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## **EUISS REPORT**

### **WORKSHOP ON THE FUTURE OF THE CHEMICAL WEAPONS CONVENTION TRANSITIONING TOWARDS THE POST-DESTRUCTION PHASE**

Brussels, 10 September 2012

#### **I. Participation**

The workshop, organised by the EU Institute for Security Studies (EUISS) in cooperation with the European External Action Service (EEAS), was held in Brussels on 10 September 2012. Its purpose was to have an in-depth brainstorming session on the future of the Chemical Weapons Convention (CWC) with officials from EU Member States and candidate countries.

Representatives participated from Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, and the United Kingdom, as well as the EEAS and the EUISS.

Invited non-governmental expert speakers were nationals from Denmark, Germany, Ireland, the Netherlands and the United Kingdom.

#### **II. Meeting presentations**

*Dr Jean Pascal Zanders* welcomed the participants on behalf of the EUISS and briefly outlined the purpose of the workshop. *Ms Clara Ganslandt*, Head of Division, Weapons of Mass Destruction, Conventional Weapons, Space, EEAS, recalled the success of the CWC at the 15<sup>th</sup> anniversary of its entry into force. At the same time, she referred to important remaining challenges, including the delays in the destruction of US and Russian chemical weapons (CW), the continued need for universalisation and national implementation, and the threats posed by holdout states such as Syria and non-state actors. She confirmed the EU's continuing commitment to the CWC, including through the multiple Joint Actions.

In the opening presentation *Dr Jean Pascal Zanders* (Senior Research Fellow, EUISS) noted that while the CWC may be of *unlimited* duration, this does not mean that it will be *perpetual*. One of the tasks for the States Parties is to retain the convention's relevancy after the termination of CW destruction operations. Success is presently defined by political statements and illustrated by means of statistics (e.g., numbers of States Parties, munitions destroyed, inspections, etc.). However, some of those numbers will eventually become meaningless, simply because the ultimate goals have been achieved. This raises the question what the future definition of success will be and by what standards success will be judged.

In the context of challenges to the CWC it may appear remarkable that ‘failure’ has never been defined. Several developments have been viewed as setbacks (e.g., destruction deadlines, status of national implementation, universalisation, Article XI implementation, etc.), but the firm belief exists that these goals must and can be achieved given time and sufficient resources. Yet, there is no envisagement of an event or series of events that might irreparably harm the CWC. While certain damaging scenarios can be ideated, precisely because they can be imagined, they are also preventable. Far greater risk to the CWC may result from developments that fall between the folds of the foreseeable. For instance, many trend analyses are linear and allow for certain unexpected developments, but which tools should be developed to be able to identify and assess the impact of the confluence of otherwise independent developments (as, for example, the meeting of science, industry and military doctrine in the first major chemical attack in Belgium in 1915)? Enabling technologies often allow unforeseen directions in research and development. Another major risk to the future of the convention is ‘failure by routine’. If the verification machinery remains welded to the three schedules, then the CWC’s capacity to prevent future armament may become limited to past warfare agents only. Similarly, dangers of systemic confirmation bias must be addressed so that expectations of compliance do not blind inspectors and verification analysts to the small statistical anomaly or subtle hint that something insidious might be going on.

Many political, social and technological developments take place outside of the CWC, but nonetheless have a major impact on the present and future functioning of the convention. They include the emergence of new stakeholders and security actors; the growing role of non-state and transnational actors and the resulting relative diminishing influence of government agencies over these processes; and the shifting balances of power in the economic, political and military spheres and rise of multiple power centres. These factors all contribute to the future challenge of governance of chemistry and its many applications in a post-proliferation world. Once destruction activities have been completed, international trade of toxic chemicals and other technology transfers, for instance, will assume greater relevancy in the future prevention of CW. How these will be monitored may require careful recalibration of verification resources, or they may entail greater responsibilities for the National Authorities if States Parties decide that the Technical Secretariat must downsize. The future governance regime of the CWC should ideally also incorporate several civil society constituencies and tap into their capacity for independent intellectual input into many areas of concern to the OPCW. However, two less frequently discussed dimensions also require consideration, namely the development of beneficial working relationships between National Authorities and domestic stakeholders and universalisation of civil society’s contribution to the widening and deepening of the CWC regime.

*H.E. Mary Whelan* (Permanent Representative of Ireland to the OPCW and Vice-Chair of the Open-ended Working Group for preparation of the Third Review Conference) briefed participants on the preparations for the forthcoming review conference. She suggested that the overall objective for the period to 2023 should be to achieve a world free of CW, universality of the Convention, a robust verification mechanism, a strong cooperative relationship with industry, and a treaty regime that is both flexible enough to respond to a changing scientific environment and authoritative enough to command universal respect and support. In this context States Parties could use the Third Review Conference to recommit to achieving the goals of the CWC, critically evaluate their collective and national implementation efforts and consider whether any reorientation of the work of the OPCW is required. Ambassador Whelan also referred to the potential of political developments (e.g., in the Middle East,) impacting on the work of the Review Conference.

