

6

Reviewing the Chemical Weapons Convention: gently does it

Robert J. Mathews

.....

The 1992 Chemical Weapons Convention (CWC) was heralded as a major breakthrough in multilateral arms control.¹ It was the first comprehensively verifiable multilateral treaty that completely banned an entire class of weapons and it went further than any previous treaty in the depth, extent and intrusiveness of its verification. Verification under the CWC² includes compulsory national declarations about relevant industrial and military activities, destruction of chemical weapons within a time frame with intrusive verification, and a regime of routine inspections of declared industrial and military facilities. Additional features are provisions for challenge inspections, whereby a state party can request an inspection of any site in another state party at short notice, and provisions for the investigation of alleged use of chemical weapons.

The convention specifies that conferences to review its operation should be held 'no later than one year after the expiry of the fifth and the tenth year after entry into force of this Convention'. Such reviews 'shall take into account any relevant scientific and technological developments'.³ In addition, the convention specifies that, during the First Review Conference (RevCon), its provisions related to the declarations and verification of the 'other chemical production facilities' (OCPFs) producing discrete organic chemicals (DOCs) are to be re-examined in the light of a comprehensive review of the overall verification regime for the chemical industry on the basis of the experience gained, and that the RevCon shall make recommendations so as to improve the effectiveness of the verification regime.⁴

The first CWC RevCon was convened at the headquarters of the Organisation for the Prohibition of Chemical Weapons (OPCW) in The Hague from 28 April to 9 May 2003.⁵ This chapter considers the preparations for the first RevCon, its conduct

and its outcome, with particular emphasis on verification, and concludes with an assessment of the potential value of the RevCon in guiding the activities of the OPCW over the next five years.

Preparations for the RevCon

In May 2001, the Sixth Conference of States Parties (CSP) to the CWC tasked the Executive Council with beginning preparations for the First RevCon. To this end, at its 26th session in September 2001, the Executive Council (EC) established an open-ended Working Group for the preparation of the Review Conference (WGRC).

The OPCW had intended that preparations for the RevCon would have been a major focus of activities for the 19 months from September 2001 until the convening of the RevCon in late April 2003. However, despite the early commencement of such preparations, there were a number of distractions in the latter part of 2001 and for most of 2002. In particular:

- The replacement of the original Director-General, José Bustani of Brazil, took several months and caused considerable tensions within the OPCW.⁶
- The negotiation of the 2003 OPCW budget, following the financial crisis in 2001, resulted in lengthy and time-consuming budget negotiations between April 2002 and the conclusion of the Seventh CSP in October 2002.⁷
- The 11 September 2001 terrorist attacks on the US led to the establishment of an OPCW anti-terrorism working group in December 2001, which met several times to discuss how the OPCW could assist in raising the barriers to chemical terrorism and in providing emergency assistance following a chemical terrorism incident.
- There was also a sense in many capitals that the CWC was working reasonably well and that there were more important security issues facing defence and foreign ministries, including terrorism and issues relating to the 1972 Biological Weapons Convention (BWC).⁸

By October 2002, the WGRC had met several times and discussed administrative arrangements for and the objectives and methodology of the RevCon. In particular, it had agreed that, rather than the traditional article-by-article review, the RevCon would review the CWC thematically. The themes would be: implementation of the convention (including universality, changes in the security environment and terror-

ism); destruction of chemical weapons (CW) and former CW production facilities; nonproliferation measures; verification; assistance; and international co-operation.

However, substantial discussion of the various issues did not begin until after the Seventh CSP had concluded in October 2002. At that time, the Chair of the WGRC, Ambassador Alberto Davèrède of Argentina, supported by the Technical Secretariat (TS), began developing drafting notes which became the focus of discussions in the WGRC and ultimately formed the basis of the draft Political Statement and draft Review Document that were submitted to the RevCon.

Background review documents were also prepared by the Director-General,⁹ the Scientific Advisory Board (SAB)¹⁰ and the TS.¹¹ However, once again, because of the distractions discussed above, the final versions of these papers were not available until a couple of weeks before the start of the RevCon. There were also 32 national papers on various topics, prepared by 17 states parties.¹²

Useful workshops were also conducted in the lead-up to the RevCon, including an International Union of Pure and Applied Chemistry (IUPAC) Workshop held in Bergen, Norway, in June 2002,¹³ a North Atlantic Treaty Organisation (NATO) workshop held in Bratislava, Slovakia, in October 2002,¹⁴ and Pugwash (Pugwash Conferences on Science and World Affairs)¹⁵ workshops. They reviewed developments in science and technology and changing industry practices that may have an impact on the CWC. Topics included the development of novel methods of production of toxic chemicals (including through biologically mediated processes) and novel toxins, and the development of new monitoring techniques, including miniaturised sensors and portable chemical analysis equipment.¹⁶ The NATO and Pugwash workshops also reviewed the OPCW verification procedures on the basis of the early experiences of the OPCW Inspectorate, including issues related to access to records, the extent of access to chemical industry plant sites, and sampling and analysis.¹⁷ These workshops also resulted in useful background papers for the RevCon.

The Review Conference

The RevCon commenced with a message from the UN Secretary-General, Kofi Annan, and a statement by the recently appointed Director-General, Rogelio Pfrter of Argentina.¹⁸ This was followed by the General Debate, which began with a provocative statement by the US in which it alleged non-compliance by Iran and

concerns about Sudan¹⁹ (this was in spite of the declared intentions of key delegations that the RevCon should be conducted in a harmonious, constructive atmosphere). However, following Iran's robust response to the American allegations,²⁰ the remaining couple of days of national statements were uneventful.

Following the General Debate, work began in the Committee of the Whole (COW), chaired by Ambassador Marc Vogelaar of the Netherlands, on finalising the Political Declaration²¹ and the Review Document,²² which had been drafted during the lengthy preparatory process. While the COW retained the central role in negotiating and redrafting these documents, a so-called Friend of the (COW) Chair 'editing group' (chaired by the Ambassador Dato' Noor Farida Ariffin of Malaysia) was allocated responsibility for 'fine-tuning' both documents.

