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Organizational, Political and Technical Elements of  
Success”

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“I have a strong faith in multilateralism as a viable instrument for advancing  
peace and security in the world.”

*(Rogelio Pfirter, Director-General of the OPCW, 2002-2010)*

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## LIST OF ABBREVIATIONS

ABAF	Advisory Board on Administrative and Financial Issues
ACAT	Assistance Coordination and Assessment Team
ACW	Abandoned Chemical Weapons
AG	Australia Group
BTWC	Biological and Toxin Weapons Convention
BW	Biological Weapons
CD	Conference on Disarmament
CEFIC	The European Chemical Industrial Council
CI	Challenge Inspection
CMA	U.S. Chemical Manufacturers Association
CSP	Conference of State Parties
CW	Chemical Weapons
CWPF	Chemical Weapons Production Facility
CWSF	Chemical Weapons Storage Facility
CWWG	Chemical Weapons Working Group
CWC	Chemical Weapons Convention
CTBT	Comprehensive Nuclear-Test-Ban Treaty
DG	Director-General
EC	Executive Council
FCSP	First Conference of the State Parties
ICA	International Cooperation and Assistance
ICCA	International Council for Chemical Associations
IAEA	International Atomic Energy Agency
INGO	International Non-governmental Organization
IO	International Organization
GPC	General Purpose Criterion
GRULAC	Group of Latin American and Caribbean Countries
NAM	Non-Aligned Movement
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
OCPF	Other Chemical Production Facilities
OEWG	Open-Ended Working Group
OPCW	Organisation for the Prohibition of Chemical Weapons
PrepCom	Preparatory Commission
PTS	Provisional Technical Secretariat
RC	Review Conference
RCA	Riot Control Agent
TS	Technical Secretariat
SAB	Scientific Advisory Report
SSOD	U.N. Special Session Devoted To Disarmament
VA	Verification Annex
WEOG	Western European and Other Countries Group
WMD	Weapons of Mass Destruction



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# I. INTRODUCTION

## I.1. Introduction and research objective

Chemical weapons have been around for centuries. They have proven to be deadly warfare instruments and over the years, they have been produced by a variety of countries. The public, however, has taken little notice of them since WWII. During the Cold War era most discussions about weapons of mass destruction focused on nuclear weapons. As such, the Chemical Weapons Prohibition Regime, too, has generated little public interest so far, even though observers praise it to be the most successful disarmament regime of all times. What threat do chemical weapons constitute? The answer was provided by the outbreak of civil war in Libya in March 2011. The Wall Street Journal was one of the first media to announce that: “U.S. fears Tripoli may deploy gas as chaos mounts” (Solomon, 24 February 2011). All of a sudden chemical weapons had become an issue of concern again. While Libya still possesses a chemical weapons capability, the danger of chemical weapons being used would be much greater, if the Chemical Weapons Convention didn’t exist. Upon joining the Chemical Weapons Prohibition Regime in 2004, Libya destroyed all of its chemical weapons delivery agents. Consequently, it is very unlikely that Libya would deploy chemical weapons as instruments of warfare. Because of the Chemical Weapons Prohibition Regime the threat of the use of chemical weapons has decreased.

It is evident that the international community is capable of generating functional multilateral regimes. However, not all regimes succeed in coming up with effective solutions, which makes it important to understand the conditions for regime success. Consequently, the main objective of this study is to evaluate to what extent a multilateral disarmament and non-proliferation regime can be effective. For this purpose, the Chemical Weapons Prohibition Regime is analyzed in terms of institutional format, procedural efficiency and significance of output.

After decades of demanding negotiations, a compromise on the scope of the regime was finally reached in 1992, when the Chemical Weapons Convention (CWC) was adopted by the Conference of Disarmament in Geneva. It entered into force five years later, on April 29, 1997. The CWC created a specialized international agency to oversee its implementation.

Since the regime has now existed for fourteen years now, it seems worthwhile to investigate as to how the regime has developed in reality. In this regard, two particular aspects have to be considered: firstly, the delicate nature of the issue of chemical weapons as their existence implies a threat to a state's survival and secondly, the changing character of the international security system which was triggered by the end of the Cold War.

In the course of analyzing the Chemical Weapons Prohibition Regime I will focus on why the Convention came into being, how the Convention has been made operational by the work of the OPCW and which actors have played central roles in this multilateral regime.

## **I.2. Research questions and hypotheses**

**RQ 1:** Why did the Chemical Weapons Prohibition Regime come into existence?

**RQ 2:** Which actors were involved in the creation process and to what extent? Which actors have influenced the regime's character?

**RQ 3:** What role does the implementing organization, the OPCW, play in the successful implementation of the CWC?

**RQ 4:** What are the central attributes of the regime? To what extent does it feature aspects of multilateralism<sup>1</sup>?

**RQ 5:** Has the security environment changed since the creation of the Chemical Weapons Prohibition Regime? What was the impact on the regime? Did the changing preferences of big states change the nature of the regime?

Development of these questions led to the following hypotheses which structure the analysis of the Chemical Weapons Prohibition Regime presented in this paper.

**H 1:** *The Chemical Weapons Prohibition Regime came into existence primarily because of material interests/threats and not because of a universal taboo.*

**H 2a:** *The regime came into existence only because representatives of the chemical industry supported it. They also influenced the states' negotiation position.*

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<sup>1</sup> Hereby I refer to the notion of multilateralism presented by John G. Ruggie in his article: Multilateralism: the anatomy of an institution. *International Organization* 46 (3), pp. 561-598 (1992).

***H 2b:** The Chemical Weapons Prohibition Regime and especially the daily work of the OPCW are characterized by a multi-stakeholder-approach. NGOs, the epistemic community and the chemical industry have a big impact on the setting of agendas within the regime.*

***H 3:** The existence of the OPCW is crucial for the successful implementation of the CWC. The Technical Secretariat acquired some influence within the institution.*

***H 4:** Outwardly, the CWC displays an egalitarian multilateralism. In reality, however, big states still dominate decision-making within the system.*

***H5:** The Chemical Weapons Prohibition Regime is a relatively stable regime that successfully fulfills its tasks. Changes in the security environment and preferences of big states only have had a limited impact on the regime.*

### **I.3. Methodology**

This study is based on a qualitative research approach and relies on three types of data: primary documents, secondary literature and expert interviews conducted in verbal form. The primary documents, which are used to describe the regime's scope and development, include the Chemical Weapons Convention, decisions taken by the policy-making organs of the OPCW and the annual OPCW implementation reports. Moreover, the analysis of the Chemical Weapons Prohibition Regime is based on a variety of secondary sources. Expert interviews were conducted in order to generate the views of people involved in the daily work of the OPCW.

#### *Excursus: Guided Expert Interviews*

In contrast to other forms of interviews, expert interviews intend to discover the experts' knowledge and not their personal characteristics (Flick 2007: 215).

In the notion of Meuser and Nagel (1991: 443-444), expert status is awarded to individuals in accordance with the scientist's research interest. It is thus a relational status. An expert can be anyone who is in any way responsible for the drafting, implementation and controlling of problem solving tasks, or who has preferential access to information concerning the problem solving. Therefore, experts have a certain function within an institutional context, which enables them to acquire more information about the processes.

One can also differentiate between “field-internal” experts who are directly involved in the institutional processes and “field-external” experts who have a specific knowledge of the institutional processes, but are not directly involved (Forschauer and Lueger 2009: 245).

I chose to exclusively focus on “field-internal” experts. For this, experts from three different groups were inquired:

- 1) *Permanent representatives of various states to the OPCW*
- 2) *Heads of National Authorities situated in the respective home countries*
- 3) *Representatives of the Technical Secretariat of the OPCW*

According to their profession, the experts are entrusted with different tasks and thus, have different perspectives on the Chemical Weapons Prohibition Regime. The *Permanent representatives* are mainly diplomats who have to advocate their government’s positions according to the instructions they receive. Thus, they are directly involved in the negotiation process. The *heads of the National Authorities* are civil servants who are in charge of implementing the CWC and supplementary decisions taken by the States Parties on national level. Consequently, they are involved in the implementation process. Finally, the *Technical Secretariat representatives* are international civil servants overseeing the technical implementation of the Convention. Interviews with nine permanent representatives of several States Parties<sup>2</sup>, two heads of National Authorities and two representatives of the Technical Secretariat were conducted.

In general, expert interviews can serve different functions. Bogner and Menz (2009: 64-66) have drawn up three different function-related forms of expert interviews: 1. explorative expert interviews, which intend to generate a first outline of the issue; 2. systematizing expert interviews, which intend to generate specific insider-information as a supplement to other sources; 3. theory-generating expert interviews, which do not intend to generate objective information, but try to reconstruct the subjective attitudes of the interviewees. As mentioned above, the conducted interviews aimed to generate experts’ assessments of the regime. Therefore, they belong to the category of theory-generating expert interviews. Yet, the interviews conducted with the heads of National Authorities

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<sup>2</sup> In order to take geographical balance into account, the diplomats interviewed represent: Western Europe and Other States (5), Eastern Europe (2), African Group (1), Group of Latin America and the Caribbean (1);

were also used as systematizing expert interviews as they contained information about the implementation work conducted by National Authorities.

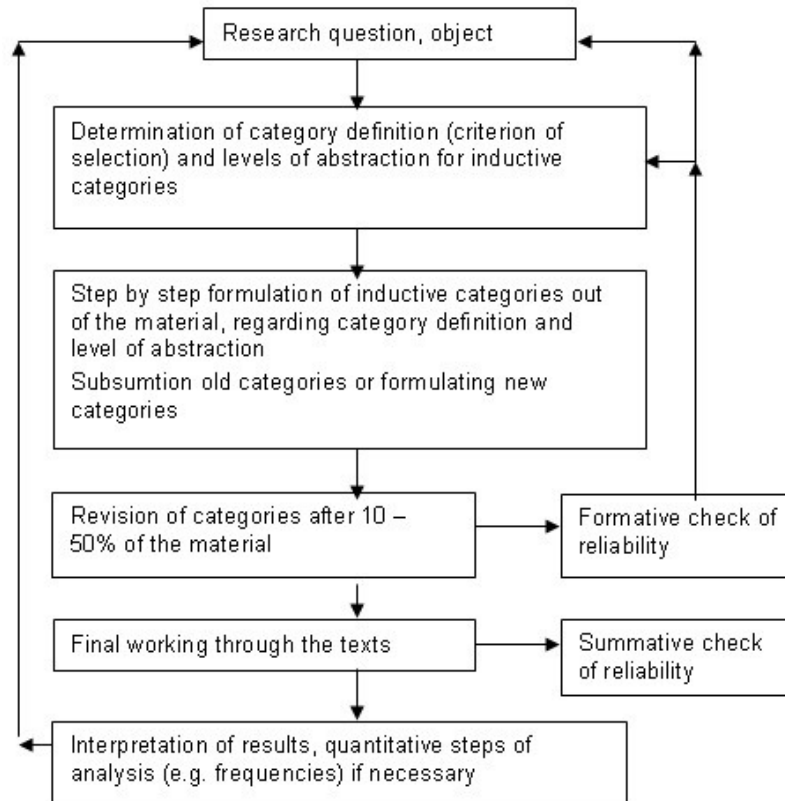
All interviews were conducted in half-standardized form by means of questionnaires, which enable a more systematic enquiry and, thus, a comparison between all interviews. (Flick 2007: 224). Most of the interviews were conducted during a field trip to The Hague from 3<sup>rd</sup> to 6<sup>th</sup> of April 2011. All interviews were recorded with a Dictaphone, which allowed a word-for-word transcription of the interviews. For the analysis of the primary data retrieved by the expert interviews, the qualitative content analysis by Philipp Mayring was employed.

#### *Excursus: Qualitative Content Analysis:*

Philipp Mayring developed a consolidated method of data analysis that generates concrete rules and procedures of analysis in order to meet the criteria of reliability and validity. Mayring's method of qualitative content analysis focuses on the development and application of categories. He distinguishes between two procedures: "inductive category development and deductive category application" (Mayring 2000: 3). While for the inductive category development procedure definitions of categories are drawn up, for the deductive category application procedure an elaborate coding agenda corresponding to category definitions is used. Since the inductive category development approach guarantees a more open approach towards content analysis, I chose this procedure for analyzing the conducted interviews.

The steps of inductive category development are illustrated in the following figure:

**Figure 1: Inductive category development according to Mayring**



Source: Mayring 2000: 4

Firstly, definitions of categories are developed on the basis of the research question and the theoretical background. Secondly, the clearly defined categories are endowed with appropriate examples from the text to be analyzed. Having worked through about half of the research text, the reliability of the developed categories is checked and the categories are revised. Finally, a thoroughly summarized list of different categories derived from the material is subject to interpretation.

As all interviewed experts share the same institutional context, it is possible to compare their statements. By comparing the different statements in each category, it is intended to generate “representative” core-declarations. The overall aim of interpreting expert interviews is to generalize visions, opinions and attitudes, which are used for a thick social description of the phenomenon (Meuser and Nagel 1991: 454-460).

## **I.4. Outline of chapters**

*Chapter 2* discusses the theoretical background of the thesis which deals with the emergence and significance of international organizations and the concept of multilateralism.

*Chapter 3* outlines the historical use of chemical weapons as well as the coinciding emergence of a chemical weapons taboo.

*Chapter 4* traces the creation of the Chemical Weapons Prohibition Regime in terms of Chemical Weapons Convention negotiations and PrepCom consultations.

*Chapter 5* gives an account of the most important provisions of the Chemical Weapons Convention. The strengths and weaknesses of the Chemical Weapons Prohibition Regime are analyzed in respect to the basis of the legal provisions.

*Chapter 6* deals with the functioning of the OPCW, which is in charge of monitoring the Chemical Weapons Convention implementation. The structure of this organization, its development in the past and its effectiveness in different work areas are discussed.

*Chapter 7* presents the results of the qualitative research conducted in order to gain information about experts' attitudes towards the regime. By comparing the different interviews, core statements are identified that enable a detailed description of the Chemical Weapons Prohibition Regime.

*Chapter 8* concludes by summarizing the main findings derived from the research results and the analysis of the primary and secondary literature. Accordingly, the validity of the hypotheses and the different theoretical approaches is tested.



## II. THEORETICAL BACKGROUND

Theories matter, not only because they help us understand the world, but also because they shape behavior. Correspondingly, theories can - to some extent - become self-fulfilling. For instance, if representatives of states are convinced that international organizations are ineffective, they will act accordingly and thus, impede the work of the organizations. Theories which are used to explain social phenomena can at the same time influence the further development of these phenomena.

The aim of this paper is to determine which theoretical approach best explains the current standing of the Chemical Weapons Prohibition Regime. Taking into account that theories of international relations have influenced the emergence and development of the Chemical Weapons Prohibition Regime, questions of how this multilateral regime works, what transforms it and which actors influence it have to be considered.

### ***II.1. Five theoretical approaches***

In the following pages the basics of each theory is explained. The theories chosen are amongst the most significant theories of international relations dealing with regimes: *neorealism*, *neoliberal institutionalism* in form of regime theory, *neofunctionalism*, *constructivism* and *the English School*. It is not intended to paint a complete picture of all theories existing in the field of international relations, but rather to examine a few theoretical approaches that seem to be appropriate for analyzing the Chemical Weapons Prohibition Regime.

#### **II.1.1. Neorealism**

The theory of neorealism was first introduced by Kenneth Waltz's publication "Theory of international politics" and is to a large extent based on realism. While realists posit that the nature of man inevitable leads to a system of anarchy, neorealists assume that the system of anarchy results from structural conditions. For realists the central aspect is absolute power. For neorealists everything depends on relative gains.

In the neorealist view, every system consists of a web of interacting units. Yet, it is not the composition of units which is central, but the structure which arranges the units within the system. This leads to three main elements of every political system – ordering principles,

character of units and the distribution of capabilities. Moreover, neorealists conceive states as the only actors in international relations that are significant enough to be subject of analysis (Waltz 1979: 79-106).

1. Ordering principles of units within the system. Whereas a hierarchical structure exists within the state, anarchy persists in the international system.

2. Character of units. Since all states are assigned to the same duties, there is no functional differentiation. Every state has to fulfill the same key task: to retain its sovereignty in an anarchic system, in which it cannot trust any other state. Given that in no central authority with a monopoly on the legitimate use of force exists, “self-help is necessarily the principle of action in an anarchic order” (Waltz 1979: 111).

3. Capabilities of units. Due to the fact that all units in the international system are functionally undifferentiated, they can only be distinguished by their capabilities to conduct the same tasks.

According to neorealism these three observations lead to only one valid conclusion: “Among states, the state of nature is the state of war” (Waltz 1979: 102). What possibility is there for cooperation between states at war? The neorealists reply: limited. States are always concerned with absolute gains and since the state’s survival is of prime importance, they live in constant fear that their enemies will gain more. States, therefore, perceive “military issues” to be a priority.

In order to explain the world’s relative stability after the Second World War, neorealists argue that the anarchic world system is characterized by a state tendency to form alliances which create a balance of power. Consequently, a bipolar system with two powerful leader states, as experienced in the Cold War, is more stable than uni-polar or multi-polar systems (Waltz 2008:119).

### **II.1.2. Regime theory**

Regime theory, which was developed in the late 1970s, shares three central assumptions with neorealism: 1. states are not the sole actors in international politics, but they do constitute the central figures, 2. the world system is anarchic; 3. states act on the basis of rational-choice calculations with pre-defined interests (Keohane 2005: 7-11; 65-67).

Regime theory developed out of the Interdependence Theory, which supposes that the world is more and more defined by a complex interdependence between states characterized by multiple channels of communication, multiple issues with an absence of hierarchy and the minor role of military force (Keohane and Nye 1977: 24-27). Keohane (1982: 335) asserts that “like imperfect markets, world politics is characterized by institutional deficiencies that inhibit mutually advantageous coordination”. Consequently, there is a “demand” for international regimes. However, by sharing certain assumptions with neorealists, the supporters of regime theory acknowledge that there have to be pre-conditions for the creation of regimes. Originating from the processes involved in economic calculations, regime theory assumes that states form regimes if they expect the benefits to outweigh the costs. Regimes are created to resolve market failures by providing information, reducing transaction costs and developing solutions. Krasner (1982:152) defines regimes as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations”. This definition stresses the functional foundation of regimes, namely to stabilize actors’ expectation of a certain issue defined in an agreement. Yet, there is a clear difference between regimes and organizations. Regimes often include organizational entities, but their scope is much wider. In that sense, “regimes are institutions in a broader sense: recognized patterns of practice that define the rules of the game (Keohane and Nye 1985: 151).

While regime theory posits that a state is a self-interested utility maximizer, neorealism sees it is a self-interested status maximizer. Neorealists think institutional compromise will only emerge if there are relative gains, whereas regime theory considers states to be concerned primarily with absolute gains for their own welfare (Young 1986: 118-119). Regime theory insists that the danger of failed cooperation based on state concern about relative gains is almost non-existent in the multilateral field. In multilateral negotiations, relative gains are hard to calculate and the risk of power shifts is marginal (Keohane 1998: 88).

A special concept of international relations that combines neorealism and neoliberal institutionalism is the concept of hegemonic stability, most often associated with the scholar Charles Kindleberger. This concept draws on the hypothesis that a regime can only come into existence if a hegemonic leader is interested in creating and maintaining

such a regime by bearing the costs for cooperation. However, the hegemonic stability theory has lost support when the decline in American hegemony in the 1970s did not result in the collapse of all international regimes (Keohane 1982: 326).

### **II.1.3. Neofunctionalism**

Neofunctionalism is rooted in the theories of liberalism and idealism. Neofunctionalism conforms to the liberal belief that welfare issues are the most important issues in world politics. This comes from the liberal conviction that “each individual’s pursuit of economic interest is the first social fact of political relevance” (Haas 1964: 32). All states share an equal interest in maintaining or enhancing the welfare of their population which can only be achieved by joint action. Neofunctionalists think that by focusing on common interests, war and conflict can be overcome. Thus, a peaceful international society will evolve that matches the idealist notion of “perpetual peace” as formulated by Kant.

He was of the belief that if international law were obeyed by every state, it would finally lead to an enduring system of peace. For that, certain requirements have to be met. Most importantly, international law has to be based on a “federalism of free states” and each state needs to follow the principle of a “republican constitution” that separates the legislative from the executive branch (Kant 1795: 30-38). Kant’s theory is often misinterpreted and mixed up with the “democratic peace” theory that eliminates the possibility of two democracies waging war against each other.

Advocates of regime theory also agree with functionalists on the prominence of welfare and economic concerns in international politics. However, while regime theory underlines the “benefits of competition”, functionalists underline the “necessity of service” (Haas 1964: 20). Instead of ideological or power-maximizing thinking, the function of international cooperation is of prime importance. This leads to the functionalists’ core assumption that “form follows function”. The concrete form of intergovernmental cooperation will be defined by the function it has to fulfill. In particular the technical and non-political character of international welfare activities enhances the possibilities for peaceful intergovernmental cooperation (Haas 1964: 92-93).

Even though these functionalist theses had existed for some time, the approach gained importance through the phenomenon of European Integration in the 1960s and 1970s. Ernst B. Haas developed new concepts and thereby wielded primary influence over the neofunctionalist school of thought.

Based on analysis of the gradual creation of the European Union, Haas (1961: 366-367) defines the concept of integration as follows:

Political community exists when there is likelihood of internal peaceful change in a setting of contending groups with mutually antagonistic claims. The process of attaining this condition among nation states we call integration, the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities toward a new and larger centre, whose institutions possess or demand jurisdiction over the pre-existing national states.

According to the neofunctionalist conception, three different stages of integration exist: 1. Cooperation on the basis of the least common denominator, 2. Cooperation on the basis of negotiation and compromise, 3. Cooperation on the basis of common interests, comparable to a political community coordinated by a supranational authority. Integration always has to be understood as a process implying that neofunctionalism focuses on the process flow in international relations.

One has to distinguish between universal and regional integration. Regional integration not only occurs more often, but is also featured by a deeper and wider integration. What leads to political integration? Haas (1961) argues that integration is first and foremost triggered by external factors. For example, the history of international relations reveals that integration in military organizations only occurs if there is a common threat or enemy. Yet, one has to consider that even though "external environments produce motives favoring integration, they are never sufficient in themselves to explain the rate and intensity of the process" (Haas 1961: 376).

Thus, also internal factors of organizations or regimes have to be included in the analysis of integration. Neofunctionalists perceive the staff of an organization or supranational authority as well as technical experts to be the main advocates of integration. By means of smart bargaining, technical expertise and skillful managing, technocrats can create spill-over effects that lead to deeper integration.

The art of manipulating integration consists in isolating functional areas which produce converging interests among moderately hostile states, and in capitalizing upon those "non-political" aims which very soon spill over into the realm of politics when specific programs are envisaged by strong international institutions. (Haas 1961: 389)

These spill-over effects result in the introduction of more issues to the organization's agenda. This is tolerated by member states because of the process of social learning in which a consensual knowledge is created. However, member states still dominate most of the decision-making within an organization and therefore are the organization's main

clients. The staff of an organization always has to convince its clients to act on their behalf (Haas 1964: 112). In the end, the management style of technocrats can decide about a regime's survival or failure.

#### **II.1.4. Constructivism**

Neorealism, regime theory and neofunctionalism all belong to the category of rationalist theories. The emergence of constructivism as a theory of international relations challenges these rationalist theories in a variety of ways. Alexander Wendt, the most prominent supporter of constructivism, published his reformist article "Anarchy is what states make of it" in 1992.

*Constructivists* contest the rationalists' assumption that the interests and identities of states are a priori and exogenously given. They estimate that interests and identities are rather constituted by social practices: "Actors acquire identities – relative stable, role-specific understandings and expectations about self-by participating in such collective meanings" (Wendt 1992: 397).

It is on the basis of this identity that states define their interests. A situation change causes actors to adapt their identity and interests. Wendt determines that self-help security systems "evolve from cycles of interaction in which each party acts in ways that the other feels are threatening to the self, creating expectations that the other is not to be trusted" (ibid: 406).

In other words, the rationalist understanding of anarchy does not necessary have to be a competitive security system. An anarchic world system could just as well be perceived as an individualistic or as a collective security system. This implies that "self-help" emerged as an institution which has been socialized. Constructivists believe that actors and structures are mutually produced and reproduced by processes of interaction (see Wend 1992: 400- 424).

While in the rationalist conception material sources constitute structure, in the *constructivist* tradition social sources form structure. In contrast to rationalists, which focus their research on "preferences, information strategies, and common knowledge", for constructivists the key issues are "identities, norms, knowledge, and interests" (Katzenstein et al. 1998: 678).

Besides the concepts of identity and interests, norms are of great importance to constructivist theory. For both constructivists and rationalists, norms that regulate

behavior form the fundamental basis of institutions. However, constructivists also acknowledge another kind of norms, namely constitutive norms. These constitutive norms produce new actors, interests or categories of action and are thereby a central feature of international relations (Finnemore and Sikkink 1998: 891).

#### **II.1.5. The English School**

Like constructivism, the English School belongs to the category of sociological-constructivist theories. However, in contrast to constructivism, the English School expands the ideas of shared interests, identity and culture, while maintaining some structural realist estimations. In general, the English School is characterized by a wide variation of different theoretical assumptions within the school. This chapter will mainly focus on the writings of Henry Bull and Barry Buzan.

The main concept of the *English School* is “international society” which can be traced back to notions by Hugo Grotius who stated that international law constitutes a community of participating states. Buzan (1993: 328-331) compares the notion of “international society” with “international system” and concludes that the “international system” is a more basic idea. Whereas an international system can exist without a society, the opposite is not possible. As defined in more concrete terms by Henry Bull (1995: 13), “international society” is:

A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.

There are three minimum requirements for the emergence of an international society:

1. some regulation on the use of force, 2. some regulation on the sanctity of contracts, 3. some regulation on property rights (Bull 1995: 4-5).

An international society can evolve in two different ways: the “civilizational” (*gemeinschaft*) and the “functional” (*gesellschaft*) model. The *gemeinschaft* model suggests that a society is something organic. According to this notion, society has developed over time and is based on shared experiences, sentiments and a common identity. In contrast, the *gesellschaft*-model considers society as being constructed and therefore dependent only on the states’ will to form a common ground. Society in this functional way does not rely on pre-existing cultural bonds. An international society

which adheres more strongly to the *gemeinschaft*-part is much more persistent in times of trouble. However, a functional society can create a common cultural base (*gemeinschaft*-elements) if it exists for a long time and enjoys the approval of all its member states.

It must also be differentiated between international society and world society. The latter not only includes states as the most important political units, but also non-state actors such as NGOs, TNCs and individuals. Therefore, world society is more closely connected with the civilizational model of society. A potential world society is never tied to any specific political structure, but provides a wide range of different structural possibilities: “It could be a hierarchy (world government); it could continue to be international anarchy; or it could be primal anarchy at the individual level” (Bull 1995: 339).

This approach implies that states are not necessarily restricted by the self-help paradigm, but rather voluntarily stick to it by accepting the current notion of power politics. Another important aspect of the development of an international society is its uneven spread. Society generates in circles. While some states form the core of an international society, others states are located in the periphery or outer circle of the society.

According to Bull (1995: 349), the truly global international society at present can be defined as follows:

As one would expect from its partly *gemeinschaft* origins, it has a European (now Western) core that is much more highly developed than the rest of it in terms of having a higher number, variety, and intensity of rules, norms, and institutions binding its members in a network of regimes. And as one would expect from its partly *gesellschaft* origins, it is globally multicultural in character and significantly differentiated in terms of the degree of commitment with which states adhere to it.

## **II.2. Different notions of multilateral regimes**

This section sketches the main conceptions of the different theories in regard to an international, multilateral regime. The aim is to come to a conclusion as to which of the theoretical approaches is relevant for the Chemical Weapons Prohibition Regime.

### **Regime creation**

When considering regime creation, two questions dominate: “Why is there need for a regime?” and “What are the pre-conditions for regime emergence?” For the first question the aforementioned theories can be divided into two different approaches: the rational and the sociological-constructivist. All three rationalist theories, *neorealism*, *regime theory* and *neofunctionalism* assume that in an anarchic world system the agents are self-

interested rational actors that form their decisions on the basis of material interests and problems. Contrary to that, constructivism and the English School believe that agents, structures and identities, as well as interests and problems are constituted.

According to neorealism regimes are created by the most powerful states, which are only interested in maintaining or increasing their share of power. Hence, regimes are “essentially arenas for acting out power relationships” (Mearsheimer 1994: 13).

Scholars of regime theory support the notion that regime creation is a process of extensive bargaining around a certain issue. (Young 1986: 310) Even though in this context, power and given interests are central, a variety of actors can change the outcome by smart bargaining, linking issues, setting the agenda and providing certain information (Keohane 1982: 347).

Similar to this conception is the one of neofunctionalism which assumes that regimes are created by states when they realize that the desired outcome cannot be reached autonomously. According to neofunctionalists, this process is not only based on negotiations but also on social learning, which is a form of human problem-solving (Haas 1982: 209-211).

In the constructivist discourse regimes are created by shared norms which evolve in a three-stage process: 1. norm emergence, 2. norm acceptance and 3. internalization. Once a certain norm is internalized by a community of different actors, it produces a common understanding of the problem. Thus, the evolution of a regime is accompanied by social learning (Finnemore and Sikkink 1998: 895-899).

In a similar vein, the English School suggests that the emergence of regimes rests on a community of culture which is constituted by common interests, common norms and the toleration of ideological differences. Moreover, it acknowledges that the emergence of an international society is an uneven development. Thus, certain states need to act as “local agents of a world common good” (Hoffman 1986: 186).

In a combining of all these theories, Young (1991: 287) explains the necessity of political leadership in “institutional bargaining” that forms the origin of regime creation. The concept of leadership can be distinguished in three different forms which all adopt different strategies: the structural, entrepreneurial and intellectual leadership. The structural leadership is connected to realism, since this leader - usually a state representative - bargains on the ground of structural power. In contrast to this an

entrepreneurial leader, which might act as a representative for any stakeholder in the game, has to rely on his negotiation skills to frame an issue in such a way that the negotiation process ends in success. Finally, an intellectual leader uses the power of ideas that shapes interests and identities. This notion of the intellectual leader can be compared to the concept of a “norm entrepreneur” developed by Finnemore and Sikkink (1998: 893).

### **Actors**

A crucial question for any analysis of international regimes is: Which actors are able to determine regime creation and regime endurance? According to *neorealism*, regimes are only instruments in the hands of hegemonic leaders. It is up to states, especially the most powerful, to decide the fate of a regime (Waltz 2008: 208-209).

Keohane and Nye (1972), the two main scholars of regime theory, stress that transnational interactions in world politics have grown since the end of World War II. In this context the importance of non-state actors has expanded as well. Actions of non-state actors need to be incorporated in the analysis of regimes. Nonetheless, in the conception of regime theory “states remain the most important actors in world affairs, acting both directly and through intergovernmental organizations to which states, and only states, belong” (Keohane and Nye 1972: 344). In a later publication, Keohane (1998: 193) concludes that the increasing prominence of non-governmental actors over the last decades has been fostered by the development of new technologies like the fax machine and the internet.

Since *neofunctionalists* focus on the technical, functional and non-political aspect of international relations, in their vision technocrats and technical experts are the main actors within regimes, and especially within an organizational entity. While states still have the last say about concrete policy outcomes, technocrats have powerful means to manipulate the actors’ perception of their interests. Two factors are of significance. Firstly, an organization has to be headed by a skillful leader that is not only able to create an organizational ideology the staff can identify with, but is also able to convey the feeling to serve primarily the interest of member states. The quality of leadership can determine failure or success. Secondly, experts can use their knowledge to solve problems and conflicts which might lead to deeper integration, especially if the regime

faces problems of a complex technical nature. Thus, technocrats have to advocate “de-politicized programming” (Haas 1964: 99-115).

For constructivists a variety of actors play a decisive role in developing a so-called global polity. Global polity combines the totality of global political structures, processes and actors (Ougaard 1999). Intergovernmental cooperation is therefore not only the result of state interaction and behavior toward each other, but includes the actions of a number of non-state actors, on a local level as well as on a global one. The emergence of technological inventions like the internet facilitated the coordination between non-state actors. Since it is not the material power of actors but the normative power of ideas is crucial for policy change, many actors can acquire necessary resources. Besides NGOs, transnational networks of knowledge-based experts, so-called epistemic communities, are the most important norm entrepreneurs in the international field (Ruggie 1998: 868).

Contrary to this, the English School, exhibiting a strong association with the neorealist school of thought, acknowledges states as the main actors in international politics. They argue that non-state actors have existed a long time, but that the state’s sovereignty, international law and international organizations are the principles of international society. All these principles are dependent on the survival of a nation-state’s significance (Hoffman 1986: 189-190).

