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The Chemical Weapons Convention: Hollow Idealism or Capable Mechanism? The Syrian Intervention as a Test Case

BY DAVID MARTIN*

INTRODUCTION

Once alarmed by the prospect of a unilateral American military strike to destroy Syria's chemical weapons and chemical weapons facilities, the international community has been pleasantly surprised at the peaceful progress of the identification, location, and destruction of Syrian chemical weapons, enabled by the Chemical Weapons Convention (CWC) framework.¹ Considering the unique circumstances that culminated in the disarmament agreement struck between the international community and Syria, is the CWC framework responsible for the positive results thus far? Or is Syria's accession to the CWC and subsequent consent to the inspection and destruction of its chemical weapons arsenal a fortunate anomaly? This article concludes that: (1) the bold, flexible framework of the CWC made it possible for peaceful disarmament in Syria; (2) the enforcement of the CWC in Syria serves to strengthen its stature as a capable mechanism for future enforcement of chemical weapons disarmament; and (3) the CWC framework can be a useful model for future and existing disarmament agreements.

Section I of this article analyzes the background of chemical weapons use and regulation, highlighting why universal disarmament is vital to regional and universal stability. Section II discusses the legal framework of the CWC, pointing out the unique features that make it an

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1. Ajey Lele & Gunjan Singh, *Syria's Chemical Weapons Mess and Great Power Game*, SOCIETY FOR THE STUDY OF PEACE AND CONFLICT (Sept. 26, 2013), www.sspconline.org/opinion/SyriasChemicalWeaponMess_GreatPowerGame_26092013. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, S. TREATY DOC. NO. 103-219, 1974 U.N.T.S. 317 [hereinafter CWC].

effective mechanism for chemical disarmament as compared to existing disarmament frameworks (particularly the Nuclear Non-Proliferation Treaty and the Biological Weapons Convention). Section III discusses the events leading up to the decision to enforce the CWC in response to Syria's chemical weapons violations in 2013. Section IV analyzes the aspects of the CWC framework that have made implementation in Syria a success and those that could pose future challenges. Section V concludes that the CWC framework, which enabled the peaceful cooperation in the disarming of Syria, should not only serve as a model for resolving chemical weapons violations, but also for international disarmament agreements in general.

I. BACKGROUND: HISTORY OF MODERN CHEMICAL WEAPONS USE AND REGULATION

1. World War I

Chemical, nuclear, and biological weapons share the same capacity to inflict mass casualties in one single attack.² World War I ushered in the modern large-scale use of chemical weapons (CW).³ Both sides of that conflict used poisonous gasses to inflict excruciating suffering on one another and to significantly increase battlefield casualties.⁴ These weapons essentially consisted of widely known commercial chemicals placed into standard munitions such as grenades, artillery shells, and other explosives.⁵ Armed forces in World War I used at least twenty-eight types of gases and sixteen different mixtures of gases during combat.⁶ Such chemicals included chlorine (a respiratory irritant), phosgene (a choking agent), and mustard gas (which causes agonizing burns on the skin).⁷ The results of CW use in World War I were gruesome and costly,⁸ causing nearly 100,000 deaths⁹ and injuring approximately one million people.¹⁰ In addition to the physical cost of human life, CW use

2. Ramesh Thakur, *Introduction: Chemical Weapons and the Challenge of Weapons of Mass Destruction*, in THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES 1, 1 (Ramesh Thakur & Ere Haru eds., 2006).

3. BROOKS E. KLEBER & DALE BIRDSELL, THE CHEMICAL WARFARE SERVICE: CHEMICALS IN COMBAT 3, 3 (Stetson Conn ed., Ctr. of Military History, 2003).

4. *Chemical Weapons*, UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS (UNODA), <http://www.un.org/disarmament/WMD/Chemical/> (last visited Sept. 19, 2013).

5. *Id.*

6. KLEBER & BIRDSELL, *supra* note 3, at 3.

7. *Chemical Weapons*, *supra* note 4.

8. *Id.*

9. *Id.*

10. Thakur, *supra* note 2, at 6.

inflicted a significant psychological toll on civilians: “[t]here can be no doubt that gas warfare emerged from World War I with the reputation of a horror weapon even when field experience did not substantiate this view.”¹¹ Since World World I, chemical weapons have killed over one million people throughout the world.¹² These statistics alone show the horrifying destructive capability of CW, and thus the need to rid the world of their existence.