The Political Declaration was finalised first, in the middle of the second week of the RevCon, following six days of difficult negotiations. At that stage (only two days before the end of the RevCon), it had become clear that the editing group would not have time to finish redrafting the longer Review Document. To expedite drafting, the US, the UK, India and Iran (assisted by the Director-General) formed a 'small drafting group' which developed agreed language on the controversial elements. This agreed language was then incorporated into a revised draft document which was returned to the COW for consideration, where it was subsequently adopted with relatively minor modifications. The document was then endorsed by the RevCon, allowing it to finish shortly before midnight on the final day.

In addition to the formal conference sessions, an Open Forum entitled 'Challenges to the Chemical Weapons Ban' was held at The Hague Peace Palace on the afternoon of 1 May. This forum, organised by the TS and non-governmental organisations (NGOs), discussed a number of issues, among them CW destruction, industry issues and scientific developments, including non-lethal weapons. For many delegates, the opportunity for free-ranging discussion of scientific and technical issues during the Open Forum was the highlight of the RevCon.

Major issues and conference recommendations

Measures to ensure universality of the CWC

The fact that the CWC had attracted 151 states parties²³ within six years of its entry into force was hailed by the Director-General and several member states as evidence

of significant progress towards universal adherence.²⁴ While it was recognised that some countries (particularly in the Middle East) were claiming that they could not yet accede to the CWC because they believed it might harm their national security, several statements also cited a perception among some developing countries that there was a lack of tangible benefits from treaty membership to entice them to join.²⁵ The Review Document recommended that the EC, with the co-operation of the TS, should develop and implement a plan of action in order to further encourage, in a systematic and co-ordinated manner, accession to the convention and to assist states that were ready to join the CWC in their national preparations to implement it.²⁶

The functioning of the OPCW

The OPCW has had its share of challenges in its first six years. These include the financial crisis in 2001, which resulted in the need to impose 'austerity measures' for several months, and the replacement of the original Director-General, which also took several months and caused considerable tensions within the OPCW and among states parties. Since his appointment in July 2002, Ambassador Pfirter has undertaken an active programme to improve the transparency of the Technical Secretariat's management procedures, ensure a greater sense of common purpose between states parties and the Secretariat, and ensure adequate and proper use of financial resources. His positive influence was apparent during the Seventh CSP in October 2002 and even more so during the subsequent preparations for the RevCon. By the time of the RevCon, there was a strong sense that the states parties and the OPCW had moved beyond the difficult situation they had faced in 2002.

The Executive Council, which has oversight of the operations of the OPCW on behalf of the states parties, has notched up substantial achievements since entry into force. However, there has also been disappointment in that it has not been able to reach decisions on many issues considered important for the effective operation of the OPCW, including some dating back to the tasks that the Preparatory Commission (PrepCom) was requested to complete before entry into force.²⁷ The unresolved issues include legal and technical ones related to industry declarations and verification.²⁸ The Review Document expressed concern about these delays and urged the Council to increase its momentum and strive to conclude all unresolved issues.²⁹

Judging from a number of national statements as well as comments from delegates in the margins of the RevCon, there has clearly been a high level of satisfaction with respect to the functioning of the OPCW inspectorate.³⁰ However, because of the recently implemented staff tenure policy, many of the most experienced OPCW staff (including the originally recruited inspectors) will leave the organisation in the next few years.³¹ While there are reasonable arguments in favour of a maximum term of seven years for general management and administrative staff, it is unfortunate that the same tenure rule is to apply to the specialist staff who manage the organisation's verification functions and to the inspectors themselves. Not only will this add significantly to the cost of maintaining a properly trained and experienced inspectorate, but unless the process is managed carefully the loss of these highly experienced staff may substantially reduce the effectiveness of the inspections.

Clearly, the budget planning process has caused considerable difficulties for the Executive Council in the OPCW's first six years. A major obstacle in developing the annual budgets has been the lack of agreement on the size of the OPCW, with some states parties (primarily some of the major financial contributors) arguing that the OPCW should only have limited (if any) growth, while the TS has argued that for the OPCW to fulfil its mandate there will need to be a substantial increase in its size, requiring an increase in its budget. A related issue that the EC continues to grapple with is how the OPCW should allocate the available resources between the competing demands of: verification of destruction of CW and of CW production facilities (treaty articles IV and V); industry verification (Article VI), including the allocation of resources for inspections of Schedule 1, Schedule 2 and Schedule 3 facilities and OCPF; and international co-operation and assistance, including support for member states in developing their national legislation (Article VII), assistance protection (Article X) and economic and technological development (Article XI).

National implementation measures

Each CW state party is required to adopt a range of domestic legislative and administrative measures to enable it to enforce its international obligations at the national level, including the collection of information required for declarations, and enabling the OPCW inspectors to conduct inspections in its territory. The Director-General and some states parties have expressed concerns that six years after entry into force many states parties have failed to adopt any national implementation measures.³²

The Director-General has suggested an action plan to develop a proactive, effective and well-targeted programme of implementation support.³³

The RevCon confirmed the essential role of national legislation in the proper functioning of the convention. It called on states parties that have not already done so *inter alia* to designate a National Authority and inform the OPCW by the Eighth CSP (in October 2003) of the status of their national implementation measures. The Review Document also encouraged the TS, as well as states parties, to develop partnerships with relevant regional organisations that could provide implementation support to states parties.³⁴

Another national implementation issue raised was that some states parties have focused exclusively on specific CWC obligations, such as establishing a National Authority, and have not developed legislation relevant to the more general requirements of the treaty, such as those in Article 1 which embodies the prohibition on CW. An important issue in this regard is implementation of the general purpose definition of CW, which recognises that, in addition to the chemicals listed in the CWC schedules, other toxic chemicals could be used as CW, either as part of a state CW programme or by a terrorist group.³⁵ The Review Document emphasised that for effective implementation it is necessary for states parties to adopt a broad perspective on what constitutes 'CWC-relevant chemicals',³⁶ which clearly goes beyond the chemicals listed in the three schedules.³⁷

Destruction of CW and former CW production facilities

The two main CW-related issues raised in the General Debate were the importance of adhering to the CWC destruction timelines and the level of inspection resources currently being used for verification of CW destruction.