### **Regime consequence or “do regimes matter?”**

What Mearsheimer calls the “false promise of institutions” essentially reflects the neorealist position in regard to regime effectiveness. Even though regimes comprise norms, it is still the states’ decision to adhere to these norms (Mearsheimer 1994: 8). One could observe that the administration of U.S. President George W. Bush endorsed this notion. John Bolton, who represented the U.S. at the UN Headquarters during the presidency of Bush junior, commented that “there is no such thing as the United Nations. There is only the international community, which can only be led by the only remaining superpower, which is the United States” (Watson, 8 March 2005). Needless to say that Bolton’s time at the UN was short-lived and unfruitful.

The main task of regime theory is to find evidence of the fact that international regimes matter. Regimes matter in so far as they affect actors’ patterns of behavior. Advocates of regime theory argue that by providing information, by defining rules and rights which

stabilize actor's expectations and by monitoring the compliance of states, regimes can reduce the costs of cooperation.

Where agreement by many states is necessary for policy to be effective, even the United States finds it useful to compromise on substance to obtain the institutional seal of approval. Therefore, the decision-making procedures and general rules of international institutions matter. They affect both the substance of policy and the degree to which other states accept it. (Keohane 1998:87)

The more competent an international organization is in regard to monitoring, autonomous research, interpretation and dispute settlement, the more significant it is. Yet, international organizations cannot act as completely autonomous entities (Young 1981: 347).

In contrast, neofunctionalists hold that regimes "reflect more than the initial convergence of actor demands", due to the fact that the interests of actors can change if they obtain new knowledge produced by organizations. If organizations manage to mobilize new solutions, they can substantially impact the states' policy positions (Haas 1982: 241).

In a similar vein, constructivism assumes that organizations are autonomous entities which have the ability to change policy outcomes by generating more or less powerful actors with specific duties and benefits. Thus, international organizations can influence their environment in so far as they construct a social world (Barnett and Finnemore 1999: 700). According to constructivists, the main sources of international organizations' leverage are: "(1) the legitimacy of the rational-legal authority they embody and (2) control over technical expertise and information" (ibid: 707). These views rest on the constructivist assumption that international regimes shape states through a macro-process of international socialization in which states adopt new identities and interests (Bearce and Bondanella 2007: 704).

For scholars supporting the English School, international regimes are basic ingredients that enhance the emergence of a common culture. Each international regime is based on an international convention. This confirms the "Grotius version" of international community. Moreover, every organizational entity also creates new norms to enhance international order. They constitute new policy fields in which international society is generated (Buzan 1993: 344).

### **Regime transformation**

Neorealists are of the opinion that the end of the Cold War did not symbolize the end of anarchy. Indeed anarchy persists, but because the capabilities of one unit decreased a

unipolar world emerged. Yet, such power shifts in the anarchic structure of world politics can have an impact on regimes. Neorealists argue that now the transformation and stability of regimes is now connected with the United States' estimations of their value and utility (Waltz 2008: 197; 206).

Scholars supporting *regime theory* agree that regimes experience constant transformation which reflects the political, economic and social changes in their environment (Young 1980: 351). Yet, Krasner (1982: 189) distinguishes between changes of principles and norms of a regime on the one hand and changes of rules and decision-making procedures of a regime on the other hand. While the first set of alterations leads to a regime change, the second only leads to changes within the regime, which does not mean that the regime becomes obsolete. Thus, material power changes do not automatically lead to the dissolution of regimes which are characterized by strong multilevel linkages of actors, networks, institutions and norms (Keohane and Nye 1977: 55). Nonetheless, Keohane and Nye (1985: 161) argue that during the span of a regime "erosion takes place gradually, as governments and transnational actors find loopholes in the rules".

As the *neofunctionalist* approach is strongly connected to the process of social learning, it assumes that a multilateral regime is not only subject to constant change, but has to actively support a growth-oriented program. In order to secure their survival, organizational entities, have to widen their agenda by initiating spill-over effects that enhance their competence on different issues or assign themselves to new issues. An international organization's main task is therefore to foster functional and political integration (Haas 1964: 113-114).

In *constructivist* thinking, regime changes can occur because of a multitude of factors that are not connected to the material power changes in the system.

Constructivists, by contrast, insist on the importance of social processes that generate changes in normative beliefs, such as those prompted by the antislavery movement of the nineteenth century, the contemporary campaign for women's rights as human rights, or nationalist propaganda. (Katzenstein et al. 1998: 682)

If by the process of interaction, states can be persuaded to adhere to new norms, they will also change their interests and identities. Consequently, regimes are stable if they represent what the community of states acknowledges to be the "right norms" and they erode if norms that are contrary to their norms are internalized by the majority of actors (Finnemore and Sikkink 1998: 904).

Similarly, the *English School* suggests that regime transformation sets in when the rules and norms of a regime contradict other institutions created by international law or contradict the cosmopolitan moral awareness that has arisen in the last decades. The preferences of great powers are secondary (Wheeler and Dunne 1996: 102).

### **II.3. The concept of international organizations<sup>3</sup>**

In general it is useful to distinguish between “international regime” and “international organization”. While international regimes are issue-specific, international organizations, like for example the UN, can treat a multitude of issues. International regimes can never acquire actor-status, but international organizations can also operate as actors. Both institutional forms – international regimes and international organizations - are closely connected to each other and usually act supplementary (Ritterberger and Zangl 2006: 6-7). In the academic field, it is often argued that international organizations are “physical entities possessing offices, personnel, equipment, budgets and so forth” (Young 1986: 108).

IOs can be subdivided in international governmental organizations (IGOs) and international non-governmental organizations (INGOs).

Ritterberger and Zangl (2006: 10-11) classify international organizations according to membership and competences. IGOs can be universal or restricted as well as comprehensive or issue-specific. Furthermore, there is a functional division between program organizations, which primarily focus on the setup of behavioral and distributional norms or rules, and operational organizations, which have a clear mandate of overseeing the implementation of norms and rules. Where program organizations can be strongly or loosely binding, operational organizations can be strong or loose in implementation. Another kind of classification refers to the decision-making authority that is either completely assigned to member states or carried out by a supranational authority, as is to some extent the case within the EU.

One last important classificatory approach is associated with the different theoretical understanding of international regimes and international organizations. IOs can adopt the role of instruments, arenas or actors. As instruments, international organizations only

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<sup>3</sup> The term “international organization” was introduced by the Scottish scholar Lorimer in 1867. (Ritterberger & Zangl: 5)

observe what is in the interest of big states. If international organizations are seen as arenas, they only provide the infrastructure for decision-making procedures and information exchange. Once international organizations have an actor status, they absorb resources in order to change the policy outcome.

The work of every international organization can be measured by the input- and output-dimensions on the one hand, and the process of policy conversion within the institution on the other hand. For the input dimension, often referred to as the "demand side" it is important to identify which actors are involved in the agenda-setting and even more important who has the resources to demand something. Ritterberger and Zangl (2006: 78) identify five distinct groups of actors: 1. representatives of member states; 2. administrative staff of international organizations; 3. parliamentary assemblies of international organizations; 4. interest groups; 5. communities of experts. Each of these groups tries to exert power by different means. Where member states are able to exercise influence due to the fact that they are in a position to provide the necessary financial resources for international organizations, the administrative staff has the advantage of being localized "at the centre of the policy-making process" (Ritterberger and Zangl 2006: 82). In contrast, parliamentary assemblies within institutions can lean on their "democratic legitimacy", since they are directly elected. However, interest groups and communities of experts also use special resources, namely certain knowledge and expertise. Interest groups can enact the more or less stringent power to mobilize public opinion.

While a lot of actors can bring forth issues on an organization's agenda, this does not assume that they will be taken into consideration. One has to look at the conversion process which is often equal to the decision-making process within an international organization. In this regard, Ritterberger and Zangl (2006: 88-91) describe five different models: 1. intergovernmental negotiations; 2. majority voting; 3. rational choice; 4. standard operating procedures; 5. bureaucratic politics.

Both the intergovernmental negotiations model and the majority voting model assume that states are the central decision-making actors. In the first model a consensus between all participating states, which is often based on the lowest common denominator, is required. In the second model only a majority, often based on coalition-building, is needed. In the rational choice model, decisions are made according to the calculation of costs and benefits. Thus, the decisions mirror the interests of the organization itself. The standard

operating procedures model assumes that decisions within an organization are pre-determined by routine procedures. This decision-making procedure often concerns the allocation of financial resources. In the bureaucratic politics model, the bureaucratic apparatus actively defends its interest. However, this model can also reflect a struggle between different branches of an international organization.

Looking at different international organizations the following conclusion can be made:

In international organizations mainly concerned with the implementation of political programs an element of independence from member states' representatives comes to the fore, while governing, in the sense of the formulation of political programs, has essentially remained in the domain of representatives of states, especially powerful states. (ibid: 101)

In the end, what matters is the output dimension of an international organization. Ritterberger and Zangl (2006: 71) distinguish between three output dimensions: 1. policy programs; 2. operational activities; 3. information activities. Policy programs include the norms and rules created by an international organization. There are different types of operational activities that "translate" these policy programs into specific actions and requirements, including the specification of rules and norms, active implementation through the organization itself, the monitoring of the member states' compliance, adjudication in cases of dispute and the following imposition of sanctions. Yet, not every international organization features all these operational activities. In relation to information activities, the organizations' capacity to collect and publish specific data and information is of great significance.

All in all, the politics of an international organization as characterized by the input dimension, the conversion process and the output dimension, determine not only the organization's standing in the field of international relations, but also its chance of survival or even growth in size and influence.

## **II.4. The concept of multilateralism**

For this study it seems necessary to elaborate on the concept of multilateralism as well. This chapter reflects Ruggie's (1992) academic writings on "multilateralism". In his opinion, "multilateralism" is a specialized form of institution:

Our illustrations suggest that multilateralism is an institutional form which coordinates relations among three or more states on the basis of "generalized" principles of conduct—that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence. (1992: 571)

Moreover, Ruggie's (1992) concept of multilateralism is characterized by three principles: (1) general organizing principles entailing non-discrimination, (2) indivisibility as a social construction, and (3) expectation of "diffuse reciprocity"<sup>4</sup>.

The academic community often misinterprets the term "multilateralism" as encompassing "the universe of multilateral organizations or diplomacy" (ibid: 574). According to Ruggie, there are three institutional forms of intergovernmental relations: international norms, international regimes and international organizations. All forms can be multilateral, but not necessarily are. Multilateral arrangements are in so far advantageous, as they are better suited to adapt to new environments and thus, are more likely to survive. Even if multilateralism is accompanied by stability and endurance, multilateral institutions sometimes do not always exhibit full, non-discriminatory multilateral decision-making. Some scholars like Hardin (1982) and Snidal (1985) support the concept of "k-groups", that is to say that the most dominant group of states within the regime governs the regime. Whereas regimes in this notion are not sheer instruments of one hegemonic leader, it does not reflect a real "egalitarian decision-making" process (see also Ruggie 1992: 594).

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<sup>4</sup> The term "diffuse reciprocity", which originates from Keohane, stands for equivalent benefits.



### III. THE HISTORY OF CHEMICAL WARFARE

#### III.1. Before 1925

The intentional use of poisons and gases in times of conflict goes back to Ancient Greece and so chemicals have been part of warfare strategies for thousands of years. However, it was only the rise of a commercial chemical industry in the late 19<sup>th</sup> century that made the large-scale deployment of chemical weapons possible. Chemical warfare is primarily associated with World War I, during which both opponents applied large quantities of chemical agents on the battlefield (Kenyon 2007: 4).

The international community was well aware of the dreadful consequences of the use of chemical weapons. Thus, a universal “chemical weapons taboo” based on the Brussels Declaration of 1874 and The Hague Convention of 1899 was constituted before WWI. Both of these conferences strived to create binding rules on warfare. In 1874, no formal agreement could be generated, but the Brussels elaborations served as basis for the agreements reached in 1899. The conference in The Hague was initiated by Russia and aimed to limit different types of weapons. In the end, the Hague Declaration of 1899 contained a well-defined agreement to abstain from the use of asphyxiating or deleterious gases (Price 1997: 15-19).

However, in 1914 “the traditional legal and moral restraints on the use of poison gas began to erode under the pressure of military necessity” (Tucker 2006: 11). Of all the major powers that launched extensive chemical weapons production programs, Germany had the biggest chemical industry and was therefore at a clear advantage. It is thus not surprising that Germany’s military executed the most fatal chemical weapons attack. The Belgian city Ypres was covered by a yellow-green cloud containing the dangerous gas chlorine on 22 April 1915. As soon as the chemical fog reached the French and Algerian troops, they were immediately blinded. Within an hour, thousands of soldiers were rendered out of action. The Allies claimed afterwards that 5,000 of their troops lost their lives in this unbalanced battle. Ypres became a site of chemical warfare once again in 1917. This time, the newly developed mustard gas was used by the Germans. Mustard gas, later also used by Allied troops, was soon considered to be the most dreadful chemical weapon and acquired the moniker “king of the war gases” (Tucker 2006: 11-19).

In total, 124 metric tons of 21 different chemical agents were used during World War I. More than 1,000,000 soldiers were injured and about 90,000 were killed as a result of chemical agents.

### **III.2. The Geneva Protocol and WWII**

After the world community experienced these atrocities, the decision was taken to renew the ban on the use of chemical weapons. During the subsequent 1925 Geneva conference on arms control, the U.S. initially suggested the creation of a universal prohibition of chemical warfare agents. Polish diplomats insisted on the additional inclusion of biological warfare instruments, too. Consequently, in June 1925 the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* was introduced and opened for signature. Unfortunately, the ban contained a number of flaws. Many states expressed reservations when ratifying the protocol. These reservations included the fact that states were still able to employ chemical weapons for retaliatory purposes in the event of being attacked with chemical weapons by other states first. Thus, the treaty came to be known for simply creating a “non first-use” regime (Kelle et al. 2006: 16). Furthermore, some states reserved the right to attack with chemical weapons those states that were not member of the protocol. Lastly and probably most importantly, some big powers like the United States, who actually proposed the creation of this ban, did not ratify the Geneva Protocol at the time. All of these indicators had a significant impact on the effectiveness of the Geneva Protocol.

Given this inconsistency, it seems rather peculiar that chemical weapons did not play a major role in course of the Second World War. Three factors supported the fear that chemical weapons would be used on a large scale in this war. Firstly, all states continued to run chemical weapons’ production programs in the interwar period. Secondly, fascist Italy deployed chemical weapons when invading Abyssinia in 1935 and 1936. Finally, states even enhanced their efforts concerning research and production of chemical weapons (Bernauer 1990: 12-13). The U.S., for example, raised the budget for the Chemical Warfare Service from \$2 million in 1940 to \$60 million in 1941 and to a further astonishing \$1 billion in 1942 (Tucker 2006: 89). Despite all these factors, chemical weapons were almost non-existent on war sites during World War II. The only exception

was Japan, which reportedly not only deployed chemical agents in the war against China, but also left behind large arsenals of chemical weapons (Bernauer 1990: 13).

This poses the question of why leaders of the most powerful states decided to refrain from the use of chemical weapons during wartime. Many speculations have been made about this issue. As it is known that most of the countries had a great capacity of chemical weapons, scholars have argued that the uncertainty about the enemy arsenals affected the decision against the use of chemical agents. Thus, due to the threat of the enemy response that could potentially harm a country and its inadequately protected civilian population, an “atmosphere of mutual deterrence” was created that resembled the one produced by nuclear arms during the Cold War (Bailey 1992: 183). However it is also frequently mentioned that Hitler, as a victim of chemical warfare in WWI, was personally against the use of chemical weapons (see Kelle et al. 2006: 17; Tucker 2006: 19).

Others claim that their non-use was provoked by uncertain military value of chemical weapons in combination with the logistical burden they placed on the military (Price 1995: 75). The debate about the value of chemical agents as warfare instruments has been lively for years. Thakur (2006:2) states that due to problems of storage, transportation and dispersal, chemical weapons only possess a limited value. As chemical agents are very instable, they are easily affected by changing climate attributes such as temperature modifications, rain or wind. Moreover, for inflicting a high number of casualties, large quantities of chemical agents are required. He thus concludes that “[t]hey are weapons of political terror rather than military force”. Using a similar line of argument, David Joyner (2009: 84) even demands to exclude chemical weapons from the group of weapons of mass destruction. He would rather integrate chemical weapons in a distinct category of “weapons of mass casualty” or “weapons of mass terror”.

Instead of analyzing the feasibility of chemical weapons, some academics focus on the moral and legal taboo surrounding them. In this context, Price (1995:75) argues that:

[t]he existence of a stigma using CW was a necessary pre-condition of the non-use of CW. (...) In the absence of a taboo that politicized the use of CW at the highest level, these other restraints would likely not have been sufficient to prevent chemical warfare during World War II.

In a later publication, Price (1997) elaborates on the issue of the CW taboo in a more extensive way. He claims that the origin of this taboo goes back to ancient times, when the use of poison was already associated with extreme cruelty. Literary proof of this

observation can be found in a passage from Homer's epos *Odyssey* (transl. by McCrorie 2004: 10), in which poison is characterized as an extraordinarily dreadful mean of killing:

Odysseus went there sailing a fast-running vessel,  
To look for deadly poison, useful for coating,  
his bronze-tipped arrows. Ilos, though, would not give it:  
he dreaded the rage of Gods living forever.

The fact that chemical weapons were on the agenda of disarmament conferences in the late 19<sup>th</sup> century is striking, insofar as they had not yet been developed "as a feasible means of war" (Price 1997: 31).

At that time none of the countries were able to produce a big enough capacity of chemical weapons in order to use them as instruments of warfare. However, chemical weapons were still a matter of serious concern. Yet, it can also be argued that the states could easily agree to refrain from CW use, because at the time it did not constitute a real possibility for warfare. According to Price (1997: 6), the non-use of chemical weapons against civilians in WWI helped to produce the substantially false conception that people are defenseless against chemical weapons. This notion led to the successful arms control negotiations that resulted in the Geneva Protocol, as well as to the further abstention of chemical weapons in WWII and in the post-war years. Contrary to the positions of his colleagues, Price asserts that at least until WWI, chemical weapons were seen as "having military utility despite limitations" (Price 1997: 93).

### **III.3. After WWII**

While the use of toxic warfare has been alleged in about 80 cases of conflict after the Second World War, the vast majority of these allegations could not be verified (Robinson 1998: 19).

The employment of chemical weapons could actually only be ascertained in two cases. The first of them concerns the civil war in Yemen supported by the Egyptians. In autumn 1962, Egypt began to participate actively in the civil war which was designed to replace the ruling monarchy by a republican government. Whereas in the beginning, the Egyptian troops made only occasional use of tear gas, in the latter battles bombs containing phosgene and mustard were dropped on the territory of Yemen (Tucker 2006: 191). It is not clear how Egypt acquired the necessary amount of chemical weapons. Observers assumed that the first chemical attacks were courtesy of weapons left behind in Egypt

during WWII and chemical agents provided by their former Soviet allies. Yet, it cannot be excluded that Egypt produced large quantities of chemical weapons on its own. This is still an issue of serious concern today, since Egypt is one country that has not yet ratified the CWC in order to maintain a counter threat to the nuclear arms threat posed by Israel (Shoham 1998: 53).

Saudi Arabia was the only state which brought the issue of Egypt's unlawful use of chemical weapons to the attention of the international community. However, this effort did not entail any action. Neither the UN Secretary-General U Thant, nor any of the major powers demanded to deal with the issue within the UN bodies. While the U.S. government was secretly worried about Egypt's assumed capacities, it did not publicly condemn Egypt's violation of international law. Why? It can only be speculated that the U.S. feared the issue of chemical weapons use would draw attention to the "yellow rain" debate. Even though the U.S. was not member of the Geneva Protocol at that time, criticism might have been exercised on its employment of tear gas and the herbicide Agent Orange in Vietnam (Tucker 2006: 193-195). Once again, this sheer fact seems to underpin Price's thesis of a long-existing and far-reaching chemical weapons taboo. By politicizing the use of chemical weapons, the status and importance of the chemical weapons taboo did not lose its relevance for the international community. In fact, when facing criticism on its use of chemical agents in Vietnam, the Nixon administration finally ratified the Geneva Protocol in 1975 (Price 1997: 134).

The second case of conflict in which the use of toxic weapons has been affirmed was the Iran-Iraq war in the 1980s. In September 1980, Saddam Hussein's regime attacked Iran by surprise which led to a military conflict that lasted for 8 years. In the beginning, Iraq refrained from the use of CW. Only after Iran achieved some notable military successes, did Iraq begin to actually deploy chemical weapons. The first incident involving chemical weapons was a battle near Basra in July 1982. This was a wake-up call to the international community that had not been aware of Iraq's CW capability.

It seems likely that Iraq's acquisition of chemical weapons relied on a strategic cooperation agreement with Egypt. The chemical plants in Iraq were constructed by the Egyptian branch of the West German company Walter-Thosti-Boswau International. In addition, Egypt served as a reloading point for Western exports of chemical precursors to Iraq. In the long run, the Iraqi government built up a production complex with the code

name “State Enterprise for Pesticide Production” (SEPP). For this, the Iraqi regime was supported by 14 companies from West Germany, three companies from both Switzerland and the Netherlands and two companies from France and the U.S. (Tucker 2006: 250-251). Thus, if it had not been for unscrupulous, profit-seeking Western business men, Iraq would never have been able to develop such an extensive chemical weapons capability.

But why did the Iraqi government not make use of its chemical weapons stockpile at an earlier stage of the war? Without a doubt, the military superiority of Iran eventually had an impact on Iraq’s strategy. However, Price also claims that the use of chemical weapons was originally prevented by the existence of the chemical weapons taboo:

The evidence indicates that Iraqi leaders did in fact feel constrained by the existence of a norm prohibiting CW, and only after the failure of the international community to demonstrate its commitment to the norm in the face of Iraq’s initial testing of the waters did Iraq feel free to flout the chemical weapons taboo. (Price 1997: 137)

What did this “testing of the waters” look like? First of all, Iraq warned the international community, and especially Iran, several times that it had the means to use weapons of mass destruction. Furthermore, Iraq tested the reaction of the international community by deploying non-lethal tear gases. None of these trials resulted in public condemnation, so Iraq started to use its chemical weapons on a large scale.

In 1983, Iran called the UN Secretary-General’s attention to the Iraqi deployment of chemical weapons, which was in breach of the Geneva Protocol. Even though the U.S. secretly verified this accusation, there was no reaction at an international level. Tucker argues that due to “geopolitical considerations” and the belief that Iran posed a greater threat to the international community than Iraq, the U.S. and other nations kept quiet (Tucker 2006: 252). Allegations of CW use have been frequent after WWII and since most of them were false, the international community tended to not to take them too seriously (Flowerree 1992: 194).

However, as the war intensified in the second half of the 80s, more and more nations became concerned with Iraq’s extensive use of chemical weapons. It is important to note that these chemical weapons were only so effective because Iran failed to adequately provide its soldiers with modern protective equipment (Kenyon 2000: 3).

The continuing use of chemical weapons eventually led to stronger export controls in industrialized countries. As a consequence, Iraq was forced to search for different foreign suppliers and began to develop a production capability of its own (Tucker 2006: 271). It

was only when Saddam Hussein started to deploy chemical weapons against civilians, first against Iranian Kurds and then against the Kurdish minority in its own country in 1988, that it was considered that he had taken one step too far. When even the taboo of harassing civil population with chemical weapons was broken, many countries called for sanctions. In fact, the UN never imposed sanctions on Iraq. However, Iraq's reputation in the international community was damaged and most states refrained from secretly supporting Hussein's regime (Price 1997: 139-141).

By only condemning and not sanctioning Iraq, the international community failed in establishing a real punishment for the violation of an international treaty. This had "a deeply corrosive effect on the legal, political, and moral norms constraining the spread of chemical arms" (Tucker 2006: 286).

After the war, the UN investigations could affirm the Iraqi use of CW. This finding supported by undeniable evidence had far-reaching consequences:

The question of chemical weapons definitely moved out of the theoretical realm of concern about their possible use in a future conflict in Europe into the grim reality of their increasing and restricted use in an atrocious war in one of the world's politically most instable regions. (Lundin 1989: 99)

It was also the first time that a UN investigation could provide clear evidence of the use of chemical weapons during war. The inspections owed their success to a number of favorable circumstances. Most importantly, inspection teams could access the area where chemical weapons were allegedly deployed without any serious security threats. Moreover, Iran fully cooperated with the UN inspection teams in order to profit from the international community's condemnation of Iraq's breach of the Geneva Protocol (Floweree 1992: 195).

When it was manifested that Iraq made use of chemical agents, the Iraqi government could no longer deny its breach of the Geneva Protocol, so it started to come up with a new strategy, namely to defend its actions via two lines of argument. First, when the Iraqi Minister of Defense admitted in 1989 to the deployment of chemical weapons against the Kurdish population, he clarified immediately that the attacked Kurds were traitors supporting Iraq's enemies. Secondly, the Hussein regime took great care to promote the notion of chemical weapons as the "poor man's nuclear bombs" being used against "uncivilized nations". More and more countries in the Middle East took up the conception of the "poor man's nuclear bomb" and thereby linked chemical weapons to nuclear

weapons. This link still prevails in the Middle East security negotiations today (Price 1997: 143-144). Consequently, chemical weapons, which were perceived as effective warfare means after WWI, have obtained the status of the “weapon of the weak”. In 1987 President Gorbachev unilaterally declared the suspension of the Russian chemical weapons production program, while the U.S. production of binary chemical weapons<sup>5</sup> ceased in 1990. According to Robinson (1998: 18), states finally realized that “scientific developments might not, after all, be capable of overcoming the inherent technical limitations of toxic warfare to the point where its weapons had more than marginal utility.”

Yet, another military conflict followed, in which the possibility the employment of chemical weapons seemed high. In August 1990, the Hussein regime alarmed the international community by invading Kuwait. This time the UK and the U.S. got involved in the conflict by deploying military personnel in order to support Kuwait in defending its territory. For the first time after WWII, the leading Western nations were confronted with the threat of being attacked by chemical weapons. It was also feared that Iraq would launch terrorist attacks with chemical and biological agents. Consequently, the U.S. officially warned Iraq beforehand that if they were attacked by chemical or biological weapons, “American people would demand the strongest possible response” (quoted in Tucker 2006: 304-305). Iraq replied by stating that if the U.S. used nuclear weapons, they would definitely respond with chemical weapons which were equally effective killing instruments. In this way, chemical weapons were “established as a threshold by both sides in the Gulf War, a weapon whose use would change the character of the war” (Price 1997: 148).

Chemical weapons were not deployed by either side in the end. However, it is not clear whether it was really the threat of nuclear retaliation that led to the absence of chemical weapons. A variety of other reasons can be thought of, e.g. that Iraq’s chemical weapons stockpiles and production facilities were damaged by the Coalition bombing at the beginning of the war or that the chemical weapons could not be deployed and transported due to unfavorable weather conditions and/or technical problems. (Lundin and Stock

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<sup>5</sup> Binary weapons are composed of two different precursors, which mix when actively deployed as a weapon. The toxicity increases to a great extent when the two substances get mixed. Binary weapons that are not activated can be transported and stored relatively safely and thus are conceived to be useful weapons. (Tucker 2006: 245-246)

1992: 159) Overall, the public perception of chemical weapons changed due to Iraq's CW use:

Developments in Iraq brought chemical warfare to the forefront of public awareness. It is also clear that segments of the chemical industry put commercial interests above ethical considerations and took advantage of the current situation, in which CW production is not yet internationally prohibited. (Lundin and Stock 1991: 91)

Thus, these horrific warfare scenes in the 1980s and 1990s coincided with the final conclusion of the Chemical Weapons Convention in 1992.

### **III.4. The emergence of a new threat**

The threat that chemical weapons could get into the hand of terrorists had existed for quite some time. It became a reality in 1994, when the Japanese sect Aum Shinrikyo killed 7 people by deploying the nerve gas Sarin in the city of Matsumoto. However, very little attention was paid to this incident on an international level (Kenyon 2000: 3-4). Indeed, Aum Shinrikyo was able to continue to secretly produce chemical weapons in a three-story building at the Mount Fuji Center called Satian 7. The sect, that had recruited 40,000 members from Russia and Japan by 1995, was able to accumulate enough resources to finance an extensive chemical weapons research and production program (Tucker 2006: 333-340).

At the beginning of 1995, the sect's leader Asahara decided to deploy the nerve gas Sarin in the Tokyo subway system, which transported more than 5 million people each workday. Luckily, the sect's scientists received this order on short notice and were therefore only able to produce very dilute quantities of Sarin. The Sarin solution was injected into small plastic bags which were then dropped in a couple of subway trains, thereby releasing the deadly nerve gas. The terror attack in the Tokyo subway system killed 12 people, seriously injured another 122 and demanded the medical treatment of almost 4000 people (Tucker 2006: 344-346). The side-effects were even more dreadful:

The Sarin attack also terrorized Tokyo for months, causing some residents to develop posttraumatic stress syndrome and deterring people from riding the subways. For the first time in the post war era, the vast metropolitan area felt like a city under siege. (ibid: 347)

The fact that the sect's criminal activities were uncovered shortly after did not help to calm the population and the events in Tokyo caused lasting public concern. The threat of the use of chemical weapons by terrorists remains a very relevant issue, especially after the events of 9/11.



## IV. CREATING THE CHEMICAL WEAPONS PROHIBITION REGIME

### IV.1. The Negotiations: From the East-West to the North-South conflict

In the 1960s the movement for the creation of a universal and more complete ban on chemical and biological weapons gained momentum. As a response to the U.S. use of herbicides and tear gas in the Vietnam War, not only an UN General Assembly resolution demanding strict adherence to the Geneva Protocol was adopted in 1966, but the UN General Assembly also came up with a definition of chemical weapons which included herbicides in 1969 (Bernauer 1990: 15). Moreover, in 1968 the issue of chemical and biological weapons was put on the agenda of the multilateral disarmament conference based in Geneva (Kenyon 2000: 4). The “Conference on Disarmament” which was originally named the “Eighteen Nation Committee of Disarmament” was the first multilateral disarmament negotiating forum. For most of the 24 years of CWC negotiations, the Conference consisted of 40 members, including all five nuclear-weapon states. The participating states were divided into three political groups - the Western Group, the Socialist Group and the Group of 21 (neutral and non-aligned countries) – all of whom had varying opinions on the topic of chemical weapons. While non-member states could obtain observer status during the negotiations, NGOs and individuals could only send recommendations to the Secretary General and were therefore ignored for most of the time (Bernauer 1990: 3). Initially, it was still a question of both biological weapons and chemical weapons. However, only one year after the Geneva negotiations included CBW issues, the UK proposed to have a separate treaty on biological weapons. After intensive discussions it was agreed to differentiate between chemical weapons and biological weapons, which eventually led to the adoption of the Biological and Toxin Weapons Convention (BTWC) in 1972. The relatively quick understanding on biological weapons was predicated by the states’ conviction that the biological weapons ban could be sustained without intrusive verification provisions (Kenyon 2000: 4). Yet, since many states feared that negotiations on chemical weapons negotiations would halt after the successful conclusion of the BTWC, the Convention contains the following provision (BTWC 1972, Art. IX):

Each State Party to this Convention affirms the recognized objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specially designed for the production or use of chemical agents for weapons purposes.

The first important proposal was brought up by the neutral and non-aligned countries which presented a draft treaty recommending a CW declaration system that would ensure compliance by means of international verification (Robinson 1998: 24).

By that time, the two most important players, the U.S. and the USSR, had very contradicting views on the issue of CW verification. Nevertheless, in 1974 the basis for successful negotiations was created when the two major players announced that they were considering a “joint initiative” in order to facilitate the conclusion of a universal ban on chemical weapons (Kenyon 2006: 1). In a strategic paper of the 1970s, Meselson (1978: 20) pointed out that NATO and Warsaw Pact troops are well equipped to defend themselves against chemical weapons and thus “any large scale chemical warfare in central Europe could inflict far higher casualties on civilians living near the combat zone than on the combatants”.

Therefore, both, Western Europe and Eastern Europe were interested in a global chemical weapons ban. In the following two decades eleven bilateral negotiations rounds were held between the U.S. and the USSR. Consequently, multilateral and bilateral negotiations co-existed in the course of CWC creation. As the political scientist Heinz Gärtner (1989: 436) put it, the Chemical Weapons Convention was “both a bilateral and a multilateral issue, and progress on both levels can be blocked from either side. Compromise is not always the best solution”.

Even though a formal negotiation group solely treating the issue of chemical weapons was not launched in the 1970s, more than 60 working papers from the three different political groups were distributed until 1978. While the Western Group and the Group of 21 preferred an intrusive verification regime, the Eastern Group strongly opposed such a regime. This discord dominated the negotiations over the years. When the bilateral negotiations were temporarily adjourned in 1980 due to the Soviet invasion of Afghanistan, an agreement on big issues failed to appear. In any case, the first rounds of bilateral meetings produced a common understanding on certain provisions that were later incorporated in the CWC, such as for instance the use of declarations, the 10-year

destruction period, the creation of a Consultative Committee with a Technical Secretariat and the possibility of challenge verification by means of on-site inspections, though originally thought to be voluntarily (Kenyon 2007: 8-9).

