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Africa and the Chemical Weapons Convention

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Abstract

With 188 states parties, the Chemical Weapons Convention (CWC) is one of the most successful international treaties and the 3rd Five-Year Review Conference of the Convention is scheduled for April 2013. The near-universalisation of the CWC in Africa is a testament to the continent's commitment to ensuring that the misuse of dangerous chemicals does not happen either in Africa, or anywhere else in the world. There are, however, still challenges. As the Organisation for the Prohibition of Chemical Weapons (OPCW) shifts its focus away from chemical weapons disarmament to one that concentrates

on non-proliferation and international co-operation and assistance, adjustments to the mandate, programmes and approaches given to the OPCW by its Member States will need to be made. As a way to improve effective national implementation of the CWC in Africa, thereby creating the essential conditions for providing reliable non-proliferation assurances, and addressing new challenges faced by States Parties of the Convention, this paper proposes a number of recommendations for the OPCW¹.

1. A shorter version of this article was published in the Non-Proliferation Monthly Special Issue on the CWC 3rd Review Conference (2013/11).

Introduction

Angola, Somalia and Egypt and now South Sudan, which in July 2011 became the 193rd member state of the United Nations (UN), are among only eight countries that are not party to the Chemical Weapons Convention (CWC). With 188 states parties, the Convention is one of the most successful international treaties and with the 3rd Five-Year Review Conference of the Convention scheduled for April 2013, the time for these African States to become States Parties is long overdue. Angola, Egypt, Somalia and South Sudan like the Democratic People's Republic of Korea and the Syrian Arab Republic, have not even signed the Treaty. Israel and Burma have signed but not ratified. During the 17th session of the Conference of State Parties to the CWC held in November 2012, UN Secretary General Ban Ki-moon stated that 'if a world free of chemical weapons is to be fully realised, it is crucial that these eight states join without delay'. Members of the Non-Aligned Movement (NAM) reiterated this by calling for the total eradication of all chemical weapons throughout the world – including the stocks held by the United States, Russia and Libya - all of whom have had their deadlines to fulfill their commitments to never under any circumstances "Develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone" (Article 1, paragraph 1) extended.

In some senses one can understand why Somalia and Egypt have delayed their accession. Somalia has no real functioning government, which, along with the current internal situation, means that CWC accession in the near future is unlikely. Somalia is party to a limited number of international criminal, human rights, humanitarian and refugee law treaties, and to no conventions covering arms control issues. Egypt insists on linking the issue of nuclear weapons in the Middle East with chemical weapons; holding that Israel, which has a policy of nuclear ambiguity, should first join the Nuclear Non-Proliferation Treaty (NPT) as a non-nuclear weapon state. It maintains that this linkage is a necessary component of its support for a Weapons of Mass Destruction-Free Zone in the Middle East.²

Angola, however – a member of NAM that has no confirmed history of chemical weapons possession and use, no serious external threat to its security since the ending of the decades-long civil war in 2002 and a relatively small chemical

industry - should be able to announce its accession at the 3rd Five-Year Review Conference, a key focus of which will be on all states fulfilling the CWC's core objectives and on developing strategies to prevent the re-emergence or future use of these weapons. Importantly, the three Africa non-parties' (and particularly Angola) accession at this time will reinforce the African Union's (AU) calls for a Chemical Weapons-Free Zone in Africa – something it has been pushing for since at least 2004³ and which was strengthened in 2006 with the signing of a Memorandum of Understanding between the AU and the OPCW that underscores their continuing co-operation in the Convention's implementation.

At the signing ceremony, the then African Union Commission Chairperson, Alpha Oumar Konaré, stated that co-operation with the OPCW was important for the African Union's goal of establishing a chemical weapons-free zone in Africa and in fostering the peaceful uses of chemistry. The OPCW's work in Africa includes the following activities:

- Support for, and fostering of, international cooperation in the peaceful use of chemistry;
- Building African capacity for national implementation of the Convention as a whole;
- Assisting the effective functioning of National Authorities, including the control of imports and exports of Scheduled Chemicals;
- Enhancing understanding of the rights and obligations of States Parties;
- Enhancing understanding of the verification regimes of the CWC; and,
- Facilitating co-operation and enhancing the capacity of African States Parties in the area of assistance and protection against the use or threat of use of chemical weapons.⁴

Adherence to the CWC thus provides concrete benefits for all OPCW Member States. Not only does the OPCW support programmes to enhance Member States' national capacity infrastructure and regulatory framework to implement the Convention, but they also strengthen measures to protect civilian populations against chemical

3. Workshop on the Universality and the Implementation of the Chemical Weapons Convention (CWC), conducted jointly by the Government of the Federal Republic of Ethiopia and the Organisation for the Prohibition of Chemical Weapons (OPCW) in Addis Ababa, Ethiopia, 20 to 22 April 2004.

