

# Conflict Management and the Chemical Weapons Convention

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## 1. INTRODUCTION

While conflict management is an important part of any international treaty, it is particularly important in the case of the Chemical Weapons Convention, which will enter into force on 29 April 1997.<sup>1</sup> Disarmament is the primary goal of the Convention and, therefore, by definition, it will encroach on the sovereignty and security interests of its state-parties. Negotiated by the Geneva-based Conference on Disarmament over more than 20 years, the Treaty was finally approved by that body in September 1992 and endorsed by the UN General Assembly in December of that year. The Convention's provisions reflect the new world into which it was born. The regime established by the Convention to verify compliance with its terms is unprecedented in terms of its scope and depth, and because state-parties will have no right to refuse verification activities specified in the Convention. It is also unprecedented in that all state-parties are treated equally, unlike some other multilateral regimes related to the control of weapons of mass destruction negotiated earlier. Nonetheless, such an extensive regime, made possible by the politics of a post-Cold-War world, will inevitably encounter unexpected complications and unforeseen difficulties. This will be so particularly with respect to compliance and interpreting the results of verification activities; therefore, the provisions in the Convention for

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1. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Doc. DC/1170 (1992) (hereinafter the Convention). At the time of writing, 161 states had signed the Convention; 70 of those states have deposited their instruments of ratification. Ratifying states include practically all European states and industrialized countries, as well as many developing countries. Unfortunately, neither the Russian Federation nor the United States, the two major possessors of chemical weapons, have yet ratified the Convention, although both countries continue to state their intention to do so before the Convention enters into force. Participation by these two states is viewed by many as an indispensable element of the treaty. For a list of current signatories and ratifications, see PC/CWC-S.R./22, 3 March 1997.

managing potential or actual conflict will be crucial for it to operate effectively.

This article describes some of those provisions, starting with a general overview of the Convention and, in particular, the Articles relating to conflict management. It identifies and analyses two particularly interesting aspects of the system of conflict management: first, the absence of a dedicated institution with jurisdiction to deal with all disputes and the consequences of such an approach; second, the strong emphasis throughout the Convention on preventing disputes when possible and avoiding escalation of those disputes that nonetheless arise. The article concludes that while the conflict management provisions are flexible, they are not unstructured and, coupled with the powerful compliance measures, they are likely to succeed in managing potential or actual conflict, which in turn will generate confidence in the Convention as a whole.

## 2. THE CONVENTION: A GENERAL OVERVIEW

The Chemical Weapons Convention prohibits state-parties from developing, producing, acquiring, stockpiling, retaining, transferring, or using chemical weapons and requires that all existing chemical weapons and related facilities be declared and destroyed.<sup>2</sup> The Convention establishes the Organization for the Prohibition of Chemical Weapon (OPCW) “to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.”<sup>3</sup> The Organization will have three organs: the Conference of the States Parties (its membership body), the Executive Council (its executive body), and the Technical Secretariat (its functional body).<sup>4</sup> Compliance with the Convention will be verified by state-parties making declarations to the Technical Secretariat regarding specified activities,<sup>5</sup> which in turn will undertake routine inspec-

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2. The Convention, *supra* note 1, Art. I.

3. The Convention, *supra* note 1, Art. VIII(1).

4. The Convention, *supra* note 1, Art. VIII(4).

5. The activities coming under the Convention’s purview include those occurring at military facilities as well as activities at industrial facilities which deal with chemicals listed in the three schedules to the Convention. These chemicals are “dual use”, that is, chemicals with peaceful industrial purposes but with the potential to be used as precursors for chemical weapons, or as chemical weapons themselves.

tions to verify the accuracy of those declarations. In addition to these routine inspections, the Organization has the power to conduct short notice challenge inspections without the right of refusal to clarify any questions concerning possible non-compliance.<sup>6</sup>

There are a number of provisions in the Convention dealing with a range of potential disputes. Many of these provisions are overlapping and may operate simultaneously. Article IX ('Consultations, Co-operation and Fact-Finding') is the broadest of these, covering matters that might arise relating to the object and purpose of the treaty, as well as its implementation and possible non-compliance. The Article provides for a range of mechanisms to deal with situations including consultation and cooperation between the parties to a dispute, clarification of ambiguous situations or non-compliance concerns, and finally, the right of every state-party to request an on-site challenge inspection.

Disputes involving a state-party's non-compliance with the Convention are addressed in Article XII ('Measures to Redress a Situation and to Ensure Compliance, Including Sanctions'). This Article enumerates measures such as restricting or suspending a state party's rights and privileges under the Convention, collective measures against a state party, and bringing concerns to the attention of the UN General Assembly and UN Security Council.