The US, India and the Republic of Korea (South Korea) have each destroyed a substantial portion of their Category 1 CW.³⁸ Russia, which is having considerable difficulty in destroying its weapons, announced during the RevCon that it had recently completed the destruction of 1 percent of its CW arsenal—three years after it was originally scheduled to do so.³⁹ This disappointing result occurred despite the fact that Russia is currently receiving both technical and financial assistance from several states parties, including the US and some members of the European Union (EU). Another state party, Albania, recently discovered CW agents on its territory and has declared itself as the fifth CW possessor state.⁴⁰

While most references in national statements to the need to meet the convention's CW destruction timelines were expressed in general terms,⁴¹ the UK expressed disappointment at Russia's performance.⁴² Yet it is important to keep this issue in perspective. The 10-year time frame for the destruction of all CW was agreed in Geneva in the late 1980s at a time when the US and the former Soviet Union were both confident that they could destroy all their CW within 10 years of entry into force. The RevCon itself took a pragmatic approach, stressing the secure storage of all CW stockpiles while they await destruction—a matter of increasing importance in the light of heightened concerns about chemical terrorism.⁴³

The majority of inspections conducted so far by the OPCW inspectorate have been associated with verification of destruction of CW.⁴⁴ There are two major reasons for this. The first is that the US and Russia never concluded the bilateral destruction agreement that had been anticipated during negotiations on the CWC, which would have seen the bulk of the verification of destruction of the American and Russian CW stockpiles being conducted by bilateral inspection teams, with OPCW inspectors providing only complementary verification.⁴⁵ The second reason is the interpretation of the CWC text adopted by the PrepCom with respect to the continuous monitoring of destruction efforts, which has resulted in the continuous presence of inspectors, as well as continuous monitoring with on-site instruments.⁴⁶

There will be a substantial increase in the inspection workload for verification of CW destruction facilities (CWDFs) in the next few years as several additional CWDFs begin destruction operations.⁴⁷ There are concerns that there will not be enough resources in the OPCW inspectorate to provide the level of verification of destruction based on currently agreed procedures. As the Director-General pointed out to the conference, the 'verification methodology applied at CWDFs needs to be reviewed if the verification regime as a whole is to remain sustainable and affordable'.⁴⁸

The Review Document reaffirmed the obligation of the CW possessor states to destroy their CW stockpiles within the CWC-specified timelines and urged them to exploit scientific and technological developments to enable more effective use of verification resources.⁴⁹ It also called on other states parties to support these efforts and provide assistance where possible. The RevCon also reiterated the obligation of states parties possessing converted former CW production facilities to report annually for 10 years on the activities at those sites and to open them to inspection.⁵⁰

Chemical industry declarations

The overall poor rate of submission of initial Article VI declarations, related to activities not prohibited under the CWC, was a major disappointment in the first few years after entry into force.⁵¹ While most states parties have now provided initial and annual declarations, a considerable number are incomplete. It has also been recognised that the declaration requirements for states parties are complex and that some have experienced technical difficulties in compiling the required information.⁵² The TS, in co-operation with a number of interested states parties, has been assisting other states parties which have had difficulty in completing their declaration requirements. The Secretariat has also been undertaking clarification procedures, comparing declared information with chemical production information available from open sources, to identify additional industry facilities which should have been declared.

In the area of Article VI declarations, the Director-General identified three issues that need further attention: the quality of national implementation; the agreement on outstanding declaration issues (including unresolved 'industry issues'); and an increase in the effectiveness of the system (for example, through the introduction of 'nil declarations' in those cases where a state party has nothing to declare).⁵³ With respect to Article VI declarations, the Review Document called on all states parties to submit complete and accurate declarations in a timely manner.⁵⁴

Routine inspections of chemical industry

When the CWC was being negotiated, it was recognised that it would be necessary to review and adjust, as appropriate, the proportions of inspection effort devoted to inspections of Schedule 1, Schedule 2, Schedule 3 and DOC facilities. Accordingly, the Article VI regime, under which these inspections fall, was designed to be flexible and open to future adjustment in the light of practical experience and changes in chemical technology and chemical industry operations.⁵⁵

During the first few years after entry into force there was an understandable focus on the initial inspections of Schedule 1 and 2 facilities in order to meet specific convention timelines. Following completion of these initial inspections, a greater proportion of the available resources has been devoted to Schedule 3 and DOC inspections.⁵⁶ In addition to spreading the inspection load over a greater number of states parties, this also results in more inspections being conducted at 'CW-capable'

facilities which many experts regard as most relevant to possible illicit CW programmes.⁵⁷ Overall, there has been a high degree of satisfaction on the part of the OPCW, states parties and industry facility personnel with the way industry inspections have been conducted.⁵⁸ Fortunately, no OPCW routine inspections have been delayed so far because of lack of national legislation.

Since entry into force, 58 states parties have declared a total of almost 4,000 inspectable OCPFS. Of these facilities, around 100 had received inspections by the end of 2002. The Technical Secretariat has concluded that these inspections have shown that some of the OCPFS 'are highly relevant to the object and purpose of the convention. These facilities produce chemicals that are structurally related to Schedule 1 chemicals. Of particular relevance to the Convention are facilities that combine this kind of chemistry with production equipment and other hardware designed to provide flexibility and containment'.⁵⁹

The Scientific Advisory Board, in its study of developments in the production of CWC-relevant chemicals, concluded that OCPFS are the area where the impact of recent technological developments was most relevant and recommended that it would be prudent to increase the number of inspections of such facilities.⁶⁰

These assessments were not fully shared by all states parties.⁶¹ However, based on the recognised relevance of OCPFS, the Review Document referred to the need to 'take account of the OCPFS declared by states parties, of their technical characteristics and activities, and trends in science and technology that impact on these parameters, to increase the number of OCPF inspections to the extent found appropriate as the budget unfolds in the ensuing years'. The Review Document also advocated improving the selection algorithm by fully implementing all parts of the selection mechanism for OCPF inspections,⁶² which should result in industry inspection being redirected towards those OCPFS considered most relevant to the CWC. Such measures should increase confidence in the verification results obtained under Article VI and in the deterrent effect of the Article VI regime.