In the meantime, the first Special Session of the UN General Assembly Devoted to Disarmament (SSOD) that took place in 1978 nominated the Chemical Weapons Treaty as the most urgent issue to be addressed. Although in the subsequent SSOD II and SSOD III no further consensus could be reached on chemical weapons verification, they still provided a coordination forum (Bernauer 1990: 22).

In 1984, the Conference on Disarmament (CD) determined that it was time to start the final elaboration rounds resulting in a universal ban of chemical weapons. Two factors showed to be important driving forces for negotiations in this year: 1. the U.S. proposed a new draft treaty; 2. the UN Secretary General published a report verifying the Iraqi use of chemical weapons against Iranian soldiers (Robinson 1998: 26). The latter proved that the horizontal spread of CW had been taken place to a wide extent. In the course of the 70s and 80s, many countries developed a modern chemical industry, which also helped them to acquire the necessary know-how and technical material to produce chemical weapons. More and more allegations of chemical weapons use during conflict began to surface. These allegations and the proof provided in the Iraq-Iran war heightened the threat of chemical warfare within the international community. Consequently, export control regimes such as the Australia Group (AG) came into being.

#### **Australia Group (AG)**

*The Australia Group was founded in 1984 when it was revealed that the Iraqi chemical weapons program was to a large extent based on imports of Western companies. The AG is named after Australia, the initiator of the first meeting. It is an informal suppliers' group forum that does not pass any legally binding provisions, but tries to harmonize export controls in order to ensure that traded products are not used for the production of weapons. However, the regulations of the AG inevitable also affect non-member states as their trade activities with States Parties are restricted. The AG has neither a permanent Secretariat, nor a charter. Yet, all member states participate in the annual Paris conference, which is chaired by the initiating country, Australia. During these meetings three sub-organs hold the following parallel meetings: 1) implementation meeting, 2) information exchange, 3) enforcement exchange meeting. The aim of the meetings is to discuss technological changes and if necessary, update the control lists (Gamse 2008:120). Whereas not*

*legally binding, the AG has established a Common Control List containing compounds for which export control certificates are required. Besides chemical weapons precursors and chemical dual-use equipment, the Common Control Lists include biological-related products. In addition, the so-called Catch-All provision requires export licenses for any not listed product which is suspected of being purchased for illegal purposes (AG Homepage 2011). Currently the AG numbers 42 participants, all of which are industrialized nations. The AG also engages in a variety of outreach activities aimed at teaching other countries about their export control regulations. This led to other states adopting similar export control provisions. All AG members have ratified both the CWC and the BTWC. Originally, the AG was perceived as a temporary measure until the completion and conclusion of the CWC. But the AG members refused to dissolve their group after CWC conclusion by reasoning that their export control regime was supplementary to the Conventions in preventing weapon proliferation. Since there are no transparent criteria for the AG's decisions to restrict trade, the group has been heavily criticized by outsiders (Tucker and Thränert 2007: 27). Yet, it was also argued that the AG's export control regime has contributed to the hampering of the proliferation of WMDs (Gamse 2008:120). Austria joined the Australia Group in 1989. The implementation of the non-binding guidelines is coordinated by the Federal Ministry of Economy, Family and Youth (Interview 2).*

Furthermore, the negotiation efforts of all sides increased, which had also a great impact on the subsequent bilateral meetings of the U.S. and the USSR. The U.S. Draft Convention of 1984 was based on a system of verification called “open invitation”. This basically meant that any party at any time could request on-site inspections on government facilities of other States Parties. The visited party would be informed 48 hours before and had no right of refusal. The U.S. draft reflected the Western position, but was opposed by the Eastern countries and some members of the Group of 21 (Bernauer 1990: 22-23).

Bilateral talks between the U.S. and the USSR resumed in 1985 but little progress could be made within the following years. In the multilateral field a “rolling text” was constituted in which different agreements and positions were embraced (Kenyon 2007: 10). After all, the problem of the dual-use nature of chemical compounds persisted. Sweden came up with an important proposal with regard to the verification of the non-production of chemical weapons. It suggested placing chemical substances into three categories according to the possible danger they exposed. This approach was adopted in the final Convention (Bernauer 1990: 24).

The continuous negotiations were somehow hampered by the renewed U.S. effort to produce binary chemical weapons. In addition to the Congress approval of an enlarged budget for the binary CW program in 1985, NATO formally advocated the U.S. program. Obviously, the USSR was affronted by this behavior, which negatively affected the negotiation process for some time. However, this was overcome when the Soviet Union declared in 1987 that their intention to refrain from chemical warfare would not be affected by the U.S. binary CW program (Bernauer 1990: 40-42). Furthermore, the Soviet Union also announced its willingness to accept the intrusive verification measures mentioned in the 1984 U.S. Draft Convention. Since this important security question of chemical weapons could be resolved, “economic” questions in regard to verification exercises of the civic chemical industry took on greater significance. A new confrontation line appeared:

All this fading away of East-West disagreement naturally had the effect of exposing as-yet-unreconciled differences in the hinterland of the negotiation, especially along its North-South dimension. Of these, the chief one was the lesser military utility and political value of CW to the rich industrialized countries as compared with the rest of the world. (Robinson 1998: 28)

Even though the bilateral negotiations between the USSR and the U.S. continued, an increasing number of issues were discussed within the multilateral framework. In 1989, two conferences were undertaken that bolstered the forthcoming CWC. The Paris Conference, held in January, attempted to reinforce the validity of the Geneva Protocol. In the end, the event - which was attended by 149 state representatives - was concluded by a final act that strictly condemned the use of chemical weapons. By that time, 67 states had officially announced to not possess any chemical weapons. Yet, some problems needed to be addressed before the Chemical Weapons Convention could be adopted. For one, some Middle East countries linked the issue of chemical weapons to the issue of nuclear instruments of warfare. Secondly, the Non-Aligned movement protested against the discriminatory nature of some export control regimes in place, such as the Australia Group. All in all, the Paris Conference provided another platform for exchange of national policies (Bernauer 1990: 55-56). Furthermore, the Australian government hosted the first industry-government Conference (the Canberra Conference) in September of 1989. It was aimed to offer a discussion forum for state representatives and figures from the chemical industry. Two years earlier, the Board of Directors of the U.S. Chemical Manufacturers Association (CMA) announced its positive attitude towards a final conclusion of the

CWC. Soon after, other chemical industry associations as the European Chemical Industry Council (CEFIC) and the Japan Chemical Industry Association (JCIA) declared their full support for the Chemical Weapons Convention. The chemical industry's reputation was seriously damaged when it was revealed that several U.S. and European companies had backed the chemical weapons production programs in Iraq. Even though the projected Chemical Weapons Convention meant an increased workload for some industrial companies, chemical industry associations still favored a stricter regime. By expressing their support at this stage, they hoped to be able to exert some influence on the concrete provisions that were contained in the Convention. Their most important goal was to ensure the protection of confidential information during verification exercises. In the long run, the Canberra Conference fostered the dialogue between representatives from the chemical industry and from states (Bernauer 1990: 54-58). The representatives of the chemical industry were especially grateful to be able to express their concerns and expertise on the field of chemical weapons verification. After all, chemical industry associations became loud proponents of a universal ban on chemical weapons involving a far-reaching verification regime.

The year of 1989 was also characterized by the 'most productive' round of bilateral negotiations. The two superpowers took up a new approach to chemical disarmament:

Up to this point the emphasis of the bilateral process had been on supporting the objective of a multilateral Chemical Weapons Convention which would form the basis of controlled chemical disarmament by the two powers. A new departure, announced on 2 August 1989 (...) was the concept that they should inspect each other's chemical weapon stockpiles and destruction processes both before and after conclusion of the CWC. (Kenyon 2006: 2)

The detailed procedure for this bilateral agreement was recorded in the Wyoming Memorandum of Understanding, signed on 23 September 1989. The bilateral verification program was divided into three phases: 1. exchange of data; 2. detailed data and on-site inspection; 3. reciprocal visits to monitor destruction operations. It was also arranged to clarify the implementation of key points during the following rounds of bilateral negotiations. This bilateral arrangement was seen as a great relief in regard to further CWC negotiations.

Just two days after the Wyoming meeting the then President Bush senior suggested to the UN General Assembly that the U.S. and the Soviet Union destroy 80 % of their CW stockpiles before the conclusion of a multilateral Chemical Weapons Convention and 98% of their stockpiles within 8 years after the CWC's entry into force. However, the U.S. also

wanted to maintain 2% of their chemical weapon stocks until all other states followed suit (Bernauer 1990: 29). The proposal displayed the U.S. reluctance to fully refrain from chemical weapons as long as not all other states did the same. This change of U.S. policy was certainly related to the new findings in the case of Iraq's chemical warfare:

The importance of this change lay in its express recognition of what had always been the case, that no international ban on CW could ever be fully verifiable. This was so because (...) chemicals and chemical manufacturing technologies can be used as well for chemical warfare as for peaceful purposes – 'dual use' attributes first demonstrated vividly during the First World War, and being demonstrated once again by the disclosure of how exactly Iraq had acquired its CW. (Robinson 1998: 27)

The mistrust concerning the zero-defect verification of a state's compliance did not just cause the U.S. to review its policy. One year before the U.S. forwarded its proposal, France had recommended that all parties of the projected Convention should be entitled to retain or acquire a small but recognizable CW stock, a so-called "security stockpile" (1000-2000 tons of chemical agents) during the first 10 years of CWC operation. While France argued that the possibility of maintaining security stocks would alleviate small states to join the Convention, France probably had other interests in mind. Researchers came up with possible explanations ranging from France's fear of the chemical weapons capability of the Soviet Union or their horizontal spread in the Middle East to its disapproval of the two superpower's superiority (Lundin 1989: 106-107). Yet, after having received very negative reactions from many countries, France withdrew its proposal in late 1988. Nonetheless, the problem of achieving 'undiminished security' remained relevant. Like France, many other countries believed that they could only maintain their safety if there was a balanced order of destruction, a well-working verification system capable of discovering prohibited activities at an early stage and other states' assistance in the case of a CW attack. Bernauer (1990: 67) emphasizes that the states' prime interest was to ensure that their security is not "affected in a negative sense" by ratifying the Convention. The question as to how to guarantee a nation state's 'undiminished security' had dominated the multilateral and the bilateral negotiations throughout the years, albeit it especially gained momentum in the final years of negotiations.

The bilateral negotiations went one step further in June 1990 when the U.S. and the USSR actually signed a bilateral agreement under which each side promised to destroy about 20% of the stocks from 1992 onwards, to limit their CW stocks to 5,000 tons within the first 8 years after the CWC entered into force and to organize a conference afterwards in

order to discuss future actions (Kenyon 2006:5). The collapse of the Soviet Union in 1991 and the resulting relaxation of the West-East relations stimulated negotiations on the CWC.

After the first Gulf War of 1991, the U.S. finally dismissed the idea of maintaining the ability of retaliation in kind against chemical weapons attacks and ceased its binary CW program (Robinson 1998: 29). Moreover, then President George HW Bush demanded the conclusion of the CWC negotiations by May 1992. Correspondingly, as a confidence-building measure chemical industry associations offered “open access” to chemical-production facilities. In doing so, chemical industry associations hoped to make a contribution to finalizing the Convention (Kenyon 2007:11).

The German ambassador Adolf Ritter von Wagner presided as Chairman over the final months of negotiation. The Australian Foreign Minister initiated this process in March 1992 by submitting a draft model of the final Convention, 80 % of which was made up of the rolling text already agreed on. Adolf Ritter von Wagner welcomed the Australian act and at the same time encouraged the participating states to conduct informal talks in order to come to an agreement on all aspects until May (Holik 2008: 83). In mid-May the Chairman introduced his own Draft Convention containing ‘controversial’ and ‘non-controversial’ issues. The Iranian Permanent Representative Mashadi (1992: 2) remarked in retrospect:

He (von Wagner) emphasized that he didn’t wish to open negotiations on the ‘non-controversial’ part, adding that ‘if in this part, there are provisions not in line with your position and if they are of high priority and of vital national significance, address them bilaterally to me’. There were some delegations from developing countries who did not agree with the chairman in this regard.

Indeed, at this stage the dissent between industrialized countries and developing countries had reappeared. Contrary to the West-East conflict, the South-North divergence has not been resolved up to this date. The biggest fear expressed by the developing countries was that the CWC would stall their economic development as many of those countries, in particular China and India, were setting up major chemical industries. Within a couple of days 12 developing countries<sup>6</sup> jointly presented a series of working papers on issues that in their opinion needed further clarification. By doing so, they not only accepted the Chairman’s draft as a basis for negotiations, but also approved the rest of the text. Von

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<sup>6</sup> Algeria, China, Egypt, India, Indonesia, Iran, Kenya, Mexico, Myanmar, Pakistan, Sri Lanka and Zaire;

Wagner officially voiced his appreciation of the 12-states-initiative and called for an increased negotiation effort in order to conclude at the end of June. Correspondingly, a new negotiation procedure was adopted:

On certain key issues, von Wagner assigned ‘proponents’ and ‘opponents’ to pursue issues together in private. On other issues, a broader, open-ended format with the assistance of a ‘moderator’ was used. Von Wagner himself kept the issue of challenge inspection under negotiation (Kenyon 2007: 13).

There followed a very intensive negotiation phase in which some difficulties could be voiced and settled. In the end, the industrialized countries compromised on some issues, “these typically being portrayed in Western commentary as sticks or carrots for increasing adherence to the treaty” (Robinson 1998: 28). Besides the establishment of a provision on assistance to countries that face a chemical weapons attack, there were also provisions on abandoned CW as well as on the role of export controls and other trade barriers.

Von Wagner issued the final draft treaty which he saw to be non-discriminatory in nature on 22 June 1992. He reassured to present solutions according to overall balance of the different groups’ preferences on one hand and according to enforceability of the treaty on the other hand. In the following period of negotiations’ recess the Germans and other Western countries embarked on intensive diplomatic activities in order to find wide support for the draft treaty. This inevitably influenced the climate of the last round of multilateral negotiations. At the beginning of the next, von Wagner declared a significant change in how the consensus rule of the Committee would be executed. From then on, changing the text was only possible if there was a consensus on the amendment (Holik 2008: 83-83). The Iranian Representative Mashadi (1992: 28) experienced this final phase as follows: “from the first meeting it was clear that there were delegations instructed not to accept any change. Negotiations had already come to an end”. Many developing countries argued that the Chemical Weapons Convention as it stood did not represent their interests. Yet, the Western World more or less blocked any far-reaching amendment. However, many countries did not refrain from expressing their dissatisfaction. While the 13 developing countries jointly insisted on a better definition of the munitions and equipment being prohibited, the Russian Federation opposed the regulation that those countries in possession of chemical weapons had to bear the cost for destruction verification. In the end, only some minor amendments were passed. The chairman circulated these few modifications at the beginning of August. From this moment forth, the Western countries

firmly prevented any further changes. Although the demands of the developing countries and Russia were not incorporated in the draft treaty, these countries finally had to concede. However, the closure of the negotiations could only be attained after the developing countries' demands for a policy statement on behalf of the Australia Group had been accommodated. In this statement the countries belonging to the Australian Group asserted that

they undertake to review, in the light of the implementation of the Convention, the measures that they take to prevent the spread of chemical substances and equipment for purposes contrary to the objectives of the Convention, with the aim of removing such measures for the benefit of States Parties to the Convention acting in full compliance with their obligations under the Convention. (quoted in Kenyon and Kisselev 2008: 252)

On 26 August, the Ad Hoc Committee forwarded the Draft Convention to the Conference of Disarmament, albeit without a consensus to recommend the approval of the draft to the UN General Assembly. Attached to the draft was also a report of the Ad Hoc Committee containing views of those countries that were not pleased with the final outcome. At the beginning of September, the draft was submitted to the UN General Assembly which soon after adopted a report praising the Convention. In January 1993, the Convention was officially opened for signature (Mashadi 1992: 30).

After almost four decades of elaborations and two decades of negotiations, the treaty prohibiting states "to develop, produce, otherwise acquire, stockpile or transfer chemical weapons and to use chemical weapons" (CWC 1993, Art 1 (a), (b)) was finally established. The CWC is the product of a unique transition period:

Depending on one's background and persuasion, (...) the Chemical Weapons Convention (CWC) is seen either as the culmination of now largely obsolete effort during Cold War to establish control over an ongoing arms race through an array of bilateral and multilateral (including regional) arms limitation/reduction and disarmament accords, or as a milestone in a global multilateral disarmament endeavor based on the establishment of a rule-based global security system. (Trapp 2006: 15)

Even if in the final phase negotiations primarily took place within the multilateral framework offered in Geneva, many experts counter that the role of bilateral negotiations between the U.S. and the USSR should not be underestimated:

It is clear that the international community owes a great debt to the USA and the USSR/Russia as the CWC could not have been concluded without the building blocks which they provided (...) and without their joint commitment to be bound by its provisions. (Kenyon 2006: 2)

### **OPCW headquarters**

*During the last stage, the Conference of Disarmament dealt with the question of where the future organization would be seated. Next to The Hague and Geneva, Vienna competed for the OPCW headquarters. Since Vienna has already been the seat of the IAEA, the Austrian government was interested in attracting another disarmament organization. Yet, neither of the UN cities was chosen to host the organization, but the ‘underdog’ The Hague. According to the OPCW’s former head of communication, The Hague, which was on the way to becoming “the World’s legal capital”, took a special effort to present the advantages of its venue (Kaiser 2009). It also has to be taken into account that due the end of the East-West conflict Vienna’s strategically advantageous „intermediate” position became less important. However, Vienna succeeded in being chosen as the seat of the CTBTO a few years later.*

## **IV.2. The Preparatory Commission: how to create an effective OPCW?**

“In retrospect, the years have proved to be more difficult than most of us had expected.”  
(Kenyon 1997: 1)

In this quotation, Kenyon is referring to the period he served as Executive Secretary General of the Preparatory Commission. The so-called PrepCom was established during the Paris Conference of 1993 which marked the CWC’s opening for signature. During this two-day multilateral meeting 130 states signed the Convention on Chemical Weapons and a separate resolution on the mandate and structure of the Preparatory Commission (Kenyon 2007a: 36). The PrepCom, made up of states that had already signed the Convention, was seen as a transition body in charge of arranging the basic requisites for a functioning organization until it started working. At the time it was believed that the minimum ratification rate for the CWC’s entry into force, namely 65 member states, would be achieved within one and a half years. In order to give the PrepCom some more time to fulfill its mandate, it was arranged that the CWC would enter into force no earlier than 2 years after the signing ceremony (Stock 1994: 685). The PrepCom was financed by the signatory states according to the UN scale of assessment. Its mandate contained some 40 distinct exercises, which can be subsumed as follows: clarifying details concerning the verification regime in order to make it operational, installing a functional organization with trained personnel, concluding a headquarters’ agreement with the host country and coming up with a draft of the organization’s budget (Dunworth et al. 1998: 171). For these tasks, the PrepCom was assisted by a Provisional Technical Secretariat (PTS). The PrepCom adopted a three-level working structure: First level: plenary sessions, second

level: subsidiary working groups, third level: expert groups. Final decisions were adopted in the plenary sessions which were held every two or three months. Originally it was planned that the expert groups would only provide recommendations on issues of a technical nature in order to support working groups in coordinating their positions. Yet, due to time restrictions the working groups barely met and in most cases only passed the expert groups' recommendations on to the plenary. Therefore the expert groups turned into the "driving force" of the PrepCom. It soon became clear that the PrepCom not only had to worry about executing its mandate in a timely manner, but also "had to ensure that it did not undo the careful balances and compromises struck by the negotiators in Geneva" (Kenyon 2007a: 36-41).

One has to bear in mind that the diplomats that took part in the Geneva negotiations were not the same as those that took part in the PrepCom elaborations. While in Geneva primarily representatives of Ministries of Foreign Affairs were in charge of advocating the positions of states, representatives of the Ministries of Defense or Commerce took over in The Hague. These ministries had to deal with the CWC implementation on a national level. These implementers first and foremost "focused more on how to limit the impact of the CWC" (Kenyon 1997a: 62).

Furthermore, many countries that were dissatisfied with the outcome of the Geneva negotiations, tried to rewrite parts of the Convention. Already in the first meeting of the PrepCom, which was convened in February 1993, the South-North conflict reappeared:

While the developing countries had been slow in putting forth their nominees, the message that came through clearly on that February morning in the Hague was that adequate and equitable representation of developing countries in the Provisional Technical Secretariat was obviously not a majority. (Shahbaz 1993: 5-6)

In fact, representation and universal participation continued to be a problem throughout the duration of the PrepCom's existence. Many states lacked the resources to fully engage in the discussions. While 58 signatory states did not even have permanent representatives in the Netherlands, many other countries could not afford to have one person always attending meetings at the PrepCom. Without a doubt, these shortcomings led to the danger of ill-representation in ideologically terms. In addition, one also ran the risk of an insufficient number of participants to reach the required quorum for decision-making, but this did not occur in the end (Dunworth et al. 1998: 174). After not being able to fully contribute to the ongoing elaborations, small states like Vietnam and Lithuania refused to

pay their assessments. Even though this did not put a strain on the PrepCom budget, it mirrored the “potentially worrisome” attitude of smaller states (Stock 1994: 701).

Overall, the biggest problem to emerge was the slow ratification rate of the Convention. As discussed before, it was supposed that the first 65 states would submit their instruments of ratification to the UN Secretary-General over a period of only 18 months. This optimism came from that critical point in time at which the CWC was concluded:

It is true that the text of the treaty was adopted by the Conference of Disarmament in Geneva in a time of hope and optimism. The Cold War had just ended and barriers, both real and perceived, were falling, paving the way for precisely this type of treaty – a symbol of the new world. (Kenyon 1997: 2)

In reality, it took more than 4 years for the CWC to finally enter into effect. By 1995 only 47 countries had ratified the CWC. What was even more alarming was that the biggest possessor states, the U.S. and the USSR, had not done so. Observers argued that the complexity of the implementation process, which incurred administrative, legal and technical coordination, had been underestimated. Furthermore, many countries may have delayed their ratification due to the non-ratification of the U.S. and the USSR (Stock et al. 1996: 671-672). While in Russia, the discussion was mainly about the high costs of destruction, in the United States the situation was more controversial. Even though the U.S. population and the civil industry fully endorsed the Convention, domestic politics battles made ratification impossible.

Because of the slow ratification progress the Provisional Technical Secretariat (PTS) assumed a rather proactive role in fostering the ratification and implementation of the CWC. Several workshops and seminars were convened in different regions of the world. In order to inform small countries with no representation in The Hague about the steps being taken by the PrepCom, the PTS published regular ‘press releases’ (Kenyon 2007a: 64-65). Moreover, the PTS closely cooperated with scientific NGOs that possessed a wide technical and legal expertise that could aid in CWC implementation. Some NGOs as for instance the SIPRI-Saskatchewan-Frankfurt Group, the Pugwash Study Group or the Harvard Sussex Programme took on a lot of effort in organizing training seminars and publicity campaigns (Kenyon 1997: 3). Although NGOs played a very active role in promoting the Convention, they were not entitled to attend sessions of the PrepCom. Thus, the scientific community had no way of overseeing or commenting on the further progress of the chemical weapons ban. Every kind of control mechanism was deactivated (Stock

1994: 691). As this exclusion triggered a lot of criticism, NGOs regained accreditation to attend session of the Conference of the States Parties when the actual organization started operating.

Representatives of the chemical industry shared the fate of NGOs in that they, too, were excluded from all PrepCom sessions. Of course, this met the disapproval of chemical industry councils. Since the States Parties realized that a close coordination with the chemical industry was of uttermost importance, many informed their national chemical industry associations about the decisions being made. Some countries even included industry representatives in their national delegations. After chemical industry associations had officially complained about the lack of opportunities to contribute, the PrepCom instituted “annual combined meetings between representatives of the chemical industry and its expert group on chemical industry facilities” (Feakes 2007:191). In Working Group B issues concerning verification exercises of all kinds were dealt with. Therefore also industry related topics were taken up, such as the thresholds of schedule 2 and schedule 3 chemicals liable to national declarations, the size and composition of inspection teams and model facility agreements for inspecting industrial sites. The difficulty was finding a balance between effective verification procedures and the confidential treatment of companies’ data. The chemical industry was especially concerned with the negative impact that inspection exercises could possibly have on their public image. Thus, the PrepCom adopted a confidentiality guideline in 1995 which prohibited inspectors from contracting the media or otherwise “comment on any specific inspection activity in a State Party” (Feakes 2007: 198). Since the cooperation between representatives of the chemical industry and representatives of states continued to be fruitful, the chemical industry remained to be one of the strongest CWC supporters. In fact, the CMA (Chemical Manufacturers Association of the U.S.) publicly called for U.S. ratification of the Convention at the end of 1996. At that time it was already clear that the Convention would become effective on 29 April 1997 and that the U.S. would not be able to influence important decisions being taken in the First CSP if it remained a non-ratifying party. Given the restrictions on trade with non-States Parties to the CWC, the CMA also warned that: “at least \$ 600 million a year in U.S. export sales will be directly affected once the CWC’s trade ban goes into effect” (Webber 1996: 2). Furthermore, the CMA praised the outcome of its involvement in the CW negotiations and PrepCom elaborations,

which resulted in “narrowing the scope of the treaty” (ibid). The CMA claimed that as a consequence the majority of companies dealing with chemical precursors backed the Convention and vigorously demanded U.S. ratification.

Eventually, the U.S. ratified the CWC just five days before the Convention entered into force with Russia following suit in November 1997 (Walker 1999: 1). However, when ratifying the Convention, the U.S. established separate safeguards which did not conform to the provisions of the CWC. The most controversial article of the U.S. by-law allows “the U.S. president to refuse an on-site inspection on the grounds that it could ‘pose a threat’ to national security” (Smithson 2001: 25). Despite the fact that this regulation clearly contradicts all goals of the CWC, no other State Party appealed against it. It can be assumed that most actors believed that the CWC was not violated as long as the U.S. did not act upon this law.

During the four years of PrepCom operation, the signatory states tried to come up with technical clarifications in reference to all important CWC articles and to establish a functioning organization with specific rules of procedure and an applicable budget.

Among other things, the nature of the inspection teams, the precise procedure for inspection exercises, guidelines for industry declarations and declarations regarding chemical weapons were negotiated. Working Group B succeeded in developing a concrete Declaration Handbook. Moreover, databases on assistance and on technical cooperation came into existence. Concerning challenge inspections a list of possible indicators for abuse was drawn up (Dunworth et al. 1998: 177-181).

Despite agreement on these technical matters, political disputes impeded many proceedings. Dissent between industrialized countries and developing countries occurred especially in the expert groups related to Art. X (Assistance against a Chemical Weapons Attack)<sup>7</sup> and Art. XI (Cooperation in Peaceful Uses)<sup>8</sup>. In particular the role of the Australia Group continued to cause a negative atmosphere. While developing countries were hoping that the AG would cease its activities, its members claimed that

national export licensing policies were focused solely on preventing assistance of activities banned under the CWC and therefore represented a means of fulfilling the Article 1

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<sup>7</sup> Art X of the Convention states that a State Party is entitled to request technical assistance from other States Parties in the event of a chemical weapons attack.

<sup>8</sup> Art XI of the Convention states that the provisions of the CWC would be implemented in a way that avoids hampering trade. On the other hand it states that each State Party should be able to participate in the exchange of chemicals, equipment and technology.

obligations. Moreover they indicated that national export control measures are fully supportive of the undertakings under Article XI. (Kenyon and Kisselev 2007: 254)

They justified their position by stating that the multilateral export control regime created by the CWC did not satisfy their demands, since it did not include unscheduled chemicals that could also be used as chemical precursors. Industrial states wanted the expert group on Art XI to focus solely on practical steps to foster peaceful economic cooperation aimed at supporting industrial development in developing countries. While some technical measures were adopted, most of the issues were reported to “require further consideration” (Kenyon and Kisselev 2007: 254-257).

The South-North discord further influenced the PrepCom elaborations on Art X., too. Developing countries held the notion that assistance in the case of a chemical weapons attack should be “automatic, speedy and obligatory”. In contrast, industrialized countries supported a more voluntary notion of assistance intended to provide a positive incentive for developing countries to join the Convention. Provisions on Art X largely remained unfinished business (Kenyon and Mashadi 2007: 241-247).

Despite unconcluded decisions on some issues, proceedings had to continue:

And today, on the eve of entry into force of the Convention, should we wait for the perfect compromise on all unresolved issues of implementation before proceeding to implement the Convention? Having worked for this treaty for more than twenty years, my answer is an emphatic ‘no’. (Kenyon 1997: 2)

After all, the PTS succeeded in establishing a functioning organization. In the beginning nobody knew how many people would need to be employed in the Technical Secretariat. In a U.S. Paper distributed during the Geneva negotiations it was estimated that a fully operational Technical Secretariat would be based on a staff of 1,200. The PrepCom advocated more modest staffing of around 500-800 employees. The OPCW’s first full year budget for 1998 commissioned a staff of 491. It was the job of the PTS to appoint qualified personnel in accordance with overall geographical balance (Kenyon 2007a: 52). In this context the selection and training of the inspectorate received special attention. Chemical industry associations still feared that inspections would disturb daily operations or reveal confidential data. Consequently, the PTS was called upon to instruct their inspectorate to handle all information carefully. After selection, the inspectors were trained in different centers all over Europe. While the training proved to be immensely successful, one working assumption hampered the actual work of the organization. During

the PrepCom it was expected that the 1991 bilateral agreement between the U.S. and Russia would be implemented. Calculations for the required number of inspectors and the organization's budget were thus based on the belief that verification of the U.S. and Russian chemical weapons destruction programs would take place to a great extent outside of the OPCW framework. In fact, the bilateral agreement between the U.S. and Russia never entered into force. Consequently, the organization had great difficulties executing its mandate effectively in its first year. (Manley 2007: 107-110)

Nevertheless, the PrepCom can be judged as having been a successful enterprise as it created a well-equipped organization that was able to fully operate from the outset.



## V. THE MASTERPIECE: THE CHEMICAL WEAPONS CONVENTION

The Convention aims to make the use of chemical weapons impossible by eliminating the whole category of weapons of mass destruction. In order for this to happen, the States Parties have to implement all provisions of the Convention. The CWC consists of a Preamble, 24 Articles, and 3 Annexes - the Annex on Chemicals, the Verification Annex, and the Confidentiality Annex. The Confidentiality Annex was particularly created to respond to the chemical industry's concern that confidential production information would not be protected under verification exercises. Besides, the Annex on Chemicals provides a detailed list of chemical precursors that have to be destroyed as well as a list of three schedules subject to verification exercises. The schedules are differentiated on grounds of their toxicity. The Convention determines that schedule 1 chemicals constitute a "high risk", schedule 2 chemicals constitute a "significant risk" and schedule 3 chemicals constitute a "risk" to the objective of the Convention. The Verification Annex outlines how inspections are to be conducted and which instruments are permitted to be used.

The Preamble reveals the States Parties' attitude towards chemical weapons. It is asserted that the "achievements in the field of chemistry should be used exclusively for the benefit of mankind" (Preamble, CWC 1992), thereby supporting free trade and international cooperation. Furthermore, the Convention is understood as being complementary to the Geneva Protocol and the BTWC. Furthermore, one paragraph states that herbicides should not be used as instruments of warfare.

In the following pages the most significant Articles of the Convention will be discussed

### **Article I. – General Obligations**

The first Article lays down the basic prohibitions: the use of chemical weapons, the preparation of the use of chemical weapons, and the assistance to anyone engaging in prohibited activities (para. 1). A State Party agrees to destroy all its chemical weapons, including those that it has abandoned on the territory of another State Party (para. 2-3). Moreover, a State Party must also destroy all its chemical weapons production facilities (para. 4). Lastly, it is emphasized that States Parties to the CWC are not entitled to use riot control agents as a method of warfare (para. 5).

## **Article II. – Definitions and Criteria**

According to this Article, chemical weapons are understood as toxic chemicals, precursors and munitions and devices containing toxic properties. A toxic chemical is defined as: “[a]ny chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals” (para. 2). Consequently a very broad definition of chemical weapons was adopted. Even though an international ban on herbicides is mentioned in the preamble, they are not prohibited under terms of the CWC.

This article classifies old chemical weapons as chemical weapons produced before 1946 (para. 5) and abandoned chemical weapons as chemical weapons left behind on a territory after 1925 (para. 6).

In paragraph 9 the activities that are not prohibited under the Convention are declared. Besides commercial uses for “industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes” (para. 9; a.), uses for protective purposes and military purposes not connected to chemical weapons are not forbidden.

## **Article III. – Declarations**

Within 30 days after the entry into force of the Convention, States Parties have to declare all chemical weapons, chemical production facilities and abandoned chemical weapons that are located on their territory. Moreover, States Parties have to provide a plan for the destruction of all their CW stockpiles and production facilities.

## **Article IV. – Chemical Weapons**

This Article contains regulations with regard to the destruction of chemical weapons as well as the verification of such destruction. All States Parties that possess chemical weapons must guarantee free access to their destruction facilities (para. 5), and have to report the progress of destruction on a yearly basis (para. 7, b).