Article XIV ('Settlement of Disputes') deals with disputes that may arise concerning the application or interpretation of the Convention. The Article provides for consultation between the parties to a dispute by "negotiation or by other peaceful means," including recourse to the organs of the Convention and, by mutual consent, referral to the International Court of Justice.<sup>7</sup> It also authorizes the Executive Council to assist by whatever means it deems appropriate, including by bringing matters to the attention of the Conference, which in turn can entrust other organs with the task of settling the dispute.<sup>8</sup> Both the Conference and the Executive Council are "separately empowered" to request an advisory opinion from the International Court of Justice on "any legal question arising within the scope of the activities of the Organization."<sup>9</sup> The dispute settlement mechanism

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6. The Convention, *supra* note 1, Art. IX(8).

7. The Convention, *supra* note 1, Art. XIV(2).

8. The Convention, *supra* note 1, Art. XIV(3) and (4).

9. The Convention, *supra* note 1, Art. XIV(5).

contained in Article XIV is "without prejudice to Article IX or to the provisions on measures to redress a situation and ensure compliance, including sanctions."<sup>10</sup>

Protecting confidential information, both military and industrial, is an important factor in achieving a workable verification regime. Reflecting this, the Annex on the Protection of Confidential Information is appended to the Convention, which deals with disputes involving both a state-party and the Organization relating to a breach or alleged breach of the obligation to protect confidential information. The Annex requires that a Commission be set up as a subsidiary organ of the Conference, with jurisdiction to consider this category of dispute.<sup>11</sup>

These are some of the main provisions relating to conflict management in the Convention. However, there are a number of other means by which conflict will be minimized and resolved. One example is the device of facility agreements, which are arrangements between a state-party and the Organization governing the activities of both the inspected site and the international inspection team in the course of a routine inspection.<sup>12</sup> The negotiation of facility agreements will provide a forum for identifying potential areas of dispute and ways of resolving these. Further, the facility agreement can provide in advance for procedures to handle any disputes which nonetheless arise in the course of an inspection.<sup>13</sup>

More generally, much of the preparatory work currently being undertaken is aimed at minimizing the incidence and escalation of disputes once the Convention enters into force.<sup>14</sup> The Preparatory Commission for the OPCW has been conducting training courses and seminars for those people who will be involved in implementing the Convention at the national level. These courses not only educate those involved about the obligations

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10. Art. XIV(6).

11. The Convention, *supra* note 1, Confidentiality Annex, para. 23.

12. The Convention, *supra* note 1, Verification Annex Part III(8). For a full discussion on ways in which the Convention minimizes conflict in the course of inspections, see R. Mathews & T. Mc Cormack, *Prevention is Better than Cure: Pre-Emptying Inspection-Related Disputes Under the Chemical Weapons Convention*, 16 *Contemporary Security Policy* 396 (1995).

13. *Id.*, at 409-410.

14. When the Convention opened for signature in January 1993, the signatory states established a Preparatory Commission for the Organization, with the task of preparing for entry into force the Convention. Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons, Legal Series PC-OPCW 1 and Addenda 1-3, 1996.

in the Convention, but also provide a forum for discussion between member states on implementation. Similarly, the Preparatory Commission is conducting various outreach programmes for the chemical industry, which will allow that sector to be aware of their rights and obligations under the Convention, thus reducing the risk of misunderstandings and inadvertent non-compliance. Finally, the inspectors themselves undergo a rigorous five-month training course prior to appointment, which includes instruction on conflict prevention and management techniques.

### 3. DECENTRALIZED DISPUTE RESOLUTION

The Confidentiality Commission, although dedicated to dispute resolution, will only have jurisdiction to consider cases relating to alleged breaches or of confidentiality. Further, while Article VIII(21.f) empowers the Conference of the states parties to establish “such subsidiary organs as it finds necessary for the exercise of its functions,” there is no obligation to do so. Thus, there is no dedicated dispute resolution institution with jurisdiction to consider all disputes arising under the Convention, whatever their nature. Consequently, a range of mechanisms are available to resolve or prevent escalation of disputes. These include, but are not limited to, consultation, fact-finding, procedures for seeking clarification, mutual agreement to arrange inspections, recourse to the various organs of the Organization and to outside agencies, and challenge inspections.