2. Geneva Protocol (1925)

The Geneva Protocol, signed in 1925, was a response to the public outrage resulting from CW use in World War I.¹³ While a positive step, the Geneva Protocol was limited.¹⁴ The Protocol merely prohibited the *use* of chemical weapons against those states who were party to the treaty; the protocol, however, “did not prohibit the development, production or stockpiling of chemical weapons.”¹⁵ Furthermore, many parties to the Protocol reserved the right to use prohibited weapons against states that were not party to the Agreement, and in response to any state that used CW against it.¹⁶

3. Post-Geneva

While some states have used chemical weapons since the Geneva Protocol, CW use has not been pervasive.¹⁷ Italy, however, used chemical weapons in small amounts against Ethiopia in the 1930s.¹⁸ Germany used poison gases in concentration camps in World War II, and Japan used gas against China in World War II as well.¹⁹ Since World War II, states have used chemical weapons in only a few cases: by Egypt in North Yemen in the 1960s,²⁰ and more notably by Iraq against Iran and its own Kurdish population in the 1980s.²¹ Iraq’s CW use in the 1980s demonstrated that the effects of CW use can devastate and destabilize

11. KLEBER & BIRDELL, *supra* note 3, at 653. The psychological harms of CW use are further discussed later in the article.

12. *Chemical Weapons*, *supra* note 4.

13. *Id.*

14. *Id.*

15. *Id.*; Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 94 L.N.T.S. 65 [hereinafter Geneva Protocol].

16. *Chemical Weapons*, *supra* note 4.

17. *See id.*

18. THOMAS L. MCNAUGHER, BALLISTIC MISSILES AND CHEMICAL WEAPONS: THE LEGACY OF THE IRAN-IRAQ WAR 7 (1990).

19. *Id.* at 7; *Chemical Weapons*, *supra* note 4.

20. MCNAUGHER, *supra* note 18, at 7.

21. *Id.* at 22-23.

nations and populations on a regional and potentially universal scale.²²

a. Iraq's chemical weapons use in the 1980s

Iraq used chemical weapons as part of its arsenal during an extended conflict with Iran between 1982 and 1988.²³ A 1991 U.S. Central Intelligence Agency report estimated that Iran suffered thousands of deaths and tens of thousands of injuries as a result of Iraq's CW use, which was spread out over multiple attacks.²⁴ More alarming, "deferred symptoms from low-dose exposure [have] continued to plague both the civilian and military populations in Iran, producing thousands of additional deaths."²⁵ The Iraqi regime, led by Saddam Hussein, also directed chemical attacks against its own Kurdish population in retaliation for their alleged support of Iran in the ongoing conflict.²⁶ Iraq's CW use against the Kurds was responsible for the deaths of tens of thousands, including a single attack that killed 5,000.²⁷ Commentators credit Iraq's CW use as a major reason that Iran ultimately decided to negotiate a cease-fire that was favorable for Iraq, despite Iran's superior military forces.²⁸

b. Physical and psychological effects

Chemical weapons are effective because of their psychological as well as physical effects.²⁹ The "special emotional and psychological effects" of chemical weapons on a state's population could produce greater harm than the mere physical effects of traditional weapons.³⁰ Chemical weapons have been dubbed as weapons of "political terror rather than military force."³¹ Using the Iraq-Iran conflict as an example, "[Iraq's] threats to use CW against enemy civilians . . . did, apparently, produce a drop in morale."³² Iraq's CW use inflicted psychological injury on a large segment of the population: "[t]here is little doubt that chemical weapons . . . played a role in sharply lowering the morale of

22. *Id.* at 32.

23. *See id.* at 8, 17.

24. Robin Wright, *Chemical Arms' Effect Linger Long After War*, L.A. TIMES (Nov. 19, 2002), available at <http://articles.latimes.com/2002/nov/19/world/fg-chemwar19>.

25. Margaret Sewell, *Freedom from Fear: Prosecuting the Iraqi Regime for the use of Chemical Weapons*, 16 ST. THOMAS L. REV. 365, 371 (2004).

26. *Id.* at 372.

27. *Id.* at 373.

28. MCNAUGHER, *supra* note 18, at 5, 8.

29. *Id.* at 22.

30. *See id.* at 22.

31. Thakur, *supra* note 2, at 2.

32. MCNAUGHER, *supra* note 18, at 22.

Iranian citizens and soldiers.”³³ In addition to Iraq’s actual use of chemical weapons, the mere *threat* of CW use against Iran greatly increased “the sense of panic that already gripped Tehran’s residents . . . [f]or a city already in panic, the threat of CW seems to have exacerbated the problem, perhaps substantially.”³⁴ CW use also had a special emotional and psychological impact on its observers: journalists interviewing Kurdish leaders found them to be “fatalistic” after observing the fallout from a chemical weapons attack on unprepared rebels and civilians.³⁵ Iraq’s CW use in the 1980s put the world on alert: both to the continued destructive effect of CW and also to how powerful a state could become when in possession of CW.

c. Toward proliferation and grim possibilities

The Cold War brought upon “significant development, manufacture and stockpiling of chemical weapons.”³⁶ In addition to the arms competition between the United States and the Soviet Union, smaller regional powers and rogue nations have also viewed chemical weapons as a quick and easy way to gain power.³⁷ Some third-world countries, such as Iraq, considered chemical weapons as “the poor man’s nuclear bomb,” enabling a state to inflict significant physical and psychological damage on another, thereby wielding a great deal of political leverage to achieve its ends.³⁸ An estimated twenty-five states were developing chemical weapons capabilities by the 1970s and 80s.³⁹

Notwithstanding the psychological toll of CW, the physical consequences remain harrowing: in addition to the ability to cause death, chemical weapons can also cause blindness, blistering, burning, lung damage, skin discoloration, involuntary urination and defecation, vomiting, twitching, convulsions, paralysis, and unconsciousness.⁴⁰ From a military-strategic standpoint, however, chemical weapons are not “nearly magical devices” that ensure victory on the battlefield.⁴¹ Modern chemical battlefield equipment such as masks and suits can adequately counter chemical weapons’ physical effects, especially when soldiers

33. *Id.* at 6.

