

Enforcing Chemical-Weapons Limits: An International Chemical Weapons Authority

Introduction

Following Iraq's successful use of chemical weapons to block the advance of numerically superior Iranian forces in the Persian Gulf War, the international community faces a crisis in chemical-weapons control. Unless effective arms-control limits can be imposed quickly and enforced effectively, chemical weapons—including medium-range ballistic missiles capable of delivering poison gas against cities—will proliferate throughout the Third World. Thus a major challenge to the Bush administration is to persuade the world community to impose effective controls on these weapons before they are used again by a sovereign state on a large scale or by a terrorist group on a smaller but still deadly scale.

The International Chemical Weapons Authority (ICWA) paper has been delivered and published in a number of forms since it was first presented at the United States Institute of Peace Workshop in January 1989. A *New Republic* editorial (February 27, 1989) discussed the ICWA concept. Incorporating extensive comments received at the Workshop, a thirty-five page paper was presented to the June 1, 1989, Annual Meeting of the Canadian Political Science Association (CPSA). Following that presentation, a short article appeared in the July/August 1989 edition of the Canadian journal, *International Perspectives*.

Dr. Robin Ranger has also presented the ICWA concept at two meetings: "The Danger of Chemical and Biological Weapons in the Middle East," a symposium sponsored by the Public Affairs Department of B'nai B'rith in cooperation with B'nai B'rith Leadership 2000 on March 30, 1989; and "Arms Control and the Proliferation of High Technology Weapons in the Near East and South Asia," a conference sponsored by the Carnegie Endowment for International Peace (with support from a United States Institute of Peace grant) on April 26, 1989.

The Bush administration will confront a hidden obstacle, however, to controlling chemical weapons: the defective conceptual basis for punishing violations underpinning the 1925 Geneva Protocol, which bans chemical-weapons use. The fatal flaw in this framework is its reliance on sanctions imposed by signatory governments for the enforcement of restrictions. While the Protocol has been repeatedly violated, no government has ever imposed sanctions on the violators.

To remedy this flaw, the draft Chemical Weapons Convention under negotiation at the United Nations (UN) Conference on Disarmament should establish an International Chemical Weapons Authority. This agency would be responsible for enforcing compliance with any chemical-weapons convention by monitoring and publicizing technology transfer, determining definitively whether a chemical-weapons strike has occurred, and placing defensive, and perhaps even offensive, means at the disposal of the victim of such an attack.

The assumption underlying this proposal is that chemical weapons are most usefully thought of as a separate category of armaments from conventional and nuclear weapons. It is true that chemical weapons share some of the characteristics of both conventional and nuclear weapons: they can be put to tactical use on the battlefield and delivered to their target in the same way as high explosives, and in their lethal, modern form they can be put to devastating strategic use against distant enemy population centers. But while they possess the compactness and intimidating impact of nuclear arms, they are easily manufactured and do not require the technological sophistication necessary for the development and manufacture of nuclear weapons. Moreover, they can be concealed with impunity. Therefore, arms-control solutions that may be useful for conventional or nuclear weapons may be inappropriate for chemical weapons. (These observations also apply to biologically produced toxin weapons, which contain biological agents that are no longer alive and so do not multiply. Toxin weapons thus function in ways similar to chemical weapons. However, toxin weapons may be easier to manufacture than chemical

weapons and so may pose an even greater challenge to limits on the use of chemical and biological weapons.)

Current Chemical-Weapons Limits

The key clauses in the 1925 Geneva Protocol ban the “use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices” and “extend this prohibition to bacteriological methods of warfare.” These limits establish a framework for chemical-weapons control that is unique:

- The Protocol does not ban the testing, production, or stockpiling of chemical-weapons agents and their delivery systems, so essentially it is a no-first-use agreement. Some states ratified the Protocol with conditions, explicitly reserving a right of retaliatory chemical-weapons use against any state that breached the prohibition.
- Over the sixty-three years—including World War II—that the Protocol has been in force, the no-first-use principle (based on a similar rule first codified multilaterally in the 1897 Hague Convention) has become part of customary international law.
- It is unclear whether the no-first-use principle would apply to the use of poison gases by a government against its own population, such as by the Saddam Hussein regime against the Kurds in Iraq. It is also unclear whether this principle applies to peacetime chemical-weapons use by nongovernment groups, such as terrorists.
- The Protocol does not limit the development of defensive measures against chemical weapons, such as the testing and stockpiling of protective clothing, equipment, and antidotes.
- The Protocol contains no mechanisms to provide for the verification of compliance with the no-first-use-of-chemical-weapons rule or for the enforcement of this rule.