One important provision that has been matter of dispute for many years now can be found in paragraph 16:

Each State Party shall meet the costs of destruction of chemical weapons it is obliged to destroy. It shall also meet the costs of verification of storage and destruction of these chemical weapons unless the Executive Council decides otherwise.

In addition, the Verification Annex also contains regulations with respect to the destruction of chemical weapons and the verification of this destruction. The phrase that causes great problems at this point of time reads as follows: “but in no case shall the deadline for a State Party to complete its destruction of all chemical weapons be extended beyond 15 years after the entry into force of this Convention” (Verification Annex: Part IV(A); para. 26). Thus, all States Parties have to complete their destruction process 15 years after entry into force of the Convention – 29 April 2012.

#### **Article V. – Chemical Weapons Production Facilities**

After declaring the ownership of chemical weapons production facilities, States Parties are obliged to immediately cease the production (para. 4). Under the Convention also the production facilities have to be destroyed and only in exceptional cases the facilities can be converted for purposes not prohibited under the Convention (para. 13).

#### **Article VI. – Activities Not Prohibited under This Convention**

While each State Party is entitled to produce, use and transfer chemical substance allotted to the 3 different schedules, they have to declare the relevant chemicals and facilities according to the Verification Annex that are located on their territory on an annual basis (para. 8). It is the job of the National Authorities to communicate with the facilities which are concerned by the provisions of the CWC. Industrial sites dealing with scheduled chemicals must be open for inspections (para. 6) that are conducted according to a specified scheme taking geographical balance and seize into account.

#### **Article VII. – National Implementation Measures**

This Article contains very important provisions assuring that States Parties to the CWC prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity. (para. 1; a)

Not only the States Parties, but also their citizens must adhere to the Convention. Thus, States Parties need to adopt adequate national legislation and install National Authorities to serve as a national focal point for communication with other States Parties and the TS (para. 4).

### **Article VIII. – The Organization**

The Convention also establishes an implementing organization to oversee the States Parties' compliance with all provisions (para. 1). This organization is settled in The Hague, Netherlands, (para. 3) and is financed by the States Parties. While the administrative part of the budget is allocated to all States Parties according to the UN scale of assessment, the States Parties, who are obliged to destroy chemical weapons, are to cover the expenses for the verification of destruction (para. 7). States Parties that are in arrears of payment for more than two years will lose their right to vote (para. 8). This Article also introduces the three organs of the Organization: the Conference of the States Parties as the main decision-making body, the Executive Council as the executive organ, and the Technical Secretariat which is in charge of destruction verification, industry verification and administrative tasks (para. 4).

### **Article IX. – Consultations, Cooperation and Fact-Finding**

This Article contains the so-called unique method of challenge inspection. However, it is called upon States Parties to “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” (para. 2). Every State Party can also request the Executive Council to assist in clarifying uncertainties (para. 3). The paragraph on challenge inspection reads as follows:

Each State Party has the right to request an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of this Convention, and to have this inspection conducted anywhere without delay by an inspection team designated by the Director-General and in accordance with the Verification Annex. (Art IX; para. 8)

The demanding State Party undertakes to keep the request for challenge inspection within the scope of the Convention to provide the evidence on which its suspicion is based (para. 9). The challenge inspection can only be prevented if the Executive Council votes against it by a three-quarter majority within 12 hours of receiving the request (para. 17). However, in order to avoid the political abuse of challenge inspections, the Article additionally introduces a consequential review process of the challenge inspection to identify its nature (para. 22).

### **Article X. – Assistance and Protection against Chemical Weapons**

The provisions comprised in this Article were of greatest interest to developing countries. Each State Party is entitled to ask for assistance in the event of the deployment of chemical weapons or riot control agents against it or if it is threatened by activities prohibited under the Convention (para. 8). All States Parties commit either to declare what kind of assistance they offer within 180 days after entry into force of the Convention or to contribute to the voluntary fund (para. 7), whereas the Technical Secretariat has to establish a database containing information about different assistance offers (para. 5).

### **Article XI. – Economic and Technological Development**

The exact language used on this matter was the main source of dispute during the last days of negotiation. Developing countries particularly feared that their economic progress would be restricted by the Convention and by the export control arrangements in place, most notable by the Australia Group. Therefore, this Article underlines that the Convention needs to be implemented in a way that avoids hampering the economic and technological development of States Parties (para. 1).

The interpretation of the following sub-paragraph is still a matter of vivid discussions:

Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge. (para. 2, c.)

Developing countries perceive this provision as an obligation for the industrial countries to dissolve the Australia Group, whereas members of the AG refuse to identify the group's existence as a violation of this provision.

### **Article XII. Measures to Redress a Situation and to Ensure Compliance, Including Sanctions**

In the event that a State Party does not provide necessary information to prove its compliance with the Convention if requested to do so, it will temporarily forfeit its rights and privileges (para. 2). Moreover, if the Convention is seriously damaged by illegal acts of States Parties “the Conference may recommend collective measures to States Parties in conformity with international law” (Article XII, para. 3). If the breach of the Convention

is especially alarming, the issue can be addressed to the UN General Assembly and the UN Security Council (para. 4).

#### **Article XIV. Settlement of Disputes**

If conflicts about the interpretation of the Convention's provisions arise, the Executive Council can offer assistance such as good offices and mediation (para. 3). In accordance, the Conference is also equipped with the right to establish separate organs in charge of conducting a settlement procedure (para. 4). Moreover, States Parties are entitled to ask the Court of Justice for an advisory opinion, regardless of the case (para. 5).

#### **Article XV. Amendments**

Every State Party can initiate an amendment by submitting a proposal to the DG (para. 1). It will then be decided upon by a special Amendment Conference, which can only be set up if one third of all States Parties agree on the proposal (para. 2). However, amendments of a technical or administrative nature are to be discussed within the Executive Council. If the Executive Council recommends the amendment and no State Party objects within 90 days of recommendation, the amendment will be adopted (para. 5).

#### **Verification Annex**

There are two other specific provisions of the CWC that seem worthwhile mentioning.

First, the CWC places restrictions on trade with non-States Parties. Schedule 1 and schedule 2 chemicals can only be transferred between States Parties (VA, Part VI, para. 3 and Part VII, para. 31). Only schedule 3 chemicals can be traded with non-States Parties, but for this the recipient needs to sign a certificate declaring the purpose of the end-use and the name of the end-user (Part VII, para. 26). The VA determines that the CSP should consider developing further restrictions on the trade of schedule 3 chemicals at their fifth annual meeting. (Part VII, para. 27)

To conclude, the CWC also establishes a cohesive trading regime that limits trade with non-States Parties. The Convention thereby not only produces higher security safeguards, but also offers an added incentive to join the Convention.

The second obligation that needs to be discussed in more detail deals with the verification of non-CW production at OCPFs (Other Chemical Production Facilities). According to the

definition of the Verification Annex, OPCFs are plant sites that produce a synthesis of more than 200 tons of unscheduled discrete organic chemicals or more than 30 tons of an unscheduled discrete organic chemical containing phosphorus, sulfur or fluorine (part IX, para. 1).

OCPFs also need to be declared to the OPCW (part IX, para. 3). In order to ensure that no schedule 1 chemical is produced at the referred sites (part IX, para. 14), regular on-site inspections are convened (part IX, para.). OCPFes were included in order to enable the OPCW inspectorate to discover new chemicals that are of concern.

### **V.1. CWC – unique and valuable**

In many publications the Chemical Weapons Convention is praised for being an extraordinary disarmament treaty. For instance, the former U.S. Ambassador Donald Mahley (2009: 1) describes the CWC as being “arguably the most successful multilateral arms control agreement of all time” and the former Director-General Pfirter (2009: 2) identifies the conclusion of the CWC as “a watershed in the international community’s effort to ban these weapons”.

The majority of scientific observers confirm that the CWC is a strong treaty exhibiting inimitable attributes.

It is unique as the first multilateral treaty to ban an entire category of weapons of mass destruction and provide for international verification of the destruction of these weapons and the conversion of their production facilities to peaceful purposes. (Thakur 2006: 7)

Moreover, Thakur (2006) notes three other aspects that constitute the unique character of the CWC: 1. it was developed in a multilateral framework; 2. representatives of the chemical industry was directly involved in the negotiation and implementation process; 3. the Convention additionally backs international cooperation in peaceful use and provides assistance in case of a chemical weapons attack.

There is a general agreement in the scientific community that the CWC outclasses the other two operating multilateral disarmament and non-proliferation treaties, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the 1972 Biological and Toxin Weapons Convention (BTWC). In this context, Tucker asserts that “the CWC breaks new ground in the extent and intrusiveness of its verification regime” (Tucker 2001: 2). Not only the destruction of CW is subject to regular on-site verification inspections, but also certain private chemical plants in accordance with the toxicity of the

chemicals they are treating. The industrial verification system of the CWC is based on declarations. Since all declared facilities face the risk of being inspected at any time, the economic and political costs of treaty violation are high. Consequently, the CWC's verification regime is considered as an effective deterrent.

Unlike the BTWC, the CWC installed an implementing organization in charge of monitoring States Parties' compliance with the Convention. The NPT did not create its own organization either. It adapted in collaboration with the IAEA an already existing agency that conducts NPT related inspections. Yet the 1996 CTBT (Comprehensive Nuclear Test-Ban-Treaty), which bans all nuclear explosions, also establishes an international implementing organization, which is currently in preparation. The CWC actually served as a model for the CTBT.

Moreover, the CWC verification regime is extraordinary with regard to the "express prohibition of private activities" (Bothe et al.1998: 591). States Parties to the CWC have to implement legislative measures that prevent legal and natural persons from violating the Convention. Thus, individuals are also obliged to comply with the Convention's provisions.

In contrast to the NPT, the CWC provides an absolute non-discriminatory regime as all States Parties enjoy the same rights and duties, when joining the Convention, regardless of their chemical weapons possession. Furthermore, States Parties have no possibility to declare reservations to the provisions of the Convention.

A special advantage of the CWC is that prohibited activities are defined by the General Purpose Criterion (GPC). The GPC states that all chemicals produced with intent of harming and/or killing human beings or animals are prohibited. In order to keep up with the ever-changing field of chemistry, the Convention's drafters created an adaptable treaty. The GPC ascertains that also highly toxic chemicals that will be generated in the future are included in the ban. Thus, it is not the nature of the chemical that decides its legality, but the aim of its use.

A universal legal ban can only be effective if it is adhered to by the majority of States Parties. Consequently, the CWC tries to provide incentives for non-CW possessors and CW possessors alike to join the regime. On the one hand, positive stimuli can be found in Art X, which particularly supports poorer countries in bearing the effects of a chemical weapons attack and in Art XI, which aims to foster the development of chemical industries

in developing countries. On the other hand, the Convention also puts a strain on non-States Parties by limiting their trade with States Parties. The greater the number of industrialized nations that ratify the Convention, the more difficult it is for other States Parties to stay outside of the Convention. Wyszomirski (1995: 3) remarks that the CWC has established a global trading system which ensures that it is “no longer the supplier of chemicals which can be put to improper use who infringes valid law, but the mis-user.”

There is no doubt that the CWC contains significant and far-reaching provisions in striving to create a world that is free from chemical weapons. The CWC constitutes a genuine gain for all States not only in security terms, but also in economic and technological terms.

## **V.2. CWC – weaknesses and ambiguities**

In the final analysis it seeks to embody within its provisions a number of delicate balances – between developed and developing countries, CW possessors and non-possessors, national sovereignty and intrusiveness, permitted and prohibited activities, confidentiality and transparency, and benefits and burdens – which are a testament to the difficult terrain the negotiators had to traverse in order to conclude the Convention. (Shahbaz 1993: 5-6)

This quote by Shahbaz shows the complex circumstances under which the Convention was developed. What at the time of conclusion was seen as an unparalleled success in encouraging multilateral disarmament, was later seen to have several flaws and dangerous ambiguities. The vague phrasing of certain provisions was accepted as a necessary concession in the search for a compromise. However, precisely those ambiguities could damage the credibility of the Chemical Weapons Prohibition Regime.

From the beginning, it was clear that the final effectiveness of the Convention depended on the complete implementation of the CWC at state level. States Parties are not only obliged to declare destruction facilities and private industrial facilities for verification, but must also adopt legal provisions that penalize their citizens for engaging in any prohibited activity. Moreover, States Parties have to establish National Authorities that monitor the adherence to the General Purpose Criterion at a national level. Consequently, especially States Parties are concerned with the implementation of the GPC (Robinson 2008: 2). Needless to say that the faultless implementation of the Convention at a state level relies on a State Party's political will to do so. It is significant that the Chemical Weapons Prohibition Regime created by the CWC is overall conceived as fair, valid and beneficial.

In the following passages, two ambiguities of the Convention are discussed that could have a great impact upon the effectiveness of the regime.

#### **V.2.1. The issue of riot control agents and other non-lethal weapons**

While the general approach to defining prohibited activities must be praised for its completeness, there exists one major loophole in regard to eliminating chemical weapons. One purpose that is not forbidden under the Convention is law enforcement including domestic riot control. In Art I paragraph 5 it is only laid down that States Parties are not entitled to “use riot control agents as a method of warfare”. First of all, the term “riot control agent” must be clarified. In general, riot control agents (or RCAs) are “designed to temporarily disable by causing intense irritation of the mucous membranes, eyes and skin” (Sutherland 2008: 12). The effects of RCAs are intended to handicap the targets for a short time and not designed to cause any long-term harm. Moreover, these agents become rapidly effective when deployed. In a similar approach, the CWC defines RCAs as “any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure” (Art II, para. 7).

According to this classification, it is not permitted to use any agents that are included in the list of the three schedules or any agents that cause long-term harm.

Yet, as one example of the recent history shows, RCAs do occasionally show long-term effects. In 2002, Chechen terrorists gained control of the Dubrovka Theatrical Center in Moscow and took hostage of 800 people. The Russian authorities decided to deploy the riot control agent fentanyl in order to disable the terrorists for a short time to enable them to storm the theatre without inflicting a high number of civilian casualties. In the end, the chemical agent killed 50 terrorists and 117 of the hostages, among them many children. In actual fact the Russian authorities did not violate CWC provisions, for fentanyl is not considered a scheduled chemical and it was used as a domestic law enforcement measure (see Ballard 2007; Sutherland 2008: 20).

After the event, intense discussion about the validity of the RCA provision in the CWC arose. Those discussions were driven by the fear that the use of RCA would transcend its intended purpose. In today’s post-war environment, the nature of conflict is often blurred. When specialists from one country engage in complex peace operations in other countries, it is not necessarily classified as a state of warfare. The question that arises is “when, in

short, does law enforcement end and a method of warfare begin?” (Dando 2002: 34). According to UN rules, a State can only exert law enforcement measures on a territory under its jurisdiction. As a UN member, a state can also resort to a legally protected sovereignty, yet in times of occupation this sovereignty might not be acknowledged by the community of states. This was the case in Iraq. For over a year the country did not have a legally protected sovereignty. Many other instances imply that law enforcement is not inevitably restricted to domestic law enforcement. In the end, it is always a matter of interpretation. Ballard (2007) concludes:

Unfortunately, the treaty’s legal language is sufficiently vague on the definitions of ‘riot control agents’ and ‘law enforcement’, that countries might believe they are legally permitted to use toxic chemical agents as battlefield weapons.

The U.S. was the main opponent of a tougher wording on RCAs during the Geneva disarmament negotiations. Thus, there is a justified concern that the U.S. will be one of the nations that make use of the treaty’s ambiguities on RCAs. If so, other countries may follow lead (Dando 2002: 35).

A matter of greater concern than the uncertain phrasing on RCAs is the non-discussion of other non-lethal weapons. Non-lethal weapons are those that have no deadly impact and so include incapacitating agents. Incapacitating chemicals are meant to temporarily harm people but have a much longer-lasting effect than RCAs (Sutherland 2008). Other technologies that relate to non-lethal chemical agents must also be considered. The field of chemistry is characterized by constant development. This was the main reason why CWC negotiators introduced a provision stating that every five years a CSP has to be convened during which the latest chemical findings are put under discussion. The States Parties are called upon to amend the Convention, if the goal of eliminating chemical weapons is endangered. So far, not only the SAB (Scientific Advisory Board) as sub-organ of the TS but also a number of scientific associations, such as the IUPAC (International Union for Pure and Applied Chemistry), have voiced concerns about the Convention’s ambiguities concerning RCAs. Furthermore, many European countries openly endorse an amendment of the Convention in order to include the clear prohibition of all non-lethal agents. Switzerland even issued a paper to this effect. Yet, in both Review Conferences conducted, no agreement could be reached on an amendment regarding RCAs and other non-lethal weaponry (Sutherland 2008). For this, the European countries not only face strong opposition from developing countries, but also from the U.S. and Russia.

Experts have also warned about agents that combine chemical and biological substances in scientific fields such as neuroscience or immunology. The demarcation between chemical and biological issues does not mirror today's reality; therefore many experts demand a closer cooperation of the BTWC regime and CWC regime. In this regard it is in particular problematic that the BTWC regime does not involve a systematic verification regime of activities in the biological field. Kelle et al. (2006: 169) therefore recommend launching "a new Framework Convention on Biochemical Controls (FCBC), which would not produce "legally-binding proscriptions for state action".

All in all, the question of non-lethal agents in whatever form remains to be addressed by the international community. On the one hand, the definitions of "riot control agents" and of "law enforcement" need to be clarified. On the other hand, a wording on all kinds of "non-lethal weapons" must be included. It also seems vital for the stability of the regime to find a way of banning the use of newly developed bio-chemical agents.

#### **V.2.2. The issue of challenge inspections**

The challenge inspection provision of the CWC has been met with great approval. Asada (2006: 76) even identifies the challenge inspection system as "the Convention's epoch-making character". According to Art IX of the Convention, States Parties have the right to request a challenge inspection to be conducted within a short amount of time. The Verification Annex provides detailed information on what a challenge inspection request has to contain: a. the name of the State Party to be inspected; b. the point of entry used for the inspection; c. the size and type of the inspection site; d. the concern regarding possible non-compliance; and e. the name of the observer from the requesting State Party (VA, Part X, para. 4). While the accused State Party cannot object to the inspection, the EC can disapprove it by a three-quarter majority. It must be negotiated with the inspected State Party at what point of time the referred side can be accessed by the OPCW inspection team. In any case, this access must be guaranteed "no later than 108 hours after the arrival of the inspection team" (VA, Part X, para. 39). All in all, the maximum period from the initial request to the actual inspection must not exceed 120 hours. To ensure that all evidence is discarded during the inspection, all entrances and exits to the facility are monitored upon arrival (VA, Part X, para. 23-26).

Considering these various provisions, it seems difficult to understand why there has been so much discussion about this issue. In short, the problem concerning challenge

inspections is most notably their non-use. So far no challenge inspection has been requested (OPCW 2010: 11). This is even more astonishing if one takes note of the official allegations that were made at the 1<sup>st</sup> Review Conference in 2003. The following phrase of the U.S. statement triggered controversy:

We are most troubled by the activities of Iran, which we believe continues to seek chemicals, production technology, training and expertise from abroad. The United States believes Iran already has stockpiled blister, blood, and choking agents. We also believe it has made some nerve agents. (quoted in Asada 2006: 89)

The U.S. has also publicly accused China, Russia and the Sudan of violating the CWC in the same manner but has never demanded a single challenge inspection. Why? The U.S. ambassador Mahley answered this question in detail:

If you have a concern that a country has a stockpile of weapons or agents that they shouldn't have under the convention, then until you've got a location for that it doesn't do you any good to simply call challenge inspections willie-nillie. If you call a challenge inspection for the wrong place, then the country, even though it may still have that stockpile, is going to claim that it has been exonerated by the international community and therefore you can't list them as a concern anymore. (Interview, Meier 2008b)

Moreover, he stated that it was not clear whether a challenge inspection would really cause the concerned State Party to cease prohibited activities. One might also assume that the U.S. did not want to unseal intelligence sources as it was not clear what would be achieved (Asada 2006: 90). It is clear that the request for a challenge inspection is a highly political issue that would be considered as an aggressive offence against another State Party. There is not only the danger that nothing will be found in the challenge inspection, but also that the accused State Party launches a counter-attack by requesting a challenge inspection in the initiating country. Not to forget, the Executive Council can also block any challenge inspection request. Tucker (2007) concludes that "[t]he longer the challenge mechanism remains unused, the higher the political hurdle to using it will become".

So what would be an effective solution to this stalemate? Industrial countries mostly regard challenge inspections as a significant deterrent, which can only be effective if actually used. Therefore, European countries in particular have demanded to facilitate the process of requesting challenge inspections by making it a more regular exercise. For instance, the former German Minister of Foreign Affairs, Dr. Steinmeier, explained:

Indeed, challenge inspections are also successful when they reveal no violations of agreements. We thus believe that challenge inspections should become a form of routine control, not unlike an audit in a company or authority. (OPCW 2007: 32)

Also in general debates, the EU has called for adapting the provisions on the challenge inspections in order to make it more operational. In contrast, some developing countries dismiss the idea of making challenge inspection a routine measure. They recall instead that the Convention's text refers to challenge inspections as last resort (Asada 2006: 91-92).

While the issue of challenge inspections has been under discussion for a long time and was on the agenda of both Review Conferences, no technical amendment or adaptation has been adopted so far. However, in order to train its inspectors for the event of a challenge inspection, the TS has conducted several mock challenge inspections. The former Director-General Pfirter declared in an interview that the Technical Secretariat "continues to retain a high degree of readiness. Hopefully, if we are requested to conduct a challenge inspection, we will be able to do it as the convention foresees" (Meier 2007). It remains to be seen if the overtly praised challenge inspection will ever be deployed.

### **V.3. The experiences of two Review Conferences**

The two examples of concern, which were elaborated in the previous paragraphs, originate in treaty ambiguities that can certainly endanger the regime's aim to eliminate all chemical weapons. Thus, both issues have been on the agenda of the two Review Conferences (RCs) that were held in 2003 and 2008. As the Convention specifies in Art VII, para. 22, RCs are to be convened every five years in order to "undertake reviews of the operation of this Convention. Such reviews shall take into account any relevant scientific and technological developments".

For both RCs the Executive Council established an open-ended working group two years in advance, which was in charge of preparing the Review Conference and developing a draft report. In this phase NGOs played a very important role as they provided the States Parties with necessary background information on the research and development of chemical science. The TS also issued several reports about the important topics of discussion, which were intended to illustrate the progress of CWC implementation. Moreover, the industry representatives clarified how they had experienced the functioning of the OPCW as the implementing body. Talking about the various background papers, NGOs and others produced in advance of the first RC by NGOs and other parties, Alexander Kelle (2003) determined:

Against the background of the many efforts undertaken in the run-up to the Conference, the supposedly "under-researched" nature of any of the crucial issues before the Conference could hardly have been used as an excuse for a flawed, half-hearted or unsuccessful review.

The OEWG of the second Review Conference was chaired by the UK Ambassador Lyn Parker. When she was asked about the nature of the then on-going consultations in the OEWG, she testified that it was "a very positive atmosphere and a strong sense of common purpose" (Meier 2007). Thus, both Review Conferences had been prepared very well with the assistance of NGOs, the TS, and to some extent chemical industry representatives.

The first RC started off with heated discussions, triggered by the U.S. accusing Iran of being non-compliant with the Convention. Iran countered that it was the U.S. which had been known for weakening and not adhering to multilateral agreements (Kelle 2003). Given these fierce attacks in the beginning, it somehow seems extraordinary that the first RC could be concluded with the adoption of a final report (RC-1/5, dated 9 May 2003) and a political declaration (RC-1/3, dated 9 May 2003) by consensus just a few days later. In the course of the first RC a wide-range of different issues were taken up, such as universality, implementation of the CWC at a national level, the functioning of the OPCW, the question of challenge inspections, the OCPF regime, assistance and economic cooperation. In a number of cases the TS was instructed to come up with concrete measures, for example the development of action plans for universality and for the implementation of Art. VII. (RC-1/5, dated 9 May 2003). However, other issues were not touched upon or only debated in the usual manner.

Here, 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. (Kelle: 2003)

Even though many States Parties acted on the basis of national self-interest and not in accordance with the mandate of objectively reviewing the CWC, it still can be argued that the first RC was successful in so far as it produced a final report which contained 50 concrete tasks.

Although the language used by the States Parties in the general debate of the second RC was comparatively neutral, coming to an agreement in the end proved much more difficult. The second RC featured an open forum in which NGO representatives and chemical industry representatives were invited to speak of their concerns and expectations.

This was a genuine effort to encourage greater interaction with non-state actors. However, complete inclusion of the non-state actors was still lacking, as the “real” meeting with the States Parties was convened behind closed doors (Guthrie 2008:1). After endless negotiations on technicalities of wordings, it soon became clear that the Committee of the Whole would not be able to develop a final report at the end of the RC. Therefore, a group of 20 states began to meet separately in order to draft a final report to be adopted with consensus. Needless to say some countries felt unfairly treated by this exclusion.

The results of consultations in ‘the other group’ were presented to the plenary meeting at 4 a.m. on Saturday morning, and most delegations only had an hour to work through the 149 paragraphs of the final declaration, which was adopted by 6 a.m. Some diplomats (...) voiced concern that the resentments caused by the marginalization of several smaller states-parties during this process could negatively affect the future operation of the convention. (Meier 2008a)

In the end, the final report of the second RC (RC-2/4, dated 18 April 2008) primarily called upon the States Parties and the OPCW to continue the plans for action. It is a comparatively weak statement which resulted from highly politicized debates. While the OEWG in its preparation for the second RC was very efficient, the prepared text got little approval from states. It was especially the NAM group that objected the draft text. In this context, Guthrie (2008: 4) noted that “with only two effective operational groupings in the Conference, any issues that NAM and WEOG members disagreed upon became polarized relatively quickly”.

In a final analysis, it can be stated that the States Parties often lacked the political will to honestly review the Convention and its implementation process during the RCs. While the first RC generated a useful report with many recommendations, the second RC was overshadowed by continuing dissent between political groups. Several matters of concern could not be resolved even though States Parties had received great support from NGOs, chemical industry representatives and the TS. Yet, the RC as a reviewing instrument still derives some legacy as it gives an account of ongoing developments and raises awareness about potential risks to the aim of the Convention. Both the final report of the first RC, and to a lesser extent the one of the second RC, had a positive impact on the further optimization of the Chemical Weapons Prohibition Regime.

## VI. THE OPCW (ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS)– *THE MONITORING HEART OF THE REGIME*

### VI.1. OPCW – Structure and functions

As mentioned earlier, Art. VIII of the Convention determines the composition and functions of the Organisation for the Prohibition of Chemical Weapons, which is in charge of monitoring State Party compliance with the CWC.

The OPCW is an independent international organization in a working relationship with the United Nations and is made up of three different organs. Whereas the Technical Secretariat is responsible for day-to-day administration and implementation tasks, the Executive Council (EC) and the Conference of the States Parties (CSP) are the main decision-making bodies. The EC, which is composed of 41 States Parties each elected for a two year-term according to regional representation, meets four times a year to discuss routine issues. The CSP, in which all States Parties are represented, is convened once a year and adopts not only the annual budget, but also considers more serious issues (OPCW 2011a).

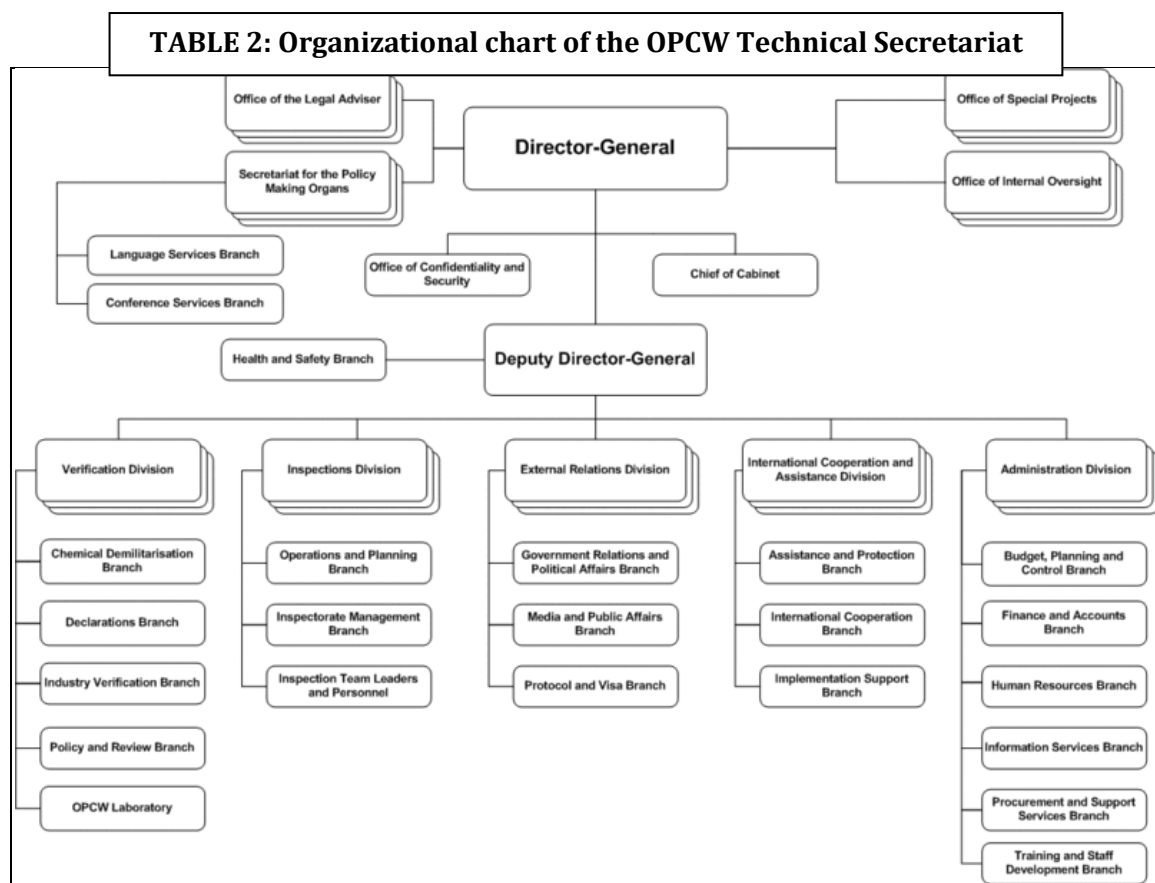
The policy-making organs of the OPCW are composed of five regional groups to which seats in the EC and other leading positions are allocated. These are the African Group, the Asian Group, the Eastern European Group, the Latin America and the Caribbean Group and the Western European and Other States Group (OPCW 2011b). Some of these regional groups also have regular sessions to coordinate their views. Thus, national policy positions are often arranged along the group line.

In the task of overseeing the implementation of the CWC, the three organs (the TS, the EC and the CSP) are assisted by three subsidiary organs: the Scientific Advisory Board (SAB), the Advisory Board on Administrative and Financial Issues (ABAF) and the Confidentiality Commission. While the SAB, which is composed of a group of independent experts, regularly reviews scientific developments and their impact on the CWC, the ABAF advises the OPCW about budgetary regulations. The Confidentiality Commission is entrusted with the settlement of disputes that involve matters of

confidentiality (OPCW 2011c). All three sub-organs were created to provide technical expertise in their field and thus influence discussions within the OPCW.

As head of the organization, the Director-General manages a staff of 500 and is appointed for a four year term of office, which can be renewed once. The DG is also in charge of appointing the staff. Most importantly, the “Director-General (like staff members) must not seek or receive instructions from any Government or from any other source external to the Organization” (OPCW 2011d). The TS is obliged to account for the tasks carried out throughout the year in an annual report that is officially presented at the CSP and can be downloaded from the organization’s homepage. Moreover, each year during the CSP the following year’s program and budget is negotiated.

As illustrated in the following organizational chart the TS is divided into five different branches:



*Source: OPCW Homepage 2011*

Aside from the destruction of chemical weapons, the OPCW is also concerned with non-proliferation, assistance in the case of a CW attack and peaceful cooperation. The TS,

which in 2010 had a budget of €75 million, not only conducts verification exercises in destruction facilities and industrial facilities, but also takes on administrative tasks (OPCW 2011 e).

## **VI.2. How did the OPCW develop over time?**

### **VI.2.1. The first six years – budgetary misery and lacking implementation**

The First Conference of the States Parties (FCSP) was held from 6<sup>th</sup> to 24<sup>th</sup> of May, 1997. It was the first time that all States Parties - at that time 80 countries - met to discuss issues which were prepared in previous years by the PrepCom. Due to the slow decision-making process, only the most urgent issues could be resolved. In order to make the organization fully operational, decisions on the budget and program for the first year and on the list of approved inspection equipment were adopted (Trapp 2007: 261-262).