34. *Id.* at 22.

35. *Id.*

36. *Chemical Weapons*, *supra* note 4.

37. Sewell, *supra* note 25, at 367.

38. MCNAUGHER, *supra* note 18, at 6.

39. *Chemical Weapons*, *supra* note 4.

40. Sewell, *supra* note 25, at 371-72.

41. MCNAUGHER, *supra* note 18, at 21.

are well-trained.⁴² Furthermore, difficulties in storing, transporting, and dispersing chemical weapons, as well as the need for large quantities of CW in order to be effective, somewhat limit their military utility.⁴³ Nevertheless, CW makes war more than just “uncomfortable,” even for properly equipped and prepared soldiers.⁴⁴

Not surprisingly, and perhaps more ominously, “chemical weapons are grimly effective when used against unprotected civilians.”⁴⁵ The threat of a chemical attack on a major city with a dense population is a primary concern.⁴⁶ Some of the special qualities of chemical weapons make them particularly effective if dispersed in an urban setting.⁴⁷ Chemical agents “would seep into basements and bunkers that conventional bombs would [normally] leave untouched.”⁴⁸ Chemicals’ ability to linger, especially if they entered closed rooms, “extend[] their lethality (depending on the agent) over hours, days, or perhaps weeks.”⁴⁹ Finally, instead of being dissipated by the winds of open terrain, the dispersion of chemical weapons in cities might be constrained by walls and buildings, causing even more casualties.⁵⁰ While there have been few chemical attacks on major cities, in 1995, an underground religious sect, Aum Shinrikyo, unleashed a terrorist attack on a Tokyo subway using a nerve gas called “sarin,” which resulted in ten deaths, thousands injured, and millions terrorized.⁵¹ Officials opined that “[h]ad their delivery capability not been so primitive, the death toll would have been substantially larger.”⁵²

Although chemical weapons do not have the same magnitude of destructive capability as nuclear weapons, states fear CW proliferation in part because of the potential for a “strategic marriage” of chemical warheads atop ballistic missiles. Achieving such a potent combination would place leaders of less developed, ill-intentioned countries in a position to create a “delicate balance of terror.”⁵³ In return, a state seeking to block such a power grab might entertain preemption, creating even

42. *See id.* at 19.

43. Thakur, *supra* note 2, at 2.

44. MCNAUGHER, *supra* note 18, at 21.

45. *Id.* at 22.

46. *See id.* at 30.

47. *Id.*

48. *Id.*

49. *Id.*

50. MCNAUGHER, *supra* note 18, at 30.

51. Thakur, *supra* note 2, at 6.

52. *Id.*

53. MCNAUGHER, *supra* note 18, at 24.

more instability.⁵⁴ Israeli strategist Gerald Steinberg commented that “[t]he introduction of missiles reduces critical decision making time to a few minutes. In a crisis, states that face the possibility of a missile attack involving chemical . . . warheads will be strongly induced to launch a preemptive strike.”⁵⁵ Indeed, states enduring the horror of a ballistic missile chemical attack and regional alliances to which they belong (such as NATO, the African Union, and the League of Arab States) would have legal authority to retaliate proportionally according to the UN Charter.⁵⁶ Article 52 of the UN Charter recognizes the right of regional security alliances to “maintain . . . international peace and security as are appropriate for regional action, provided that such . . . activities are consistent with the Purposes and Principles of the United Nations.”⁵⁷

Without the development of secure second-strike capabilities, the proliferation of chemically-armed ballistic missiles brought to the world the prospect of a new and dangerous source of instability, especially in the Middle East, a region already well known for its volatility.⁵⁸ While chemical warheads were not attached atop ballistic missiles during the Iran-Iraq War (CW were deployed by more conventional means), the potential for their combined use for more accurate and lethal strikes on unprepared populations caused increased concern for proliferation, prompting the creation of new institutions aimed at curbing key elements of these technologies.⁵⁹ By the late 1980s, Iran, Iraq, Israel, Syria, and Egypt possessed the requisite missile technology and chemical manufacturing facilities to combine CW and ballistic missile capabilities.⁶⁰ The groundwork was set for what would ultimately become the most comprehensive treaty calling for the complete eradication of an entire class of weapon: The Chemical Weapons Convention.⁶¹

54. *Id.*

55. *Id.*

56. Jordan J. Paust, *Use of Military Force in Syria by Turkey, NATO, and the United States*, 34 U. PA. J. INT’L L. 431, 435-36 (2012).

