Verification of the Prohibitions on CBW

Relevancy of processes for the IAEA

Dr Jean Pascal Zanders
EU Institute for Security Studies

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BTWC and CWC

• Quasi-universal disarmament treaties
  ▫ BTWC: 167 States Parties; 29 non-States Parties
  ▫ CWC: 188 States Parties; 8 non-States Parties
    • Second and third only to the NPT (⇒189 States Parties)

• Characteristics
  ▫ Disarmament (Backward & Forward)
    • Finite goals: No CBW for anybody
  ▫ Integrated regimes
    • 1 treaty for disarmament, non-proliferation, cooperation & technology transfers, assistance, verification, complaints & compliance, ...
  ▫ Equal, non-discriminatory rights; equal obligations for all
  ▫ Major differences, however, in verification and compliance enforcement tools
    ⇒Focus on CWC
CWC: organisation of compliance

• OPCW
  ▫ International organisation overseeing implementation of and compliance with all treaty articles
  ▫ Has autonomous responsibility for detecting non-compliance and restoring compliance

• Mechanisms to:
  ▫ Generate transparency ⇒ declarations
    • States parties must declare all past and present CW-related activities within treaty-specified parameters
    • Any unreported or erroneously reported activity is violation of CWC (but not necessarily deliberate)
  ▫ Address anomalies
    • Consultations
    • Clarification requests
    • Challenge inspections
    • (Investigation of alleged use of CW)
OPCW Structure

Conference of the States Parties (CSP)

Executive Council (EC)

Director-General of the Technical Secretariat (DG)

Technical Secretariat
- Inspectorate
- Technical staff
- Administrative staff

Subsidiary bodies
- Confidentiality Commission
- Scientific Advisory Board (SAB)
- Advisory Body on Administrative and Financial Matters
- ...
Consultations

- **Director-General**
  - Attempts to resolve anomalies with State Party
  - **Outcomes**
    - Positive: correction of reports; verification of corrective action; no further steps
    - Negative: reporting to Executive Council

- **Between States Parties:**
  - Bilateral diplomatic engagement
  - Engaging State Party decides on further action
  - OPCW organs not involved

- **Advantages**
  - No megaphone diplomacy
  - Engaged State Party can take corrective action without loss of face
Clarification request

- **Formal procedure**
  - Initial request goes directly to another State Party (bilateral)
  - Engaged State Party
    - must reply within **10 days**
    - is expected to offer supplementary information than what is available via, e.g., declarations or routine inspections

- **Escalation of matter through Executive Council**
  - If unsatisfied, requesting State Party may turn to EC
  - EC forwards request within **24 hours**; engaged State Party again receives **10 days** to reply
  - If dissatisfaction persists, requesting State Party may request EC to obtain further information
    - Possibility (no obligation) to set up an expert group
      - Delivers a factual report
      - Cannot launch its own inspection process

- **Further escalation**
  - If dissatisfaction persists, requesting State Party may call for a special EC session
  - EC in this situation obtains special decision-making authority and may recommend any measure deemed appropriate to resolve the matter
  - If still unresolved, requesting State Party may call for special session of the Conference of the States Parties **60 days after submission of clarification request to EC**

- Requesting State Party retains the right to call for a challenge inspection at any time during the clarification process
- Has never been used since EIF
Challenge inspection

• Short-notice inspection at any site (even undeclared)
• No right of refusal by challenged State Party
  ▫ Refusal would be major breach of CWC obligations
• Challenge inspection process starts automatically as soon as EC and Director-General receive request
  ▫ It can only be blocked if the EC votes within 12 hours after receipt of request with a 2/3 majority to block the inspection
  ▫ The process, up to the submission of the factual report, then continuous without further involvement of OPCW decision-making bodies
• Challenged State Party may use managed access procedure
• May be called at any time, independent of other processes or on-going procedures to restore compliance
• CWC recommends this as tool of last resort
  ▫ Has never been invoked
Confidentiality

- Very strict oversight of confidentiality at all stages of all verification procedures
- Many actions of the Director-General confidential
  - allows certain anomalies to be addressed without consequences for the State Party
- Shields the inspection process from political interference during its execution
- Confidentiality in the challenge inspection
  - Right of the challenged state party
    - No release of information unrelated to challenge inspection (e.g., via managed access procedure)
    - Allows giving of additional (business propriety) information to satisfy the inspectors
  - Need for the OPCW in order to avoid that challenged State Party submits too many areas to managed access
Special features of CWC procedures

- Reporting non-compliance to UNGA and UNSC
  - Can (not: must) be done by either EC or CSP
  - Conscious & autonomous decision rather than automatic requirement
    - P5 will be on board
    - Most likely outcome: endorsement of decisions by OPCW bodies, resulting in their enhanced authority as regards State Party with compliance concerns

- Measures to be taken by EC and CSP
  - Unspecified; the CWC only offers some recommendations without imposing limitations
  - May include sanctions (to be determined)
  - Throughout the process, the engaged or challenged State Party retains rights that preserve the integrity of the CWC process
  - A state cannot be denied membership of the OPCW
Concluding thoughts

• CWC has the most complete integrated compliance verification system

• Preference is clearly for resolving anomalies at the lowest level of confrontation
  ▫ Through its implementation, the CWC has become a cooperative regime
  ▫ Intrusive tools were designed in great detail (Cold War), but have never been used
  ▫ Inclusion of those intrusive tools have arguably been instrumental, even crucial to achieve the cooperative atmosphere

• Challenges remain
  ▫ Changes in the nature of the verification requirements after CW destruction has been completed
    • Mostly affects the future organisation of routine verification of industry and trade
  ▫ In verification, ultimate decisions always remain political even if the inspection process is to a large extent shielded from political interference
    • e.g., what if a challenge inspection confirms only *marginal* non-compliance?
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- **On the web**
  www.iss.europa.eu

- **E-mail**
  jean-pascal.zanders@iss.europa.eu