The biggest debate during the FCSP was triggered by the question as to what extent signatory states that had not yet ratified the Convention - such as Pakistan, Iran and Russia - could participate in the consultations. China in particular supported the demands of the signatory countries to actively take part in the discussions by declaring their policy positions. After all, the signatory states were not able to exert influence on the decision-making process, but could make themselves heard during plenary sessions. The fact that most of the outstanding issues were not resolved in the FCSP led to the establishment of a mechanism for further negotiations that guaranteed participation possibilities for future States Parties. It was agreed to negotiate outstanding issues in an informal mode during intersessional periods, for which a facilitator on each topic was appointed. Originally thought to be an interim solution, the OPCW has continued to initiate informal facilitations for unresolved issues up to today. However, since 1999 these informal working groups operate under the EC (Trapp 2007: 263).

One more very controversial matter arose during the FCSP. The newly appointed Director-General, José Maurício Bustani of Brazil, classified his own post in an already drafted contract as “Undersecretary General” in the United Nations hierarchy. This was not a far-fetched notion, since the IAEA Secretary General is ranked on the same level. Yet, many States Parties disapproved of the fact that they weren’t involved in the process of determining the TS contract. Even though all States Parties finally agreed to the drafted

contract, the discord about the ranking of the DG delayed the final closure of the FCSP. As observed by Kelle (1997):

In fact, the willingness to compromise appears to have been quite limited during this inaugural Session. Only those issues absolutely necessary to establish a functioning Organization were taken up by delegations.

While membership of the OPCW grew quickly over the following years, two problems impaired the first years of the organization: first, the lack of transparency due to late or incomplete declarations, and second, financial troubles that seriously impaired the fulfilling of the OPCW's mandate.

At the second CSP which was convened in December 1997 the first months of CWC implementation were reviewed. It became obvious that many States Parties had not been able to meet the deadlines for initial chemical weapons declarations and initial industry declarations. Since the implementation process of the first months proved to be less promising than expected, Mathews jumped to the conclusion that "the CWC will not have a particularly smooth transition to its operational phase" (Mathews 1998: 495-497).

In fact, one year after the CWC entered into force, most of the States Parties were still non-compliant with the CWC declaration requirements. For instance, the U.S. did not submit a full declaration on CW-related industry activities according to Article VI., and Iran did not submit an initial declaration on its CW possession in the first year of CWC operation. The declarations of Iran received particular attention, because it was believed to be a CW-possessor at that time. Until April 1998 only four states - India, Russia, the U.S. and "a State Party" that wanted to maintain its anonymity (but known to be South Korea) – had declared their ownership of chemical weapons (Leklem 1998). While Iran soon after declared that it did not own any chemical weapons and thereby fulfilled its declaration requirements; the U.S. stayed non-compliant for a further three years (Kelle 2003: 12). The missing U.S. declarations concerning its industrial chemical productions seriously impeded the effectiveness of the industry verification system.

Even more crucial, however, was that the OPCW was experiencing a far-reaching budgetary crisis. In the beginning, the budget was constrained by the fact that the PrepCom did not prepare a decision on how to reimburse the expenses incurred to verify chemical weapons destruction. According to the CWC, the possessor states have to pay for the TS verification of their chemical weapons and chemical weapons production facilities (CWPF) destruction. During the PrepCom it was assumed that the bilateral agreement

between the U.S. and Russia would enter into force and thus that the OPCW would only have to audit the bilateral verification measures. As it turned out, the bilateral agreement never entered into effect and two other States Parties also declared CW capabilities that demanded verification by the OPCW inspectorate. Therefore it was important to adopt a stance with regard to the reimbursement criteria for destruction verification missions as soon as possible. It took until 1998 for the States Parties to finally agree on the provisions for reimbursement. This did not constitute a big problem at the time, because only a few verification tasks were required as the Russian destruction program only started in 2002. However, in 2000 the OPCW was confronted with a severe financial crisis due to non-payments of financial assets by some States Parties. The OPCW was forced to cut down on inspection exercises because of the financial deficit (Trapp 2007: 264-265). In the sixth CSP of 2001, Director-General Bustani reported that 31 countries had not paid their financial contributions for more than two years and that 20 countries even had lost their voting rights because of their lack of payment (C-VI/DG.6, dated 14 May 2001, para. 25). In his opening speech the then DG pleaded before the plenary:

Give US a sound budget, as in other similar international organizations. Give US sound, consistent and complete financial regulations – not a group of an incoherent selection of some language extracted from other similar legal instruments. Give US the staff to perform the tasks. (ibid, para. 47)

The violation of the provisions laid down in the Convention by some States Parties and their neglect to pay their assessments accurately reflected their attitude at that time. Most of the States Parties lost interest in the multilateral regime constituted by the CWC (Barbeschi 2002: 50). After all, the financial crisis of the OPCW had serious implications for the day-to-day work of the TS and eventually led to the dismissal of the Director-General.

### **VI.2.2. Fight on the top: the removal of the DG**

In 2000, the appointment of the Director-General Bustani was renewed by consensus. Just two years later the U.S. took every possible effort to remove Bustani from office. The then-Secretary of State, Colin Powell, indicated the U.S. dissatisfaction with the head of the OPCW for the first time in a letter dated 28 February 2002. Just a week later, the U.S. officially complained about Bustani's management style in a State Department paper. This was ensued by a no-confidence motion in the EC on March 22 – in which 17 States Parties

voted in favor of the motion, five against and 18 States Parties abstained. As the EC is not authorized to remove the DG and Bustani did not refrain from his post voluntarily, a Special CSP was initiated on April 21, 2002. Just a few days before, the U.S. had threatened not to pay its assessment which made up over a fifth of the organization's total budget. Many states backed the U.S. in its effort, because they wanted the organization to remain effective. But there was also a strong opposition from some big NAM countries, like Cuba, Brazil and Iran, as well as by Russia and China. During the first special session of the CSP, harsh allegations were made by both sides (Howard 2002).

The U.S. accused Bustani of a lack of leadership quality and of carelessly handling the budget by preparing budget proposals "that fell within the realm of political possibility, or arbitrary and capricious personnel practices" (C-SS-1/NAT.1, dated 21 April 2002: 2).

The U.S. statement went on to claim that the DG did not adhere to his mandate, as he failed to report about the TS activities in an adequate manner: "Mr. Bustani argues that this gives him 145 bosses. He does not seem to consider himself accountable to member states, either as a group or individually" (ibid).

However, some countries accused the U.S. of taking unilateral actions based on its national self-interest to damage this multilateral regime. The U.S. Ambassador fiercely denied these allegations:

If we wished the Convention to falter, it would have been easier to simply stand back and allow the current Director-General to complete the destruction of staff morale, Technical Secretariat capabilities, and the financial foundations of the OPCW. (ibid)

While the U.S. reasoned its motion for the dismissal of the DG by emphasizing his bad management style, there is reason to believe that a different issue was at stake. After all, the OPCW had already experienced budgetary problems in 2000, but back then the U.S. supported the renewed appointment of Bustani as DG. It seems likely that the U.S. opposed Bustani's outreach activities aimed at convincing Iraq to ratify the CWC. In general, nothing was wrong with Bustani's commitment in this regard as the DG's responsibilities include striving for universal CWC participation. In this special case, however, it contradicted the U.S. policy to encounter Iraq only via military means. This policy also led to the U.S. impeding the verification work of the IAEA in Iraq. Clearly, sticks not carrots were favored by the U.S. and so the soft diplomatic approach by Bustani was disapproved of. For the U.S. the DG had gone too far (see also Monbiot, 23 April 2002).

In contrast, Bustani warned that his removal would be a dangerous, unprecedented event in the history of multilateral organizations leading to the abolishment of the States Parties' equality and the independence of the OPCW. In his last speech as DG, Bustani stressed that the outstanding contributions of the U.S. "only" accounted for €6 million.

Is six million Euros (or even 10 or 12 million Euros, should other like-minded Member States also refuse to pay their dues) too high a price to pay to avoid ousting the sitting head of an international organization, something never yet attempted in international law? Is the OPCW's independence this cheap? (C-SS-1/DG.7, dated 21 April 2002, para. 20 )

In the end, Bustani's statement did not help him. The decision to remove the DG had already been made before the special session of the CSP had been conducted. Bustani was dismissed as Director-General with 48 votes in favor and only seven votes against (from Belarus, Brazil, China, Cuba, Iran, Mexico and Russia). However, almost half of the States Parties, namely 43, abstained from voting (C-SS-1/5, dated 25 July 2002). Thus, it was a controversial decision secretly deprecated by many. After his dismissal Bustani brought the OPCW before the ILO Administrative Tribunal. He won the case and the OPCW had to pay compensation to its former DG (Trapp 2007: 266).

On 25 July 2002, more than three months after the dismissal of the 1<sup>st</sup> DG, Rogelio Pfirter from Argentina was appointed as new Director-General. Without doubt, these events in 2002 were the most traumatic moments in the lifetime of the OPCW. Nobody knew if the new DG would be able to restore the organization's credibility and functionality.

### **VI.2.3. The new DG takes over**

Clearly, Pfirter did not take on an easy job. Firstly, there was disagreement between the States Parties about how the OPCW should conduct its work in the future. Secondly, a number of highly qualified employees left the organization out of loyalty to Bustani. Finally, the organization had only one year to prepare the First Review Conference (Barbeschi 2002: 52). With the benefit of hindsight, it can be said that Pfirter proved to be the right man for this difficult phase: "In terms of institutional stability, this appointment was a turning point for the OPCW" (Trapp 2007:266).

In his first speech to the CSP as DG, Pfirter declared his understanding of the roles within the OPCW:

I hope you will know by now that in my view, ours is a joint enterprise, one in which you, the Member States, are the owners, and we at the Technical Secretariat discharge the mandate given to us in the most optimal manner possible. (C-7/DG.4, dated 7 October 2002, para. 39)

This was so stark a contrast to Bustani's view of the role of the DG:

cannot be restricted to simply following specific orders of trivial nature". I believe that, as a Director-General of the OPCW, I owe it to you to pursue the objectives of the Convention with determination, imagination and political vision, and to recommend policies and issues to the governing bodies for consideration and decision. (C-III/DG.12, dated 16 November 1998, para. 14)

The States Parties clearly preferred Pfirter's view which assumed a client-servant relationship and shortly after he was appointed, the U.S. and other States Parties paid their outstanding contributions. As a result of this the organization's budget recovered. In the first CSP session after Bustani's removal, the States Parties approved a 9.9 % budget increase. When reporting about this session of the CSP, Treggoning (2002) asserted that even though it could have been viewed as "a 'grace period' for the organization", there nevertheless remained a "certain goodwill generated by what is regarded as an accomplished and dedicated new Director-General."

The first big challenge for the new DG was the up-coming Review Conference. In the end, the First Review Conference was a very successful reviewing exercise that was concluded with a unanimously adopted report and a political declaration. Amongst others, the work performance of the TS was also evaluated during the conference. The States Parties instructed the DG to introduce a results-based budget on a gradual basis. Other recommendations concerning the institutional framework of the OPCW were expressed in the RC's final report.

However, there was still one issue that the States Parties had not agreed upon. The Staff Regulations approved in 1999 stated that the OPCW had to obey the principle of a "non-career organization"<sup>9</sup>. Yet, the decision on how to implement this principle was missing. Thus, alongside the first RC a special session was convened in order to discuss the appointment regulations for the TS. The States Parties decided to limit the tenure of staff to seven years, although the DG could propose some exceptions to this tenure policy if the policy had a negative impact on the work of the TS. On no account was any original staff member to be employed after 2009- a simple technical adjustment which actually generated far-reaching consequences:

Inevitably, there was an immediate impact on the staff morale. At the same time, preserving institutional memory as well as technical competence in areas where there is limited supply

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<sup>9</sup> With the term "non-career organization" it is to be understood that the contracts of employment were limited to a certain length of time.

of new (replacement) expertise from States Parties (...) became an issue that the OPCW had to address with urgency. (Trapp 2007: 267-268)

It is important to note that the TS's verification inspections, especially those conducted at industrial sites, have been praised for their effectiveness. The industry facility personnel were satisfied with the way in which the experienced TS inspectorate handled confidential data. The former president of the American Chemistry Council, Frederic Webber (2002) reported that his association was not aware "of any failure with or problems in protecting this information during industry CWC inspections".

With the new tenure policy in place it was feared that this institutional expertise would be lost. Indeed, this concern has even grown over recent years, as many senior professionals with great technical knowledge have left the OPCW (Mahley 2009: 3).

Throughout the years, Pfirter managed to find some balance between the OPCW policy goals, such as destruction, non-proliferation and international assistance and cooperation. The OPCW membership rose constantly, more and more CW were destroyed and the OPCW's budgetary problems were resolved. For five consecutive years the DG even proposed zero nominal growth budgets.

<b>TABLE 3: ANNUAL BUDGET OF THE OPCW</b>	
1997	88,773,800 NLG = <b>40,283,780 Euro</b>
1998	140,800,000 NLG = <b>63,892,232 Euro</b>
1999	137,748,000 NLG = <b>62,507,295 Euro</b>
2000	132,748,000 NLG = <b>60,238,395 Euro</b>
2001	132,747,964 NLG = <b>60,238,378 Euro</b>
2002	<b>61,932,600 Euro</b>
2003	<b>68,562,966 Euro</b>
2004	<b>73,153,390 Euro</b>
2005	<b>75,695,000 Euro</b>
2006	<b>75,614,241 Euro</b>
2007	<b>75,025,751 Euro</b>
2008	<b>75,025,734 Euro</b>
2009	<b>74,499,600 Euro</b>
2010	<b>74,505,400 Euro</b>
<i>Source: OPCW Implementation Reports 1997-2009</i>	

Yet in recent years one has been able to observe tension between certain States Parties as questions of the future of the OPCW intensified. 2008 was the first year in which the CSP adopted a budget with consensus but no report. During the thirteenth CSP there was dissent between WEOG countries and NAM countries about whether to increase the number of industry inspections, which in 2008 accounted for a mere 20% of the budget. While in the end it was agreed to implement marginally more industry verification exercises for the next year, a final report failed to be adopted. Iran insisted on stronger language with regard to the non-compliance of some States Parties with the final destruction deadline of 2012, which both the U.S. and Russia opposed. As will be explained in detail in the next section, both the U.S. and Russia are experiencing difficulties in concluding their CW destruction on time. Iran especially attacked the U.S. for its possible violation of the Convention. It is evident that the political tension between the U.S. and Iran has also found its way into the OPCW. Whereas some States Parties did not attach importance to the missing adoption of a report, others were seriously worried about the future of the Chemical Weapons Prohibition Regime (Meier 2009).

#### **VI.2.4. A new DG – a new era?**

In his two terms as DG, Pfirter proved to be a skillful leader. Since his activities had satisfied most of the States Parties, he could rely on the wide support of all regional groups. However, in July 2010 Pfirter's second term as DG expired. Therefore just one year after the historical CSP without a unanimously approved report a decision on whom to appoint as the new DG was due. There were wide-spread fears that conflicts between certain States Parties would impede the election of a new head for the OPCW. The wounds of the previous DG change were still not healed. "According to diplomatic sources, the process of reaching agreement on a new director-general is burdened by the lack of a precedent for a routine, harmonious change at the helm of the OPCW" (Meier 2009b).

In order to avoid lasting contention between the States Parties, it was arranged to decide upon the next DG on the last EC, some weeks before the decision was officially due. Seven diplomats applied for the post - Benchaa Dani of Algeria, John Freeman of the United Kingdom, Peter Gottwald of Germany, Sudjadnan Parnohadiningrat of Indonesia, Aapo Pöhlö of Finland, Anton Thalmann of Switzerland, and Ahmet Üzümcü of Turkey. General opinion was tested in three straw polls conducted before the EC. In the end,

Ahmet Üzümcü of Turkey prevailed. Some observers argued that the Turkish diplomat won the race because he symbolized a compromise of North and South. Many argued that the DG's background might be advantageous in the promotion of universality, since Turkey has strong bonds with Syria and Egypt (Meier and Horner 2009). In any case, Üzümcü is well informed on disarmament issues, as he had previously served as a Turkish representative at the NATO and in the Geneva CD. Whether he proves himself to be as diplomatic and tactful a leader cannot be judged as yet. As a first step, Üzümcü launched an expert panel "to review the implementation of the Convention and to make recommendations for future OPCW activities". The panel of 14 experts has to submit its final report by June 2011. (Horner 2011) It is impossible to deny that the OPCW is in a phase of change. The future of the OPCW is on the agenda for discussion.

### **VI.3. OPCW core activities**

According to the first medium term plan of the OPCW (C-9/S/1, dated 2 December 2004), which was developed in order to evaluate the achievements of the organization, the organization has six core objectives:

- 1. The elimination of chemical weapons stockpiles and chemical weapons destruction facilities subject to verification;*
- 2. The Non-proliferation of chemical weapons subject to verification;*
- 3. Assistance against chemical weapons and their use or threat of use (Article X);*
- 4. Economic and technological development through international cooperation for peaceful uses (Article XI);*
- 5. Universal adherence to the Convention;*
- 6. Full implementation of the provisions of Article VII.*

In the following the organization's achievements in regard to the six core objectives are illustrated.

#### **VI.3.1. On the way to universality**

A global weapons ban can only be effective if the majority of nation states adhere to it. This was clear from the beginning. After decades of negotiations and the atrocities of the Iran-Iraq War, many countries officially announced to fully support the Chemical Weapons Prohibition Regime. Thus, it was no surprise that 130 states had already signed the CWC by the opening ceremony in Paris in 1993. In fact, it was expected that the 65 ratifications needed for the ban to enter into effect would be attained within 18 months.

These expectations were not met. In autumn 1996 Hungary was the 65<sup>th</sup> state to ratify the Convention (Kenyon 2007a: 63-65). When it was evident that the CWC would enter into force in April 1997, many states followed suit, including several larger ones. At the end of 1997 the OPCW counted a membership of 105 countries. During the second session of the CSP in December 1997, it was recommended that the TS and the States Parties actively fostered universality (C-II/Dec.11, dated 5 December 1997).

Indeed, when the Convention was opened for signature the general consensus was not to interfere in the ratification process of the signatory states. However, as the slow ratification progress exceedingly delayed the Convention's entry into force, the TS took on a more proactive role. It is important to understand that the ratification process of the single countries requires a dozen national actions. While the foreign ministry is usually the body that initiates the ratification process, other ministries and actors have to be consulted before ratification can take place. In many countries parliamentary approval is also required. It is a long and politically contentious process (Feakes 2008).

In order to foster universal participation in the Chemical Weapons Prohibition Regime, the Technical Secretariat organized various regional seminars and implementation workshops in cooperation with scientific NGOs. Moreover, bilateral talks between States Parties and non-States Parties successfully contributed to the rise in membership. The DG's visit to non-States Parties was also an effective tool in stimulating wider participation. The increased efforts of the OPCW to engage in universality-related activities correlated with the fact that the threat of terrorist activity with chemical weapons was more pertinent. It was acknowledged that the threat of toxic terror could only be curtailed if all States Parties refrain from the production of CW. In this regard, Zanders (2002) emphasizes that universality should not only be discussed in terms of quantitative universality, but also in terms of qualitative universality, which "refers to the necessity of the global treaty to remain relevant to all parties during its lifespan in order to ensure universal compliance" (Zanders 2002: 25) In Zanders' opinion the "two pillars for long-term universality" are provisions for emergency assistance in Article X and provisions for international cooperation on the peaceful use of chemical products in Article XI. Those two Articles were particularly included to the CWC as they were seen to be a positive incentive for developing states to join the CWC.

The issue of universality was also discussed during the 1<sup>st</sup> Review Conference. It was stressed that the validity of the chemical weapons ban depended on universal adherence.

The final report contains following paragraph:

The First Review Conference recommended that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it. (RC-1/5, dated 9 May 2003, para. 7.18)

As a consequence, the Executive Council adopted on 24 October 2003 an Action Plan for universality of the Chemical Weapons Convention. This Action Plan included three concrete measures: 1. the States Parties were encouraged to install “Points of Contacts”; 2. the TS was instructed to designate an officer of the External Relations Division to serve as a “Focal Point”; 3. the TS had to publish annual documents on universality-related activities that are prepared (EC-M-23/DEC.3, dated 24 October 2003). As illustrated in the table below, the Action Plan triggered great results in terms of universal participation.

<b>TABLE 4: CWC Participation</b>			
<b>Year</b>	<b>Member States</b>	<b>Signatory States not ratified</b>	<b>Non-Signatory States</b>
1997	105	62	-
1998	121	48	-
1999	128	42	-
2000	144	33	-
2001	145	29	19
2002	147	26	20
2003	158	22	14
2004	167	16	11
2005	175	11	8
2006	181	6	8
2007	183	5	7
2008	185	4	6
2009	188	2	5
2010	188	2	5
<i>Source: OPCW Implementation Reports 1997-2009</i>			

A special breakthrough was reached, when the Libyan Arab Jamahiriya joined the Convention in 2004. DG Pfirter commented Libya’s ratification in his opening statement of the ninth session of the CSP as follows

The process of disarmament taking place in the Libyan Arab Jamahiriya confirms the validity of multilateral organizations and the invaluable part they play in creating and preserving international peace and security. (C9/DG.8, dated 29 November 2004, para. 8)

Nevertheless, the Libyan accession to the Chemical Weapons Convention has to be understood in a wider context. Libya not only refrained from the use of CW, but renounced all its WMD ambitions. This was the result of years of secret negotiations between Libya, the U.S. and the UK. In the end Gaddafi's turnaround was a consequence of both internal turmoil and external economic pressure. Libya was promised "economic reengagement with European trading partners and the United States" if it ceased engagement in international terrorist warfare (Nincic 2010: 175-179).

Libya therefore represents evidence of the idea that positive incentives can lead to success. Moreover, the case of Libya proved that bilateral contacts can be used favorably for fostering universality in regard to the CWC. Commenting on Libya's accession the former DG Pfirter stated in an interview:

(...) I also believe that aside from the efforts that we undertake collectively, or I as director-general bilaterally, the efforts which countries bilaterally, or regionally might take in negotiations with those outside I also think are important and much encouraged. (quoted in Pomper and Nguyen 2005)

Throughout the years, the OPCW has established close contacts with regional organizations, such as the AU or the OAS. During the tenth session of the CSP in 2005, the States Parties decided to establish an OPCW office in Africa with the aim of promoting CWC participation in the region (C-10/DEC. 13, dated 10 November 2005).

On the CWC's 10<sup>th</sup> anniversary, Batsanov (2006: 341) praised the OPCW for its hands-on management of universality-related issues:

These achievements by the OPCW have been the result of long-term planning, analysis, nontraditional diplomacy (including coalition building), effective adaptation to changing circumstances, and continuity of effort - a combination that individual states with their diverse foreign policy priorities usually cannot not sustain.

Batsanov commented that the OPCW successfully influenced internal policy decisions to join the Convention in a number of countries such as the Sudan, Serbia and Montenegro, Afghanistan, Libya and several former Soviet Republics.

Up to now 188 states have ratified the CWC and so the ban protects 98% of the World's population. After the entry of Iraq, another CW-possessor state now officially refrains from the use of CW. However, the goal of universality is not reached until all States Parties ratify the Convention. Accordingly, the former DG Pfirter stated in his opening speech during the 11<sup>th</sup> session of the CSP:

The chain of global commitment and determination to proscribe chemical weapons could be broken at any time by a single weak link – a country that was determined to circumvent the

Convention, or a terrorist group that managed to exploit the opportunities available in any country that lacked the internal mechanism and legal measures required of all States Parties. (C-11/DG.9, dated 5 December 2006, para. 73)

The threat posed by terrorism makes universal ratification especially indispensable. Countries that do not possess chemical weapons capability also pose a risk to the objective of the CWC, as they can be exploited as safe havens for the smuggle and the production of CW by non-state actors. A total of seven states remain outside of the CWC. Israel and Myanmar have signed, but not yet ratified, the CWC and a further five states (Angola, Egypt, North Korea, Somalia and Syria) have neither signed nor ratified the CWC. (see OPCW Implementation Report 2010)

In an interview shortly before the end of his term of duty, DG Pfirter declared that Angola and Myanmar are the most likely to ratify the CWC soon, since both countries showed interest in joining the CW ban. With regard to Somalia, Pfirter did not foresee any soon accession because it is a so-called failed state with a non-functioning government. Yet, Somalia does not pose the greatest risk to the aims of the Convention (Meier 2010a).

The most difficult cases concerning universality are North Korea and the countries of the Middle East - Egypt, Syria and Israel. Pfirter explained that North Korea has never replied to any openings of the OPCW and so there is no information about North Korea's willingness to join the CWC. While discussions about North Korea in the international arena usually focus on their nuclear capability, North Korea is also believed to possess a great CW capability (Feakes 2008).

In the Middle East the prevailing linkage policy between chemical and nuclear weapons hampers any further process. When the CWC was opened for signature in 1993, Egypt proclaimed that it would not become a party of the ban until Israel ratified the NPT. Egypt called upon its Arab neighbors to adhere to the same policy. While the majority of the Arabic states gave up on this position in the long-run, Egypt and Syria hold on to the linkage policy. Mills (2002) argues that these two countries perceive the possession of chemical weapons as strategically useful, "in terms both of national security policy and political 'weight'.

Neither Egypt nor Syria has publicly announced possession of CW stocks. Yet, Egypt deployed chemical weapons in the Yemenite civil war in the 1960s. It is also known that Egypt and Syria had a strategic cooperation agreement, which included transfer of chemical weapons in the 1970s (Shoham 1998: 48-49). Therefore it is assumed that Egypt

and Syria possess CW stocks. While in the beginning, both countries have rejected any cooperation or coordination with the OPCW, they have been more open to OPCW proposals lately (Feakes 2008).

Contrary to Egypt and Syria, Israel signed the CWC in 1993 and took actively part in the PrepCom negotiations. Back then, Israel perceived the global ban on chemical weapons as “net benefit” for its national security. Since Israel could rely on a nuclear capability, it was interested in banning chemical weapons from its region. However, during the early 1990s Israel’s perception of the CWC changed. Given the halting of Middle East peace process in the mid-1990s and the fact that some Arabic countries had not signed the CWC, Israel decided to stay outside the CW ban as long as its neighboring countries did the same. While Israel never officially confirmed possession of chemical weapons, it is strongly assumed to possess chemical and biological weapons (Cohen 2001: 46-47). Israel cooperates in many fields with the OPCW but declines every ratification request. As Barak (2005: 3) put it “historically – so the argument goes – only special and regional arrangements have yielded verifiable arms control regimes and normalized relations between states in the region.” It is speculated that Israel also opposes the CWC arrangement due to the fact that a challenge inspection could reveal its other WMD activities, so strategic motives may also be a factor. Observers have argued more than once that the only way to persuade Israel to join the Chemical Weapons Prohibition Regime is to come up with stricter export control regulations. Whereas the trade in schedule 2 chemicals is prohibited with non-States Parties, the CSP did not adopt a similar regulation on schedule 3 chemicals. Israel has a large chemical industry with annual sales of \$8.5 billion, 50 % of which is exported. The country’s industry would suffer extremely from stricter regulations which might persuade Israel’s government to join the regime (Barak 2005: 2).

In the cases of Egypt and Syria the benefits of closer industrial cooperation in economic terms might outweigh the possible costs of joining the CW ban. In recent years all three countries of the Middle East have been more willing to participate in OPCW related activities, but the linkage policy of Egypt and Syria still dominates discussion. This worrying for the threat of chemical weapons proliferation in the Middle East is in particular high (Mills 2002). Yet in one interview conducted with a State Party

representative (Interview 12) it was hinted that the recent developments in North Africa might result in one country ratifying the Convention sooner as expected.

The Convention's goal of permanently banning chemical weapons cannot be attained as long as a single country stays outside of the regime. Even though the Technical Secretariat in cooperation with individual member states has been very successful in persuading countries to join the ban, the battle for universality continues.

### **VI.3.2. The problem of insufficient implementation**

When the CWC was generated, it was evident that due to the wide scope of the Chemical Weapons Prohibition Regime, which defines prohibitions on the basis of the General Purpose Criterion, an international organization cannot monitor the compliance of all States Parties and individuals alone. Consequently, a national/international division of labor was anticipated. According to Article VII of the CWC each State Party must establish a National Authority that serves as focal point for the TS and assists them in carrying out their tasks (para. 4). In reality this means that the National Authority has to provide biannual declarations of chemical destruction exercises and chemical industrial exercises to the OPCW. In order to receive industrial data the National Authority has to cooperate closely with industrial companies on their territory. The OPCW checks the validity of the declarations of the States Parties by means of routine on-site inspections. The second area which involves action at a national level is the adoption of legislative measures which penalize any natural or legal person for undertaking an activity prohibited under the Convention (Art VII, para. 1).

Both implementation acts, the establishment of a National Authority linked with the adoption of necessary administrative measures and the enactment of penal legislation, are vital for the functioning of the chemical weapons ban. Even before the CWC's entry into force, Robinson (1996: 88) stressed:

The issues involved in implementation are not straightforward, and therefore, as the trigger point for entry of the Convention into force approaches, the administrative and legislative preparations being made in countries around the world need the most careful consideration.

In the first six months after the CWC entered into effect the majority of States Parties did not fulfill their Article VII obligations. Of the 101 States Parties only 59 appointed their National Authorities and only 20 States Parties confirmed the enacting of penal legislation (Tabassi 2007: 219). Since many States Parties established neither National Authorities

nor adequate administrative networks, they were not able to generate data for declarations. After the first anniversary of the CWC only 78 of the 108 States Parties submitted their initial declaration, which was due one month after the CWC's entry into force and even then the declarations submitted were to a large extent incomplete or inaccurate. The regime was not at all the transparent system as envisaged by the Convention (Leklem 1998).

The OPCW's work was especially impeded by the fact that the U.S. did not submit its first industry declaration until 2000. The technical non-compliance of the U.S. resulted in a bigger share of Article VI inspections for other States Parties, in particular Western European States Parties. Not surprisingly, the Western European countries disapproved of the U.S. behavior and even threatened to prevent any more industry inspections on their territories as long as the U.S. did not adhere to its Art VII obligations. Many other countries followed suit in violating the implementation obligation. (Smithson 2001: 26). The implications of the Art VII violations committed by the U.S. were so severe that the first Director-General Bustani remarked in his opening speech during the third session of the CSP:

In order to establish the 'level playing field' foreseen in the Convention, it is, however, essential for the Government of the United States of America to take the necessary action to ensure that it can meet its obligations with respect to its chemical declarations at the earliest opportunity. (C-III/DG.12, dated 16 November 1998, para. 7)

The CWC implementation in the U.S. was mainly delayed because of lacking commitment. For Washington, the Chemical Weapons Prohibition Regime was not a priority. As Smithson (2001: 28) put it "despite its multilateralist talk, the Clinton administration never threw its full weight behind the CWC".

In fact, the CWC suffered from being widely perceived as less important than other issues. Even after the U.S. finally fulfilled its implementation requirements, many States Parties stayed non-compliant.

<b>TABLE 5: Implementation of Article VII</b>				
<b>Date</b>	<b>No. of States Parties</b>	<b>National Authorities established</b>	<b>Notification of admin. and legis. Measures</b>	<b>Legislation coverage of key areas</b>
C-I: May 1997	87	Not available	0 (0%)	Not available
C-II: Dec 1997	103	59 (58%)	24 (23%)	Not available
C-III: Nov 1998	120	Not available	40 (33%)	Not available

C-IV: July 1999	125	Not available	43 (34%)	Not available
C-V: May 2000	133	Not available	48 (36%)	Not available
C-VI: May 2001	143	Not available	53 (38%)	Not available
C-7: Oct 2002	145	Not available	70 (48%)	39 (27%)
C-8: Oct 2003	154	126 (82%)	94 (61%)	51 (33%)
C-9: Nov 2004	166	140 (90%)	96 (59%)	66 (32%)
C-10: Nov 2005	174	147 (87%)	106 (61%)	59 (34%)
C-11: Dec 2006	181	172 (95%)	112 (62%)	72 (40%)
C-13: Nov 2008	184	177 (96%)	126 (68%)	82 (45%)
C-14: Nov 2009	188	181 (96%)	128 (68%)	86 (46%)
<i>Source: C-10/DG.4 2005: 5 and C-14/DG.9 2009: 7</i>				

In the first Review Conference in 2003, it was decided that an Action Plan on the issue of Art.VII was needed (RC-1/5, dated 9 May 2003, para. 7.83). Consequently, the States Parties adopted a “Plan of Action Regarding the Implementation of Article VII Obligations” (C-8/DEC.16, dated 24 October 2003) during the next CSP session. This Plan of Action requested the TS to more strongly support the implementation work of States Parties (para. 1) and to publish a progress report (para. 2). Furthermore, non-compliant States Parties were called upon to specify which kind of assistance they needed (para. 4). The deadline for full implementation of the Convention by all States Parties was set for November 2005 (para. 11). In the interim the Technical Secretariat made much effort to support States Parties. Technical assistance meetings designed to facilitate national implementation, as well as regional workshops and National Authorities’ trainings in order to raise awareness were held. These activities were financed by voluntary contributions from States Parties (RC-2/S/1, dated 31 March 2008, Annex 6).