57. *Id.* (quoting U.N. Charter Art. 52).

58. MCNAUGHER, *supra* note 18, at 24.

59. *Id.* at 25.

60. *Id.*

61. Robert J. Mathews, *The First Review Conference of the Chemical Weapons Convention: A Drafter’s Perspective*, in THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES 44, 44 (Ramesh Thakur & Ere Haru eds., 2006).

II. LEGAL FRAMEWORK OF THE CHEMICAL WEAPONS CONVENTION: AN AGREEMENT WITH BITE

1. *Chemical Weapons Convention Overview*

The Chemical Weapons Convention (CWC) provides a strong framework for the worldwide destruction of chemical weapons, with its key feature being a powerful enforcement mechanism to bring about compliance.⁶² The UN Charter, signed at the end of WWII, planted the seed for future arms regulation.⁶³ Article 11 of the UN Charter states that the General Assembly may consider “principles governing disarmament and regulation of armaments” to further international cooperation, peace, and security.⁶⁴ After twelve years of negotiating, the CWC was finally adopted by the Conference on Disarmament in September 1992, opened for signature in Paris in January 1993, and entered into force on April 29, 1997.⁶⁵

The provisions in the CWC are bold. Indeed, the CWC is the first multilateral disarmament agreement that calls for the “*elimination* of an entire category of weapons of mass destruction under universally applied international control,” which includes the inspection, verification, and destruction of chemical weapons.⁶⁶ The CWC is also notable for its collaboration with the global chemicals industry and the industry’s ongoing cooperation with the Convention’s industrial verification regime.⁶⁷ “[T]he Convention encourages international cooperation among countries in the peaceful uses of chemicals and provides assistance and protection to signatories” that are under actual, or the threat of, chemical attack.⁶⁸ One hundred and eighty-nine nations, now including Syria, are parties to the CWC, which represents about 98% of the world’s population.⁶⁹ To date, only six states have yet to become a party to the CWC: Israel, Myanmar, Angola, Egypt, North Korea, and South Sudan.⁷⁰ Of those six countries, only Israel and Myanmar have signed the treaty.⁷¹

62. *Chemical Weapons*, *supra* note 4.

63. *See* U.N. Charter art. 11, para. 1.

64. *Id.*; *Disarmament in the General Assembly*, UNODA, <http://www.un.org/disarmament/HomePage/GA.shtml> (last visited Sept. 4, 2014).

65. *Chemical Weapons*, *supra* note 4. CWC, *supra* note 1.

66. *See id.* (emphasis added).

67. Thakur, *supra* note 2.

68. *Id.*

69. *Chemical Weapons*, *supra* note 4.

70. *About the OPCW*, ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW), <http://www.opcw.org/about-opcw/non-member-states/> (last visited Oct. 17, 2014).

71. *Id.*

2. *The Organization for the Prohibition of Chemical Weapons (OPCW): A Big Stick*

The defining feature of the CWC framework is that it allows for “stringent verification of compliance by States Parties.”⁷² The CWC accomplished this by creating a commission, the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague, the Netherlands, specifically to oversee the CWC’s implementation.⁷³ Article VIII, paragraph 34 of the CWC calls for an Executive Council of the OPCW to conclude agreements with states party to the CWC, collectively called the Conference of the States Parties, on behalf of the OPCW.⁷⁴ The Executive Council consists of representatives of forty-one states parties, who are elected for two-year terms, and meet four to five times per year.⁷⁵ The Conference of States Parties includes all the CWC states and meets annually.⁷⁶ A Technical Secretariat possesses the day-to-day administration and implementation responsibilities of the Convention, including inspections, and is under the leadership of a Director-General who has been appointed at the Executive Council’s recommendation.⁷⁷ The UN and the OPCW formed a legally binding relationship that entered into force in May 2001.⁷⁸

The OPCW’s purpose is to implement the provisions of the CWC and to ensure a “credible, transparent regime to verify the destruction of chemical weapons.”⁷⁹ Through its mandate to achieve the object and purpose of the CWC, the OPCW has four goals:

(1) overseeing and verifying the destruction of all existing chemical weapons under international verification by the OPCW; (2) “monitoring [the] chemical industry to prevent new weapons from re-emerging;” (3) “providing assistance and protection to States Parties against chemical threats;” and (4) “fostering international cooperation to strengthen implementation of the Convention and promot[ing] the

72. *Chemical Weapons*, *supra* note 4.