Because the 1925 Protocol bans only the first-use of chemical and biological weapons, subsequent attempts to extend this limit have focused on their production and stockpiling. The results have been the 1972 Biological Weapons Convention and the U.S. proposal for a Chemical Weapons Convention, presented by then-Vice President George Bush in 1984. The 1972 Biological Weapons Convention bans the production and stockpiling of biological weapons but contains no provisions for the verification or enforcement of these limits. Once a sufficient number of countries has accepted the Chemical Weapons Convention draft, the production and stockpiling of chemical weapons will be banned and extensive provisions made for verification of compliance with its limits. However, there is no mechanism to enforce such compliance or even to control the manufacture and stockpiling of commercial chemicals from which effective, lethal chemical weapons are manufacturable at short order.

In light of twentieth-century use of chemical weapons despite arms-control limits, loopholes in the draft Convention threaten to undermine any chemical-weapons regime. Past infringements have established increasingly dangerous precedents in which first-users of chemical weapons enjoyed significant political-military gains without suffering commensurate penalties. These precedents suggest that it will be virtually impossible to construct an enforcement regime for a Chemical Weapons Convention based solely on traditional sanctions exemplified in the ineffective 1925 Protocol.

The Failure to Enforce Chemical-Weapons Limits

Violations, or potential violations, of arms-control limits on chemical-weapons use fall into three categories. The first was Germany's first-use of asphyxiating chemical weapons in the World War I 1915 battle of Vimy Ridge, a case of first-use followed by effective retaliation. This case is unique as a chemical-weapons breach of then-existing limits because it was clearly established as a violation when it occurred and was met, after several months, by successful allied countermeasures. These countermeasures took the form of

the retaliatory use of asphyxiating gas as well as the development of effective protective equipment.

The second category of chemical-weapons violations was clearly established as such, but did not result in any attempt by members of the international community to impose sanctions. Into this category of use and no response fall the use of chemical weapons by Italy from 1935 to 1936 during Mussolini's occupation of Abyssinia; by Japan against China from 1937 to 1945; by Egypt in the 1960s during President Nasser's intervention in the Yemeni civil war; and by Iraq from 1983 to 1988 during President Hussein's war against Iran. Following the August 1988 cease-fire in the Iran-Iraq war, Iraqi President Saddam Hussein used chemical weapons against the Kurds, in violation of the spirit, if not the letter, of the 1925 Protocol and of customary international law limits on such use. Total casualties inflicted by Iraq's use of chemical weapons, including nerve gas, are estimated at 45,000 Iranians and several thousand Kurds.

The third category of violations was that of alleged use and no response, which includes alleged chemical- (and biological-) weapons use by Moscow and Hanoi during the North Vietnamese occupation of South Vietnam, Laos, and Cambodia (1975 onwards) and by the Soviet Union and its Kabul puppet regime during the Soviet attempt to occupy Afghanistan (1979-1989). The published evidence for such chemical-weapons use is partial and ambiguous. The crucial point here, however, is that the Reagan administration, while officially charging the Soviet Union and its allies with chemical-weapons use in the annual White House reports on Soviet noncompliance from 1983 to 1988, did not attempt to impose sanctions on these governments for their alleged violations of the 1925 Geneva Protocol.

Iraq's unlawful use of poison gas and the failure of the United States and its allies to punish Iraq for it is the most recent case in a consistent pattern of reluctance to enforce limits on identified or alleged chemical-weapons users. But in the Iraqi case lack of action has been compounded by a refusal to impose sanctions against the Dutch, West German, and Japanese chemical companies that

supplied the plants and key materials used by Iraq to manufacture chemical weapons.

A consistent pattern of unwillingness to enforce limits on chemical-weapons use indicates an underlying structural flaw in existing and proposed strategies of compliance. The maintenance of legal restrictions depends on the willingness of law-abiding states such as the United States to impose sanctions on a delinquent party. Unfortunately, Western nations have repeatedly failed to enforce limits on chemical weapons, or even to try to do so.¹ The only penalty ever imposed on chemical-weapons users was on Germany during World War I. Why have sanctions not been used to enforce controls on chemical weapons and why is an International Chemical Weapons Authority needed to enforce them?

Why Sanctions Fail

A fatal flaw lies at the heart of the philosophy that grounds compliance in punitive sanctions: the asymmetry in the motivation of the delinquent vis-à-vis the enforcement officer. On the one hand, governments using chemical weapons have invariably had much more at stake than governments supporting limits on chemical weapons. Thus the prospect of indeterminate international sanctions at some time in the future is hardly likely to dissuade a state *in extremis* from obtaining a timely reprieve from defeat or a decisive and immediate strategic gain on the battlefield. On the other hand, governments supporting chemical-weapons limits have found it impossible in practice to impose sanctions against chemical-weapons users and suppliers because the costs of doing so have been too high, both at home and abroad, in relation to the perceived benefits to be obtained by punishing the delinquent government.