Whereas by 2005, 87% of States Parties had established National Authorities and 61% had at least informed the TS about legislative and administrative measures being taken, still no more than 54% of the legislation adopted on national levels covered all CWC provisions. Since the Action Plan in Article VII showed positive but insufficient results, a follow-up on the Action Plan was adopted (C-10/DEC.16, dated 11 November 2005). The follow-up was prolonged on two further occasions - in 2006 (C-11/DEC.4, dated 6 December 2006) and 2007. (C-12/DEC.9, dated 9 November 2007) It cannot be denied that most of the States Parties have made some progress in implementing Article VII over the course of the last years. Yet the States Parties’ enactment of penal legislation still lags behind. When the Chemical Weapons Convention was generated

the difficult task of implementing the specific legal provisions on a multitude of levels was underestimated. One has to consider that the CWC requires administrative action from a variety of ministries and non-state actors. Thus, it also requires necessary political will. As long as CWC implementation is not a priority for all States Parties, provisions for Article VII will not be fully met. In an assessment of the implementation process Lisa Tabassi (2007: 221) concludes:

Even when the explicit obligations of Article VII have been met by all States Parties, it will from only the foundation for full and effective implementation at the national level. States Parties will continue to devote resources to enable a vital National Authority and the vigilant application and enforcement of the legislation and administrative measures they have adopted.

Nevertheless, the general implementation depth on national level is slowly improving. The Action Plan on Article VII has been effective, not least because legal advice is provided to States Parties and the progress on Article VII is documented.

#### **CWC implementation in Austria**

*In Austria the National Authority is located in the Federal Ministry of Economy, Family and Youth. The first step to implement the CWC was to pass national legislation. For this the head of the National Authority assigned legal experts to draft a new law. The draft was then sent to other ministries and pressure groups for examination. After incorporating adjustments proposed by the trade association, the draft was forwarded to the National Parliament, which adopted it.*

*Until the CWC entered into force, the National Authority had to inform all industrial companies dealing with chemical substances of the new law. Having acquired information from the companies concerned, it turned out that about 30 companies were subject to declarations and verification. These companies had to provide the necessary declaration data. Moreover, in order to be ready for OPCW inspection visits, a national escort team was established (see Interview 3).*

#### **VI.3.3. The long-standing process of CW destruction**

In spite of the fact that the OPCW engages in a wide range of activities, the demilitarization agenda still remains a priority. So far, seven countries have declared their possession of CW stockpiles: 'a State Party', Albania, India, Iraq, the Libyan Arab Jamahiriya, the Russian Federation, and the United States of America. While Albania, India and 'a State Party' (known to be South Korea) have already completed their CW destruction program, others are still working on the elimination of their chemical weapon stockpiles. Nevertheless by October 2010 61% of the declared CW stocks had been destroyed (OPCW 2011e).

<b>TABLE 6: Chemical Weapons Destroyed</b>		
	<i>Chemical agent (metric tons)</i>	<i>Munitions/containers (million items)</i>
<b>Declared</b>	71,194	8.67
<b>Destroyed</b>	44,131	3.95
<i>Source: OPCW Homepage, dated 30 September 2010</i>		

Of the CW possessor states, Russia and the U.S. declared by far the largest stocks, with 40 000 metric tons and 28 577 metric tons of chemical agents respectively. India and South Korea announced the possession of around 2 000 metric tons of CWs. Both countries kept the specific size, location and nature of their CW arsenals secret. While India officially acknowledged its CW possession, South Korea demanded full confidentiality under the Confidentiality Annex and thus is only referred to as ‘a State Party’. However, the real identity of ‘a State Party’ was soon known. The two states to declare the smallest stock were Albania (16 metric tons) and Libya (23 metric tons). Iraq, which ratified the CWC in 2009, declared to have found two large bunkers of CW and related material from the First Gulf War. In the Iraq war of 2003 UK and U.S. soldiers bombed these arsenals. How many of those CW stocks still remain could not be verified by the OPCW inspectorate due to unstable safety conditions (Walker 2010). The fact that the U.S. and the UK destroyed CW stocks in Iraq without a mandate by the OPCW triggered a lot of controversy. Iran accused the two countries to have acted in a non-compliant way which requires further evaluation (C-15/NAT.1, dated 29 November 2010).

As no country was able to meet the initial destruction deadline of 2007, all have been guaranteed further extension by the CSP. Albania was the first State Party to destroy all its chemical weapons stocks in 2008, which is interesting in so far as Albania only declared to possess CW in 2003, whereas it had already been a CWC State Party since 1994. In order to complete its destruction in a timely manner, Albania received financial help from other States Parties like Greece, Italy, Switzerland and the U.S. (OPCW 2007a). ‘A State Party’ and India proclaimed the completion of their destruction respectively in 2009 and 2010.

Unfortunately, Libya’s destruction process is not finalized. As mentioned above, the country’s accession to the CWC was seen as a major diplomatic success. Libya’s

destruction of CW was supported from the outset by U.S.-British technical assistance teams. When Libyan officials realized that the destruction of the CW arsenals would not only last longer than expected, but would also be more expensive, the U.S. was asked for financial aid. In 2006, the U.S. and Libya signed an agreement laying down specific financial provisions. One year later Libya announced its withdrawal from the contract, which it justified by arguing that the extent and pace of the U.S. assistance did not meet its expectations. In fact, the reason for Libya's unilateral move was a geopolitical dispute (Tucker 2009: 376-378). During the 14<sup>th</sup> session of the CSP Libya was guaranteed an extension of the deadline for its CW destruction to the end of 2011 (C-14/DEC.3, dated on 2 December 2009). When civil war broke out in Libya in March 2011, countries were worried that Gaddafi would make use of the remaining CW agents. However, experts allayed fears expressed by the international community by stating that Libya had already destroyed the munitions to put the gas into and thus the deployment of nerve gas was almost impossible (Smith, 19 March 2011). Until now there have been no reports of chemical weapon use in the Libyan war. Yet, it remains to be seen how the further destruction process of Libya develops.

In particular the destruction deadline violations of the U.S. and Russia have caused dissension. The U.S. started its destruction program in the early 1990s, before becoming a State Party to the CWC. However, environmental concerns resulted in a federal law prohibiting the transfer of chemical agents, who meant that all chemical weapons had to be destroyed in the area they were stored (Walker 2010). Furthermore, a debate arose in the U.S. about how best to destroy the CW stockpiles. While the CWC requires States Parties to ensure the safety of the people and protect the environment in the course of the destruction process, there are no regulations on destruction methods. It is only forbidden to destroy CWC by "dumping in any body of water, land burial or open-pit burning" (Verification Annex, Part IV, A). It was originally planned to destroy the CW stocks by incineration, thus to burn the material. However, in 1979 the so-called "smoke pot incident" occurred in Kentucky during which chemical compounds were incinerated, generating smoke clouds that injured 40 people. Since this incident, the public has distrusted secret elimination actions by the military. In the long term, the NGO Chemical Weapons Working Group (CWWG) came into being. The CWWG was primarily founded to represent the citizens' opposition to incineration. By submitting scientific papers and

making the public aware of the dangers posed by incineration to the immediate environment, the CWWG successfully advocated their anti-incineration position. The NGO simultaneously backed an alternative method of CW destruction, namely neutralization; after all, the CWWG supported the aim to destroy CW stocks. When this public involvement could no longer be neglected by the government, a series of negotiating talks was organized between state officials, the military and the public (Kosal 2006: 123-130). The public dialogue led to the creation of 4 neutralization facilities, two of which are already active. The U.S. destruction program also involves operation of 5 large incinerators (Walker 2010), thus, the U.S. conducts a twofold CW destruction approach. Due to public involvement, the more expensive and work-intensive neutralization method was taken up. According to Kosal (2006: 139), this experience with chemical weapons demonstrates: “the ability of groups of citizens to interfere with or to affect the execution of an international agreement”.

While the CW destruction in the U.S. became more democratic and less environmentally harming, it also resulted in a considerable delay of destruction completion. In late 2006, the U.S. indicated for the first time that it would not be able to meet the final destruction deadline of 29/4/2012 (Weise 2009). In its latest announcement the U.S. Congress projected to completion of destruction 2017, while the army assumes a more realistic completion date by 2021. In any case, it is clear that the U.S. is not going to meet the destruction deadline of 2012. By October 2010 it had destroyed around 81 % of its CW stockpiles (Walker 2010).

Russia is in a similar position. It had been speculated for a long time that Russia would not be able to meet the destruction deadline. Destruction in Russia experienced a particularly slow start, as it took until 2002 to begin operations at the first destruction facility (Walker 2010). Delays in the Russia destruction process were also caused by involvement of the public: “CWC implementation in Russia has been burdened by a number of roadblocks, perhaps the greatest being the demand by local stockpile communities for infrastructure investment” (Walker 1999: 2).

In contrast to public claims in the U.S., Russia was not only confronted with environmental and health concerns from NGOs, but also public demands for improved infrastructure. They had already declared themselves unable to fully pay for the destruction program before the implementation of the CWC's. Indeed, worries about the

cost of the CWC destruction program, which were estimated to account for \$5.7 billion plus another \$330 million for OPCW verification activities, deferred Russia's ratification even further (Pikayev 2001: 32). In response to this, a handful of industrial states sponsored Russia's CW destruction under the Global Partnership. The G-8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction was founded in 2002 and strives for total elimination of all WMDs in Russian possession. So far, 17 countries have contributed around \$2.1 billion to the Russian destruction of CW agents. The biggest donor states were the U.S. with \$1 billion and Germany with approximately \$200 million. Most of the financial help was attributed to companies from donor countries that engaged in destruction activities (Walker 2007). Especially problematic was the U.S. Congress decision to prohibit the use of U.S. money for social infrastructure programs – a pre-condition demanded by local authorities in order to build destruction facilities. All in all, the Russian destruction program was marred by difficulties of under-sourcing and coordination. Confronted with such criticism, Russia took a new approach in 2000. The CW destruction gained in significance and the construction of a smaller number of larger destruction facilities was proposed. From then on, CW destruction has accelerated (Pikayev 2001: 37). In only eight years, ending in October 2010, Russia succeeded in destroying around 50 % of its stockpiles. Russia declared that it was not able to meet the final destruction deadline of 2012, but that it would be completed by 2017. Despite this delay, Russia has been praised for its latest efforts:

Russia, having been reliant on somewhat unpredictable Global Partnership funding over the past decade and not having begun chemical weapons destruction operations until 2002, has accomplished an enormous amount in just eight years and has no reason to apologize for its delays. (Walker 2010)

Nevertheless, the OPCW has to deal with the question of what happens if the two largest possessor states do not meet the final destruction deadlines. The Convention does not acknowledge any specific treatment for States Parties that are unable to comply with the deadlines. This is a difficult situation for the OPCW as the political response needs to be negotiated by all States Parties. Some countries would use this as a chance to discriminate against specific States Parties, in particular the U.S., which claimed its leading status some years before. Iran has already announced that “any breach of the provisions of the Convention will undermine the trust among States Parties and that non-compliance with

the cut-off date of destruction can in no way whatsoever be justifiable” (C-15/NAT.15, dated 29 November 2010: 3).

Also, the South African Ambassador insisted that while not suspecting the two biggest possessor states of lacking commitment, their non-compliance requires a reaction by States Parties in order to keep up the principle of equal treatment (Interview 5: 212-220).

Russia and the U.S. defend themselves by emphasizing that specific circumstances led to their delay, not a lack of political will. The U.S. ambassador Mahley argued in an interview in 2008:

Assuming that all of the possessor states that still have stockpiles in 2012 maintain their commitment, as they currently express it, toward the rapid and complete destruction of those chemicals in a verified and ecologically safe fashion, and if those stockpiles are identified, secured and under constant supervision for the OPCW, it's not clear to me that that constitutes a particularly acute threat with respect to chemical weapons proliferation. (Meier 2008b)

Both countries, the U.S. and Russia, desperately try to avoid the amendment of the Convention that could eventually lead to the deterioration of the Chemical Weapons Prohibition Regime. Therefore they started to call their behavior “technical non-compliance”. The former Director-General Pfirter tried to prevent politicization of the issue by referring to the destruction deadline of 2012 as follows: “It is a legal standing date in the Convention, but I think we need not to make ultimate success of the treaty dependent on any date” (interview with Meier 2010a).

In the 58<sup>th</sup> session of the Executive Council a decision to request the Chairperson of the Council “to engage in informal consultations with interested delegations on how and when to initiate discussion by the Council on issues related to meeting the final extended deadlines for the destruction of chemical weapons” was adopted (C-14/DG.13, dated 30 November 2009, para. 7).

Accordingly, the vast majority of the States Parties want to deal with this problematic situation in a rather informal way. It seems unlikely that the inability of Russia and the U.S. to comply with the deadline will result in an erosion of the overall ban. Yet, lasting compliance negotiations without any possible agreement might have a negative impact on the work of the OPCW. There is no doubt that the future of the Chemical Weapons Prohibition Regime will depend on how the regime can handle the violation of the deadline.

It is often neglected that CWC also demands the destruction of chemical weapons that had been produced until WW II, so-called old chemical weapons and chemical weapons that were abandoned by one State Party on the territory of another after 1925, so-called abandoned chemical weapons (CWC, Art 2). By the end of 2009, 13 countries had declared their possession of old chemical weapons, most of which were destroyed immediately. A special case in this regard is Japan, which abandoned chemical weapons on Chinese territory during the 1940s. Those abandoned chemical weapons (ACWs) are especially hard to discover and destroy, because they were buried in remote and mountainous regions. The CWC clearly allots the responsibility for ACW destruction to the abandoning State Party, so Japan has to bear the destruction costs. Negotiations between China and Japan on how to find and destroy the ACWs have been ongoing for years. In April 2010 Japan announced the start of their ACW destruction program which is conducted by means of mobile destruction facilities. (EC-60/NAT.6, dated 20 April 2010: 2). Since this is a very costly undertaking it seems likely that the destruction process will go on for many years and therefore the final destruction deadline of 2012 cannot be achieved. However, due to the fact that ACWs can't be deployed as warfare instruments, Japan did not face the same criticism as the U.S. and Russia.

Taking all these developments in consideration, it can be stated that the goal of demilitarization has been accomplished to some extent. There are already fewer chemical agents in the world that could make people suffer. Yet, the real challenge is how States Parties will deal with the issue of deadline violations.

#### **CW destruction in Austria**

*In Austria some old chemical weapons originating from WWI were discovered. Most of them were destroyed before the CWC entered into force, in order to avoid additional administrative expenses. Yet, when another old chemical agent was discovered on Austrian territory in 2007, the National Authority had to ask the EC for permission to destroy the weapon in a neighboring country. At this point of time Austria did not have a destruction facility anymore (Interview 3).*

#### **VI.3.4. Non-proliferation: the dual-use factor**

The CWC is not only a demilitarization treaty, but also a non-proliferation treaty for which a far-reaching industry verification regime was developed under the surveillance of the OPCW. It is important to note that the field of chemical science and technology is very difficult to oversee because of the dual-use character of chemical products. Chemicals can

be used simultaneously for chemical warfare and for peaceful uses. In some cases it is very difficult to draw the line.

According to Article VI of the CWC, States Parties have to declare all their industrial activities, which are either concerned with the treatment of scheduled chemicals or with OCPFs (Other Chemical Production Facilities). OCPFs were included, in order to keep up with scientific and industrial development. OCPFs handle a variety of chemicals that might be used for the production of chemical weapons. Also, industrial chemical production has altered over the years. Twenty years ago, large one-purpose industrial sites produced chemical substances, but over time they were substituted by small multi-purpose batch production facilities. Multi-purpose batch facilities are able to change from producing one chemical to another very quickly. That way they can easily adapt to shifts in market demand, but they can just as easily swift to chemical weapons production (Trapp 2008). These multi-purpose production facilities belong to the category of OCPFs. The number of industry inspections conducted by the OPCW has increased slightly in recent years.

<b>TABLE 7: Number of Article VI Inspections by Year</b>								
2001	2002	2003	2004	2005	2006	2007	2008	2009
75	85	132	150	162	180	200	200	208
<i>Source: OPCW Implementation Report of 2009</i>								

In the course of the last few years, 80% of the OPCW's verification budget has been spent on verification of CW destruction and only 20% has been allocated to industry verification exercises in accordance with Article VI (Meier 2009). This is not a lot considering that Article VI inspections have to cover schedule 1, schedule 2, schedule 3 and OCPF inspections. The highest priority and therefore the most regularly inspection missions are attributed to schedule 1 facilities, whereas OCPFs receive the lowest rate of inspections.

In 2009, there were 4,400 declared OCPFs in 78 different countries subject to regular verification (OPCW 2010: 8). It is estimated that 15 % of these OCPFs are multi-purpose batch production facilities and therefore incorporate a high risk of CW production. Only a few of the 500 high-risk OCPFs receive an OPCW inspection each year. Scientific observers complain that the verification system fails to deal with OCPFs adequately

(Thränert and Tucker 2007: 21). There are two problems: the limited number of OCPF inspections carried out each year and the selection for OCPFs to be inspected.

When drafting the Convention, it was ensured that the OCPF regime was not confused by too many details, in order to

enable the Technical Secretariat to implement the monitoring of industry in the most practically effective and cost-effective manner, including the flexibility to focus its inspection effort on (...) which, in its assessment, posed the greatest risk to the object and purpose of the Convention. (Mathews 2009: 9)

This task proved to be more complicated than originally envisaged, because States Parties approve the OPCW's budget and program each year. So far a very limited budget has been assigned to industry inspections.

Another problem with regard to OCPF inspections is the way in which they are chosen for inspection. In the Verification Annex it is determined that no more than 20 verification missions per year can be conducted in any country (VA, Part IX, para. 13). At first, this might seem to be a legitimate confinement. However, one must consider the fact that most OCPFs are located just within a mere dozen countries. Multipurpose facilities are most commonly found in the U.S., China and India. Which production facilities receive on-site inspections is decided on the basis of a site-selection methodology that takes "equitable geographical distribution, provided information about the plants' characteristics and activities carried out, proposals by States Parties" (VA, Part IX, para. 11) into account.

In the end, the methodology is not only unfair but also poses a risk to the objective of the Convention. Industrial companies in larger industrialized countries might not expect an imminent inspection and thus engage in prohibited activities. Since 2008 the OPCW operates with a refined site-selection methodology that focuses more on the technological features of OCPFs, but "this reformed algorithm (...) does not yet introduce any new criterion aimed at targeting those OCPFs considered most vulnerable to proliferation" (Meier 2008).

NGOs and scientific experts have persistently demanded the increase in the number of OCPF inspections and a revision of the site-selection methodology. They aim to create a verification system on the basis of risk assessment. Even though the issue has been discussed fiercely in ECs and CSPs, there was not enough support for amending the OCPF verification procedure. It is in fact a question of whether to take the non-proliferation part of the Convention more seriously (Tucker 2007).

Some States Parties, especially Western States Parties, support the expert claims to focus more on non-proliferation activities. For instance, the EU countries pointed out that the current inspection method of all declared OCPFs would take more than 30 years (C-14/NAT. 5, dated 30 November 2009: para. 5). Other countries, especially NAM countries, want the OPCW to focus first and foremost on CW destruction. They fear that an extension of non-proliferation activities, including more industry inspections and altered industry verification procedures, would be a burden on their economies in particular.

A solution to the problem clearly relies on the political will of all States Parties to generate an agreement (Horner 2011). It is evident that the current verification system can significantly harm the aim of the Convention, since “the narrow scope of the verification system risks creating false confidence in compliance” (Tucker 2007).

The question of non-proliferation activities becomes more prominent, as the end of destruction activities is approaching. Either more money is spent on industry verification or the OPCW’s overall budget declines. In his first interview the current DG Üzümcü cautiously clarified that his “priority will be to make sure that the Technical Secretariat is capable of fulfilling the tasks entrusted to it by the States Parties” (OPCW 2010a). However, it remains to be seen what the future tasks of the organization will be. It is absolutely clear that the Chemical Weapons Prohibition Regime’s effectiveness depends largely on actors’ compliance with provisions for non-proliferation.

#### **VI.3.5. Strengthening the regime: assistance and protection under Article X**

One of the core tasks of the OPCW is the implementation of Article X aimed at developing a well-functioning assistance and protection network. According to the Convention, States Parties against which chemical weapons are used can request assistance from the OPCW (Art X, para. 8).

This right to ask for protective assistance is especially valuable to developing countries that in contrast to industrialized countries do not have their own resources and expertise to respond to a CW attack. During CWC negotiations NAM countries insisted on the inclusion of protective assistance provisions. However, due to high politicization of the issue the wording of Article X remained vague (Trapp 2007: 281).

The CWC only states that States Parties are called upon to offer some kind of assistance by either contributing to the Voluntary Fund for Assistance or declaring the kind of

assistance they provide in emergency (Art X, para. 7). According to the Convention, the TS is required to establish a data bank which lists the assistance offers of States Parties (Art X, para. 5). Yet, the TS could not develop a complete data bank for a long time due to the States Parties' missing declarations. There was clearly a lack of commitment. Consequently, no decisions on Article X were made in the first sessions of the CSP (Trapp 2007: 281). Since the number of declarations submitted remained at a low level, it was decided to include Article X declarations in the Action Plan on Article VII. The States Parties were called upon "to cover the annual submission of information on national protective programs in accordance with paragraph 4 of Article X" (C-8/DEC.16, dated 24 October 2003, para. 6). Unfortunately, the Action Plan only showed limited results.

<b>TABLE 8: DECLARATIONS UNDER ARTICLE X</b>			
<b>Date</b>	<b>No of Complete Declarations Submitted</b>	<b>Bilateral agreement</b>	<b>Unilateral offer</b>
1999	49	4	29
2000	54	6	31
2001	56	6	32
2002	57	1	32
2003	59	1	32
2004	60	1	33
2005	66	1	35
2006	73	1	44
2007	73	1	44
2008	76	1	43
2009	76	1	43
<i>Sources: OPCW Implementation Reports 1999-2009</i>			

As mentioned before, the CWC encourages States Parties to contribute financial resources to the Voluntary Fund for Assistance, which is to be used in the event of a chemical weapons attack. While the fund's volume has increased over the years, it fell short of the CWC drafter's expectations.

<b>TABLE 9: VOLUNTARY FUND</b>		
<b>Date</b>	<b>Amount Contributed in Euro</b>	<b>No. of Contributing States Parties</b>
1998	<b>478,076.03</b>	19
1999	<b>568,876.99</b>	24
2000	<b>607,298.10</b>	26
2001	<b>818,208.41</b>	28
2002	<b>1, 086, 614. 84</b>	31
2003	<b>Not available</b>	31
2004	<b>Not available</b>	34

2005	<b>1,218,735.67</b>	39
2006	<b>1,223,181.66</b>	40
2007	<b>1,321,152.96</b>	40
2008	<b>1,391,900.00</b>	43
2009	<b>1,399,776.03</b>	43
<i>Sources: OPCW Implementation Reports 1998-2009</i>		

Despite all those shortcomings, the OPCW has been very active in developing an OPCW protection network. In the beginning it was just a few member states that trained technical experts from other countries in the use of protective equipment. Over the years this turned into a far-reaching system that included regional seminars and thematic workshops. The Article X program of the OPCW experienced a “shift of emphasis from developing an operational concept for a response after the use of chemical weapons (...), towards a stronger focus on developing indigenous protective capacity of States Parties” (Trapp 2007: 282). However, this does not mean that the TS neglected its obligations of being prepared to cope with an assistance request under Article X. In September 2002, the first OPCW exercise on delivery of assistance (ASSISTEX 1) was conducted with the purpose of testing the OPCW’s preparedness for such a scenario. After evaluating this exercise the TS informed the CSP that further actions were required (RC-1/S/4, dated 24 April 2003, para. 4.7). Three years later, the OPCW undertook its first joint action with the NATO Euro-Atlantic Disaster Response Coordination Centre in order to test its ability to verify allegations of CW use and to coordinate the delivery of an international emergency response. The exercise scenario assumed terrorist attacks involving CW (S/554/2006, dated 8 March 2006, para. 11). On the basis of the joint action’s evaluation the TS took up a follow-up plan to improve its assistance coordination (para. 24). Since then, various other ASSISTEX exercises have been conducted.

In the last 13 years, no State Party has been confronted with a chemical weapons attack and therefore, no request for assistance has been submitted to the OPCW. Yet, many States Parties have become increasingly aware of how valuable the organization’s Article X activities can be, especially during the Iraq war in 2003. The DG noted during the eighth session of the CSP:

2003 will be remembered for the unprecedented number of appeals for assistance by States Parties invoking the provisions of Article X. Prompted by the Iraq crisis, most of the countries in the region have asked for expert advice and training (C-8/DG.7, dated 20 October 2003, para. 13).

Furthermore, all States Parties have become increasingly worried about the consequences of terrorist activity with chemical weapons. A particular concern is that chemical industrial plants that work with highly toxic material or modes of chemical transport could be targeted for such an attack (Thränert and Tucker 2007: 26). The relevance of Article X in the current security environment is evident. While the implementation of Article X experienced a slow start, it is becoming a well-developed part of the Chemical Weapons Prohibition Regime, albeit lacking the contributions of States Parties.

#### **VI.3.6. The regime's beneficial output: cooperation under Article XI.**

The provisions on Article XI entailed heated debate during the last phase of the drafting of the CWC. Concerning this issue, the countries' standpoints differentiated the most. For developing countries represented by the NAM group the wording on Article XI meant without any doubt that other export control regimes, in particular the Australia Group, had to dissolve. After all, the Chemical Weapons Convention includes its own trade regime that prohibits trade with non-States Parties in regard to schedule 1 and schedule 2 chemicals and regulates trade with schedule 3 chemicals. Since Article XI calls for the dissolution of any restrictions which might mar the transfer of scientific and technical expertise, (Para. 2) NAM countries claimed that the further existence of the AG violated the Convention. In this context, developing countries received prominent support from industry representatives. Even before the Convention entered into force, a consultant for the German chemical industry argued:

The basic principle of international chemical trade in the dual-use sector has up to now been the assumption of overall responsibility for the proper use of its consignments by the individual member state of the Australia Group or by the supplier. This arrangement is acceptable as a stopgap measure, but cannot remain permanently in effect. (Wyszomirski 1995: 1-2)

The industrial representative reasoned his approval for dissolving the AG through the necessity of equal treatment for all States Parties. Yet, the chemical industry mainly supported the NAM countries appeal, because they intended to reduce the declaration burden for companies. Despite these claims, industrialized nations refused to give up on the AG. In an official statement on their homepage, the AG members claim that the group “serves to strengthen the non-proliferation goals of the CWC, whilst at the same time encouraging trade in chemical materials for legitimate, peaceful purposes” (AG 2011).

In contrast, developing countries criticized the group's lack of transparency. Its rules allow members to restrict trade with other countries solely on the basis of having a secret suspicion that chemical products are misused (Thränert and Tucker 2007: 27). The continuing dissension caused by the AG prevented a consensus on Article XI programs in the first years. While it was agreed that around 6-7% of the OPCW's annual budget is spent on international cooperation and assistance (ICA) activities, there was no decision made on the nature of IC programs (Trapp 2007: 286).

In the report of the first RC (dated 9 May 2003) the "positive effect of international cooperation among the States Parties on universality" (para. 7.15) was highlighted. The positive implications of IC program aimed at fostering chemical industrial development of less industrialized States Parties were perceived to be a strong incentive for developing countries to join the regime. In 2005 a decision on full implementation of Article XI was eventually adopted by the CSP (C-10/DEC.14, dated 11 November 2005). Since then, the International Cooperation Branch could widen the range of its activities. By the end of 2008, the international cooperation programs of the OPCW have had 2,909 beneficiaries, including analytical chemists, industrial workers and interns. The regions that mostly benefit from the programs were Asia and Africa (OPCW 2011f).

<b>TABLE 10: ARTICLE XI ACTIVITIES CARRIED OUT BY THE TECHNICAL SECRETARIAT</b>	
<b>Programs</b>	<b>Description</b>
<b>Associate Program</b>	Established in 2000, it facilitates capacity building, industry-related national implementation of the CWC and promotes good practice in chemical manufacturing and safety.
<b>Analytical Skills Development Course</b>	Established in 2004, it assists qualified analytical chemists to acquire further practical experience in the analysis of chemicals related to the national implementation of the CWC.
<b>Conference Support Program</b>	Established in 1997, it facilitates the exchange of scientific and technical information, provides financial support for the organization of conferences, workshops and seminars on special topics relevant to the CWC and facilitates participation in such events.
<b>Research Projects Program</b>	Established in 1997, it assists small-scale research projects in targeted countries for the development of scientific and technical knowledge in the field of chemistry for industrial, agricultural, research, medical and other peaceful purposes relevant to the CWC.
<b>Internship Support Program</b>	Scientists and engineers from developing countries conduct advanced research in laboratories in industrialized countries.
<b>Laboratory Assistance Program</b>	Established in 1997, it aims at improving the technical competence of laboratories engaged in chemical analysis and monitoring.

<b>Equipment Exchange Program</b>	Facilitates the transfer of used and functional equipment to publicly funded laboratories and other academic institutions in developing countries from institutions in industrialized countries.
<i>Source: OPCW Homepage, dated 28.3.2011</i>	

The flagship activity of the OPCW is the Associate Program, which is conducted in cooperation with the chemical industry. It represents the beneficial working relationship between the OPCW and chemical industry representatives. The Associate Program's benefits are two-fold: trainees have the chance to gain experience of the companies' field of work and the company workers get to know more about the CWC prohibitions. In an interview François Servantie, the former Director of the Normandy Nitrogen Company, confessed that "prior to the preliminary discussions about the stage, I knew very little about the OPCW; I have, therefore, acquired important information in many fields since then". (OPCW 2003)

In recent years the discussion on Article XI has shifted. The existence of the Australia Group has been discussed less within the OPCW, while the benefits of the Article XI programs have received more attention. Also, NAM countries assumed a more pragmatic approach to the issue. This was a relief for the regime as the discussions on the Australia Group were likely to end in a deadlock. The TS activities in cooperation with industrial companies have been appreciated greatly by the majority of States Parties. Yet, there are still discussions as to what extent of the OPCW's resources should be attributed to economic development. It is once again a field of dissension between industrialized nations and developing countries (see also Interview 2, 3 and 12).

#### **VI.4. The environment in which the OPCW operates**

Having discussed the organization's structure, work and historical development, at last the OPCW's environment requires further consideration. Every international organization relates to its environment in some way and so external developments can have an impact on internal processes.

When the CWC was concluded, the bilateral conflict between the U.S. and the USSR had just come to an end. A new security order was emerging and the post-Cold War period began. In the beginning, disarmament diplomacy experienced a major upswing which was a source of great expectation in the multilateral field of security. In the end, however, reality fell short of those expectations. While the CWC could be successfully concluded,

other arms treaties lacked similar success, for example, no multilateral agreement on adding a verification system to the BTWC regime has yet been generated. Also the CWC implementation process was extensively delayed due to the decreasing interest of States Parties in multilateral disarmament (Thränert 2003: 133). Looking back at the early 1990s, Carle (1999: 15) testifies that, “[i]n that perspective, the expectations that the end of the Cold War would suffice to set off rapid and inexorable disarmament were, quite frankly, rather silly”.

Why did the disarmament euphoria meet such a quick end? The post-Cold War was marked by new structural conditions. First of all, after the binary structure of the East-West conflict was dissolved, alignments and coalitions became more complex and fluctuating. Contrasting trends such as globalism vs. regionalism co-exist today. Furthermore, the number of players has expanded. In addition to a variety of diverse actors dealing with disarmament issues, this happens on various different levels, from bilateral to multilateral, regional to sub-regional. Disarmament issues demand a more flexible approach. When thinking about actors in the field, one should not forget to include non-state actors, such as NGOs, industries, TNCs or criminal groups. Due to new technological inventions, communication between these non-state actors improved. This also matters in the field of disarmament. For example, NGOs took on a leading role in generating the Ottawa Convention on anti-personnel landmines (Carle 1999: 16).

After all, two specific aspects that determined the transformation of the security environment in the post-Cold War era need to be discussed in more detail. First, it was widely assumed that a post-Cold War world would be increasingly dominated by multilateral regimes. On the other hand, the new distribution of power strengthened the position of the U.S.

One of the most obvious recent changes in the international environment that has affected the way that WMD issues are dealt with multilaterally is the rise of the US as international hegemon – politically, economically and militarily (Findlay 2006: 209).

During the 1990s the U.S. failed to show political commitment to disarmament issues. For the Clinton Administration, disarmament was an out-dated concept of the Cold War and thus did not generate any interest. Amongst others, the way the U.S. handled CWC implementation revealed its attitude towards disarmament. (Thränert 2003: 135) Clinton’s successor Bush chose a different approach. The Bush Administration did not simply neglect multilateral disarmament arrangements, but openly opposed them. According to

Findlay hegemonic leaders do not automatically become “self-absorbed unilateralists”, but in the period of Bush Junior “hegemony coincided with a particularly unilateralist administration in Washington” (Findlay 2006: 214). The Bush Administration was driven by conservative advisors, which disapproved of multilateralism, international law and disarmament arrangements in general.

