

THE PURSUIT OF CONSENSUS

The Fifth Chemical Weapons Convention Review Conference

In May 2023, 193 state parties to the Chemical Weapons Convention (CWC) convened for a five-day Fifth Review Conference in The Hague – a special session held once every five years that is crucial for advancing the Convention’s objectives. Despite the urgency of addressing substantive matters such as cases of chemical weapons use, for the second time in a row state parties failed to reach a consensus on the final document. Some argued that a longer conference duration might have altered this outcome. However, this Spotlight explains why, despite the high opportunity cost and regardless of the conference’s duration, a no-consensus outcome was inevitable due to current geopolitical tensions and an ongoing obstructionist policy targeting the CWC from within.



Podium during the Fifth Review Conference of the Chemical Weapons Convention. The Conference was held at the World Forum, The Hague, the Netherlands from 15 May to 19 May 2023. © OPCW CC BY-ND 2.0 via <https://www.flickr.com/photos/opcw/52899277797/in/album-72177720308298439/>.

by [Almuntaser Albalawi](#) and [Kristoffer Burck](#)

Review Conferences are an established practice of arms control regimes, including the CWC regime. The decisions taken at the conference do not amend the treaty text. However, they can still lead to legal consequences by providing further interpretations of the treaty text that might affect existing obligations, add new ones, or revise previous interpretations.¹ They can also yield visions and guidance on future steps vis-à-vis the treaty’s implementation. Review Conferences

usually adopt a final outcome document based on consensus, representing the views of all state parties and marking a successful review process. Consensus is not a legal requirement, however. Outcome documents and decisions can be adopted by majority voting. Yet, historically, a consensus has been perceived as the most politically viable basis to attain substantive decisions with implications beyond operational matters. In the CWC regime, state parties failed to adopt such a document at the previous Review Conference in 2018. As a result, delegations were eager to achieve a better outcome at the Fifth Review Conference this year.

Issues identified as relevant for the future orientation of the Convention included international cooperation and assistance in the peaceful use of chemistry, as well as verification. More concrete topics also demanded discussion, such as the highly contentious issue of chemical weapons use by the Syrian government and how to handle the remnants of abandoned chemical weapons in China. Lastly, some questions arose related to the Organization for the Prohibition of Chemical Weapons (OPCW), the implementing organization of the CWC, including the role of Non-Governmental Organizations (NGOs) and how to best utilize the newly inaugurated Centre for Chemistry and Technology (ChemTech Centre), a state-of-the-art laboratory run by the OPCW.²

What Was at Stake?

Frustration about maintaining and strengthening crucial elements of arms control treaties has been common prior to review conferences, primarily due to

ongoing political disputes. The polarization from Russia's invasion of Ukraine has further intensified this frustration.³ Yet, this has had less influence on the CWC, where the OPCW's existence, budget, and organizational functioning do not depend on a recurrent decision for renewal, unlike in the case of the Implementation Support Unit of the Biological Weapons Convention (BWC), whose organizational continuity is dependent on a Review Conference decision.

Still, there was a chance to advance the CWC on a number of pressing issues during the Review Conference. For instance, there has been an urgent need to revisit industrial verification, especially with the growing chemical industry worldwide and the rising number of inspectable facilities. Given the ongoing backlog in routine inspections, this increase would stretch the OPCW's resources just when the organization is encountering staffing challenges and delays in conducting inspections due to the restrictions during the pandemic.

Most importantly, the Review Conference took place at a critical time for the OPCW. Because the last declared chemical weapons stockpile was slated to be destroyed shortly after the conference,⁴ a major pillar of the OPCW's mission, and the risk of chemical weapons re-emerging, the organization needed strategic guidance on setting its priorities and mission for the upcoming period. There was optimism that the Conference's outcome document would deliver such a vision. A final document would not necessarily guarantee the realization of all that. Ultimately, it serves to offer only guidance, and much work needs to be done afterward to implement the intended outcomes. In principle, even if state parties agree by consensus to pursue the proposals brought forward at the Review Conference, they still need to agree on how this should be worked out in practice. This requires further interpretation of the outcome document to develop decisions, followed by intensive diplomacy and consultation before these proposals see the light. Nevertheless, an outcome docu-

ment would start the process by establishing a legal basis for such follow-ups and setting the agenda for future meetings.