73. *Id.*

74. CWC art. 8, para. 34.

75. Thakur, *supra* note 2, at 8.

76. *Id.*

77. *Id.*

78. See Decision of the Conference of the States Parties to the Chemical Weapons Convention, ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, Doc. C-VI/DEC.5 (May 17, 2001), available at http://www.opcw.org/index.php?eID=dam_frontend_push&docID=4315; Agreement Concerning the Relationship Between the UN and the OPCW, U.N. Doc. A/Res/55/283 (Sept. 24, 2001), available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/283 [hereinafter U.N. Doc. A/Res/55/283]

79. *Chemical Weapons*, *supra* note 4.

peaceful use of chemistry,”⁸⁰ which includes deactivating, destroying, or converting to peaceful purposes all chemical weapons production facilities.⁸¹ This means that while the OPCW seeks the destruction of existing chemical weapons stockpiles, it also works to both persuade the small number of states yet to join the Convention to renounce CW and also to prevent the proliferation of CW by non-party states.⁸² The OPCW must also keep an eye on those areas seeking to re-stock CW to prevent old threats from re-emerging.⁸³

3. Secretary-General's Mechanism for Investigating Alleged Chemical Weapons Use

In 1987, prior to the CWC's entry into force, the UN and Member States granted the UN Secretary-General authority to investigate the alleged uses of chemical, biological, or toxin weapons through legal authority called The Secretary-General's Mechanism (SGM),⁸⁴ which passed as Security Council Resolution 620.⁸⁵ Under the SGM framework, UN member states may request that the Secretary-General investigate alleged CW use.⁸⁶ The Secretary-General is then authorized to send fact-finding teams to the site (or sites) of the alleged incident and report back to the UN.⁸⁷ The object of such an investigation would be to ascertain any violations of the 1925 Geneva Protocol's ban on CW use or other customary international law.⁸⁸ The key elements of the SGM are the roster of experts and laboratories provided by UN member states and the Guidelines and Procedures for the conduct of investigations endorsed by the General Assembly in 1990.⁸⁹

The SGM plays a role in the CWC framework, because the OPCW is authorized by the CWC to conduct investigations in cases of alleged chemical weapons use by States Parties.⁹⁰ However, as provided by the

80. *About the OPCW, supra* note 70; *see* *Chemical Weapons, supra* note 4.

81. Thakur, *supra* note 2, at 8.

82. *See About the OPCW, supra* note 70.

83. *Id.*

84. *Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons*, UNODA, http://www.un.org/disarmament/WMD/Secretary-General_Mechanism/ [hereinafter *Secretary-General's Investigation.*]; http://www.un.org/disarmament/WMD/Secretary-General_Mechanism/; Secretary General's Mechanism, G.A. Res. A/RES/42/37C. (Nov. 30, 1987).

85. S.C. Res. 620, U.N. Doc. S/RES/620 (Aug. 26, 1988), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/620%281988%29.

86. *Secretary-General's Investigation, supra* note 84.

87. *Id.*

88. *Id.*

89. *Id.*; U.N. Doc. A/44/561 Annex I (1990).

90. *Secretary-General's Investigation, supra* note 84.

CWC, in cases of alleged use of chemical weapons by non-parties, the OPCW must closely cooperate with the Secretary-General,⁹¹ and must place its resources at the disposal of the Secretary-General if so requested.⁹² In September 2012, the UN and the OPCW concluded an agreement that set forth the means and procedures of cooperation between the two bodies for conducting an investigation in such circumstances.⁹³ Prior to the recent investigation of alleged CW use in Syria, the SGM was used to investigate alleged CW use in Mozambique and Azerbaijan in 1992,⁹⁴ but found no evidence of use in those instances.⁹⁵

4. Potent Features of the CWC

The CWC has several hallmark features that enable it to be effective in eliminating the use, stockpiling, development, and proliferation of chemical weapons. Among those are (1) a wide scope and comprehensive set of prohibitions; (2) permitting flexibility in the means by which to accomplish those ends; (3) an effective challenge and verification protocol; (4) provisions that incentivize national implementation of legislation to meet CWC goals; and (5) provisions for persistent efforts to achieve universal adoption of the CWC.

a. A Comprehensive Set of Prohibitions

Overall, negotiators successfully agreed on a broad scope and a comprehensive set of prohibitions in the CWC.⁹⁶ Importantly, they formulated a definition of “chemical weapons,” which was among the more significant aspects of the Convention.⁹⁷ Article II of the CWC sets forth the definition of CW, which covers toxic and precursor chemicals, munitions, and devices specifically designed for chemical weapons purposes, as well as any equipment specifically designed for direct use in the employment of such munitions and devices.⁹⁸

91. U.N. Doc. A/Res/55/283, *supra* note 78.

92. *Id.*

93. *Id.*

94. *FAQ about the U.N. Mission to investigate the Allegations of the Use of Chemical Weapons in the Syrian Arab Republic*, UNITED NATIONS INFORMATION SERVICE (Sept. 5, 2013), http://www.unis.unvienna.org/pdf/2013/FAQs_about_the_UN_Mission_to_investigate_the_alleged_use_of_chemical_weapons_in_Syria.pdf [hereinafter *FAQ about UN Mission to Investigate*].