Consultations, co-operation and fact-finding

A number of states parties have used the informal bilateral consultation procedures, provided for in Article IX of the treaty, to consult and seek clarifications from a number of states parties on the information provided in their declarations. For example, in its national statement, the US stated that it 'has utilised the consultative

provisions of Article IX on numerous occasions to address our compliance concerns often with great success'.⁶³ In its national statement, the UK also stated that it had made use of these clarification provisions.⁶⁴ However, no state party has yet utilised the formal consultation procedures involving the EC.⁶⁵

No challenge inspections had been requested or conducted by April 2003.⁶⁶ However, several practice challenge inspections had been conducted, including a number in collaboration with OPCW inspectors.⁶⁷ The TS has also put into place the necessary internal procedures so that it can react rapidly and effectively when a request for such an inspection is made by a state party. In relation to inspection team members, approved equipment and logistical support, a state of readiness is maintained that would allow the Secretariat to dispatch an inspection team at short notice.

No investigations of alleged use (IAU) had been requested or conducted by April 2003. However, a number of training exercises on IAU and delivery of assistance have been conducted by the OPCW and states parties. These have highlighted the importance of human factors, such as interviewing techniques and the collection of evidence, and the need for appropriate equipment. As in the case of challenge inspections, the Secretariat has put in place the necessary internal procedures for an IAU to allow it to dispatch an inspection team at short notice.

A number of national statements referred to challenge inspections. The key issue raised was whether a state party could request a challenge inspection without having undertaken prior consultations about the compliance concern. The UK made clear its interpretation of the convention text, stating that: 'The UK would not wait for prior consultations if concerns were serious and urgent enough to warrant an immediate Challenge Inspection'.⁶⁸ However, the Non-Aligned Movement (NAM) and China proposed that challenge inspections 'should be undertaken as a last resort and as part of the process of consultation and fact-finding'.⁶⁹

This issue has been bubbling away since the end-game of the negotiations on the CWC and was a major issue in the PrepCom. Clearly, Article IX allows for a challenge inspection to be requested without prior consultation.⁷⁰ Since it was not possible to obtain agreement on this issue during the RevCon, the Review Document, after emphasising the importance of challenge inspections, simply repeated the relevant parts of the convention text (in particular the first sentence of Article IX, para. 2).

Sampling and analysis

The CWC has general provisions permitting sampling and analysis during OPCW inspections, together with more specific requirements for particular types of inspection. To implement these, the TS (with the support of states parties) has developed and tested procedures for sampling and analysis, established a quality system, purchased equipment (including five transportable gas chromatography–mass spectrometer systems) and built up an analytical database. However, sampling and analysis has so far played a less prominent role in the conduct of OPCW inspections than was originally anticipated, which is partly a reflection of the requirements of initial inspections and partly a result of technical, logistical and cost constraints.⁷¹

During the IUPAC workshop, recent technical developments in analytical chemistry methodologies were reviewed, with a focus on those that may be applicable to routine and challenge inspections as well as investigations of alleged use of CW. The RevCon recognised the importance of sampling and analysis, including encouraging the EC and the TS to work towards improving the effectiveness of industry inspections through sampling and analysis procedures.⁷² However, there was no detailed discussion of previous decisions which would limit the utility of the sampling and analysis, such as the use of ‘blinded analytical instruments’⁷³ and the limiting of the OPCW analytical database to chemicals listed in the CWC schedules and their degradation products.⁷⁴

Protection of confidential information

One of the difficult issues faced by the OPCW since entry into force has been finding an acceptable balance between the need for transparency in its operations and the need to protect sensitive information. The Review Document reiterated the importance that states parties attach to the need for the OPCW to thoroughly protect confidential information, in accordance with the provisions of the convention; noted that there had been minor incidents which had not compromised the effectiveness of the OPCW’s regime to protect confidentiality,⁷⁵ and encouraged the TS and states parties to review their respective practices in assigning levels of classification of information with the intention of reducing the quantity of classified information. This would facilitate the smooth functioning of the OPCW system for protecting confidentiality.⁷⁶

Review of relevant scientific and technological developments

As discussed above, there were substantial reviews of relevant scientific and technological developments in a number of workshops during the 12 months prior to the formal two-week session of the RevCon, and a number of useful documents were prepared. The findings of the Scientific Advisory Board have been provided to the Executive Council for review. Unfortunately, apart from the half-day Open Forum, there was only limited opportunity to discuss these issues during the formal two-week RevCon session because of the priority given to concluding the drafting of the Political Declaration and the Review Document.⁷⁷

Other issues

While the primary objective of this chapter is to focus on verification, other aspects of the CWC which were reviewed during the RevCon have an impact on verification issues to varying degrees.

With respect to protection assistance (Article x), it was noted with concern that only 42 states parties had provided information on national protective purposes programmes.⁷⁸ The requirement to evaluate the various assistance measures that states parties have offered if CW are used against one of them was also recognised.⁷⁹ The Director-General and a number of national statements referred to the importance of Article x, including in response to heightened concerns about CW terrorism, as well as the need to co-ordinate with other relevant international organisations.⁸⁰

The terrorist attacks on the US on 11 September 2001 increased the international community's awareness of the threat posed by non-conventional forms of terrorism, including chemical terrorism. Several national statements referred to the importance of universality, full compliance of all states parties with the CWC national implementation measures, and criminalisation of the convention's prohibitions as means to raise the barriers to chemical terrorism.⁸¹ Providing emergency assistance under the provisions of Article x was also recognised as a key role for the OPCW in responding to an incident of chemical terrorism. The RevCon reaffirmed the decision of the Executive Council on the OPCW's contribution to the global struggle against terrorism and noted that this work was continuing in the OPCW's working group on terrorism.⁸²

With respect to economic and technological development (Article xi), the RevCon reaffirmed the commitment of states parties to implement the provisions of the convention fully and stressed the importance of international co-operation and

assistance (ICA) in the promotion of the convention as a whole, including universality, in keeping the chemical industry aware of the CWC and maintaining its commitment to the full implementation of the convention. Despite the progress to date with various ICA projects, a number of states parties were critical of these achievements and argued for more ICA activities to take place. On the issues of 'free trade' in chemicals and trade regulations, the RevCon saw a repeat of the debate which dates back to the CWC negotiations as to whether the export licensing system of the Australia Group represents a legitimate means of assisting CWC states parties in fulfilling their nonproliferation obligations under the convention, or whether the existence of the group is inconsistent with the provisions of the CWC and should be abolished.⁸³ Given the differences of view being expressed, the RevCon chose to simply reiterate the relevant parts of Article XI in the Political Declaration and the Review Document, and urged the EC to 'continue its facilitation efforts to reach early agreement on the issue of the full implementation of Article XI'.⁸⁴

Other issues which may have implications for future verification activities are those of non-lethal weapons (including riot control agents) and the use of toxic chemicals for law enforcement. As the Director-General stated, 'These issues need to be carefully analysed so as to prevent any potential harm to the Convention'.⁸⁵ These issues were referred to in the report of the SAB⁸⁶ and were discussed at length during the Open Forum. While there was no agreement to include specific mention of them in either the Political Declaration or the Review Document, they will need to be carefully considered by states parties in the near future.