Especially in the case of the former Iraqi regime, which knowingly possessed a WMD capability, the Bush administration defied every multilateral effort. For instance, the former U.S. Defense Secretary evaluated UN resolutions as null and void.

Anyone who has watched the past decade has seen the Iraqi government defy some 16 U.N. resolutions and change their position depending on what they thought was tactically advantageous to them and kind of jerk the United Nations around (McIntyre February 21, 2001).

In the end, the controversy surrounding Iraq also triggered the U.S. effort to remove the first DG who tried to convince Iraq to become a State Party of the CWC. In this case the U.S. successfully deployed diplomatic leverage power that originated from its large financial contributions. In other cases, the U.S. relied on its large delegations and significant technical expertise (Findlay 2006: 211). It cannot be ignored that U.S. behavior has seriously impeded the work of a multitude of multilateral organizations. U.S. unilateral moves like the invasion of Iraq also negatively affected its international reputation. With the current Obama Administration, the U.S. has switched back to another policy for external relations. Both President Obama and his Secretary of State, Hilary Clinton, have openly endorsed the concept of multilateralism (Gärtner 2009: 146). Whereas the U.S. succeeded in arranging the highest position of the TS according to its preferences, its unilateral attitude did not result in the total erosion of the Chemical Weapons Prohibition Regime. In this regard, it is also important to note that the Bush Administration experienced great difficulties with its unilateral approach in the long run. Therefore, they ultimately heralded a less confrontational external relations’ policy. Due to the high degree of interdependence in today’s world any unilateral approach is soon defied and U.S. unilateralism eventually came to its limits (Deppe 2010: 55).

The second development which was also strongly connected to the U.S. attitude towards multilateral regimes was the emerging threat of terrorism. The 1995 CW attacks in Tokyo’s subways already revealed that the threat of CW terrorism was real. However, more attention was allocated to terrorism with the events of 9/11, which showed that even

a super-power like the U.S. was vulnerable. The OPCW responded directly to 9/11 by establishing an open-ended working group on terrorism (EC-XXVII/DEC.5, dated 7 December 2001). In its decision the Council stressed that the destruction of all chemical weapons, universal adherence, full implementation including penal legislation, non-proliferation and assistance were of uttermost importance in the fight against terrorism. Since then, the OPCW has engaged in numerous activities such as joint actions on assistance, anti-terrorism seminars and implementation workshops. The organization aimed at diminishing the threat of terrorism through universality-related activities. Moreover, the OPCW cooperates strongly with the UN under the framework of Security Resolutions 1373<sup>10</sup> and 1540<sup>11</sup>, as well as the Global Counter Terrorism Strategy adopted by the UN General Assembly in 2006 (C-14/DG.13, dated 30 November 2009, para. 108-115).

The threat that chemical weapons are used by terrorists is everlasting, insofar as the production of chemical weapons does not require a lot of effort, especially since production procedures for some chemical agents are well-described in the internet and other public sources (Falkenrath 1998: 48).

Besides the threat of mass casualties caused by such a terrorist attack, countries fear that it could trigger panic among the population and may lead to economic damage. In his opening speech during the 14<sup>th</sup> session of the CSP, DG Pfirter reiterated:

Although the OPCW is not an anti-terrorist organization, there is a clear expectation in the international community that it will contribute to the global efforts in this field. (...) Therefore, the Secretariat has continued to respond positively to invitations to participate in international meetings related to this issue. (C-14/DG.13, dated 30 November 2009, para. 107)

Pfirter's speech reveals that even though the OPCW cooperates with the UN in activities that address terrorism, it does not have its own anti-terrorist agenda. One can see that terrorism is a topic, which is often discussed in meetings of the States Parties, yet no further decisions on terrorism have been made. The OPCW's prime effort with regard to global anti-terrorism is strengthening its own regime. Many work areas within

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<sup>10</sup> *Sec Resolution 1373(2001) was adopted as an immediate reaction to the terrorist attacks of 9/11. It calls upon states to prevent the financing of terrorist activities, not to issue visas to people formerly involved in terrorist attacks and to cooperate with other states with the aim of preventing terrorist attacks. It also establishes a committee to monitor the resolution's implementation.*

<sup>11</sup> *Sec Resolution 1540 (2004) decides that states shall refrain from the use and production of chemical, biological and nuclear weapons, as well as prevent the proliferation of these WMDs by establishing effective export control measures. This resolution also established a committee for monitoring state compliance.*

the organization such as Article X (Assistance) or Article VII (Implementation) have received greater attention due to the permanent threat of toxic terror.

To sum up, the OPCW's environment was marked by a transition period triggered by the end of a bilateral conflict that had lasted for decades. While the unilateral behavior of the Bush Administration marred the organization's work to some extent, the regime emerged even stronger than before. The emphasis on the OPCW's mandate was to a great extent triggered by the increasing threat that chemical weapons are used by terrorists.

## **VI.5. Overall assessment**

Looking back at the history of the OPCW, it can be concluded that the organization's development was extraordinary compared to similar organizations. Nevertheless, there have been great difficulties in the beginning which showed that States Parties acting on behalf of their national interest can seriously impede the OPCW's work - especially those states that contribute greatly to the budget can hold the organization hostage by not paying. A multilateral, international organization like the OPCW needs to be sponsored by all States Parties. Only a Technical Secretariat which has the confidence of the States Parties is able to influence the overall work of the OPCW. The institutional context in which a Technical Secretariat operates is complex.

Successful responses cannot come from technical solutions alone, but by accepting that the technical and political/cultural dimensions are so interlinked that these two distinct, independent elements are like a Möbius strip – where it is impossible to see where one ends and the other begins. (Barbeschi 2002: 53)

The success of the OPWC in the future will be determined on the basis of its ability to adapt to new realities and new duties. So far, the organization was able to carry out exercises effectively and cooperate well with other bodies. In a range of activities like universality, implementation and assistance, the hands-on-management of the TS in cooperation with individual States Parties prompted to be successful. Lisa Tabassi (2007a: 300) concludes that “the OPCW is actively enrolled in (...) making this treaty work”.

Yet, there are also worrisome aspects. There is still to this day a long list of unresolved issues that informal facilitations deal with. Furthermore, the field of industrial and scientific chemistry is altering quickly, but the organization has not been able to adapt its tasks adequately. These failures are closely connected to the striving for consensus, which

sometimes complicates the decision-making on “issues that are important yet also potentially divisive politically” (Meier 2010).

The phenomenon of unanimous decision-making is very common in the multilateral field. Unfortunately it has also led to the ‘slow death’ of various regimes. Only if the States Parties attach enough value to the organization, the OPCW will continue to be called a successful multilateral organization. This is especially relevant as the organization will soon experience a period of change.

A final remark has to be made concerning the validity of the chemical weapons ban. Due to the fact that so many countries adhere to the global ban, the CWC developed into a rule of customary international law. According to Lisa Tabassi (2004: 2), two factors are of importance in this context:

- (1) it is applicable to all states, even those who are not party to the CWC, and (2) parties to the CWC may not opt out of adhering to the rule by withdrawing from the treaty since they are separately bound by the rule under customary international law.

Tabassi (2004) argues that States Parties which decide to withdraw from the CWC are still bound to the Geneva Protocol of 1925 which proscribes the use of CW. Moreover, because of the UN Resolution 1373, states would also be required to secure their stocks in order to prevent terrorists to get hold of CW. And most importantly, since so many countries have ratified the Chemical Weapons Convention, the taboo against chemical weapons use is very strong. To conclude, a rule under customary international law against the use of chemical weapons has evolved over time.

Regardless of the future development of the Chemical Weapons Prohibition Regime, the ban on the use of chemical weapons will remain intact.

## **VI.6. Classifying the OPCW as an IO**

As outlined in the theoretical chapter, there are different categories of IOs operating in the international field. First of all, one has to distinguish between international regime and international organization. While the CWC has created an issue-specific regime, it also established an operating organization that to some extent has acquired an actor status. For example, the Director-General officially represents the organization in various UN meetings. The OPCW can be classified as a universal, issue-restricted organization. As it has a clear mandate of overseeing the adherence of States Parties to the CWC, it is an operational organization, which is strong in implementation.

While the input dimension of the OPCW is dominated by the representatives of States Parties, the Convention also allocates some leverage to the administrative staff, in particular to the Director-General. There is some input from NGOs and chemical industry associations, but it is restricted to a few specific scientific or industrial areas.

Most of the decision-making processes are based on the intergovernmental negotiations model. Thus, states are the central decision-making actors within the OPCW. Due to the striving for consensus, each state has the possibility to block decisions.

While the CWC has established the overall policy program of the organization, the organization itself pursues a variety of operational activities aimed at specifying the provisions of the Convention. In addition, the OPCW is engaged in the active implementation of some provisions, as for example with regard to Articles VI, X and XI. Some information activities are conducted by the TS and the sub organs of the TS, in particular the SAB. Overall, it can be said that the OPCW takes up a variety of actions and thus enhances the validity and functionality of the CWC.

## VII. RESEARCH RESULTS

This chapter presents the results of the interviews conducted with various people involved in the work of the OPCW. The aim is to compare the different interviews and generate generalizing statements which enable a thick social description of the phenomenon.

The questionnaires were based on five groups of questions: How did the regime come about? How effective is it? Which actors are involved? How did it transform over time? How will the regime develop in the future?

On the basis of the interview data, six categories were inductively developed. These categories are used for interpreting the data and structuring the research results:

- 1. Regime creation*
- 2. Nature of the regime and the effectiveness of the regime*
- 3. OPCW - procedural efficiency and institutional culture*
- 4. Actors*
- 5. Past transformation/ impact of the security environment*
- 6. Future development/ regime stability*

### VII.1. Regime creation

According to the interviewees, chemical weapons have certain flaws in terms of military utility, even though they have proven to be deadly during past warfare scenes. Since the effects of chemical weapons heavily depend on climate and wind conditions, they are not the most accurate of weapons (Interview 4).

The decline in use of chemical weapons was closely connected with the emergence of other WMDs of greater accuracy. The discussions on a chemical weapons ban started, because “*the major actors, the U.S. and the USSR, realized that they had better toys in their weaponry arsenals. This was actually the foundation*” (Interview 13: lines 229-230).

Aside from having better weapons at their disposal, the great powers saw advantages in destroying their chemical weapons stocks, which were expensive to maintain (Interview 10).

However, it took a long time until negotiations could be concluded. As one interviewee emphasized, it is the logic of every negotiation to never give up something without

getting something in return, even if the issue at stake does not have any value (Interview 6). In the end, the conclusion of the Chemical Weapons Convention was related to the events of the 1980s. The Iran-Iraq war revealed especially that “the world has become too crowded by actors of small size that cause troubles” (Interview 6: lines 51-52). The threat of horizontal chemical weapons’ proliferation had become reality. Iraq deployed chemical weapons on a large scale, not even civilians were spared. Chemical weapons developed to “*weapons of terror*” that a State Party can deploy against its own people (Interview 8: line 186-188). When the taboo of the employment of chemical weapons against unprotected civilians was broken by Saddam Hussein, the rapid creation of the Chemical Weapons Prohibition Regime became a priority for many countries. Since WWI chemical weapons have been known as extremely cruel weapons. Thus, the existence of a certain taboo surrounding chemical weapons cannot be denied. It was indicated that the Geneva Protocol had already led to an overall tendency to not use chemical weapons (Interview 3).

In the last phase of negotiations chemical industry associations actively pushed for the conclusion of a far-reaching ban, even though this implied an increased workload for industrial companies. The chemical industry’s standing had suffered extremely from the disclosure that industrial companies were involved in the chemical weapons production of Iraq and Libya. Thus, the chemical industry’s prime aim was to get rid of its reputation as a dirty business. It was emphasized that the verification and declaration obligation affected less than 1% of the worldwide chemical industry (Interviews 2 and 3). Therefore, the burden on the chemical industry overall was limited.

It cannot be denied that even before the adoption of the Chemical Weapons Convention the legacy of chemical weapons had been weak. While moral considerations might have existed, the final conclusion of the Chemical Weapons Convention was based on geopolitical and strategic calculations.

## **VII.2. Nature of the regime and regime effectiveness**

The Chemical Weapons Prohibition Regime was depicted to be a very successful disarmament and non-proliferation regime. It was argued that the success of the regime in particular relied on the shared commitment of all States Parties to permanently rid the world of chemical weapons. After all, the chemical weapons ban is almost universal

(Interviews 9 and 12). This can be traced back to the fact that chemical weapons have little military value. Since states are willing to destroy chemical weapons, it is “*a very nice topic to deal with in disarmament*” (Interview 8: lines 27-29). The Convention was also praised for its non-discriminatory approach. All States Parties share the same rights and duties (Interview 5).

When talking about the regime’s main strength, all interviewees referred to the far-reaching verification regime, which not only covers destruction activities, but also industrial activities.

The Convention itself talks about all toxic chemicals; it is not just the chemical weapons. And this sometimes has blurred the image of the Convention. Some think it only deals with chemical weapons; it has to do with the military use only. This is not the case. It has to do with chemicals in any form, which could harm living beings, not just humans. (Interview 6: lines 115-119)

Since industrial companies have to declare activities with certain chemical compounds, it is relatively easy for the States Parties and the Technical Secretariat to retrace international trade flows with chemical compounds (Interview 3). The Chemical Weapons Convention calls for the establishment of a National Authority in each State Party to serve as a contact point for the Technical Secretariat or other States Parties. The fact that these National Authorities often communicate with each other on a bilateral basis contributes to the confidence-building within the regime (Interview 1).

However, the Convention not only contains destruction and non-proliferation provisions, but also provisions on assistance and international cooperation. Whereas the positive effects of ICA programs on universality were commented by some interviewees, it also proved to be a contentious issue. In particular, the interviewees’ views on the definition of Article XI diverged.

So, the question was certainly how to define non-prohibitory items in terms of the chemistry development. I would say it is not necessarily prohibitory if someone is developing something now and brings it up there. But it does not necessarily include knowledge transfer from the developed countries to the developing countries. Obviously, the developing countries see it in a completely different way. (Interview 2: 88-92)

While the representatives of Western States argued for concentrating more on the implementation of destruction and non-proliferation Articles (Interviews 2, 3, 8), the Representatives of South Africa and Mexico advocated equal implementation of all Articles (Interviews 5 and 12).

Furthermore, some weaknesses of the Chemical Weapons Convention were also identified. According to one interviewee, these weaknesses originate from the nature of multilateral Conventions, which are first and foremost agreements that could be generated in a certain point of time.

It's always this moment were you have to choose: do you go for perfection or do you want to remain with something in your hands, because there is the risk that you will have negotiations for another ten years and in the end you have nothing. (Interview 6: lines 78-81)

Since the Conference of Disarmament was unable to reach decisions on some paragraphs, they ended up to be worded in a vague language. Even today there is a list of unresolved issues, which was determined to be the main weakness of the regime (Interview 1, 4). As one interviewee noted, the Convention's drafters were diplomats and law experts who did not possess any knowledge about the chemical field. Consequently, the Convention lacks some significant clarifications, for example the identification of quantities subject to verification. All these unresolved issues have now to be negotiated within the OPCW, which takes a lot of time and effort (Interview 3).

Another great weakness of the CWC was seen to be the fact that it "was mainly conceived as a theoretical abstract prior to the end of the Cold War" (Interview 12: lines 50-51). Some provisions of the Convention are outdated in the sense that they are not ready to deal with the present security environment.

Some of the instruments in the Convention might not be as ready to deal with particularly non-state actors. The Convention is based on States Parties and their governments being their counterparts as whole source of information, of declarations and so on. There is very little room for non-state actors. (Interview 12: lines 57-60)

Furthermore, the Convention does not provide for all possible scenarios. The OPCW already faced situations not foreseen in the Convention, such as the U.S. and the UK bombing of chemical weapons arsenals in Iraq (Interview 5). Also of concern was the outdated nature of the schedule lists, which do not reflect scientific developments (Interview 2). Lastly, it was indicated that the Convention fully relied on the will of States Parties to cooperate. The Technical Secretariat can only conduct inspections on the basis of the declarations of States Parties. So, the Technical Secretariat cannot act independently as such (Interview 6).

Yet, with the exception of one all interviewees opposed the idea of amending the Convention, because it would endanger the carefully drafted balance of different positions.

(see Interviews 3, 5, 6, 7, 12) Situations need to be addressed within the margins of the Convention.

Does the Convention have the potential to adapt? Yes, if the States Parties continue to work on that and if they try to focus their attention on using the Convention in a more flexible way. (Interview 6: 137-139)

Despite its limitations, the Chemical Weapons Prohibition Regime was overall perceived to be a success story.

I think the world is safer because of that. There is other weapons of mass destruction which are out there that need to be addressed. But I think the Convention and its implementation have reduced the threat that chemicals could be used as weapons (Interview 8: 180-183).

Even the states outside of the Convention are not believed to ever deploy chemical weapons. There is an almost universal and legally specified taboo against chemical weapons use. If any state violates this taboo, there would immediately be a harsh reaction of the international community (Interviews 1, 2, 6, 8).

### **VII.3. OPCW – procedural efficiency and institutional culture**

All interview partners showed their satisfaction with the functioning of the implementing organization, the OPCW. Yet, it was mentioned a couple of times that there is certainly “*room for improvement*” (Interview 4: line 86-87 and Interview 5: line 102).

Most States Parties representatives commented on the achievements of the TS. The knowledge and experience of the Technical Secretariat is important for the functioning of the organization (Interviews 1, 2, 4, 9, 12). Along this line, the Director of Verification defined the impartial personnel working in the Technical Secretariat as the OPCW’s main strength.

My colleagues are the real strength behind this. Even though it is a let’s say international unit as you see it in the UN and other areas. My colleagues – I told this the current DG and also the former one – are the biggest capital of the organization. (Interview 13: lines 29-32)

The tenure policy, which limits the terms of appointment for everyone inside the TS to seven years, could have a very negative effect. Since some valuable “chemical weapons specialists with hands-on-experience” are lost, the quality factor is no longer given (Interview 13: lines 38-43). It was assessed that in recent times chemical industry associations have voiced some complaints against the reduced quality of inspectors (Interview 2).

All interviewees stressed the vital role of the Director-General. He represents the organization to the outside world, but he also has to manage the Technical Secretariat. It is the DG's task to generate a common institutional culture and to take care that the organization is running smoothly (Interviews 5 and 8).

So far, the OPCW has seen three different Director-Generals, each of whom has pursued a different policy. As noted before, the first Director-General was removed from office, which constituted an unprecedented case in the history of international organizations. His successor, Rogelio Pfirter, served two full terms as DG. The statements made about the two DGs reveal how their leadership styles differed:

The first Director-General was Mr. Bustani from Brazil. He was not an easy person. The job he was doing to start up the whole thing was quite good. But he was too eager to move forward. So, what I have heard from my predecessor and other delegates is that he was in many cases quite annoyed when things didn't move the way he wanted them to move. And he also showed this to the people, for example during the Conference. Of course that did also not go down very well with delegates from different countries. (Interview 1: 267-272)

While Bustani certainly made some mistakes, the interview partners acknowledged that it was a particularly difficult job to build the organization up. In the first period of every organization there is the struggle for power between the different organs. (Interviews 3 and 11) Yet, Pfirter was also confronted with challenges.

Now, the second Director-General had the first challenge of making the organization viable after that big crisis and he succeeded. He not only did that. He really put the OPCW into a new dimension. During the eight years that he commanded the organization, he secured on the one hand a significant increase of the members of the organization – it is almost universal now. He also secured a very systematic record of verification of the industry. And he secured the full cooperation of possessor states in destroying the chemical weapons. (Interview 11: lines 118-129)

The first DG Bustani was described as somebody who was “too eager to move”. In contrast, the second DG Pfirter was praised for his conciliatory and flexible approach in the cooperation with member states (Interview 3). In this context, one State Party representative called Pfirter an “*old political fox*” (Interview 1: 214). All interview partners refrained from commenting on the new DG as he has only been in office for a few months now. Certainly, the leadership style of a DG also impacts the organization's overall functioning. Most interviewees emphasized that the TS has always depended on the financial means provided by member states. By not paying their contributions, some States Parties seriously impeded the work of the TS under Bustani (Interviews 1 and 3). Furthermore, the surrounding security environment affects the work of the TS. For

instance, the Technical Secretariat has not yet been able to send its inspectorate to Iraq because of the unstable security situation (Interview 1). The Technical Secretariat certainly operates in a difficult environment. All permanent representatives have asserted that it is extremely important that the Technical Secretariat remains impartial, neutral and solely technical. The States Parties decide what to do and the staff of the Technical Secretariat implements it (see Interviews 5, 6, 8, 10). The Director of Verification talked about the challenges he faced as head of the division:

When I arrived here in 2002 my biggest challenge, and I can only speak for Chapter 1 which is the verification chapter, was to build up confidence with member states. When I arrived the situation was quite confrontational as far as industry inspections were concerned and to a lesser degree also concerning militarization inspections. Over the years working with States Parties and working with the industry for which I used my private industry contacts as well, I was able to actually defuse this conflict and transfer it into a for both sides beneficial cooperation. (Interview 13: 73-39)

This quote reveals how important it is for the Technical Secretariat to win the trust of the States Parties, in order to conduct its work efficiently. One should always bear in mind that the issue of chemical weapons is closely connected to the survival of nation-states.

The OPCW's procedural efficiency also depends on the work of the two policy-making organs. The most discussed issue in this context was the principle of decision-making by consensus. For some consensus remains an absolute necessity which ensures that the regime does not fall apart. At the same time the striving for consensus was criticized for delaying processes and generating weak decisions (see e.g. Interviews 1, 2, 4, 6, 9). As one interview partner elaborated in more detail, consensus becomes an "*end in itself*" when the substance becomes secondary to consensus. (Interview 12: line 110) The consensus principle can also be exploited:

We have this right to be exercised carefully and in extreme circumstances, when the national interest is at risk. But when you abuse that right and you use it not in extreme circumstances with your national interest at stake, but as a daily negotiating strategy, as some delegations do, then you transform consensus in a de facto veto right, which we don't have. (Interview 12: 122-126)

Two interviewees hinted that the States Parties might have to veer away from the consensus principle in the future (Interviews 2 and 9). Moreover, it was stressed that reaching an agreement had become more difficult, because a few States Parties acted in a destructive manner (Interview 3). This attitude has a negative impact on the effectiveness of the policy-making organs.

So, I think that instead of addressing the issue in the Council, we wait until the time is right for discussing the report language and this is where the different positions come in. I think it is not an appropriate procedure. Report language is relatively irrelevant at the end of the day. It serves the purpose of some delegations to report back to capital that they were able to introduce a certain phrase that has something to do with the instructions of the capital, but has no real consequences. It also allows for delegations to deal with negotiations rather in the back room than in an open environment. (Interview 12: lines 92-99)

On the one hand, negotiations that are held in the backroom violate the principle of equality. On the other hand, the focus on report language prevents the States Parties from making important decisions. As it was reported, there are up to 40 parallel facilitations on non-resolved issues. The success of these facilitations depends on the availability and negotiations skills of the facilitator as much as on the overall willingness of States Parties to generate decisions. Thus, not all facilitations are efficient (Interviews 1 and 3).

Despite all these shortcomings, it was determined that the cooperation between States Parties in the OPCW has been more effective than in other multilateral organizations: “There is some political dispute about the nature of specific issues, but the major effort is technical in how to fulfill the Convention.” (Interview 10: lines 195-197)

In this context, one interviewee noted that the OPCW is a unique multilateral organization in so far as the States Parties are very present.

I think the involvement of States Parties not only at the policy level, but also on the micro-management level is quite high. And I can tell from experience, I was also Delegate of other organizations in the field of disarmament like the IAEA, and the involvement of States Parties here in the OPCW is much higher than in other organizations. (Interview 9: 85-89)

## **VII.4. Actors**

It is quite clear from both a State Party’ and a TS’ point of view, that States Parties are the main agents to determine the policy outcome of the OPCW.

In this organization states are the main and I would say almost the only actors. That is also one of the challenges that we are now facing - how to be more responsible to society, particularly to the chemical industry and to NGOs. Up to now we have been dominated exclusively by states activities. (Interview 11: lines 146-149)

The influence of NGOs in decision-making processes was perceived to be very limited, even though NGOs regularly attend CSPs and hold workshops. According to the interviewees, NGOs have a much more prominent role in other multilateral organizations, like for example the ICC which is also based in The Hague (Interviews 9 and 12). Furthermore, past activities of some NGOs within the OPCW were considered to be triggered by States Parties. So, their image within the organization is ambiguous (Interview

4). All interview partners stressed that NGOs mainly influenced States Parties at a national level (Interviews 1 and 8). For example, local NGOs and citizens' groups had a significant influence in shaping the destruction procedures of the U.S. (Interview 7). It was also remarked that NGOs might have a greater role to play after destruction activities are concluded (Interview 13). One interviewee stated that just recently all NGOs dealing with chemical disarmament have formed a coalition. Yet, this umbrella organization is only in an embryonic stage (Interview 9). In fact, the limited role of NGOs might be related to the almost non-existent media coverage of the Chemical Weapons Prohibition Regime. There is very little public knowledge about the CWC or the work of the OPCW. Some experts favored a better promotion of the CWC (Interviews 6 and 8), while others concluded that media coverage was not important for the work of the OPCW (Interviews 5 and 13). The views of the interviewees differed greatly when commenting on the role of the chemical industry. Some highlighted that the Convention allotted a specific role to the chemical industry.

The chemical industry is to be involved, because the chemical industry is one of the main players in the Convention, when we say we are talking about chemicals, not weapons. (Interview 6: 217-218)

Other interviewees determined that chemical industry associations played no direct role of importance within the OPCW. Chemical companies were seen first and foremost as "customers" (Interview 13: line 128), which is based on the fact that "in the end of the day, the organization has a relationship with states. And it's the states' responsibility to ensure compliance of the industry" (Interview 5: 118-119). Nevertheless, chemical industry associations are in regular contact with the National Authority and certainly influence the national position of a country (see Interviews 2, 5, 7, 8, 9, 11). The influence of the respective chemical industry depends on its size and the governmental policy (Interview 1). The chemical industry might have more weight when the non-proliferation part of the Convention receives greater attention (Interview 8). The interviewees stated that so far the cooperation with the chemical industry had been very good (Interviews 2, 3, 6, 13).

While the States Parties are the main players in the regime, the TS and the DG can influence the development of the OPCW in a certain way. The Technical Secretariat's leverage relies on its expertise and its functions.

Also in this regard, what comes from the TS forms the basis of our discussions or our final decisions. Apart from the fact that the TS has some margin, that they can propose something

or implement something within the Convention without having to seek the Member States' approval, it's very important that they give us the necessary input, the options, the expertise in order that we are able to decide. (Interview 9: 115-120)

Both TS representatives that were interviewed asserted that by providing the necessary technical background, they have a certain say. Diplomats representing states at the OPCW are rarely chemical experts. So they come to the TS employees to ask for their "technical opinion" (Interviews 11 and 13).

Moreover, the Director-General has a vital role to play, because he not only has some prerogatives according to the Convention, such as proposing the budget, but he is also the political leader.

I think that the Director-General sets the tone for how the organization will work. The Director-General can be aggressive or not so aggressive. The Director-General can set the tone in what sorts of areas of the Convention might receive greater attention. So, I think the Director-General has a lot of influence. (Interview 7: 70-74)

The tough election of the Director-General reflects the importance that States Parties attach to the position (Interviews 6 and 7). Yet, it is important that the States Parties remain the masters of the organization and the TS acts according to the States Parties' will. In spite of this some non-state actors provide the ground for decisions being taken and thus shape the policy-making, "in the end it is up to the States Parties to adopt decisions." (Interview 10: 208-209). The question is as to whether some States Parties have more power than others. According to the interviewees, the country's negotiation power depends on its size as well as on its knowledge about chemical weapons destruction or chemical production (Interviews 1 and 3). However, one expert emphasized that the personal engagement of the diplomat representing a country mattered as well. If someone is very active in representing his nation's standpoint, he is more likely to be taken into consideration (Interview 9). Even small countries that lack in expertise or diplomatic leverage are able to acquire a certain status within the policy-making organs. Since the OPCW policy-making organs operate by consensus, "if you want to be someone that people negotiate within the OPCW, you just have to say NO" (Interview 1: 309-311).

However, states do not always act individually. For one, there are different regional groups within the OPCW. How strong a regional group is, depends on its ability to generate a common view point. Thus, the influence of the five regional groups within the OPCW varies. (see Interviews 4, 5, 6, 8, 9, 10, 12) In some cases, the regional group as such is not engaged, but one very active State Party of the group imposes its policy on the

whole group. An individual State Party can become a major actor by convincing other States Parties to pursue the same policy (Interview 12). Aside from regional groups, like-minded groups, such as the EU and the NAM, play an important role in the decision-making of the OPCW (Interviews 4 and 9). Whether coordinating bodies or regional groups have a common statement at the ECs and CSPs can be a good indicator of the role they play (Interviews 4 and 8). According to one interviewee, the main division line in the policy-making organs is between industrialized countries and NAM countries (Interview 9).

It also has to be taken into account that permanent representatives of the different countries to the OPCW receive instructions from a variety of government ministries or offices. While permanent representatives are generally sent from the Ministries of Foreign Affairs, the National Authorities are often situated in other government branches, like the Ministry for Industry or Economics. National positions are coordinated with additional institutions such as the Ministry of Defense, the Ministry of Energy, the military complex and specialized agencies on non-proliferation (see Interviews 4-10, 12). Since each of these bodies deals with a different aspect of the Chemical Weapons Prohibition Regime, they also have different interests. Thus, the CWC implementation is not only the subject of negotiation between States Parties, but also a matter of negotiations between different agencies within a State Party. In particular the relationship between a Permanent Representative of a State Party, which is entrusted with the diplomatic negotiations, and the National Authority of a State Party, which is in charge of practical implementation, is a contentious one. While the permanent representatives care mostly about the political dimension of the regime, the National Authority sees the matter of the technical impact of provisions to be of greatest importance. Thus, coordination between these different positions also influences the policy outcome of the OPCW. States Parties are not homogenous entities and so negotiations take place on various levels, on each of which there are different actors trying to exert their influence.

## **VII.5. Past transformation and the impact of the security environment**

There were many different opinions as to whether the Chemical Weapons Prohibition Regime has transformed in previous years. Although it was noted that new issues appeared on the agenda that constantly required decisions on technical adjustments, the

overall scope of the regime has not changed (Interviews 1, 2, 4). In order to change the scope of the regime, an amendment of the Convention would be necessary - an action of which the majority of the States Parties representatives disapproved. (Interviews 4, 5, 12) Yet, the interviewees emphasized that there were certain shifts in emphasis over time concerning the different work areas of the OPCW. According to one interviewee the “intensity of the implementation and the focus on different areas kind of reflects priorities of the Director-General” (Interview 7: 170-172).

Whilst destruction-related activities remained the core task of the OPCW, other activities have gained in importance over the years. This especially concerns Article VII (Implementation), Article X (Assistance) and Article XI (Cooperation) according to the interviewees (Interviews 3, 8, 12). The flows in emphasis not only come from the DG’s preferences, but also from increased membership and/or the emergence of new threats. As more African states have become States Parties to the Convention throughout the years, the provisions on international cooperation have received greater attention (Interview 3). At the same time the changes in the security environment led to more focus on Article VII and Article X. Almost every interviewee identified the rise of terrorism as the most dramatic change in the security environment since the Convention’s entry into force. The interviewees pointed out that the Convention was not designed to cope with terrorist activities by non-state actors (Interviews 4, 5, 6, 9, 12, 13). Yet, the threat of terrorism has still affected the Chemical Weapons Prohibition Regime:

Well, the effect it has had particularly after 9/11 is that many states have become aware that it is of outmost importance for the internal security to exercise appropriate controls of chemicals within their territories. And that has given, if you wish, to the Chemical Weapons Convention a new dimension. (Interview 11: lines 192-195)

The equal implementation of all provisions of the Convention was prioritized after the events of 9/11 (Interview 10). It was also stressed that the threat of toxic terror is considered when deciding the future tasks of the OPCW (Interviews 4, 9). New developments in the security environment are always taken into account.

So, the world is constantly changing and the Convention has an inevitable objective. It’s up to States Parties to continue their work and by this to make sure that the Convention remains relevant, also in another security environment. (Interview 5: lines 241-243)

## **VII.6. Future development and regime stability**

All interviews talked about the far-reaching changes that are ahead of the OPCW. The States Parties will soon be concluding their destruction programs. Consequently, verification of chemical weapons destruction will not be required anymore.