95. Gregory D. Koblenz, *Probing for Chemical Attacks in Syria*, COUNCIL ON FOREIGN RELATIONS (Mar. 26, 2013), <http://www.cfr.org/syria/probing-chemical-attacks-syria/p30318>.

96. Ralf Trapp, *The Chemical Weapons Convention – Multilateral Instrument With a Future*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES* 15, 19 (Ramesh Thakur & Ere Haru eds., 2006).

97. *Id.*

98. *Id.*

Crucially different from other international arms agreements, the CWC classifies *components* of chemical weapons *in themselves* as prohibited chemical weapons.⁹⁹ Article II focuses on the specific chemical's intended purpose rather than the degree of toxicity as a defining criterion.¹⁰⁰ "Any toxic or precursor chemical is regarded as a chemical weapon unless it has been developed, produced, stockpiled, or used for purposes not prohibited, and only as long as types and quantities are consistent with such purposes."¹⁰¹ This definition, along with the States Parties' undertakings in Article I to "never, under any circumstances" develop, produce, otherwise acquire, retain or stockpile, transfer directly or indirectly to anyone, or use chemical weapons, provides "a long-lasting safeguard" to ensure that the object and purpose of the CWC is not defeated due to definitional loopholes.¹⁰²

b. The Verification and Challenge System

In addition to a comprehensive prohibition at the heart of the CWC, the States Parties also agreed on effective mechanisms for compliance verification. The CWC requires States Parties to: (1) declare all CW, CW production facilities, and related matters, and to submit them to international inspection; (2) declare all "relevant chemical activities and facilities undertaken

. . . for legitimate purposes" and to submit them to international inspection; and (3) "inform the OPCW of their national implementation measures," which are to include actions such as implementing "penal legislation and enforcing trade regulations designed to stem the proliferation of relevant chemicals to states not party to the CWC."¹⁰³ Granted, the system relies, to a considerable degree, on the States Parties' own submissions to the OPCW and thus, "a bona fide presumption of honesty and intent to comply" exists.¹⁰⁴ Still, the CWC is "justifiably regarded as setting the benchmark for verification in a multilateral arms control treaty."¹⁰⁵

However, the CWC, does provide mechanisms to verify facts independently and to address and resolve compliance doubts, including those with respect to undeclared facilities.¹⁰⁶ Article IX and the Verifi-

99. *Id.* at 20.

100. Trapp, *supra* note 96, at 20.

101. *Id.*

102. *Id.*

103. *Id.* at 21.

104. *Id.*

105. Mathews, *supra* note 61, at 63.

106. Trapp, *supra* note 96, at 21.

cation Annex (VA) outline a “challenge inspection” protocol¹⁰⁷ based on the principles of “short notice, anytime, anywhere, [with] no right of refusal,” which was “quite a novelty” among both international and even regional arms agreements.¹⁰⁸ The challenge inspection system has been recognized as “the ultimate guardian of the effective implementation of, and strict compliance with, the Convention.”¹⁰⁹ Paragraphs 8 through 25 of Article IX of the CWC outline the OPCW’s authority to conduct on-site inspections in a territory within “the jurisdiction or control of a State Party” whenever a State Party’s non-compliance is brought to the OPCW’s attention.¹¹⁰ This inspection authority is incredibly important because of its deterrent effect.¹¹¹ In addition to exposing and remedying non-compliance, a challenge inspection also serves a dual-purpose of establishing that there had been *no* breach of the CWC in questionable cases, which would enhance confidence among States Parties that states had complied with their obligations.¹¹²

A challenge request must specify the State Party to be inspected, the inspection team’s point of entry, the size and type of the inspection site, the concern regarding the possible non-compliance, and the name of the observer of the requesting State Party.¹¹³ The only way to block the request is if a three-quarter majority of the Executive Council’s forty-one members is “against carrying out the challenge inspection . . . [because it would] be frivolous, abusive, or clearly beyond the scope of th[e] Convention.”¹¹⁴ The requesting State Party would first request to inspect a designated perimeter, and if the inspected state objects to the proposed perimeter, the requesting state will designate an alternative perimeter, which will become the designated area and bar further negotiations.¹¹⁵ The inspection team must notify the inspected State of the point of entry at least twelve hours in advance of its arrival, and the inspected State must grant entry to the inspection team within 108 hours after the inspection team arrives at the point of entry.¹¹⁶ The OPCW will take into account any domestic challenges that the inspected State might be un-

107. Masahiko Asada, *The Challenge Inspection System of the Chemical Weapons Convention: Problems and Prospects*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES AND OPPORTUNITIES* 75, 78 (Ramesh Thakur & Ere Haru eds., 2006).

108. Trapp, *supra* note 96, at 22.

109. Asada, *supra* note 107, at 76.

110. *Id.*

111. *Id.* at 77.

112. *Id.*

113. *Id.* at 78.