The Convention also anticipates that parties will choose means other than those specifically mentioned, but this comes with the proviso that the obligation to settle disputes by peaceful means is observed. This is a recurring theme in the Convention. Article XIV(1) stipulates that disputes shall be settled “in conformity with the provisions of the Charter of the United Nations.” This clearly refers to the obligation to settle disputes by peaceful means found in Articles 2(3) and 33(1) of the Charter.<sup>15</sup> Article XIV(2), while allowing parties to a dispute to choose the means of settlement, limits that choice to peaceful means. The collective measures allowed for in Article XII(3) must be “in conformity with international law,” which again indicates only peaceful collective action could be justified under this provi-

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15. W. Krutzsch & R. Trapp, *A Commentary on the Chemical Weapons Convention* 234 (1994).

sion. The repeated emphasis on peaceful settlement conforms with the expressed desire in the Convention's Preamble to "contribute to the realization of the purposes and principles of the Charter of the United Nations." It is also appropriate in the light of the disarmament objectives of the treaty as a whole.

While the Convention envisages recourse to international institutions, such as the UN General Assembly, UN Security Council and International Court of Justice, it is more likely that disputes will be dealt with within the existing structures of the Organization, at least in the first instance. Apart from the fact that the Convention requires this in some cases,<sup>16</sup> parties to a dispute are more likely to turn to the internal structures for cost reasons, as well as the need to resolve disputes as speedily as possible. The need for an efficient and economic dispute resolution mechanism is reflected in the text of the Convention itself, which affords the Executive Council a key role in dispute resolution. The Executive Council will be composed of 41 state-parties elected on a two year rotational basis, designed to ensure equitable geographical distribution.<sup>17</sup> In contrast to the Conference of the States Parties, to which it will be responsible and which in the normal course of things is expected to meet once per year, the Council as the governing body can be convened at extremely short notice and will supervise the day-to-day operations of the Organization.<sup>18</sup> In particular, it will play an important role in dealing with any complications that arise in implementing the verification regime, challenge inspections, management of the OPCW, and preparing the budget.

Article VIII(35) gives the Executive Council jurisdiction to consider "any issue or matter within its competence affecting this Convention and its implementation, including concerns regarding compliance, and cases of non-compliance." Article VIII(36) gives jurisdiction to consider "doubts or concerns regarding compliance and cases of non-compliance, including *inter alia*, abuse of the rights provided for under this Convention." This paragraph also empowers the Executive Council "in cases of particular gravity and urgency to bring the issue directly to the attention of the UN General Assembly and the UN Security Council." Article XIV(3) provides

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16. E.g., Art. XII(4) provides for the Conference to bring an issue to the attention of the UNGA and UNSC "in cases of particular gravity."

17. With the possibility of re-election; see the Convention, *supra* note 1, Art VIII.

18. The Convention, *supra* note 1, Art. VIII(23-36).

for the Executive Council to contribute to a dispute by offering its “good offices, calling upon the States Parties to a dispute to start the settlement process of their choice and recommending a time-limit for any agreed procedure.” Article XII(2) gives the Executive Council the power to recommend to the Conference of the States Parties that the rights and privileges of a state-party be suspended.

The procedures within the challenge inspection provisions also confer extensive powers on the Executive Council. A prime example of this is that the Council, not later than 12 hours after having received an inspection request, may decide by a three-quarters majority of all its members against carrying out an inspection. This decision is final.<sup>19</sup> Finally, the Executive Council has the task of reviewing the final inspection report to determine if any non-compliance has occurred or if the right to request a challenge inspection has been abused.<sup>20</sup>

These powers, together with the lack of a centralized dispute resolution institution and the need to have disputes dealt with speedily and efficiently, will mean that the Executive Council will play a central role in preventing, managing, and resolving disputes that arise under the Convention.

#### 4. EMPHASIS ON PREVENTIVE MEASURES

Another striking aspect of the Convention’s conflict management provisions is the emphasis on preventing disputes, or at least managing their escalation. This is reflected in the structure of the provisions. Each of the relevant articles is graduated in approach, first providing for the means of preventing the occurrence of full-blown disputes by establishing procedures for clarifying and addressing concerns, and then moving on to enumerating measures that can be taken to resolve disputes.

The clearest example of this approach is Article IX, which starts with preventive measures such as consultation, cooperation, and exchange of information between state-parties aimed at resolving concerns about implementation of or non-compliance with the Convention.<sup>21</sup> The Article then

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19. The Convention, *supra* note 1, Art. IX(17).

