolved issues became the victim of political and economic calculations of the permanent members. The UN Secretary-General's repeated interventions to negotiate compromises to the many standoffs between Iraqi authorities and UNSCOM ultimately weakened the original inspection mandate beyond verification utility.

Again, the CWC has equipped the OPCW with several buffers against political interference in the verification processes by granting the DG several degrees of autonomy in his actions and ordering the inspectorate to limit its reporting to facts.<sup>23</sup> Furthermore, both parts of the Technical Secretariat are held to strict observation of confidentiality (as regards other states parties or outside institutions, such as the press), whose observance is overseen by the subsidiary body of the Confidentiality Commission. Such confidentiality is also required to prepare for challenge inspections, as too much information may allow the challenged state party to expand the scope of managed access or manipulate the site to be inspected. Planning and execution of a challenge inspection are automatic following a request, and can only be halted by an EC vote to such effect if supported by two-thirds of all its members within

twelve hours after having received the inspection request. Short time frames and voting quorums thus also uphold the autonomy of the process.

A third element buttressing the autonomy of the challenge inspection process is the requirement of each state to accept the no-refusal principle upon becoming a party to the CWC.

### **By Way of Conclusion**

The CWC has the most elaborate verification toolbox of any arms control or disarmament treaty. The convention, however, is also the product of the time it was negotiated; hence the heavy emphasis on CW destruction and processes to detect and restore compliance. In addition, it addresses the forward-looking aspect of disarmament, namely the prevention of new weapons programs. At the same time, this framework is less developed and may require modifications, which include revisiting the relationship between the general purpose criterion and the three schedules for reporting, monitoring, and industry verification; the annual number of industry inspections across the world; reorganization of the OPCW inspectorate in light of industry and trade verification; possible recalibration of the responsibilities between the OPCW and states parties (who are responsible for nonproliferation policies); and more.

The challenge inspection procedure stands out as the ultimate tool to maintain the integrity of the CWC. True, it has never been invoked. Some commentators therefore tend to view this as a major weakening of the treaty regime. However, many explanations may account for the situation. Perhaps the negotiators were too ambitious in their design of the challenge inspection procedure; perhaps the post-Cold War world proved more cooperative than anticipated, and other mechanisms to address compliance concerns (such as bilateral consultations) turned out to be more effective in the new global context; perhaps the conditions that might have warranted the launch of a challenge inspection never materialized; perhaps national intelligence data underlying any call for a challenge inspection was never as firm as people might wish; and so on. Moreover, not only has the challenge inspection tool never been mobilized, but states parties have also not taken recourse to the formal clarification process. Irrespective of possible reasons, other parts of Article IX to address non-compliance concerns are widely regarded to be efficient and effective. Perhaps, paradoxically, they are efficient and effective precisely because of the big bludgeon of the challenge inspection

looming behind all CWC compliance monitoring activities. Meanwhile the OPCW is conducting increasingly sophisticated exercises to test and perfect challenge inspection plans and procedures under realistic conditions. Indeed, if it were unable to satisfactorily conduct such an inspection when called for, the credibility of the CWC would be irretrievably damaged.

The challenge inspection concept is not unique to the CWC. The IAEA, for example, has special inspections to address concerns about incomplete submissions or inadequate explanations for discrepancies discovered during routine inspections. However, the CWC system is all-inclusive and affects all states parties. In contrast, the control regime for nuclear weapons is not only fragmented, but the IAEA lacks competency to verify *all* dimensions of compliance with the NPT. The NPT discriminates between nuclear weapon and non-nuclear weapon states. As the IAEA has no mandate to verify nuclear disarmament, the armament programs of the five official nuclear weapon states are beyond its verification machinery. Presumably the robustness of the CWC's challenge inspection follows from the way it is embedded in the overall verification toolbox, the confidentiality involved in various aspects of the verification process, and the high degree of autonomy of the challenge inspection process with its strict time lines. Its strength also follows from the way it is integrated in overall machinery to address compliance concerns, which involves not just internal tools, but also international organizations, notably the United Nations. Instead of attempting to initiate separate processes to restore compliance, the UN decisions would most likely enhance the OPCW's legitimacy.