She noted that the issue of national implementation was moving increasingly to the fore in the preparatory process, which is not surprising given the situation whereby less than half of States Parties have comprehensive legislation in place. Maintaining the capacity of the Technical Secretariat to fulfil its tasks and maintain the right mix of expertise was also of great importance.

Finally, Ambassador Whelan noted that the EU could engage more actively with the OPCW.

*Dr Ralf Trapp* (Independent Disarmament Consultant) outlined a number of trends in chemical research, development and production that pose challenges to the future operation of the CWC verification system. In the research area, he noted the accelerating convergence and integration between chemistry and biology and ancillary fields. New communication technologies enable novel ways of collaboration between institutes and researchers. The mass of available data and limits on computing power may presently be the single most important impediments to even further progression. With regard to development, the time from invention to marketing keeps on shrinking. New technologies and processes also depress cost markedly. At the same time automation of processes allows their introduction into work environments that only a few years ago would have required advanced scientific and technical expertise and skills ('de-skilling'). Notwithstanding, upscaling from development to industrial production remains a major challenge. New techniques also enable the synthesis of difficult molecules that would challenge more traditional methods.

These trends affect the perception of the threat posed by CW. The principle concern today is less the large military stockpile, but rather the potential capabilities of dual-use technologies, break-out capacities, and the attribution of intent to observed activities. It raises questions about the thresholds of risk to the CWC as kilograms rather than tens of tonnes of agent might represent a significant quantity (e.g., terrorism vs. a state). With some new products emerging from the interaction between biology and chemistry, the figure for what constitutes a relevant amount may drop even further over the next decade or so.

With regard to the future of the CWC, these developments raise questions about the organisation of verification, particularly concerning Other Chemical Production Facilities (OCPF). To be able to determine compliance in the absence of CW programmes, a new verification baseline with its evaluation criteria is required. In particular, it will be necessary to spell out the concrete objectives of the verification process and establish the number and types of inspections needed to create confidence. If maintained, current trends in the OPCW (dwindling relevancy of the schedules in the light of the aforementioned scientific and technological developments, inadequate tools, the reduction of the numbers of inspectors and the potential loss of relevant expertise) might therefore pose a risk to the future of the CWC.

*Dr Caítriona McLeish* (Senior Fellow, Harvard Sussex Program, Sussex University) stated that the question of science and technology development is rooted in the general purpose criterion, which ensures that the prohibitions in the CWC are both comprehensive and timeless. On a more practical level, science and technology advancements are the subject of review conferences and the Scientific Advisory Board enables the Director General to render scientific advice to the OPCW's various decision-making organs. National authorities are also confronted with the question of science and technology as a consequence of their specific responsibilities in the CWC verification process and resulting interaction with producers and users of science and technology.

Science, however, does not evolve in a vacuum. The socio-political environment will continue to be characterised by further increases in societal and economic interconnectedness within and across modern societies. Such external changes place pressure on the CWC, meaning that different and new approaches to the governance of science and technology will become necessary. In particular,

the top-down ‘government’ approach will have to be supplemented by a more horizontal ‘governance’ system based on the acknowledgement, principally by governments, that for some issues no single body can achieve success on its own because no single actor, public or private, owns all of the knowledge and information required or capabilities to solve the problem. The transition will alter the relationship between the Technical Secretariat and National Authorities, on the one hand, and producers and users of science and technology, on the other hand. In particular, the latter group will become stakeholders whose particular expertise and resources may contribute to the CWC objectives. Such partnership is already emerging, but not yet fully embraced. The convention is sufficiently equipped to allow a transition towards a governance model, but the States Parties will need to take the appropriate political decisions to ensure sustainable and interactive interaction.

The 3<sup>rd</sup> Review Conference could already undertake a number of steps to promote the governance model. At a basic level, the understanding of the impact of scientific and technological change should become a top priority. The Technical Secretariat should develop and expand its relationships with regulatory bodies in the domain and enhance its interactions with relevant stakeholders. Several initiatives to encourage stakeholder participation in major events, such as review conferences, should be considered. The role of the Scientific Advisory Board, the status of its reports and the ways in which it can interact with the science and technology community should be reviewed with a view to enhance its contribution to the CWC goals.