20. The Convention, *supra* note 1, Art. IX(22).

21. T. Kurzidem, *Conflict Management and the Chemical Weapons Convention*, in M. Bothe, N.

sets out procedures for requesting clarification about any situation that “may be considered ambiguous or which gives rise to a concern about the possible non-compliance of another State Party.” State-parties have the right to request the assistance of the Executive Council and, in particular, to request the Executive Council to obtain information from another state-party. Time lines are set down in which the procedures ought to be followed and, if doubts have not been resolved within 60 days or the situation is otherwise urgent, a state-party can request that a special session of the Conference be convened to consider the matter and recommend appropriate measures. Only after detailing these procedures does the Article move on to the ultimate tool - the right of every state-party to request an on-site challenge inspection at any location without delay.<sup>22</sup> The remainder of the Article sets out the detailed procedures for conducting challenge inspections.<sup>23</sup>

The graduated nature of Article IX emphasizes the need to facilitate resolution of disputes or concerns prior to escalation. At the same time, and this is a crucial aspect of the careful balance struck in the Article, the right of every state-party to request a challenge inspection at any time is preserved. Article IX(2) provides that all the provisions relating to consultations, fact-finding, and cooperation are without prejudice to this right. Thus, the Convention clearly specifies that while a range of more informal methods of clarification can be used, requesting a challenge inspection remains an ultimate right. However, that right, in turn, is subject to several provisos to ensure it is not abused. First, Article IX(9) cautions state-parties against unfounded inspection requests and provides that the sole purpose is to determine facts related to the possible non-compliance. Second, pursuant to Part X(4) of the Verification Annex, a request must contain the underlying substantive concerns. Third, pursuant to Article IX(17), the Executive Council may decide by a three-quarters majority of all its members against carrying out the challenge inspection, if it considers “the inspection to be frivolous, abusive or clearly beyond the scope of this Convention.” Fourth, the Executive Council has to review the final report of the inspection team and, at that stage, again can address any concerns that the right to request a

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Ronzitti & A. Rosas (Eds.), *Chemical Weapons Disarmament: Strategies and Legal Problems* (forthcoming).

22. The Convention, *supra* note 1, Art. IX(8).

23. Which are supplemented by Part X of the Verification Annex.



challenge inspection has been abused.

Article XII also adopts a graduated approach, in that its provisions range from suspending the state-parties' rights and privileges under the Convention to taking collective measures against an offending state, and in cases of particular gravity, bringing the matter to the attention of the UN General Assembly or UN Security Council. One difference with the challenge inspection right of Article IX is that in Article XII, certain conditions must be satisfied before each step can be taken. So, e.g., to suspend a state-party's rights and privileges, that state must have been requested to redress a situation and must have failed to do so within a specified time.<sup>24</sup> Collective measures can only be used where there may be "serious damage to the object and purpose" of the Convention.<sup>25</sup> The UN can only be involved in "cases of particular gravity." These conditions illustrate the Convention's aim of preventing deviation from its obligations, in that they encourage strategies aimed at correcting non-compliance rather than simply the means by which an offending state party can be condemned.

Article XIV is also graduated in structure, moving in the early subparagraphs from consultation between the parties involved to drawing on the good offices of the Executive Council, which can contribute by whatever means it deems appropriate. Further, state-parties can bring a dispute to the attention of the Conference of States Parties and finally, there are provisions for requesting an Advisory Opinion from the International Court of Justice.

## 5. CONCLUSION

The Chemical Weapons Convention provides a flexible system for managing conflicts that will inevitably arise in the course of implementation. This flexibility is possible precisely because there is no single institution of the Organization entirely responsible for all potential or actual disputes, but the danger that the lack of a fixed structure may work against efficient conflict resolution must be recognized. In the same way, the strong empha-

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24. The Convention, *supra* note 1, Art. XII(2) and *see also* Art. VIII(36), which requires the Executive Council, in cases where there are doubts about compliance to first consult with the states parties involved, then request them to take remedial measures within a specified time and then outlines additional steps if further action is deemed necessary.

25. The Convention, *supra* note 1, Art. XII(3).

sis on prevention must not be at the expense of providing for speedy resolution of any disputes which may occur.

The aim of those involved in drafting the Chemical Weapons Convention was to combine flexibility and prescription, to ensure that the Convention's primary aim of eliminating chemical weapons would not be hampered by an inability to handle disputes. Whether this aim will, in fact, be realized as the Convention is implemented remains to be seen. Although the Convention does indeed establish a system for dispute resolution, it does not provide precise recipes. The search may not be easy and will certainly require not only political will, but also dedication to the regime, the success of which must be the paramount consideration.

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