From the CWC perspective, the gravest concerns with the IAEA inspection process appear to be the high degree of politicization of the verification process, including the slew of reports and decisions traded between the IAEA Board of Governors and the UNSC; the seemingly endless process of trying to enforce compliance without any hope of near-term resolution of a major proliferation concerns (e.g., Iran and North Korea); the resulting event-driven decision making processes that have replaced strategic decision making; and the constant leaking of what should be confidential documents ahead of key meetings. The lack of total equality with regard to safeguard agreements among all IAEA members means that the legitimacy of the verification process can be and is being challenged. In addition, the fact that the NPT recognizes five states as legitimate nuclear weapon possessors (in spite of their longer term disarmament obligation) and the existence of nuclear-armed

states outside the NPT framework means that nuclear weapons are not as fully delegitimized as CW. Consequently, pressures among NPT parties to research and develop nuclear weapon capacities short of actually testing and deploying the weapon continue to exist and challenge the integrity of the NPT and the IAEA verification processes. Given that the disarmament obligation applies uniformly to all parties to the CWC, compliance issues can be detected at far earlier stages and addressed at the lowest possible levels of confrontation. As the party concerned is less likely to lose face in public, it will under those circumstances also be more willing to cooperate in resolving the concern. Likewise, the state that raised the concern can determine – after receiving further information – that the matter does not challenge the integrity of the treaty, even if not every detail of the concern can be fully resolved.

Contrary to popular belief, the challenge inspection procedure is not the ultimate tool of the CWC. After the conclusion of the inspection itself, a complex political process follows in which states parties assess the inspection findings and deliberate follow-on measures to restore compliance in case of a breach. The EC and CSP can each take actions, up to and including sanctions, against the non-compliant state party. By referring at appropriate moments to the UN or the ICJ they can not only enhance the legitimacy of their course to redress the situation, but also bear considerable supplementary political pressure on the offending state party. Political judgement is the potential Achilles' heel in the whole setup, particularly if corrective measures need to be considered after a challenge inspection has revealed a case of borderline non-compliance.

Perhaps the most important lesson to be drawn from the CWC is how an international disarmament agreement shapes the security environment in which it must function. Much of the verification machinery was devised during the 1980s when suspicion between the USA and the USSR was very high and major chemical warfare was still conceivable. Today, the possibility of hostile use of toxic chemicals still exists, but it no longer amounts to major chemical warfare (at least not among parties to the CWC). As a result, existing concerns about full compliance – and they do exist – can be addressed at or below levels of confrontations, thereby avoiding the public megaphone diplomacy so typical of nonproliferation policies. One can only wonder whether the Iranian nuclear dossier would have reached the type of political polarization of the past years if the IAEA had the OPCW's toolbox

of member obligations and mechanisms to address compliance concerns available.