The result has been a "Catch-22" situation: effective sanctions that would seriously penalize the chemical-weapons user are rejected because they are perceived as too costly, and ineffective sanctions are rejected precisely because they are ineffective. The recent U.S. debate on imposing sanctions on Iraq and its chemical-weapons suppliers is simply the latest example of such a conundrum.

Because of the critical circumstances in which chemical weapons tend to be used, there is every reason to believe that sanctions will fail in the future as they have invariably failed in the past.

Scenarios of Possible Chemical-Weapons Use

At present, three principal situations can be envisaged in which chemical weapons might be used:

1. *In the opening stages of a conventional war in Europe.* Warsaw Pact armies are extensively trained in the use of chemical weapons. If surprise was a successful tactic, considerable advantage could be gained by early attack of troop concentrations, supply depots, airfields, command and communication centers, and civilian targets. NATO forces would suffer serious losses, the task of mobilization would be disrupted, and the civilian will to resist invasion would be gravely compromised. Of all three scenarios, this is the least likely, especially in light of political changes in Central Europe; early warning detection, the adoption of appropriate defensive measures by NATO, and the fear of escalation to nuclear weapons should render Soviet first-use risky and unattractive.

2. *In a Third World conflict.* Since 1925 all uses of chemical weapons have occurred outside Europe. As the Iran-Iraq war has demonstrated, a Third World power with sufficient resources can now readily obtain full chemical war-fighting capability. In an unbalanced situation in which only one side is armed with an offensive and defensive capability, the temptation to gain an advantage is great. Cutthroat competition for markets between suppliers, a plethora of unresolved border disputes in the Third World, a subsequent high incidence of conflict, callous disregard for human life, and limited respect for the laws of war all contribute to this alarming trend.

3. *By a terrorist group.* Several states that have sponsored terrorism or trained terrorists in the past, including the Soviet Union and its clients—Iran, Iraq, Libya, North Korea, and Syria—possess chemical weapons. Many of these states also are acquiring biological weapons, including toxin weapons. Neither morality nor respect for international law is likely to stand in the way of these countries' supplying chemical materials to terrorists if they perceive the possibility of risk-free, political gain. The old bomb-in-a-suitcase scenario, familiar from thinking about nuclear terrorism, acquires new relevance. Smuggled into a target city and dispersed without warning in suitable climatic and topographic conditions, even a relatively unsophisticated chemical device could wreak havoc on a civilian population.

An International Chemical-Weapons Authority

It is against the backdrop of these unpleasant—and increasingly credible—possibilities that much thought has been given to the question of how chemical weapons can best be controlled. The 1984 Chemical Weapons Convention idea of a complete ban on production and storage of chemical weapons has all the attractions of a clear-cut and definitive solution. However, its practical drawbacks are considerable and may be insuperable. As is so often the case in political life, the best may be the enemy of the good.

The first drawback is that many kinds of chemical plants can be easily converted to produce weapons. Such conversion could only be detected by on-the-spot verification. The frequent and widespread surveillance required to spot such a needle in a haystack is likely to be unacceptable to the Soviets (and to many other governments) and even inherent verification would be of limited effectiveness. Although the system of limited inspection contained in the Intermediate Range Nuclear Forces treaty may serve as a useful model for a chemical-weapons convention, its direct relevance is doubtful.

Second, there is little reason to believe that all states with an actual or potential chemical-weapons capability would sign a

treaty imposing an absolute ban. Moreover, it is precisely those states in the Third World that have been reluctant in the past to adhere to arms-control measures, such as the 1968 Nuclear Non-Proliferation Treaty (NPT), that are most likely to be tempted to use or supply chemical weapons in the future. In a world in which Third World arms producers are moving into markets formerly dominated by traditional Western and Soviet bloc suppliers, it is no longer sufficient to base a convention on cooperation between the major powers alone.

Third, there are various situations, as noted earlier, in which the incentives to violate a treaty might prove irresistible and the prospect of sanctions seem remote and unconvincing.

Proposals for an absolute, universal ban on chemical weapons, although well-intentioned, may thus be utopian. It is unrealistic to try to abolish a weapons system that is as easy to produce as it is to conceal. Thus, why limit one's attention to the role of the chemical-weapons user? There are two additional actors involved in the proliferation of these devices that should also be considered: the supplier and the victim. It is important to move away from the ungrounded assumption that the threat of sanctions is likely to ensure compliance in matters relating to the very survival of communities; only the certainty of unacceptable pain can deter a potential delinquent.

An effective chemical-weapons control regime—a set of interlocking legal and practical provisions intended to minimize the spread and use of chemical weapons—would address itself to all the parties involved in the equation and would discourage use by the tried and tested deterrent of prospective retaliation in kind; history has demonstrated that the most effective disincentive to the use of chemical weapons is the fear of reprisal.