Nobody's Fault, but Time Was to Blame?

In their concluding remarks, some state parties blamed time constraints, among other factors, for the inability to reach a consensus. For example, the Russian delegation made such a statement, and even the Chair of the Committee of the Whole, who led the negotiations on the outcome document, identified time constraints as a major obstacle. But was that actually the case?

The Fifth Review Conference was indeed the shortest ever, with only five working days, compared to eight and ten in the cases of the Fourth and Third Conference, respectively. As Richard Guthrie pointed out, it is possible that the decision on the duration was guided by Parkinson's Law – work expands to fill the available time for its completion. In other words, negotiations may take longer than necessary if time allows for it. As such, limited time could positively impact negotiations by putting pressure on parties to remain focused.⁵

However, due to the lack of an outcome document at the Fourth Review Conference, this year's Conference was tasked with reviewing the operation of the Convention over the last ten years and coming up with a strategic vision for the next five years within a short span of five days. This may not have been realistically achievable within such a timeframe, even in a less politically polarized environment. It seems there was a belief among state parties that reliance on the Open-Ended Working Group for the Preparation of the Fifth Review Conference (OEWG), which had been mandated to prepare the review and hold consultations in a 10-month-long process before the Conference, might help overcome the time constraints.

The Review Conference deals with complex and highly politicized issues, in which success depends on multilateral diplomacy – on both "missions and capitals together," as the Brazilian delegation put it.⁶ The OEWG engaged the respective Permanent Missions at the OPCW, but not necessarily the responsible units in capitals, which may or may not have been involved with the preparatory work. The CWC OEWG Draft Provisional Text, which contained the consolidated proposals developed during the consultation process, was finalized only shortly before this Review Conference, leaving little room for actual negotiations.

Even if there had been more time for the Conference or during preparation, there was no guarantee that consensus could have been reached given the global political polarization due to the Russian aggression against Ukraine. In other words, constructive negotiations in international fora do not necessarily guarantee a change in predetermined policies in the capitals.⁷

The New ChemTech Centre

Discussions also emerged on how to best utilize the new ChemTech Centre. The general attitude was very positive, with all states in agreement that this new capacity offers an opportunity to advance the work of the OPCW. However, in this case the lack of a consensus decision might become an obstacle. Some states advocate for the Centre to play a central role in advancing international cooperation and assistance, while others see its main role in conducting forensic work. This is a key area where an outcome document by the Review Conference could have provided strategic guidance.

An Insider Problem

Syria's chemical weapons remained a central topic at the Conference, and despite the most recent OPCW report that left no doubt about the Syrian regime's responsibility for chemical weapons use in 2018,⁸ Russia's position of rejecting any attribution to Syria has not changed. Russia's persistence in shielding Syria is believed to be one key reason for the obstruction of negotiations and the failure to reach a consensus at the Conference.

Russia's attitude does not come as a surprise. Its position is not just a result of the "no business as usual" policy in multilateralism following the invasion of Ukraine. It might rather reflect a continuation of a wider policy that emerged after Russia became militarily active in the Syrian conflict in 2015 and intensified with the accusations against it in the Skripal and Amesbury chemical poisonings in 2018.⁹ In an attempt to paralyze any accountability efforts directed against Russia's alleged assassinations or Syria's use of chemical weapons, Russia's apparent policy is to target the OPCW's credibility and weaken the Organization's ability to enforce the prohibition norm.

Knowledge of procedures, access to information and practices, and authority are the three elements qualifying someone as a potential threat to organizations from within. As an active founding member of the CWC and member of the Executive Council, the OPCW's governing body, Russia has all three. Instead of withdrawing from the CWC, a move that would severely damage Russia's reputation and commercial interests, Russia is able to target the OPCW from within.

Russia might have been exploiting its status in the OPCW to obstruct administrative and operational affairs vital to the organization's functioning. This seems evident every time Russia blocks consensus and votes against the OPCW program and budget. Furthermore, Russia attempted to discredit the Organization's work several times and questioned the Technical Secretariat's impartiality.