114. Asada, *supra* note 107, at 79.

115. *Id.* at 80.

116. *Id.*

der.¹¹⁷

c. National Implementation

The CWC requires States Parties to enact and implement national laws that ensure the international ban on chemical weapons is reflected in national laws. The CWC also requires that any violator can be “apprehended, prosecuted and punished no matter where an offence is committed.”¹¹⁸ International law traditionally expects countries to take domestic implementation measures to ensure that their citizens follow the rules of any agreement struck between states, which are typically a matter of state sovereignty and constitutional framework.¹¹⁹ The CWC is “somewhat more specific,” requiring States Parties to: 1) “adopt [the] necessary measures to implement the Convention;” 2) adopt the necessary measures to ensure that potentially harmful chemicals within state borders are used only for permitted purposes; and 3) “cooperate with other States Parties and afford legal assistance . . . in the context of . . . sharing information for prosecution purposes.”¹²⁰ Furthermore, since the wake of the 9/11 attacks, states are now required to adopt and enforce legislation prohibiting “any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.”¹²¹

The CWC requires each State Party “to designate or establish a National Authority to ensure the effective implementation of the CWC.”¹²² The National Authority makes initial and annual declarations on chemical weapons stockpiles and facilities, “coordinates and participates in the receipt of OPCW inspections of industrial and military sites,” participates in assisting states under chemical attack or threat of chemical attack, and “promotes the peaceful use of chemicals.”¹²³ “The National Authority is thus the focal point in a country’s interaction with other countries and the OPCW.”¹²⁴ While OPCW inspections could always raise domestic sovereignty and constitutional issues, the CWC’s

117. *See id.* at 88.

118. Trapp, *supra* note 96, at 31; CWC *supra* note 1.

119. *Id.*

120. *Id.* at 31-32.

121. FAIZA PATEL KING, *Implementing the Chemical Weapons Convention: A Comparative Case Study of the Legislation of Australia and France*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES* 101, 101 (Ramesh Thakur & Ere Haru eds., 2006).

122. Thakur, *supra* note 2, at 9.

123. *Id.*

124. *Id.*

intensive efforts of encouraging and enabling States Parties to set up their own national implementation scheme is invaluable.

d. Flexibility

Another defining feature of the CWC is that its provisions allow for flexibility in achieving its ends. The mandate given to the OPCW through Article VIII itself is very broad: “to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.”¹²⁵

Article VIII also calls upon the OPCW to conduct inspections in the least intrusive manner possible by requiring it to protect confidentiality and to use scientific advances to increase the effectiveness of verification.¹²⁶ The OPCW was thus conceived as a “learning organization that would adapt to new developments in science and technology.”¹²⁷

Through the call of Article VIII to “provide a forum for consultation . . . among States Parties,”¹²⁸ the OPCW’s mandate is by no means limited to the destruction of chemical weapons stockpiles. In addition to destruction, the mandate also allows States Parties to address new security challenges related to chemical weapons, adjust the implementation process to new requirements, and adapt the regime as necessary.¹²⁹ In a sense, the CWC sets up a formal dialogue between the States Parties and the OPCW, both of which work to modify a living document that is the CWC. The Conference of the States Parties is encouraged to “make recommendations and take decisions on any questions, matters or issues related to [the] Convention.”¹³⁰

The CWC also provides flexibility by allowing a state to take protective security measures in the event that it comes under threat of, or actual, chemical attack.¹³¹ Article X of the CWC “provide[s] for a variety of mechanisms to deal with possible future CW threats”, and “calls for enhanced cooperation between the parties in exchanging equipment for protective purposes.”¹³² According to Ralf Trapp, the Convention was clearly drafted as a “flexible and adaptable legal instrument” capa-

125. Trapp, *supra* note 96, at 22 (internal citation omitted).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* (internal citations omitted).

131. Trapp, *supra*, note 96 at 23.

132. *Id.*; CWC, art. X.

ble of withstanding time constraints, scientific and technological advances, economic changes, and security in general.¹³³

The Convention is unique in that there are two different processes to amend or change its provisions.¹³⁴ In addition to a typical amendment procedure, which risks “unraveling previously existing consensus,” the Convention also provides for a “simplified procedure called a ‘change,’” to be used when the proposed adjustment is already widely agreed upon.¹³⁵ This innovative process made it possible to “adjust technical and administrative procedures that might in [the] future turn out to be impractical, insufficient, technically obsolete, or otherwise in need of adaptation.”¹³⁶ Some early proposals for changes have demonstrated that the OPCW is “indeed capable of going through technical/administrative change” and that the apparatus “can be utilized to adjust the technicalities of CWC implementation to new [] conditions in the real world.”¹³⁷