4. Noel Stott, Enhancing the Role of the OPCW in Building Africa's Capacity to Prevent the Misuse of Toxic Chemicals, *Africa's Policy Imperatives*, Issue 6: May 2011.

2. See: Noel Stott, Time for Angola to Ratify the Chemical Weapons Convention, *ISS Today*, 5 December 2012.

weapons. The Convention eliminates a common threat, enhances mutual trust and mandates the OPCW to deliver concrete support, assistance and protection to all Member States threatened by a chemical attack, or who actually suffer such an attack. Perhaps, in the African context, more importantly, the OPCW also facilitates co-operation amongst States Parties to promote the peaceful uses of chemistry.⁵ As such these programmes yield direct economic benefits to a continent struggling with socio-economic development.

Africa and the OPCW

Africa is a major stakeholder in the Organisation for the Prohibition of Chemical Weapons (OPCW): African States Parties to the Chemical Weapons Convention are actively involved in the work of the OPCW's policy-making organs and subsidiary bodies and have in the past been elected chairs or vice-chairs of Conferences of the States Parties. The Executive Council always has nine African States as members representing the African region and thus they are able to influence policy decisions enabling the OPCW to function effectively. African States are also included on the OPCW's subsidiary bodies, including the Advisory Body on Administrative and Financial Matters, the Confidentiality Commission and the Scientific Advisory Board. The contribution of the African States Parties is also reflected in the large number of senior posts in the Technical Secretariat that are held by nationals from the region.⁶

In 2007, the OPCW Director-General proposed the development of a Programme to Strengthen Cooperation with Africa on the Chemical Weapons Convention. The Programme would:

- Respond to the particular needs of African States Parties;
- Contribute to the effective and non-discriminatory implementation of the Convention;
- Be supported by Regular Budget and Voluntary Contribution from Member States/European Union and in kind contributions mostly in Developing Countries.

Over the years the Programme has expanded in both quantity and in its scope of support and has further enabled African actors to participate in training courses and workshops on the continent

5. <http://www.opcw.org>

6. <http://www.opcw.org>

on topics that are of direct relevance to them.⁷ The OPCW, in co-operation with States Parties from the region, co-hosts events in Africa ranging from regional meetings of CWC National Authorities to sub-regional training workshops for customs officials.

As of 31/12/2011, the region of Africa has gained from the OPCW's international co-operation programmes in the following ways (global figures in brackets):

- 130 analytical chemists trained (of 315)
- 112 Associate Programme participants (of 265)
- 610 Conference Support participants (of 1,966)
- 68 interns (of 115)
- 56 conferences (of 239)
- 48 laboratories (of 92)
- 153 research projects (of 437)
- 30 transfers of used and functional equipment (of 73)
- In total, 1207 individual and facility beneficiaries (of 3,502)⁸

Recent and forthcoming OPCW events in Africa⁹ include Analytical Chemistry courses in Tunisia and in South Africa.

The OPCW's implementation support programme includes assisting States Parties to meet their obligations under Article VII of the Convention: establishing National Authorities for effective liaison with the OPCW; taking the necessary steps to enact legislation, including penal legislation, and adopt administrative measures to implement the Convention; identifying declarable chemical industry and trade activities; and submitting accurate declarations. In addition, the OPCW has also focused on the areas of customs officials and port authorities and the implementation of the requirements of the transfers regime, licensing, and the training of National Authority personnel as national inspection escorts. All this has resulted in: 49 of the 51 States Parties having National Authorities; 26 submitting Art. VII(5) reports; 12 having legislation covering all key areas and 4 undertaking Article XII(2e) reviews.¹⁰

7. Noël Stott, Enhancing the Role of the OPCW in Building Africa's Capacity to Prevent the Misuse of Toxic Chemicals, *Africa's Policy Imperatives*, Issue 6: May 2011.

8. <http://www.opcw.org>

9. See the OPCW website for details of events hosted or due to be hosted in Africa, <http://www.opcw.org>

10. National Implementation Update, *OPCW Today*, Vol. 1 No. 2 August 2012.

The Importance of National Legislation

The near-universalisation of the CWC in Africa is a testament to the continent's commitment to ensuring that the misuse of dangerous chemicals does not happen either in Africa, or anywhere else in the world. While it remains important to promote accession in the remaining three states not yet party to the Convention, effective implementation of the CWC in the existing African States Parties continues to be an ongoing challenge. In particular, the fact that only 22 percent of African States Parties have implementing legislation covering all key areas of the CWC is of major concern. The CWC contains detailed implementation provisions explicitly requiring States Parties to adopt as criminal offences activities that violate the treaty and to extend these measures to offences committed by their citizens outside of their territory. National laws are also necessary to establish and operate the National Authority required under the CWC.