So, now there is a discussion how to transform the aims of the organization and the organization as such. What should the organization do when all stockpiles of chemical weapons are destroyed? On what should the future organization emphasis? We are dealing with these questions right now in many consultations. (Interview 4: lines 198-202)

Until this point in time most financial resources were allocated to the destruction agenda. When the destruction of chemical weapons ceases, either the resources will have to be shifted to other activities or the overall size of the organization will have to shrink. Some interviewees assumed that the overall size of the organization would decrease, since many States Parties wanted to cut their financial contributions, given the current financial crisis (Interviews 1 and 2). Other interviewees elaborated on their opinions that the OPCW would shift towards an equal implementation of all provisions of the Chemical Weapons Convention (Interviews 5 and 8). It was clear from the statements made that industrialized nations would prefer to focus on non-proliferation, while developing countries would favor more concentration on Article XI. (Interviews 1, 2, 8, 12)

No State Party has ever claimed that chemical weapons should not be destroyed or that chemical weapons could be used in certain circumstances. So that prohibition is universally accepted. As for how to pursue the agenda of the so-called non-proliferation, namely how to control the industry and how to inspect the industry, we do not find the same degree of unanimity. There are divergent views. (Interview 11: 45-50)

The regime's stability relies on the States Parties' unanimous commitment to destroy chemical weapons. It is now up to the policy-making organs to find a similar consensus on the future of the organization. Some voiced worries that States Parties' inability to find an agreement with regard to this issue would damage the regime in the long run (Interviews 3, 4, 8, 12).

However, the transformation of the OPCW will not take place as soon as envisaged in the Convention, according to which all destruction activities must be concluded until 29 April 2012. Besides the two major possessor states, Libya is assumed to have difficulties complying with the final destruction deadline. Not meeting the destruction deadline is a violation of the Convention. Yet, the majority of interviewees reckoned that this violation would not endanger the overall stability of the regime, because all States Parties are genuinely interested in keeping the regime in place. There was a general understanding

that there has to be some political reaction from the policy-making organs, but not as grave as a complaint to the Security Council (Interviews 1, 2, 3, 4, 6, 12). Even though no interviewee questioned the commitment of the concerned States Parties to destroying their CW stocks, for some states it is of great importance to sanction any non-compliant. Otherwise exceptions would be created that endanger the validity of the overall regime (Interview 5). Discussions about how to deal with the violation of destruction deadlines are ongoing. One interview partner stated that the elaborations made so far have already left the States Parties with a narrow track to navigate (Interview 12).

Whatever happens, no interviewee could imagine that the organization would cease to exist. The Technical Secretariat needs to be capable of conducting challenge inspections and industry verification exercises (Interviews 1, 3, 4, 7). After all, not only the missing agreement on the future of the OPCW would impede the regime's effectiveness, but also a missing decision on amending the regime's scope.

Well, I can hardly see any big danger that threatens the Convention. The only issue is that we are probably going to administer the subject dead in the future, because we are not able to find an agreement in amending the current schedules. So, this is the biggest concern. (Interview 2: 465-468)

It was acknowledged that the regime might be damaged if some States Parties decide to leave the regime.

Well, the biggest threat would be if one of the big players is forced out of the organization or takes the decision to leave the organization, because that would introduce a major imbalance. And I am referring particularly to the big possessor states. If one or two were forced to leave or decide to leave, that would be a major threat to the regime. There are international organizations where the participation of the two big players is desirable, but not essential, like the ICC. But in a disarmament or international security organization the absence of either one of them plus a number of other major actors, such as emerging powers, like European powers, would seriously endanger the effectiveness. (Interview 12: 287-294)

Despite these threat scenarios, all interviewees stressed that the regime is a very stable and successful one. Some interviewees even found difficulty in identifying any threat for the regime.

## **VII.7. Summary of key findings**

According to the interviewees, the discussion on a comprehensive chemical weapons ban was initiated by the two Cold War powers. The final conclusion of the Chemical Weapons

Convention was driven by geopolitical considerations, most prominently the proof of horizontal proliferation.

In general, interviewees voiced their satisfaction with the effectiveness of the regime, as 60% of the chemical weapons stocks have already been destroyed. The regime's stability strongly relies on the wide consensus of all parties involved to eliminate chemical weapons forever.

The OPCW was identified as a fairly efficient organization. However, it seemed essential that the States Parties should remain the masters of the organization, whereas the Technical Secretariat is the functional organ which provides the necessary technical information. According to one interviewee, the States Parties' involvement in the OPCW is comparatively high.

It was mentioned that the States Parties faced some difficulties in the decision-making process. Even if the striving for consensus contributes to the regime's stability, it hampers the efficiency of the policy-making organs. The principle of consensus allows States Parties to acquire negotiation leverage just by saying no. States Parties which contribute largely to the OPCW's budget or States Parties which possess knowledge about chemical weapons were determined to be powerful actors. It was also stressed that the personal engagement of the diplomat representing a country could affect the State Party's standing. However, in most cases different regional or like-minded groups dominate decision-making within the OPCW. In general, the regime was praised for its non-discriminatory approach. All States Parties - whether chemical weapons possessors or not - are equal.

There was consent that NGO's involvement in the Chemical Weapons Prohibition Regime has been limited. Also chemical industry associations have more of a say at a national level than at an organizational level. It was stated that the influence of both NGOs and chemical industry associations might increase after CW destruction is finalized. Discussions on the future of the implementing organization are taking place right now. As the States Parties' viewpoints in this respect differ, some interview partners voiced concern about the future stability of the regime.

When talking about changes of the security environment, the interviewees often referred to the threat of toxic terror that is not addressed by the Convention. The only way to encounter this terrorist threat is to fully implement all provisions of the Chemical Weapons Convention.



## VIII. CONCLUDING REMARKS

This thesis aimed to explore the pre-conditions for regime success in the field of multilateral disarmament and non-proliferation. In the previous chapters an analysis of the emergence, the characteristics as well as the effects of the Chemical Weapons Prohibition Regime was performed. On the basis of this analysis, the validity of the hypotheses presented at the beginning of the study is discussed.

The Chemical Weapons Convention was concluded in 1992, after more than two decades of negotiations. The initiative to form a universal ban on chemical weapons originated from the super-powers of the Cold War, the U.S. and the USSR. Military experts have ascertained that chemical weapons only had little military value as their effects highly depended on meteorological conditions. In addition, the storage of chemical weapons is expensive and dangerous. So both countries were genuinely interested in a world free of chemical weapons. Indeed, the bilateral consultations between the U.S. and the USSR mainly drove the development of a comprehensive chemical weapons ban. It was only after the Soviet Union collapsed that the multinational negotiations of the Chemical Weapons Convention provided by the Conference of Disarmament gained in importance. The Iran-Iraq War of the 1980s proved that horizontal proliferation of chemical weapons had taken place. The international community realized that more and more developing countries were capable of deploying chemical weapons. And so a conclusion to the Chemical Weapons Convention became a matter of priority. In the end, the U.S. President urgently called for the finalization of the Convention.

Since ancient times, chemical weapons have been associated with extreme cruelty. The Geneva Protocol was generated as a result of the atrocities of WWI. Yet, the Geneva Protocol's effectiveness was limited. Whereas alleged chemical weapons deployment was reported in some interstate conflicts after WWII, none of these incidents triggered a public outcry. It was not until Iraq attacked unprotected civilians with chemical weapons in the late 1980s that other countries officially condemned the use of chemical weapons. By attacking unprotected civilians, Iraq had gone too far. When it emerged that industrial companies from Western Europe and the U.S. had contributed to the Iraqi and Libyan chemical weapons production programs, the chemical industry came up against wide

criticism. According to the interviewees, chemical industry associations decided to get actively involved in negotiation of the Chemical Weapons Convention in order to rid the chemical industry of its reputation as a dirty business. As the Convention's declaration obligation concerns less than 1% of the worldwide chemical industry, the burden for the chemical industry was manageable. By actively participating in the last phase of negotiations, chemical industry associations not only managed to be heard with their concerns, but also influenced the national position of those states which are host to large chemical industry complexes. Besides, the engagement of chemical industry associations positively affected the final conclusion of the Convention.

Taking these observations into account, the first hypothesis which states that the CWC was generated primarily due to material and politico-strategic interests can be partly verified. While it seems wrong to say that moral considerations in relation to the chemical weapons taboo did not play any role, it is hard to imagine that the regime would have come into existence if greater military value had been attributed to chemical weapons.

The second hypothesis can be fully verified. Chemical industry associations took a strong stake in the end of negotiations and appeared as one of the loudest proponents of the chemical weapons ban. It was clear from the beginning on that the chemical industry needed to contribute to the verification regime drawn up in the Convention by providing data and hosting inspections. According to the interviewees, the cooperation with the chemical industry has been very prosperous since the Convention entered into force. As the National Authorities of the States Parties are in permanent contact with concerned companies and national industry associations, they can also influence national positions.

Hypothesis 2b suggests that the work of the OPCW as an implementing organization is characterized by a multi-stakeholder approach based on the strong participation of NGOs, chemical industry associations and the epistemic community. Having investigated the OPCW's development and having analyzed the expert interviews, it can be concluded that the engagement of non-state actors at OPCW level is limited. It is true that NGOs and chemical industry associations take part in the sessions of the Conference of the States Parties and hold seminars on a regular basis. Yet, according to the interviewees, these parties possess little leverage in the decision-making process. Whereas NGOs fulfilled the important task of capacity-building before the Chemical Weapons Convention entered into effect, their involvement at this stage has been limited. The only exception is that

scientific NGOs in particular are very active in providing information for Review Conferences. It was also said that NGOs and the epistemic community might receive a greater role within the regime, once the agenda of the OPCW transforms in response to the completion of destruction activities. A first step in this direction was set by the Director-General who entrusted a panel of scientific experts to elaborate on the future of the organization. So far, the States Parties are the most important actors in the OPCW. Representatives of the chemical industry can exert some influence at a national level, but not at OPCW level. How powerful the respective national chemical industry association is, depends on the chemical industry's size and the governmental policy. While at the end of the day the OPCW has a relationship with member states, those with big chemical industries will not ignore objections of chemical industry associations. If the OPCW focuses on non-proliferation in the future, chemical industry representatives will gain influence. After all, hypothesis 2b cannot be verified, because the regime is less characterized by a multi-stakeholder-approach than other multilateral regimes. The States Parties remain the most important actors. However, it has to be kept in mind that the States Parties are not homogenous entities. Many different government agencies are involved in implementing the CWC, and so there are extensive negotiations at an intra-state level as well as at an inter-state level.

There is no doubt that the existence of the OPCW is vital for the successful implementation of the Chemical Weapons Convention. Most of the interview partners identified the far-reaching verification regime as a particular strength of the Chemical Weapons Prohibition Regime. In addition, the policy-making organs of the OPCW take care that ambiguous provision of the Convention are specified and that the ban stays functional in a different security environment. So far, the policy-making organs have taken decisions by consensus. In all but one sessions of the CSP it was possible to adopt a report on consensus. The consensus principle simultaneously embraces advantages and disadvantages. Adopting decisions on consensus implies that all States Parties agree. However, the striving for consensus can be exploited by States Parties as a de facto veto right which is not foreseen in the Convention (Interview 12). Furthermore, the striving for consensus delays processes and causes weak decisions.

The Technical Secretariat was praised for its achievements. Since the CWC entered into force, the TS has proactively been pushing for universality and national implementation.

In other contentious areas such as Article X and Article XI the TS has succeeded in making some progress by focusing on practical implementation. Since State Party confidence in the regime derives from the inspections conducted by the independent staff of the Technical Secretariat, it has largely contributed to the regime's overall stability. By providing technical expertise, the Technical Secretariat has been able to influence the policy-making within the OPCW to a certain degree. According to the interviewees, the Director-General has even more leverage as he has some prerogatives such as presenting the budget and representing the organization to the outside world. The Director-General's priorities are reflected in the agenda of the OPCW. Despite all these factors, the interviewed States Parties representatives stressed that the States Parties had to remain the masters of the organization. Also, Bustani's removal proved that a Director-General cannot impose his own program on the organization. Ultimately, the organization depends on the financial contributions of the States Parties, who have to be convinced that both the Technical Secretariat and the Director General act according to their will. One way to curtail the influence of the Technical Secretariat staff is provided by the tenure policy: it limits tenure at the OPCW to seven years. Yet, some interviewees criticized this policy as it results in a loss of expertise. In general, hypothesis 3, which states that the OPCW is vital for the successful implementation of the Chemical Weapons Convention and that the Technical Secretariat has acquired some influence, can be verified. Nevertheless, the States Parties are the decision-makers. As reported by one interviewee, the involvement of States Parties at a political and at a micro-management level is comparatively high (Interview 9).

The question is if some States Parties have more influence than others. According to the Convention, all States Parties share the same rights and duties. So far, all States Parties have complied with the destruction obligation, even if the two biggest possessor states will not be able to comply with the final destruction deadline. According to one interviewed State Party representative, the non-compliance by the U.S. and the USSR requires some kind of political reaction, as the principle of equality will otherwise be placed at risk (Interview 5).

Some provisions of the Chemical Weapons Convention were included with the specific purpose to attract many countries to the regime. For instance, ICA programs are of special interest to developing countries. On the contrary, industrialized nations are interested in

having as many countries as possible adhering to the ban, in order to prevent the horizontal spread of chemical weapons. Each country possesses one vote in the decision-making process. As decisions are taken by consensus a country can also block a decision, regardless of its size or expertise. Some regional groups or like-minded associations have a strong say. The more States Parties a group represents, the bigger are its chances to influence the decision-making process. In this respect it was mentioned that individual, highly engaged diplomats can contribute to a country's standing within the organization. In fact, it is not the big countries that dominate the decision-making in the OPCW, but the engaged countries acting on behalf of a group. Lately most negotiations have shown two blocks confronting each other: "WEOG + EU" versus NAM states. The fact that both blocks have completely different interests has led to a rather balanced implementation of CWC provisions. By comparing it with other regimes, the Chemical Weapons Prohibition Regime displays a fairly egalitarian multilateralism. Therefore, the fourth hypothesis, which assumes that only big countries dominate the decision-making within the regime, can be falsified.

The last hypothesis states that the regime is very stable. According to the interviewees, the Chemical Weapons Prohibition Regime is the most successful regime in the field of disarmament and non-proliferation. As for eliminating existing chemical weapons stocks, the regime has accomplished great results. Also, cooperation with the chemical industry on the issue of inspections and declarations was praised. The regime's main weakness is the incomplete implementation of the Chemical Weapons Convention at a national level. Given the potential risk that chemical weapons are used by terrorists, the States Parties' non-compliance with Article VII is very concerning. The emergence of global terrorism was the most significant change in the security environment over the last decade. Since the Convention was written before global terrorism became an urgent issue in international relations, it does not adequately cover terrorist activities by non-state actors. Hence, an open-ended working group on terrorism was established right after the events of 9/11. The interviewees identified the non-discriminatory implementation of all provisions as the best way to prevent the terrorist use of chemical weapons. Since the States Parties are now more aware of the threat of toxic terror, the Chemical Weapons Prohibition Regime has overall gained in significance. As illustrated, the unilateral behavior of the U.S., which

caused the removal of the first Director-General, did not damage the regime in the long run. The Chemical Weapons Prohibition Regime has proven to be a very stable one.

To draw a conclusion, the investigation has revealed that the regime's stability is based on six factors:

1. There is wide consensus among all States Parties involved that chemical weapons should be destroyed. So far, discussions within the OPCW have concentrated on the practical implementation of the ban.
2. With 188 member states, the regime is almost universal.
3. The States Parties have confidence in the regime's validity due to the far-reaching verification provisions.
4. The States Parties are the most relevant agents to determine policy outcomes. Since they are highly involved in the management of the organization, they feel to be in control of future developments.
5. The States Parties have an equal standing within the organization, since each State Party has one vote and decisions are taken by consensus. The regime reflects more or less the interests of all States Parties.
6. The regime enhances cooperation between States Parties in numerous areas. There are strong bonds between all the involved parties.

### **VIII.1. Theories do matter**

This final section discusses which of the theories outlined in the beginning best explains the development, endurance and effects of the Chemical Weapons Prohibition Regime.

The neorealist assumption – which states that regimes only come into existence if it is in the interest of the major powers - largely applies to the emergence of the Chemical Weapons Prohibition Regime. However, moral considerations were also involved in the process of CWC creation. Iraq's use of chemical weapons against unprotected civilians accelerated the final conclusion of the Convention. Neorealism emphasizes that the most powerful states are the only ones to decide a regime's future. Indeed, it has been proven wrong that the U.S. can determine the regime's development. The U.S. unilateral behavior during the Bush Administration did not result in a total erosion of the regime and other

States Parties have also been able to influence the policy outcome. Neorealists argue that the effectiveness of regimes is especially limited in the field of international security. Even though regimes do install norms and rules, states can still decide against adhering to those rules. In respect to the Chemical Weapons Prohibition Regime, it is very unlikely that any country will violate the chemical weapons ban. The Convention contains a variety of provisions that foster State Party cooperation by establishing networks and bonds. Hence, there is a deep level of integration that contributes to the regime's stability. Whereas neorealism might help to explain the initial construction of the Chemical Weapons Prohibition Regime, the theory is not suited to explain its further development.

According to regime theory, regime creation is a process of extensive bargaining between different stakeholders, whose interests are based on material causes. This was the case for the Chemical Weapons Convention whose creation took over 20 years and was subject to extensive bilateral as well as multilateral negotiations.

Advocates of regime theory acknowledge countries as the most important - but not the sole actors - of international relations. The Chemical Weapons Prohibition Regime allocates responsibilities to countries as well as to industrial companies. Even though the chemical industry is an actor within the regime, at the end of the day the OPCW has relationships with the States Parties. The States Parties remain the most important actors within the regime. Regime theory therefore applies in regard to determining the role of the different stakeholders.

Furthermore, regime theory stresses the importance of regimes which establish norms and rules and thus, stabilize actors' expectations. Indeed, the Chemical Weapons Convention lays down clear obligations for each party. Due to the fact that an organizational entity to oversee the CWC implementation has been established, the States Parties have great faith in the regime. Regime theory determines that international organizations cannot act as independent actors. While it is true that the Technical Secretariat of the OPCW conducts inspections autonomously, these inspections are based on data provided by States Parties. The TS cannot conduct any inspection because of the suspicion of illegal activity. Only States Parties can call for a challenge inspection. The Technical Secretariat's independence is therefore limited. However, the Technical Secretariat staff can exert autonomous influence of their own when publishing information or providing technical advice to States Parties.

Moreover, scholars of regime theory argue that regimes are constantly changing according to their environment. These changes, however, are rather changes within the regime than of the regime itself, which cannot be dissolved easily. Interests of individual States Parties cannot seriously damage multilateral regimes which are characterized by strong bonds. Indeed, the Chemical Weapons Prohibition Regime enhances cooperation between States Parties in numerous areas (i.e. interaction of National Authorities, cooperation in Articles X and XI). Yet, regime theory neglects the fact that the decision-making is not only based on negotiation, but also on social learning. As Tabassi (2004) has asserted, the ban on chemical weapons evolved to become part of customary international law. Even if States Parties perceive the costs of the regime to outweigh the benefits, it is very unlikely that they will use chemical weapons. The taboo against chemical weapons is much stronger now than before the Chemical Weapons Convention's entry into force.

Neofunctionalists expect regimes to come into existence if states realize that the desired outcome can only be reached in cooperation with other states. Neofunctionalism determines that not only negotiations, but also social learning lead to the formation of regimes. This is true for the Chemical Weapons Prohibition Regime, which was created because states endorsed a world free of chemical weapons. Chemical weapon deployment by Iraq clearly showed that a far-reaching ban on chemical weapons is required.

Furthermore, Neofunctionalism assumes that a regime continuously widens its agenda due to spill-over effects. In this context, neofunctionalism identifies technocrats as important stakeholders that push for broadening the tasks of their organization, because it allocates more power to them. By means of smart bargaining and technical expertise, technocrats can create spill-over effects that lead to deeper integration. In fact, the Technical Secretariat succeeded in making some progress in rather contentious areas of the Convention by advocating "de-politicized programming". However, the agenda of the OPCW has not been transformed. The States Parties, which are deeply involved in the management of the organization, take care that the regime does not develop beyond the Convention's provisions. One has to keep in mind that the Chemical Weapons Prohibition Regime is restricted to the field of chemical weapons. Neofunctionalism, for which the European Union serves as a prime model, seems for many parts inappropriate to describe such a specified multilateral regime.

Yet, the neofunctionalist notion of the role of technocrats applies to some extent to the Chemical Weapons Prohibition Regime. As it has turned out, the TS staff and the DG play a significant role within the OPCW. While it is the States Parties' task to adopt decisions, the advice of the Technical Secretariat is often reflected in these decisions. Moreover, the Director-General can act independently to a certain degree. However, the fact that the first DG was dismissed reveals that technocrats have to strike a balance between their own initiatives and the will of the States Parties.

Constructivism dismisses the idea that regimes are created by self-interested rational nations that have material interests in mind. Instead they understand regime creation as a continuous process of norm creation, in which many agents are involved. As material power is secondary in this process, NGOs, epistemic communities and the media are the most influential agents. This notion does not apply to the creation of the Chemical Weapons Prohibition Regime. Even though chemical weapons had already been associated with extreme cruelty in Ancient Greece, it has taken until 1992 for a comprehensive ban on chemical weapons to be generated. The final conclusion of the Convention can be traced back to the fact that chemical weapons had not been seen as very useful warfare instruments. Moreover, the States Parties are the most important actors within the Chemical Weapons Prohibition Regime. NGOs and epistemic communities are active in presenting new ideas, but the States Parties decide if those ideas are applied. There is almost no media coverage of the Chemical Weapons Convention or the work of the OPCW. Consequently, the public is largely unaware of the regime's existence. Exceptions at a local level exist. As reported, local citizens' groups have been significant in shaping of the destruction process in the United States. Since the permanent representatives of the States Parties pay attention that the OPCW's development is in accordance with their national positions, the constructivist idea that organizations can act fully independently does not apply. The States Parties decide on behalf of their national economic and security interests, for which they form coalitions with like-minded countries. Indeed, it is very unlikely for any state actor inside or outside the Convention to breach the almost universal taboo against the use of chemical weapons. However, this taboo was constituted by international law negotiated between countries and not by a normative belief supported by various interest groups.

The English School states that regimes emerge on the basis of common interests, common norms and the toleration of ideological differences. The core element for this is international society, which relies on the existence of international law. Not all of these assumptions correlate with the Chemical Weapons Prohibition Regime. First of all, the Chemical Weapons Convention was concluded after decades of extensive negotiations between all States Parties. It is thus a compromise of parties with different positions. Secondly, the Geneva Protocol had already installed a legal norm against chemical weapons use, which was broken several times without any consequences. In contrast, the CWC not only establishes a norm against the use and production of chemical weapons, but also a verification regime that ensures State Party compliance.

International law depends on the nation-state's sovereignty; therefore the English School determines countries as the main actors in international politics. It assumes that the continuous production of new norms eventually leads to an increasingly integrated international society. A regime only loses validity if it contradicts other existing norms or a global moral awareness. This was not the case for the Chemical Weapons Prohibition Regime, which corresponds with Security Council Resolutions 1373 and 1540. Tabassi (2004) concludes that the norm against chemical weapons has developed to become a rule under customary international law. Likewise, all interviewees stated that the use of chemical weapons in a future interstate war was unlikely. Whereas the English School does not correlate with the creation of the Chemical Weapons Prohibition Regime, it correlates with the present standing of the regime.

All five theories include elements that are reflected in the Chemical Weapons Prohibition Regime, but neorealism and constructivism are mostly inappropriate to explain the regime's development. The neofunctionalist notion of technocrats as important stakeholders is mirrored in the Chemical Weapons Prohibition Regime. Yet, it still displays a specified regime that is unlikely to widen its agenda by spill-over effects. In the end, the Chemical Weapons Prohibition Regime is best explained by regime theory and the English School. On the one hand, regime theory is appropriate to explain the creation of the Chemical Weapons Prohibition Regime. On the other hand, the emergence of a universal norm against chemical weapons is best explained by the English School.

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<sup>12</sup> The interviews contain personal views. Thus, they shall not be understood as official statements of the respective delegations.

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# ANNEX 1

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## Questionnaire

### Introduction:

- *What is/was your role in regard to the CWC and the work of the OPCW?*
- *Which institution/person in your home country provides you with instructions?*
- *How have your working experiences with the CWC/OPCW been so far? What were the most notable events/challenges for your work?*

### Regime creation:

- *Since the WWI chemical weapons have rarely been used as warfare instrument? Why?*
- *Why did States, in your opinion, engage in negotiation talks to form a universal ban on producing, acquiring, stockpiling and using Chemical Weapons?*
- *Why did CWC negotiations take so long?*
- *Which actors were central for the formation of the CWC? Who was pusher, who was lagger?*

### CW regime attributes:

- *What is the big strength of the CWC? What are the loopholes of the CWC?*
- *How did you experience the institutional culture and the procedural efficiency of the OPCW?*
- *How would you rate the role of the TS and especially the role of the DG for the functioning of the OPCW?*
- *How did you experience the dismissal of the DG in 2002? What was the problem?*

### Actors:

- Since the OPCW started its work which actors have influenced the decision-making? Are States still the central actors? Have other non-state actors emerged?
- How important are the different regional groups within the OPCW?
- How would you judge the role of the following actors: 1. TS; 2. Epistemic communities (including scientific NGOs); 3. Humanitarian NGOs; 4. Industry; 5. Military complex within states?
- What role do the media play in promoting the CWC?

#### **Regime transformation:**

- Has the OPCW's mandate been transformed over time? Have some new issues appeared on the agenda?
- What are the biggest challenges in regard to the successful implementation of the CWC?
- Do you think the security environment has changed since the CWC entered into force? What was the impact? Has the regime lost or won significance?
- If the destruction deadlines will not be met by the biggest possessor states – what impact will it have?

#### **Last Part:**

- How do you think the Chemical Weapons' Regime will develop further?
- Who or what could seriously damage the effectiveness of the Chemical Weapons' Regime?
- Is there anything else that you feel like has to be said concerning the issue?

#### Additional Questions for Technical Secretariat Representatives

- What is your specific work area?
- What have you done before? How did you get this job?
- What are the particular strengths of the OPCW as implementing organization?
- How would you characterize the relationship between the TS and the State Parties?
- What are the biggest problems/challenges the TS is confronted with in regard to fulfilling its mandate?

#### Additional Questions for Heads of National Authorities

- What is/was your role in regard to the CWC implementation?
- In which ministry is the National Authority seated? How is the cooperation with other government branches?
- What are the biggest challenges you face in your daily work?
- How was the National Authority created?
- How is the cooperation with the industry?
- In how far does the public opinion play a role in your work?

## ANNEX 2

### **English Abstract**

The present study deals with the question of the conditions required for the development of an effective multilateral disarmament and non-proliferation regime. For this purpose, the Chemical Weapons Prohibition Regime, often praised as most the successful disarmament regime, is investigated in terms of historical development, institutional format and policy outcome. Different theoretical approaches serve as a basis for the investigation.

In WWI, chemical weapons were used on a large scale. Due to horrifying effects of chemical weapons seen in the war, the international community decided to form a ban on the use of chemical weapons, taking the form of the Geneva Protocol of 1925. Unfortunately, the Geneva Protocol was not effective in preventing the use of chemical weapons. Yet, due to the emergence of other WMDs, chemical weapons became weapons of limited military value. Thus, in the late 1960s countries decided to form a more comprehensive ban that eliminated chemical weapons entirely. Negotiations took until 1992, when the Conference on Disarmament finally adopted the Chemical Weapons Convention. The CWC, which entered into effect on 29 April 1997, established an independent organization (OPCW= the Organisation for the Prohibition of Chemical Weapons) to oversee its implementation. The thesis investigates the strengths and weaknesses of the Convention as well as the OPCW's development over time.

It turns out that the Chemical Weapons Prohibition Regime is a very stable regime that largely relies on the overall consensus that chemical weapons shall be eliminated. With a membership of 188 countries the chemical weapons ban is almost universal. It is unlikely that any country will use chemical weapons in any future interstate conflict. On the contrary, the threat of toxic terror is highly relevant in today's environment. Hence, the non-proliferation provision of the Convention gained in importance. States Parties are the prime actors within the regime, but the regime is not dominated by any single powerful country. Since decisions are taken by consensus, each decision is subject to extensive negotiations between different regional blocks. In this sense, the Chemical Weapons Prohibition Regime displays a fairly egalitarian multilateralism.

## German Abstract

Die vorliegende Arbeit beschäftigt sich mit der Frage, unter welchen Voraussetzungen multilaterale Abrüstungsregime erfolgreich operieren können. Als Beispiel hierfür wird das internationale Chemiewaffenverbot-Regime, welches von vielen Experten als das effektivste Abrüstungsregime gepriesen wird, hinsichtlich Entwicklung, Struktur und Wirkung untersucht. Die daraus resultierende Analyse basiert auf verschiedenen Theorien der Internationalen Beziehungen.

Als im ersten Weltkrieg Chemiewaffen erstmals systematisch eingesetzt wurden, manifestierte sich die fatale Wirkung dieser Waffen. Die Staatengemeinschaft verabschiedete daraufhin mit dem Genfer Protokoll von 1925 ein Chemiewaffenverbot. Das Genfer Protokoll hatte jedoch nur eine geringe Wirkung. Staaten produzierten weiterhin große Mengen an Chemiewaffen. Dass Chemiewaffen nach dem 2. Weltkrieg nur selten eingesetzt wurden, ist primär auf die Entwicklung effektiverer Massenvernichtungswaffen zurückzuführen. Ende der 1960er entschied sich die Staatengemeinschaft unter Führung der beiden Supermächte eine umfassende Konvention zur Vernichtung von Chemiewaffen einzuführen. Nach jahrzehntelangen Verhandlungen verabschiedete die Genfer Abrüstungskonferenz 1992 die Chemiewaffenkonvention. Mit dieser Übereinkunft, die am 29. 4. 1997 in Kraft trat, wurde auch eine internationale Organisation (*OPCW = the Organisation for the Prohibition of Chemical Weapons*) gegründet, welche die Einhaltung der Konvention überwacht. In der vorliegenden Arbeit werden sowohl die Stärken und Schwächen der Chemiewaffenkonvention als auch die bisherige Tätigkeit der OPCW untersucht. Es stellt sich heraus, dass das Chemiewaffenverbot-Regime ein sehr stabiles Regime ist. Nachdem bereits 188 Staaten die Konvention ratifiziert haben, hat das Chemiewaffenverbot einen annähernd universalen Charakter. Daher ist es relativ unwahrscheinlich, dass Chemiewaffen in einem zukünftigen interstaatlichen Konflikt eingesetzt werden.

Nationalstaaten sind die wichtigsten Akteure innerhalb des Chemiewaffenverbot-Regimes. NGOs und industrielle Gruppierungen spielen im Vergleich nur eine minimale Rolle. Das Regime wird jedoch nicht nur von ein paar mächtigen Staaten dominiert, sondern ist durch eine egalitäre, multilaterale Struktur gekennzeichnet.

# Curriculum Vitae

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## ***Personal Information***

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Date of Birth:	26 <sup>th</sup> March 1988
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## ***Education***

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Oct. 06 – June 11	<b>Political Science, Masters Degree Course and Theatre-, Film- and Media Studies, Bachelor Degree Courses</b> , University of Vienna, Austria  <i>Research Interest: International Relations, International Security and Development, International Organizations;</i>
1998 – 2006	High School, wirtschaftskundliches Realgymnasium der Ursulinen – Innsbruck, Austria Concentration on economics and mathematics;

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## ***Overseas Training***

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Sept. 09 – June 10	<b>Year abroad, Political Science, Department of Public Administration, Erasmus University Rotterdam</b> , Rotterdam, Netherlands (Erasmus Exchange Programme) Main Focus: EU Politics, International Relations, Issues of International Security and Development and Globalization;
August 08	participant at the <b>International Summer School of the University of Helsinki</b> , Course: EU-Russia Relations; HSS Diploma with highest distinction.
March 09	delegate of the <b>Harvard WorldMUN Conference</b> in the Hague 2009
November 08	Participant at the Convention on International Law and Politics at the University of St. Gallen: <i>Migration- Impulse or Threat for ageing societies?</i>
July-August 08	participant at the <b>International Summer Program of the University</b>

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August 08	of <b>Vienna</b> , SHS Diploma of European Studies with highest distinction. participant at the Summer Discourse on Economy, Law and Culture 2008 : <i>Transformations – Challenges of Global Chance</i> ; (organised by the University of Vienna)
January-July 04	One semester as an <b>AFS exchange student in Milwaukee/ USA</b>

### ***Study Tours Abroad***

April 09	Study tour to the <b>United Nations Headquarters</b> , New York, and the <b>World Bank</b> and <b>International Monetary Fund</b> , Washington DC, US (organised by the Dept. of Political Science, Vienna University).
December 08	Study tour to <b>ICTY</b> (International Criminal Tribunal - Yugoslavia), <b>ICC</b> (International Criminal Court) (The Hague), <b>ICJ</b> (International Court for Justice, European Parliament (Brussels), <b>UNESCO</b> (Paris) (organised by the Dept. of Political Science, Vienna University).
May 08	Study tour to <b>Poland</b> , visiting Polish institutions in Krakow and Warsaw; (organised by the Dept. of Political Science, Vienna University)

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Jan.-Mar. 10	10 weeks <b>practical training</b> at the <b>Austrian embassy</b> in the Hague
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