

Iran and the Ban on Chemical Weapons

Compliance with the norm before and after the CWC

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How Iran Might Test an Agreement with the P5+1

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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 (\Rightarrow 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 demonstrate 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 \Rightarrow (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 \rightarrow 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.



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