## Notes

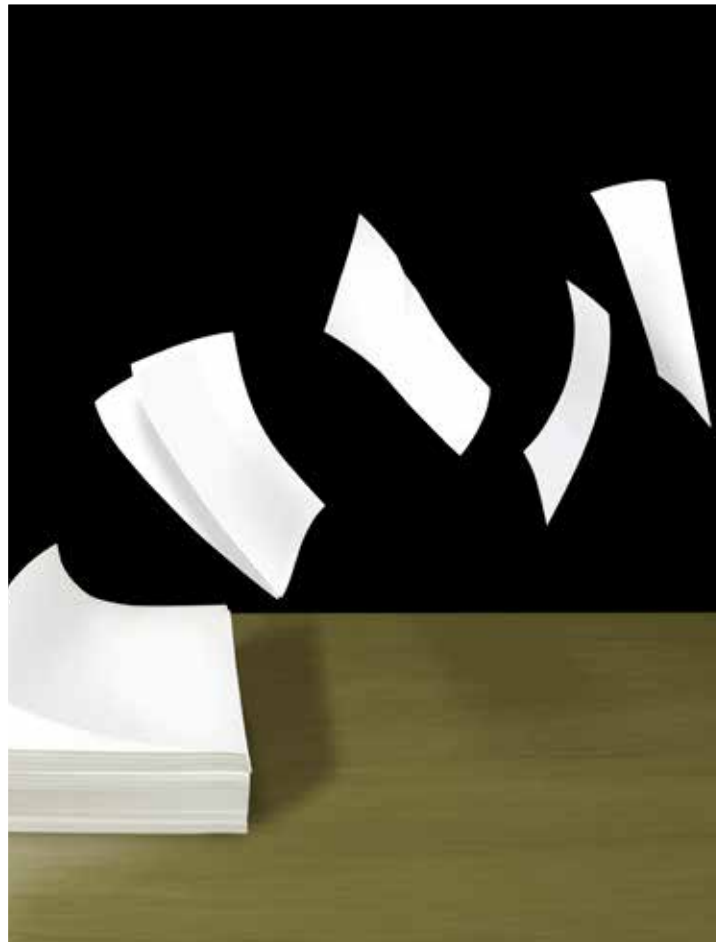
- 1 Details of functions, procedures, and responsibilities are in CWC Article VIII (B) and, with regard to amendments, in Article XV.
- 2 Thus far, there have been only two instances in which the CSP did not take a decision by consensus, namely the ouster of the first Director-General in April 2002 and Iran's vote against an OPCW decision to extend the final deadline for CW destruction for the US (but not Russia) at the 2011 CSP.
- 3 Details of functions, procedures and responsibilities are in CWC Article VIII (C).
- 4 CWC Article VIII (D).
- 5 CWC, Confidentiality Annex, §23.
- 6 CWC Article VIII, §§ 21(h) and 45.
- 7 OPCW Financial Regulations, Article 15.
- 8 Note by the Director General, OPCW document S/951/2011, July 25, 2011, available from [http://www.opcw.org/fileadmin/OPCW/PDF/Advisory\\_Group\\_report\\_s-951-2011\\_e\\_.pdf](http://www.opcw.org/fileadmin/OPCW/PDF/Advisory_Group_report_s-951-2011_e_.pdf).
- 9 Daniel Feakes, "Evaluating the CWC Verification System," *Disarmament Forum*, no. 4 (2002): 11.
- 10 OPCW, "National Authorities," <http://www.opcw.org/about-opcw/member-states/national-authorities>.
- 11 Old Chemical Weapons were produced before 1946. The CWC distinguishes between two categories of OCW. The first contains those munitions produced before 1925, which can be disposed of as toxic waste. The second groups those weapons that were produced between 1925 and 1946, but which have deteriorated to the point that they are no longer useable. These must be destroyed like any other CW, but according to time lines that may differ from those of other CW following agreement with the OPCW.
- 12 CWC Article VIII, §1 and Article IX, §1. The OPCW is not an organ of the United Nations. Relationships and cooperation between both institutions are the subject of formal agreements that require ratification by the respective membership (i.e., the CSP and the UNGA).
- 13 CWC Article IX, §2. Wikileaks, for instance, contains some US reports on consultations with Iran about Iran's lack of declarations of CW stockpiles to the OPCW.
- 14 CWC Article IX, §§3–7.
- 15 CWC Article IX, §2.
- 16 A situation in which an allegation of CW use does not concern or affect a party to the CWC may also present itself. As has been the case with allegations of CW use in the Syrian civil war, the UN Secretary General may activate a UN investigative mechanism and call upon the OPCW (and the World Health Organization) to provide technical expertise and inspectors. The investigations conducted in August and early September were carried out according to OPCW-established investigative and analytical protocols. The final report was released in December 2013.

- 17 As noted in Informal Chairperson's Provisional Texts, Working Group for the Preparation of the Third Review Conference, January 9, 2013, Section "Review of the Operation of the Chemical Weapons Convention," §§59–61.
- 18 CWC Articles VIII, §36 and XII, §4.
- 19 As far as this author is aware, military measures under Chapter VII of the UN Charter against a non-compliant state party to the CWC have not been considered in any depth.
- 20 CWC Article XIV, §§ 2 and 5.
- 21 Agreement concerning the relationship between the UN and the OPCW, October 17, 2000, available from <http://www.opcw.org/about-opcw/un-opcw-relationship/>.
- 22 IAEA Statute, Article XII (C). In practice, the IAEA can request in its report that the UNSC take no action – see comment 9.
- 23 Routine inspections, in contrast, allow OPCW inspectors to append personal assessments to the factual reports if these have a direct bearing on the matter at hand.



# The Nuclear Nonproliferation Regime at a Crossroads

Emily B. Landau and Azriel Bermant, Editors



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## משטר תפוצת נשק גרעיני על פרשת דרכים

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