Conclusion

At the conclusion of the RevCon there were mixed feelings. On the one hand, there was a sense of relief among delegates that the meeting had not collapsed in disarray but had been able to finish almost on time, with an agreed Political Declaration and Review Document, and without the acrimony and ill will displayed during the 2001–2002 BWC RevCon.

On the other hand, some delegates questioned whether a thorough review of the convention had actually taken place, some commenting in the margins of the meeting that 'this RevCon is like an annual Conference of States Parties without the budget negotiations'. This was a quite understandable remark for capital-

based officials who had not been involved in the preparatory work and had only become fully engaged when the formal two-week session commenced.

One outside observer judged that: 'With respect to states parties having critically evaluated their own individual and collective performance in implementing the CWC, there was a clear trend towards papering over shortcomings'.⁸⁷ He noted that 'the similarity between topics raised and positions held during the most recent regular session of the CSP last October and the Review Conference is revealing, suggesting that a large number of delegations were stuck in "business-as-usual" mode, not inclined to take the step back necessary to look at the CWC's operation in more generic terms'. With respect to two of the most important issues under review, he commented that the RevCon 'seems to have resolved little in respect of the Article VI inspection allocation debate' and that 'the disagreements and differences in approach amongst states parties to Article XI are still unresolved'.⁸⁸

Disappointment was expressed by NGOs at what they perceived to be their limited opportunity to contribute to the RevCon,⁸⁹ noting that 'increased participation by NGOs, academics and the industry representatives active in the CBW community, at an earlier stage, would be a welcome initiative'.⁹⁰ However, NGOs did play a key role in the substantive review of critical questions in the lead-up to the RevCon, in the IUPAC, NATO and Pugwash workshops, including in relation to CW destruction, industry, scientific developments relevant to the CWC and non-lethal weapons. These workshops permitted useful informal interaction between NGOs and government officials which helped form national positions.

Without question, the major focus of the two-week formal session was the final negotiation and drafting of the Political Declaration and Review Document. The RevCon was therefore not a particularly enlightening experience.⁹¹ It was disappointing for those states parties, NGOs and the International Committee of the Red Cross (ICRC), which had been hoping for substantive outcomes on issues such as riot control agents and non-lethal weapons.

Taking into account the magnitude of the task of reviewing a treaty as complex as the CWC, the RevCon did achieve a substantial review of most of the aspects of the operation of the CWC in the light of the changing international climate, the early experience of the OPCW, and scientific and technological developments, even though most of the substantive review took place well before April 2003.

Just over 10 years after it was opened for signature, and six years after entry into force, the CWC is still regarded as setting the benchmark for verification in a multi-lateral arms control treaty and, despite the problems experienced so far, the OPCW has performed remarkably well for a young international organisation. However, the OPCW faces a number of serious challenges in the coming years, including: achieving universality for the CWC; gaining the full adherence of all states parties to the CWC's legislative requirements; improving decision making by the Executive Council; maintaining the competence of the Technical Secretariat (in particular, the inspectorate) while implementing the tenure policy; balancing the competing priorities within the limited OPCW budget; making optimal use of new monitoring techniques to make verification of CW destruction less resource-intensive; maintaining a credible number of industry inspections with a broad geographic distribution; gaining a better appreciation of export licensing issues; further developing the OPCW response to chemical terrorism; and greater transparency in the the OPCW's operations.

The 64,000-dollar question is therefore whether the Review Document will assist the OPCW and states parties in addressing these challenges over the next five years. The Review Document, while not particularly ambitious, does provide a useful 'roadmap' to assist the OPCW in meeting these challenges.

Another useful outcome of the RevCon was its remarkably harmonious atmosphere during its latter stages, thanks in no small part to the very positive influence of the recently appointed Director-General. At the conclusion of the RevCon, there was a strong sense that the states parties and OPCW had moved beyond the difficulties they had faced during the PrepCom and in the early years after entry into force, and that the first review had indeed been a useful process which will guide the OPCW towards maturity in the next five years. However, despite what appear to be promising outcomes, the OPCW will only mature as an organisation and fulfil the objective of a world free of chemical weapons if all states parties demonstrate maturity and resolve to follow the roadmap. Only time will tell.

.....

Robert J. Mathews is a Principal Fellow/Associate Professor in the Faculty of Law, University of Melbourne, Australia.

Endnotes

¹ The views expressed in this chapter are those of the author and do not necessarily reflect those of the Australian government.

² Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), opened for signature 13 January 1993; entered into force 29 April 1997, www.opcw.org/html/db/cwc/eng/cwc_frameset.html.

³ CWC, Article VIII, para. 22.

⁴ CWC, Verification Annex, Part IX, para. 26.

⁵ Of the (then) 151 states parties, 113 attended the RevCon. Also in attendance were 2 signatory states (Haiti and Israel) and 2 non-states parties (Libya and Angola). In addition, the RevCon approved the attendance of 5 international organisations—the European Space Agency (ESA), the International Committee of the Red Cross (ICRC), the Permanent Court of Arbitration, the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) Preparatory Commission and the United Nations Institute for Disarmament Research (UNIDIR)—as well as 22 NGOs and 6 industry associations.

⁶ For details see Robert J. Mathews, 'The OPCW at five: balancing verification in evolving circumstances', in Trevor Findlay and Oliver Meier (eds), *Verification Yearbook 2002*, The Verification Research, Training and Information Centre (VERTIC), London, 2002, pp. 53–73.

