Iran and the Ban on Chemical Weapons
Compliance with the norm before and after the CWC

Dr Jean Pascal Zanders

How Iran Might Test an Agreement with the P5+1
Colloquium organised by The Washington Institute for Near East Policy,
25 June 2015 – Washington, DC
Part 1

Iran and CW before the entry into force of the Chemical Weapons Convention

• 1925 Geneva Protocol
• 1980 – 88 Iran – Iraq War
• The post-war period
The 1925 Geneva Protocol

- **Part of the Laws of War (Humanitarian Law)**
  - Prohibits the use in armed conflict of chemical and biological weapons
  - Is a contract among parties; if violated by a belligerent it is null and void (among belligerent parties)
    - ≠ CWC: each State Party individually committed to treaty, irrespective of what another Party does
  - Relies of the wisdom of the United Nations for its enforcement

- **Not part of Arms Control / Disarmament Law**
  - Does not affect CW armament programmes, stockpiles and other chemical warfare-related preparations
  - Allows a state to retain CW for deterrence purposes

- **Was legal situation on eve of the Iraqi invasion of Iran in 1980**
  - Iraq & Iran were then both party to the Geneva Protocol
The 1980 – 88 Gulf War

• Iraq initiated chemical warfare
  • Absence of UNSC condemnation of Iraq until after cease-fire of August 1988
  • Psychological impact:
    • Broke up human wave attacks (in summer 1982: effects of Iraqi tear gas use)
    • Major demoralising effects on Iranian military
      • No retaliation
      • Poor CW defence and protection until late stage of war
  • Fear of CW missile strikes against Iranian population centres

• Incapacity to retaliate
  • Few indications of Iranian CW use; possibly occasional firing of Iraqi munitions
  • Did not have the R&D and production base for a CW programme
  • Production of 1st generation agents either at end of war or shortly afterwards
  • May explain maintenance of moral high ground, despite repeated threats of retaliation
Iran & the prohibition on CW use

- Only Middle Eastern state party to all treaties against chemical warfare
  - 1899 Hague Declaration (IV, 2)
  - 1899 and 1907 Hague Conventions
  - 1925 Geneva Protocol
  - (1972 Biological and Toxin Weapons Convention)
  - 1993 Chemical Weapons Convention

- Prohibition on the use of poison in Islamic law; Iran claims to abide by it

- Regarding CW, Iran was never in contravention of then existing international law
  - Had legal right to possessing or retaliating with CW (until 1997)
  - Western ‘even-handedness’ during Gulf War was not based on international law, but on subjective appreciation of Islamic regime
  - Iran was even denied access to CW defence and protection technologies
    - From 1987 onwards: indigenous technology base for CW defence, protection & prophylaxis
  - Great reliance on non-Western states for CW-related technology access (China, India, ...)
Part 2

Iran and CW after the entry into force of the Chemical Weapons Convention

- Basics of the disarmament regime
- Managing compliance
- Iran’s participation in the CWC regime
The Chemical Weapons Convention

- **Quasi-universal disarmament treaty**
  - 190 States Parties; 6 non-States Parties
    - Second only to the NPT (191 States Parties, including Palestinian Authority)

- **Characteristics**
  - Disarmament (backward & forward dimensions)
  - Finite goals: No CW for anybody
  - Single Integrated Treaty System (SITS)
    - 1 treaty for disarmament, non-proliferation, cooperation & technology transfers, assistance, verification, complaints & compliance, ...
  - Equal, non-discriminatory rights; equal obligations for all
  - Of unlimited duration
CWC: Some key characteristics

• **Legally binding definition of ‘chemical weapon’**
  • Not a universal definition, but one that serves the purposes of the CWC
  • Based on physiological impact; not on juridical difficult notions such as toxicity or families of compounds

• **General purpose criterion**
  • Enables to address the dual-use aspect of many CW-relevant technologies
  • Captures past, present and future toxic compounds
  • Default position: application of all toxic substances is prohibited (past, present & future)
    • Therefore no need to determine what are legitimate & illegitimate activities
  • A limitative list of purposes is ‘not prohibited’ (note emphasis on prohibition)
  • Therefore, onus is on possessor of technology to demonstrated that the purpose is not prohibited
  • Affect the nature of verification activities
    • E.g., primary focus is not on counting artefacts, but on establishing the legitimacy of activities
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 ⇒ (mandatory) 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)

- **Pushes any illicit programmes deep underground**
  - No testing; no training of military formations ⇒ affects utility of CW on battlefield

- **Preference is clearly for resolving anomalies at the lowest level of confrontation**
  - Problems can be resolved without loss of face for interlocutors; remediation is more easily achieved
    - Interaction Technical Secretariat of OPCW with State Party
    - Interaction between States Parties without involvement of the Technical Secretariat
  - 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
Why would states want to comply?

- **Internalisation of norm**
  - Ratification by each State Party: national parliaments become stakeholders
  - Obligatory national implementation legislation
    - Involves national stakeholders in treaty implementation
    - Creates internal pressures for norm conformity
  - In most countries: boundaries between international and municipal law; public and private law disappear
    - More problematic in the USA given role of Constitution in national political discourse
    - Also informs US insistence on national assessment of compliance, rather than collective assessment
  - Important contributing factor to state obedience of the CWC

- **Division of labour between international community (= OPCW) and State Party**
  - OPCW overviews implementation and compliance
  - Mandatory establishment of National Authority as focal point for national stakeholders, other States Parties, and OPCW

- **Legitimacy of CWC**
  - Co-operative disarmament (vs coercive disarmament)
  - Negotiated by important subset of the international community
  - Verification organisation and inspection procedures field-tested during negotiations
    - Now seen as legitimate

  SITS
Iran and the CWC

• **Declared possession of CW production plants**
  • Pilot-production scale facilities; no large-scale production facilities
  • Relatively few munitions produced
  • Production in limited quantities of S-mustard; status of HCN production unclear

• **Status as reported to OPCW**
  • Declarations on past programmes submitted to OPCW
  • CW production plants destroyed before entry into force of CWC
  • CW destroyed before entry into force of CWC; therefore no declaration of CW possession
    • Important aspect of US concerns about Iran’s compliance with CW, even though the CWC does not require declaration of stockpiles destroyed before entry into force
    • Concerns about past CW-relevant technology transfers to Libya and Sudan
  • Declarations certified by OPCW in November 1999
  • Currently 1 known firm for BC protection equipment, affiliated with MoD

• **Active partner in OPCW decision-making forums**
  • Nationally
    • As chair of the Non-Aligned Movement (tendency for other NAM members not to dissent)
    • In the field of international cooperation for peaceful purposes and technology transfers (Article XI)
    • Makes knowledge & expertise concerning victims of CW available to OPCW
  • Friction with US (US CWCW breach regarding CW destruction deadlines; Iran's position on Syrian chlorine use)
  • Was not an original State Party (EIF: 3 December 1997) → Important decisions on core areas of interest taken at 1st CSP, which frustrated and still frustrates Iran.
Recalling where science, industry and military art converged
Challenging entrenched positions

www.the-trench.org

E-mail

jpzanders@the-trench.org