An effective international convention on chemical weapons would need to contain the following provisions:

- A reaffirmation of the 1925 Geneva Protocol prohibition on the first-use of chemical weapons.
- A prohibition on the sale or transfer of chemical weapons.

- A prohibition on the sale or transfer of technology to countries at war or suspected of planning aggression.
- The establishment of an International Chemical Weapons Authority (ICWA) to enforce the above.

ICWA would consist of an inspectorate and would have defensive (and perhaps offensive) chemical devices at its disposal. Its duties would be the following:

- Monitor the worldwide diffusion of chemical technology.
- Widely publicize its findings on any infringements of the convention. Western companies found in breach of the convention would be held up for opprobrium and punished by their domestic governments and their clients.
- Send out, at short notice, teams of observers fully equipped to definitively determine whether chemical weapons have been used, when such use is alleged.
- Have the authority to supply the proven victim of a chemical attack with all defensive means necessary to face a future attack and the offensive capacity to retaliate in kind against the delinquent powers in time of war.

An agreement of the kind proposed here would successfully meet the challenges posed by chemical-weapons proliferation that have become evident in recent years, such as the cupidity of firms cynically and irresponsibly selling technology to any buyer; the ease with which countries like Iraq and Egypt could deny and conceal having used chemical weapons; similarly, the ability of third parties, such as Turkey, to deny any knowledge that chemical weapons had been used by an ally or potential trade partner, such as Iraq; the vulnerability of many Third World countries to attack; and the impunity with which an aggressor might use chemical weapons without fear of reprisal.

A Historical Precedent

There is an important precedent for the ICWA. The League of Nations negotiations on extending chemical-weapons limits produced a report in 1932 on the "Prohibition of Chemical Warfare and Violations of the Prohibition." This report concluded, correctly, that if chemical-weapons manufacture was to be banned, an effective verification system would be required to detect violations. Such a system would be extraordinarily difficult to operate, however, given the ease with which commercial chemical plants could be converted to produce chemical weapons. Furthermore, the level of intrusiveness demanded to make such a verification regime work would create risks of industrial espionage. Accordingly, the report recommended that a ban on chemical-weapons manufacture be enforced by imposing severe sanctions on states in violation of it and that potential breaches be immediately investigated by an *independent authority*.

The kind of sanctions required for effective enforcement was first suggested in a far-reaching proposal put forward by a group of states in 1926, but that proposal failed to achieve international consensus. The 1926 proposal largely anticipated the measures contained in this paper, and called for

All states in possession of a chemical industry...[to]...undertake: (a) to put at the disposal of any state which is attacked by gas the raw materials, chemical products, and the means of operation necessary for reprisals; (b) to engage in joint reprisals themselves...by the use of other chemical means against the State which has committed an act of aggression by the use of gas.

These proposals have gained a double significance. They indicate how an effective compliance regime for a chemical-weapons ban should look. They also illustrate the requisite rigor of a compliance regime for a ban on the manufacture and use of chemical weapons that were far less effective militarily than the weapons used by Iraq. To enforce a ban on modern chemical-weapons manufacture and use thus requires an even more rigorous compliance regime, as proposed in the ICWA.

Conclusion

There is nothing new in the dismaying prospect of chemical-weapons use and proliferation now facing the international community. Over half a century ago the problem was accurately diagnosed and appropriate solutions were proposed. To this day the twin principles of inspection and reprisal by an international authority remain the keys to a compliance regime. Had the original 1925 Geneva Protocol been strengthened and enforced along the lines of the 1926 and 1932 proposals, the tragic series of chemical-weapons violations that have occurred since might have been avoided. The genie is now out of the bottle. Many more states now possess the incentive and potential to produce chemical weapons than was the case in 1932. As the twentieth century has progressed, chemical weapons have become deadlier and the means to deliver them have become more effective. If, as logic strongly suggests, abolition is no longer a viable option, the need for effective controls has become increasingly urgent.² The creation of an appropriate international authority of the kind suggested in this paper may be the most realistic way of addressing the problem.

Notes

1. The nature and extent of the failure of governments to enforce compliance with the limits of the 1925 Geneva Protocol on the first-use of chemical weapons is detailed in Robin Ranger and Dov Zakheim's "More Than Ever, Arms Control Needs Compliance," *Orbis* 33, no. 2 (Spring 1990): 1-14.
2. The problem has continued to worsen as shown by Libya's development of its Rabta chemical-weapons manufacturing plant and Iraqi President Saddam Hussein's official adoption of a strategy of massive chemical-weapons retaliation against Israel, if Israel were to attack Iraq's chemical-, biological-, or nuclear-weapons facilities. See Morton Kondracke, "Saddamnation," *New Republic*, May 7, 1990, pp. 9-12.