In a more general sense, the OPCW should maximise its interaction with the broader shareholder community (including civil society representatives), among other things, by offering concrete or virtual platform for communication, information dissemination and encouraging relevant research into all aspects of CWC governance and implementation.

*Mr Richard Guthrie* (CBW Events and Postgraduate researcher, University of Bath) argued that while the present focus of States Parties remains on CW destruction, the CWC contains many more obligations that need to be correlated to a variety of on-going threats. This poses questions about the accuracy of threat assessments, and therefore the level and type of response capacity required under the CWC. He noted that the nature of threats may change much faster than the institutional capacity to respond to them.

With regard to the organisation of verification, he noted the growing tension between the so-called ‘hierarchy of risk’ based on the three schedules and the geographical distribution of risk. Does a country committed to the CWC goals with a schedule 2 facility pose a greater risk than one of concern with an OCPF?

The role of the National Authority was defined during the negotiation of the CWC. It can be viewed as a mere contact point or as an active agency. Its role in relation to the Technical Secretariat depends in essence on its effectiveness. In the light of future technological developments, the importance of the National Authority will only increase, with, *inter alia*, the need to develop relationships with national stakeholders to prevent misuse of dual-use technologies. A key question requiring an answer in the near future concerns the routine and non-routine activities the Technical Secretariat will have to undertake to inhibit misuse. However, if States Parties are unwilling to fund those tasks, will they be prepared to undertake and pay for them on a national level?

The OPCW will have to give careful consideration to the relationship between the tasks and responsibilities of the Technical Secretariat and the National Authorities and how that relationship might evolve. First and foremost, the responsibility to prevent future chemical armament must receive sufficient priority on the global level based on realistic threat assessments. To this end, the Technical Secretariat must be accorded sufficient resources to maintain its skills base and undertake

the necessary tasks. In addition, irrespective of how the future division of responsibilities between the Technical Secretariat and the National Authorities might evolve, the National Authorities must be strengthened in order for them to participate fully in the verification process.

*Ms Yasemin Balci* (Associate Legal Officer, VERTIC) looked at the changes facing the CWC and their implications for national implementation measures. Presently, only 88 out of 188 States Parties have implementation legislation in key areas and 186 have designated a National Authority, although in a number of cases these are merely an address for OPCW correspondence. As the OPCW's focus will shift from destruction to the prevention of the re-emergence of CW, the status of national implementation is perilously low. Diminishing resources for legislative support may have important consequences. The implementation obligations in Article VII will not change in the post-destruction era, but the manner in States Parties will have to oversee and enforce the measures in the light of scientific and technological advances will be different.

Looking at some changes foreseen by the Advisory Panel on the Future Priorities of the OPCW, Ms Balci considered effects on national implementation requirements in three areas. The CWC's scope is sufficiently wide and comprehensive to cover international security developments (including inter- and intra-state armed conflict) and the transposition of international obligations into the domestic legal system covers this issue area. The Rome Statute, which created the International Criminal Court and makes individuals criminally accountable for war crimes (which include the use of CW in international or internal wars), reinforces this need to transpose the CWC's general prohibitions into domestic law. However, more national measures may be required to address threats posed by non-state actors, both in terms of CW acquisition or sabotage of chemical facilities. The OPCW is still very cautious about linking the CWC with counter-terrorism objectives. States Parties also remain reluctant to discuss the place of incapacitating chemical agents in international law, and hence in national implementation. In a legal case concerning the use of an incapacitating agent to liberate hostages in the 2002 Moscow theatre siege, the European Court of Human Rights did not refer to the CWC as a relevant source of international law.

The convergence of chemistry and biology calls for answers relating to the relationship between the CWC and the Biological and Toxin Weapons Convention (BTWC). VERTIC data indicate that States Parties work concurrently on their chemical and biological weapons legislation. However, to be able to regulate science and technology in the future, States Parties will need to agree on international measures, before they can start implementing them on the national level. It is expected that advances in science and technology will increase the challenges for National Authorities to monitor transfers and facilities as well as to generally enforce legislation. Budget reductions for National Authorities are likely to severely hamper their effectiveness.

In view of the migration of chemical production capacity to Asia and Latin America, the need for implementation legislation and a legal framework to regulate the industry there is great.

In the final session *Dr Cindy Vestergaard* (International Relations & European Studies, Danish Institute for International Studies) discussed a number of potential developments during the period leading up to the 2013 Review Conference that might hamper the overall EU goals in the field of disarmament and non-proliferation based on the 2003 WMD strategy. In particular, she referred to the current economic and financial crisis and its possible impact on the OPCW budget, and hence on opportunities for developing future strategies. While the EU continues to fund the CWC through Joint Actions, it also accepts cuts to the OPCW budget in spite of the fact that the WMD strategy views support for multilateral institutions as a first line of defence. She recalled the experience with the EU Common Position for the 2011 BTWC Review Conference. Dr Vestergaard stressed the need for the EU to have a clear vision for the OPCW.