Given the resource constraints that most African countries operate under, it may be useful for African States Parties to consider an integrated approach to the regulation of WMD issues in general. A useful model of the latter is South Africa's Non-proliferation of Weapons of Mass Destruction Act (Act No. 87 of 1983) and its interdepartmental structure - the South African Non-Proliferation Council for Weapons of Mass Destruction (NPC) - which administers the Act and controls the transfer (export/import/transit/re-export) of dual-use technology, materials and goods. While it may be true that each of the major treaties relating to nuclear, biological and chemical weapons have different requirements for national implementation measures, it does not follow that states need to adopt a separate and dedicated legal instrument for each.

Such an approach would make it easier for States to implement related treaties such as the NPT and BTWC and indeed UNSC Resolution 1540 thus making the best use of limited resources to, for example, effectively control dual-use nuclear, biological and chemical materials. This approach would also prevent a collage of export control, customs and criminal legislation in a particular country. In addition, it may make it possible for States, through appended regulations, to make provision for new technological developments and risks in the field and new UNSC resolutions covering non-proliferation issues that may arise in the future.

Importantly, the adoption of the necessary legislation by African States will demonstrate their full compliance and build confidence that the

assistance they receive in the development of advanced chemical technologies will be used only for peaceful purposes.

Involving other Stakeholders

Although the OPCW has achieved a great deal in Africa and beyond, it cannot continue to do this alone. Other stakeholders of the established National Authorities, such as the chemical industry, customs authorities and other governmental stakeholders, regional and sub-regional bodies, as well as civil society must work collaboratively to ensure that the practical aspects of the Convention are implemented appropriately. This co-operation should also include a tailor-made approach to implementing the CWC, and other related WMD conventions in Africa.

Importantly for Africa is the impact that conventions such as the CWC have on socio-economic development. Benefits of being a States Party includes the right to participate in, the fullest possible exchange of chemicals, equipment and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under the Convention. Therefore, engagement on this issue in Africa must include (or even predominantly focus on) both the developmental benefits as well as the security dimensions of OPCW membership. Implementing the CWC does not solely pertain to security - keeping chemicals out of the hands of unauthorised state and non-state actors. Technical assistance, co-operation, and the transfer of technology are probably most relevant to a continent that struggles with challenges such as poverty, unemployment and under-development.

Recommendations

As the OPCW shifts its focus away from chemical weapons disarmament to one that concentrates on non-proliferation and international co-operation and assistance, adjustments to the mandate, programmes and approaches given to the OPCW by its Member States will need to be made¹¹ As a way to improve effective national implementation of the CWC in Africa, thereby creating the essential conditions for providing reliable non-proliferation assurances, and addressing new challenges faced by States Parties of the Convention, such as the potential use of

11. See: Amelia Broodryk, 'Is there a role for civil society in the evolution of the OPCW? Academics, NGOs and States Parties: conflict or complementary?', presentation to a Wilton Park Conference: Chemical Weapons Convention: Third Review Conference and beyond, 15 - 17 October 2012.

toxic industrial chemicals (for example, by non-State actors), the following recommendations are proposed for the OPCW:

1. To follow the example of a recent African initiative to establish a Forum of Nuclear Regulatory Bodies in Africa (FNRBA). The FNRBA sees itself as assisting States to upgrade their legislation and regulatory frameworks, to promote education training and managing the recent increase in uranium mining on the African continent. The work of the FNRBA complements that of the International Atomic Energy Agency's (IAEA) Nuclear Security Programme in Africa. A similar African initiative with a mandate on the CWC and the chemical industry, in cooperation with the OPCW, could be created in order to sustain and maintain a network for information exchange among diplomats, scientific communities, academic institutions, chemical-industry associations, NGOs, and regional and international institutions.
2. The African Union, which, as described above, has a Memorandum of Understanding on Cooperation with the OPCW's Technical Secretariat, should be lobbied to take a more proactive role in strengthening States Parties' capacities against the misuse of toxic chemicals and in finding the appropriate balance between security and development.
3. The OPCW should assist African States in examining current examples of general WMD control legislation that covers the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and their Destruction (BTWC), the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as well as the CWC.
4. Given that the role of both the OPCW and African civil society is to promote international peace and security through disarmament and non-proliferation the complementary nature of our activities should be recognized and both should embark on mutually reinforcing actions in, for example, promoting awareness and universality of the CWC in Africa and lobbying for the enactment of domestic laws.♦

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