⁷ For a detailed discussion of the budget issues, see Mathews, 'The OPCW at five', pp. 55–56.

⁸ See chapter by Jez Littlewood in this volume.

⁹ 'Note by the Director-General to the First Review Conference', OPCW document RC-1/DG.1, 17 April 2003.

¹⁰ 'Note by the Director-General: Report of the Scientific Advisory Board on developments in science and technology', OPCW document RC-1/DG.2, 23 April 2003.

¹¹ 'Background paper on the conduct of inspections under the Chemical Weapons Convention and related issues', OPCW document RC-1/s/1, 17 April 2003; 'Background paper on international cooperation programmes', OPCW document RC-1/s/2, 22 April 2003; 'Implementation support', OPCW document RC-1/s/3, 13 April 2003; 'Background paper on assistance and protection programmes', OPCW document RC-1/s/4, 24 April 2003; 'Background paper on universal adherence to the Chemical Weapons Convention', OPCW document RC-1/s/5, 25 April 2003; 'Background Paper: consolidated unclassified verification implementation report (April 1997–31 December 2002)', OPCW document RC-1/s/6, 25 April 2003; and 'Background paper on the implementation of the confidentiality regime', OPCW document RC-1/s/7, 25 April 2003, all available on the website of the OPCW at www.opcw.org.

¹² The national papers are available at www.opcw.org.

¹³ International Union of Pure and Applied Chemistry (IUPAC), 'Impact of scientific developments on the Chemical Weapons Convention: Report by the International Union of Pure and Applied Chemistry to the Organisation for the Prohibition of Chemical Weapons, *Pure and Applied Chemistry*, vol. 74, no. 12, 2002, pp. 2323–2352.

¹⁴ For a summary of the conclusions from the workshop, see Graham S. Pearson, 'Maximising the security benefits from the First Review Conference of the Chemical Weapons Convention', First CWC Review Conference Paper no. 2, University of Bradford, Department of Peace Studies, December 2002.

¹⁵ On the Pugwash conferences, see www.pugwash.org.

¹⁶ Further development of such items may reduce the current levels of 'inspector presence' deemed necessary at CWC-related facilities and allow development of rapid screening methodologies using portable analytical equipment to support verification.

¹⁷ It was recognised that it would be necessary to review current verification procedures to ensure that the convention remains effective. For example, many verification-related decisions were adopted on an interim basis on the understanding that the issues would be further considered and refined as the OPCW gains experience.

¹⁸ 'Opening Statement by the Director-General to the First Review Conference', OPCW document RC-1/DG.3, 28 April 2003.

¹⁹ United States, 'US national statement to the First Review Conference of the Chemical Weapons Convention by Assistant Secretary of State for Arms Control, Stephen G. Rademacher', The Hague, 28 April 2003. The statement also alleged that 3 states not party—Syria, Libya and North Korea—are developing CW.

²⁰ 'Statement by the delegation of the Islamic Republic of Iran, exercising the right to reply in response to the US delegation statement', The Hague, 28 April 2003.

²¹ The Political Declaration was a 23-paragraph document intended to be accessible to those without an in-depth understanding of the convention or CW.

²² The Review Document, item 7 of the report of the RevCon, was a detailed 134-paragraph document containing the outcomes and recommendations following the substantive review of the operation of the convention. 'Review Document, as approved by the First Special Session of the Conference of the States Parties to review the operation of the Chemical Weapons Convention', para. 18 (excerpted from OPCW document RC-1/COW.1, 9 May 2003), available at www.opcw.org.

²³ Since the RevCon, two more states (Timor Leste and Tonga) have become parties, bringing the total number of states parties to 153.

²⁴ The 151 states parties as of April 2003 included the US and Russia (the two largest possessors of CW); the major chemical-producing and -exporting states of Europe and Asia; and many of the major developing states with chemical production capability. There were still 25 signatory states which had not ratified, and 18 countries had not signed. A particular source of unease is that a number of countries of CW proliferation concern, including Egypt, Iraq, Libya, Syria and North Korea, have not even signed the CWC. A significant number of developing countries also have yet to ratify it.

²⁵ This was based on the fallacious argument that 'developed' countries have more to gain than 'developing' countries in terms of security benefits, and that developing countries would need a 'carrot' in the form of increased funding for international co-operation activities to give them an incentive to join the CWC.

²⁶ 'Review Document', para. 18.

²⁷ Robert J. Mathews and Antony S. Taubman, 'Preparing for implementation of the Chemical Weapons Convention: progress during 1993', in *Verification 1994*, The Verification Technology Information Centre (VERTIC), London, 1994, pp. 111–128.

²⁸ The following outstanding issues are currently being considered in the 'industry issues cluster': low concentration limits for Schedule 2A and 2A* chemicals; captive use; boundaries of production; transfers of Schedule 3 chemicals to non-states parties; and the development of proposals by states parties for the selection of OCPF sites for inspection.

²⁹ 'Review Document', para. 123.

³⁰ The first OPCW inspection began on 1 June 1997 (just over one month after entry into force). As of 28 March 2003, the TS had carried out 1,407 inspections at 602 sites in 52 states parties. The breakdown of inspections is as follows: 325 inspections at CW destruction facilities; 274 to CW production facilities; 199 to CW storage facilities; 20 to abandoned CW sites; 43 to 'old CW' sites; 5 to destruction of hazardous chemicals sites, 1 to an emergency destruction of chemical weapons site; 115 to Schedule 1 facilities; 208 to Schedule 2 plant sites; 101 to Schedule 3 plant sites and 115 to discrete organic chemicals (DOC) plant sites; and 1 other. OPCW inspectors had spent a total of 79,244 person-days on missions.

³¹ There was agreement at the Fourth CSP in 1999 that the maximum tenure of TS staff should be 7 years, based on the agreement among states parties that the OPCW should not offer 'career positions'. The decision on the starting date for the introduction of the policy, 2 July 1999, was finally adopted by the CSP's Second Special Session on 30 April 2003. The agreement included the possibility that the Director-General could, as an exceptional measure, in order not to compromise the effectiveness of the OPCW, be permitted until 1 January 2009 to extend the contracts of individual staff members beyond 7 years.