Among the other issues that might affect the outcome of the Review Conference, she listed the current political and social upheaval in the Middle East, the civil war in Syria and the continuing risk of accidental or deliberate CW release, the outcome of the UN-sponsored conference on Middle East disarmament called for by the 2010 Review Conference of the Nuclear Non-Proliferation Treaty (if held at all), and the US presidential elections.

*Ms Clara Ganslandt* and *Mr Nikos Panayiotou* (Presidency, Permanent Representation of Cyprus to the OPCW) offered some workshop conclusions and reflected on the preparations for an EU Common Position for the Third Review Conference. *Dr Jean Pascal Zanders* thanked the speakers and the participants for their input into the day's proceedings.

### **III. Discussion**

#### *On future priorities for the OPCW*

Future OPCW priorities must inevitably be considered in the context of the debates on the budget. While the OPCW is expected to adapt to new challenges (including terrorist threats), pressures to reduce the budget continue. The disappearance of knowledgeable experts or people with specific expertise poses a real risk.

Budgetary considerations also have significant implications for support programmes, notably regarding national implementation assistance for States Parties. Several participants advocated integration of national legislation covering chemical, biological and even nuclear weapons. However, this is beyond the scope of the assistance the OPCW can provide. Existing programmes need to be critically evaluated for their effectiveness and the option of more bilateral assistance should be considered. Several people wondered whether an opportunity for greater EU leadership exists here.

The organisation of emergency assistance under Article X was raised in the context of the Syrian crisis. Several participants remarked on the EU's silence on the threat posed by Syrian CW to the Syrian population and neighbouring countries. The EU could announce that in case of a serious incident, it would materially support OPCW responses to the crises or organise bilateral emergency assistance to States Parties in the region. Both options are allowed under Article X.

#### *On the role of National Authorities*

To most participants a discussion on the recalibration of responsibilities between the Technical Secretariat and National Authorities was either irrelevant or premature. They attached far greater importance to the optimisation of the tools already provided for in the CWC. Presently, National Authorities need to be strengthened to perform their current tasks; in many countries they are a mere letterbox for the OPCW. Besides their role in national data collection and assistance to the OPCW with regard to verification, the effectiveness of a National Authority could also be judged in function of their outreach to national stakeholders (industry, scientific community, etc.) and the nomination of nationals to participate in various OPCW events, including training courses.

#### *On science and technology*

Conversion between chemistry and biology was a major topic. It was stressed that this discussion is not about the merging of the CWC and the BTWC, but concerned a number of advances that draw on new products and processes based on insights from the two scientific fields and their practical applications. These pose challenges for the reporting requirements and verification parameters (particularly with regard to the chemical industry) in the CWC.

### *On civil society involvement*

The participation of civil society in the CWC was a recurring theme. Civil society representatives find it difficult to have access to pertinent information and documents. Their participation in major events, such as Conferences of States Parties and Review Conferences, is not guaranteed. Side events are difficult to organise (particularly if compared to the possibilities during meetings of the BTWC), and some events are organised in buildings far removed from the conference centre or OPCW headquarters. Contrary to the past, access to the OPCW library and canteen is no longer possible when meeting with staff of the Technical Secretariat.

It was argued that the most relevant contributions from civil society to the CWC process occur through their publications and organisation of events with delegates. Nevertheless, it was recognised that this was not an ideal situation and the Director General of the OPCW seeks to ameliorate it.

The composition of ‘civil society’, the politicisation of its agenda and the place of the scientist in it engendered some exchanges. Scientific advice has the aura of neutrality, but ‘the’ scientist may also pursue a political agenda. The possibility of achieving consensus on a particular issue or on the relative importance of a particular issue among the various civil society constituencies is close to zero. Too many types of civil society organisations exist and they all represent different agendas. Of greater concern, however, is how the scientific community could be engaged in more systematic ways. Often their professional requirements (e.g., publication pressure in high-impact, peer reviewed journals, but with limited reach) are at odds with active participation in the CWC process. Ways need to be found to credit their input. Another question concerned the regional diversification of civil society participation, as many States Parties view civil society as a Western tool to influence their own policies. Notwithstanding, many representatives from EU Member States underscored the many positive contributions to the CWC from civil society constituencies.

### *On EU support for the CWC*

Nobody questioned the substantial contributions the EU makes to the OPCW. However, some representatives from EU Members wondered how the EU might increase its impact on the organisation. In particular, many would welcome the presence of an EEAS representative at internal coordination meetings in The Hague.