Russia seems to value making interventions in the Convention as a forum that lends credibility to its claims. For instance, CSPs and other meetings of the OPCW presented opportunities for Russia to spread disinformation about chemical weapons use in Syria, the Skripal case, and its allegations of chemical weapons use by Ukraine.¹⁰

In pursuing this long-term policy, Russia may strive to remain relevant and maintain authority under the Convention. This explains Russia's attempts to assume the Vice-Chair seat of the Eastern European Group during the Review Conference and the 27th CSP. While it is too soon to assess the success of such a policy, the Review Conference shows that it is at least not futile.¹¹

Conference of the State Parties (CSP)

OPCW administrative issues are usually addressed during the annual Conference of the State Parties, which offers another opportunity for state parties to agree on decisions for the effective implementation of the Convention. CSPs, in contrast to Review Conferences, focus on procedural and functional issues rather than fundamental questions of treaty interpretation and therefore have been more open to adopting decisions by majority vote in the past.

Overlooked Progress and some Hurdles

With the disagreement regarding Syria preventing a consensus, progress on other issues could be overlooked. However, the Fifth CWC Review Conference addressed several issues and achieved at least some successes, while other areas remained contentious.

One highlight was the announcement of the destruction of all declared US chemical weapons, which was completed in July 2023, even earlier than anticipated.¹² While some states criticized the US for not meeting earlier deadlines, the overall perception was that the completion would mark a milestone in strengthening the Convention. The fact that all declared weapons have been verifiably destroyed affirms that the CWC is a successful global disarmament treaty.

Another area that started with some criticism but preferred more positive attitudes later on was the issue of the Japanese chemical weapons abandoned in China. Despite some progress made by Japan in clearing remnants, China clearly articulated that Japan needs to invest more effort in retrieving these weapons and mitigating their long-term effects. Yet, towards the end of the Review Conference, the two delegations were closer to a common line and would have been able to agree on a shared language on how to move forward. Without an outcome document, this progress will not be reflected in writing but will not prevent the two states from continuing bilateral engagement to address disagreements.

NGO participation policy is another issue that remains unresolved without an outcome document. The fact that three NGOs were not allowed to attend the Conference caused fierce discussions about the role NGOs should play under the Convention. Western states emphasized that the inclusion of civil society is crucial for the CWC. In contrast, Turkey, Russia, and Iran stated that it is ultimately up to the states to decide which NGOs are deemed worthy of accreditation, and that states have the right to deny participation. It is likely that this fundamental disagreement would not have been resolved regardless of the "Syria deal breaker." Instead, states would probably have decided not to address this topic within an outcome document as it

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did not seem central enough to risk losing consensus. Nevertheless, the role of NGOs and accreditation procedures are expected to remain an important topic of discussion at future meetings.

The Normative Outlook

Not having an outcome document is unfortunate, as it prevents issues from being spelled out even where agreement was reached. However, from an operational perspective, the consequences are not as existential for the CWC as they may be in other contexts. The OPCW will remain operational and expand with the new responsibilities assumed with the new ChemTech Centre, and unfinished discussions at the Review Conference could be resumed in upcoming CSPs. As such, the prohibition regime will likely withstand another five years without a consensus. However, from a normative perspective, the robustness of the non-use and investigation norms could remain vulnerable, considering the continued obstruction, contestation, and lack of serious engagement driven by Russia's policy.

Norm robustness correlates with the acceptance of the norm's legitimacy and the institution tasked with its implementation, as well as the reactions of state parties to violations. If the ideal normative situation is to have an outcome document that, in theory, condemns Syria's chemical weapons use and affirms the legitimacy of evolving norms such as attribution, then blocking such declaration could impact the robustness of the CWC norms in the long run.

Finally, normalizing non-consensus, especially over substantive matters, could be self-defeating. It contradicts the essence of norms. Without consensus, the degree to which a behavior is "standard" or the norm values are "shared" is put into question. In other words, repeated non-consensus on substantive matters can be a sign of growing division that may risk both the validity of norms and the sense of ownership among state parties.

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References and further reading:
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