³² As stated in the report on national implementation measures dated 17 March 2003, only 82 states (representing 52 percent of states parties) had made submissions in compliance with Article VII, para. 5 obligations. Only 42 (28 percent of states parties) reported having legislation covering all key areas. For 108 states parties, there is no legislation in place, there are gaps in the legislation or the legislative situation is not known. See *CBW Conventions Bulletin*, no. 59, March 2003, p. 7.

³³ 'Note by the Director-General to the First Review Conference', OPCW document RC-1/DG.1, 17 April 2003, para. 4.9.

³⁴ 'Review Document', para. 83.

³⁵ Indeed, a more pragmatic view has been taken by many states parties as a consequence of the greater recognition of the potential terrorist threat arising from toxic chemicals that are not on the convention's schedules.

³⁶ However, the expression 'comprehensive nature of the prohibition of chemical weapons' was used instead of the more familiar 'general purpose definition'. See 'Review Document', paras 21–23.

³⁷ This issue has been recognised for some time. For example, in a 1996 PrepCom Working Paper Iran recognised the relevance of a number of non-scheduled chemicals for export licensing purposes. (Islamic Republic of Iran, 'Implementation of Article XI in the field of chemical trade', PC-XV/B/WP.6, 5 November 1996.)

³⁸ By March 2003, OPCW inspectors had verified the destruction of approximately 7,305 tonnes of chemical agents and approximately 2 million munitions. India and the Republic of Korea are expected to meet the CWC 10-year CW destruction deadline. However, some semi-official American sources have suggested that the US may have difficulty in meeting its 10-year timeline.

³⁹ 'Statement by the Russian Federation at the first session of the Conference to review the functioning of the Chemical Weapons Convention', 28 April 2003. The first intermediate destruction deadline calls for 1 percent destruction. According to Part IV (A) of the CWC's Verification Annex, this target should have been met 3 years after entry into force. The EC granted Russia an extension to this deadline in 2000.

⁴⁰ However, the approximately 15 tonnes of CW agents recently declared by Albania are apparently no longer useable and their destruction should not pose major problems.

⁴¹ For example, the US stated that: 'Destruction of chemical weapons, on the whole, is not proceeding at the rate foreseen in the Convention, and this lack of progress must concern us all'. See United States, 'US national statement to the First Review Conference of the Chemical Weapons Convention by Assistant Secretary of State for Arms Control, Stephen G. Rademacher', The Hague, 28 April 2003, p. 5.

⁴² See United Kingdom, 'First Review Conference of the Chemical Weapons Convention: statement by Dr Denis MacShane MP, Minister of State for Europe, Foreign and Commonwealth Office', The Hague, 29 April 2003.

⁴³ 'Review Document', paras 10, 42.

⁴⁴ Approximately 85 percent of the inspection resources have been used for Article IV and V verification since entry into force ('Background paper on the conduct of inspections under the Chemical Weapons Convention and related issues', OPCW document RC-1/S/1, 17 April 2003, para. 12.1).

⁴⁵ In accordance with the CWC, Article IV, para. 13.

⁴⁶ This 'convention requirement' is based on a particular interpretation of the words 'verification through continuous monitoring with on-site instruments and physical presence of inspectors', which appear in the CWC Verification Annex Part IV(A), para. 59(b) (with respect to destruction of CW), Part V, para. 40 (with respect to destruction of former CW production facilities), and Part V, para. 83 (with respect to conversion of former CW production facilities). When the text was negotiated, it was this author's understanding that the word 'continuous' referred to 'monitoring with on-site instruments' and that there was no requirement in the convention for the continuous presence of inspectors. During the PrepCom, the more stringent interpretation was adopted.

⁴⁷ John Gee, 'The CWC and the task of eliminating Chemical Weapons: the first five years', Opening Address to the International Chemical Demilitarisation Conference, The Hague, 21–23 May 2002, available at www.opcw.org/html/global/speeches/dera_2k2.html.

⁴⁸ See 'Note by the Director-General to the First Review Conference', OPCW document RC-1/DG.1, 17 April 2003, p. 7.

⁴⁹ 'Review Document', paras 45, 46.

⁵⁰ 'Review Document', para. 53.

⁵¹ For example, only 36 percent of initial declarations were submitted within the specified time frame, and by the end of 1999, 26 percent of the states parties still had not submitted their initial declarations.

⁵² In addition, many states parties have failed to notify points of entry for inspection teams and/or notification of their National Authority, which complicates inspection planning by the TS.

⁵³ See RC-1/DG.1, pp. 10–11. Unfortunately, there was no agreement by the RevCon on the Director-General's 'nil declaration' proposal.

⁵⁴ 'Review Document', para. 39(b).

⁵⁵ As is discussed above, it became apparent during the negotiation of the CWC that, because of uncertainty about the number of facilities that would be declared under schedules 1, 2 and 3 and as DOC facilities, as well as the relative risk they represented to the object and purpose of the CWC, it would be impractical to attempt to develop rigid solutions in the convention text. The practical verification problems involved would only become apparent in implementation of the CWC. See Robert J. Mathews, 'Intention of Article VI: an Australian drafter's perspective', *OPCW Synthesis* November 2000.

⁵⁶ For example, the Seventh CSP agreed a work programme of 132 Article VI inspections for 2003, with 16 Schedule 1, 38 Schedule 2, 18 Schedule 3 and 60 OCPF inspections, compared to the agreed distribution for 2002 of 18 Schedule 1, 40 Schedule 2, 42 Schedule 3 and 32 OCPF inspections.

⁵⁷ For example, Iraq used a number of Schedule 3- and DOC-type facilities in its CW production programme in the 1980s. See Robert J. Mathews, 'Intention of Article VI: an Australian drafter's perspective'.

⁵⁸ Although minor problems have occasionally arisen in the course of some inspections, for the most part they have been carried out smoothly and with the full co-operation of the inspected state party.

⁵⁹ RC-1/DG.1, p. 12.

⁶⁰ 'Note by the Director-General: Report of the Scientific Advisory Board on developments in science and technology', OPCW document RC-1/DG.2, 23 April 2003, para. 4.4(a).

⁶¹ For example, Pakistan stated that: 'Increase in emphasis on verification and inspection of facilities producing relatively harmless discrete organic chemicals (DOCs) should not be at the expense of higher risk Schedule 1, 2 and 3 chemicals listed in the Annex to the CWC'. See 'Statement to the First Special Session of the Conference of States Parties to review the operation of the Chemical Weapons Convention by Mr. Mustafa Kamal Kazi, Ambassador and Permanent Representative of Pakistan to the OPCW', The Hague, 30 April 2003.

⁶² 'Review Document', para. 69(a) to (d).

⁶³ United States, 'US national statement to the First Review Conference of the Chemical Weapons Convention by Assistant Secretary of State for Arms Control, Stephen G. Rademacher', The Hague, 28 April 2003, p. 4.

⁶⁴ United Kingdom, 'First Review Conference of the Chemical Weapons Convention: statement by Dr Denis MacShane MP, Minister of State for Europe, Foreign and Commonwealth Office', The Hague, 29 April 2003, p. 5.

⁶⁵ CWC, Article IX, paras 3–7.

⁶⁶ The US has expressed concern that some states parties are not in full compliance but so far has chosen to seek clarification through bilateral consultations rather than request a challenge inspection.

⁶⁷ One of these exercises simulated the entire challenge inspection process from the submission of the request and the convening of a special session of the EC through to the preparation of a final report. These

practice inspections are seen as valuable experience for the EC, the TS and states parties in preparing for a real challenge inspection.

⁶⁸ United Kingdom, 'First Review Conference of the Chemical Weapons Convention. Statement by Dr Denis MacShane MP'.

⁶⁹ 'Statement by Ambassador Noor Farida Ariffin, Permanent Representative of Malaysia to the Organisation for the Prohibition of Chemical Weapons on behalf of the states parties of the Non-Aligned Movement to the Chemical Weapons Convention and China', The Hague, 30 April 2003, p. 5.

⁷⁰ The first sentence of Article IX, para. 2 states: 'Without prejudice to the right of any State Party to request a challenge inspection, states parties should, whenever possible, first make every effort to clarify and resolve, through exchange of information and consultations among themselves, any matter which may cause doubt about compliance with this Convention, or which gives rise to concerns about a related matter which may be considered ambiguous'.

⁷¹ Initial inspections of Schedule 1 and 2 facilities have not required sampling and analysis. The transportable gas chromatography–mass spectrometer systems present practical and logistic problems, being heavy and expensive to transport, and having long set-up times at the inspection site. An additional technical issue is how the equipment would be used to verify the 'absence of any Schedule 1 chemical'.

⁷² 'Review Document', para. 71(c).

⁷³ Blinded analytical equipment uses special 'blinded software' and a restricted database to provide only 'presence/absence' information about CWC-related chemicals.

⁷⁴ However, the SAB has recommended that the OPCW expand the database to include other chemicals, including certain non-scheduled chemicals which have the potential to be used in chemical warfare. See 'Note by the Director-General: Report of the Scientific Advisory Board on developments in science and technology', OPCW document RC-1/DG.2, 23 April 2003, para. 5.10.

⁷⁵ The report on 'Implementation of the confidentiality regime in 2002' noted that in 2002 the Office of Confidentiality and Security had received only 3 reports of minor incidents involving breaches of confidentiality procedures, none of which resulted in the disclosure of confidential information either within or outside the Secretariat. See *CBW Conventions Bulletin*, no. 59, March 2003, p. 4.

⁷⁶ 'Review Document', paras 111–119.

⁷⁷ There were a number of interesting presentations during the lunch breaks at the exhibition area in the basement of the conference building, which unfortunately were not particularly well attended. It would have been useful if one half-day of the RevCon had been allocated for presentations of the key issues by senior TS staff members.

⁷⁸ As required by the CWC, Article X, para. 4.

⁷⁹ By April 2003, only 65 states parties had complied with this obligation under Article X, para. 7.

⁸⁰ 'Review Document', paras 94–101.

⁸¹ In particular, the requirement under Article I to destroy all CW would make such weapons less accessible to terrorist groups. The requirements of Article VII to criminalise the prohibitions of the CWC and enact effective penal legislation would reduce the possibility that a CWC state party could inadvertently become a safe haven for those who use CW as a tool of terror, and would hence help reduce the threat posed by chemical terrorism. Likewise, the transfer (export control and monitoring) obligations under Article VI would serve to reduce the risk of diversion of toxic chemicals (weaponised CW, precursors of military chemical agents—including those listed in the CWC schedules—or other toxic chemicals) for terrorist use.

⁸² 'Review Document', para. 10.

⁸³ India, which has been a major advocate of abolishing the Australia Group since the early 1990s, and a number of other states which have been critical of the group have recently adopted their own national export licensing systems, using lists similar to those developed by the Australia Group. Since 11 September 2001, a number of states parties have also put domestic monitoring procedures in place, again based on the

Australia Group lists. This has tended to take the sting out of the arguments for the group's abolition, which, according to informal comments by representatives of various regional groups, had become 'ritualistic'.

⁸⁴ 'Review Document', para. 107(a).

⁸⁵ 'Note by the Director-General to the First Review Conference', OPCW document RC-1/DG.1, 17 April 2003, pp. 7–8.

⁸⁶ 'Note by the Director-General: Report of the Scientific Advisory Board on developments in science and technology', OPCW document RC-1/DG.2, 23 April 2003, p. 15.

⁸⁷ Alexander Kelle, 'The CWC after its First Review Conference: is the glass half full or half empty?', *Disarmament Diplomacy*, no. 71, June/July 2003.

⁸⁸ 'Where to from here? The First Review Conference and the next five years', *CBW Conventions Bulletin*, no. 60, June 2003, pp. 1–5.

⁸⁹ The ICRC expressed great disappointment that it was not permitted to speak during the General Debate, as it is in other international meetings. See 'News chronology', *CBW Conventions Bulletin*, no. 60, June 2003, entry for 30 April 2003.

⁹⁰ 'Where to from here? The First Review Conference and the next five years', p. 4.

⁹¹ Indeed, the RevCon emphasised the divide between the 25 or so states parties which are actively involved in the day-to-day activities of the OPCW, using a combination of diplomats based in The Hague and experts from national capitals, and the majority of states parties which do not have the resources to follow the more detailed aspects of the operation of the CWC closely. In my view, the RevCon did not cater particularly well to the latter group.