Lastly, the CWC shows flexibility in the means by which it incentivizes non-parties to join the Convention. Rather than a “one size fits all” means of accession to the Convention, the CWC language encourages “bilateral, regional, and appropriate measures” on the part of the OPCW Technical Secretariat to facilitate non-parties to join and comply with the Convention.¹³⁸ This flexibility is key because “if there were a growing perception that the CWC, and hence the OPCW, were no longer suited to dealing with the changing threats posed by chemical weapons today and in the future, the ramifications would strike at the heart of the Convention itself, and “go far beyond the chemical weapons arena.”¹³⁹ By allowing states to address their concerns in a bilateral or regional context, they can feel more secure and confident that their needs will be met when joining the CWC, increasing the likelihood that those states will join the Convention.

e. Universality

The CWC unabashedly calls for the destruction of chemical weapons, which can only become possible if the Convention becomes universal.¹⁴⁰ While the word “universality” does not explicitly appear in the

133. Trapp, *supra* note 96, at 23.

134. *See id.*

135. *Id.* at 23-24.

136. *Id.* at 24.

137. *Id.*

138. *Id.* at 27 (internal quotations and citations omitted).

139. Trapp, *supra* note 96, at 38.

140. *Id.* at 31.

text, the CWC's Preamble nevertheless refers to "progress towards general and complete disarmament under strict and effective international control," total exclusion of the possibility of CW use, and "the complete and effective prohibition of . . . chemical weapons."¹⁴¹ These goals implicitly call for a universal adherence by all states and jurisdictions, since they cannot be accomplished without it.¹⁴² Initial sessions of the Conference of the States Parties referred to a plan of action "inspired by the objective of achieving universal adherence to the Convention ten years after its entry into force."¹⁴³ While progress towards universality has been largely "rapid and steady," the remaining states not party to the Convention will likely take more time and provide plenty of challenges.¹⁴⁴

Under the Universality Action Plan, a Director of External Relations from the Technical Secretariat's office was selected to invite States Parties to designate points of contact in regions and sub-regions in which universality needs special promotion.¹⁴⁵ These points of contact communicate with non-party states to educate them on the economic and political benefits of joining the Convention.¹⁴⁶ The OPCW Technical Secretariat's engagement with regional and sub-regional organizations, as well as targeted bilateral assistance from itself and States Parties has since furthered the push toward universality.¹⁴⁷ While the Nuclear Non-Proliferation Treaty (NPT) and the Biological Weapons Convention (BWC) have many of the same parties in common with the CWC, only sixty parties to the NPT have consented to broader rights of inspection than previously authorized, and the BWC lacks any kind of verification mechanism, unlike the CWC.¹⁴⁸ Therefore, the CWC's near-universality seems more meaningful.¹⁴⁹

The Conference of the States Parties affirmed all of the aforementioned aspects of the CWC in April 2013 at the Third Review Conference, including: (1) reviewing "relevant scientific and technological developments;" (2) acknowledging new parties to the Convention while maintaining universality as a goal; (3) reaffirming all States Parties' ef-

141. Keith Wilson, *Standing the Test of Time – Efforts to Achieve Universality of the CWC*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES* 150, 151 (Ramesh Thakur & Ere Haru eds., 2006); CWC Preamble.

142. Wilson, *supra* note 141, at 151.

143. *Id.*

144. *Id.* at 153.

145. *Id.* at 154.

146. *Id.*

147. *Id.* at 164, 168.

148. Wilson, *supra* note 141, at 158-59.

149. *Id.*

forts to destroy CW within its control and affirming universal destruction of CW as the object and purpose of the treaty; and (4) asserting that “full, effective, and non-discriminatory” implementation of the verification scheme is essential for realizing that purpose.”¹⁵⁰

But is the CWC really as capable and radical as some commentators suggest? Will its provisions realistically enable the world to be free of chemical weapons? One critic remains cautious and questioned whether the international community could sustain the political will to enforce and achieve the objectives of the CWC, which would require unceasing energy and constant adaptation to changing technology and security environments.¹⁵¹ Another pundit pointed out “serious challenges,” in the coming years, including: universality, maintaining competence of the technical secretariat, and obtaining full adherence by States Parties to the CWC’s legislative requirements.¹⁵² Others suggested that the biggest challenge to the credibility of the CWC was that the challenge system had “neither [been] used nor requested.”¹⁵³ It seemed that in order for the CWC to truly demonstrate its capability as a new and more capable disarmament mechanism, it needed a real-world test. That test came in Syria in 2013.

III. TESTING THE LIMITS OF THE CWC: SYRIA’S 2013 CHEMICAL WEAPONS USE

Use of chemical weapons in Syria during its civil war in 2013 put the CWC framework to the test that many had wondered whether it could withstand. The CWC, OPCW, and the Secretary-General’s Mechanism all played a role in the 2013 allegation, verification, and destruction of chemical weapons in Syria. While many critics doubted whether the international framework could effectively succeed in the midst of political and practical pressures, the application of the CWC in Syria demonstrated that it is a strong and able mechanism fit for the task of the universal destruction of CW. The CWC’s credibility was not only strengthened, but the drafters of existing and future arms treaties could now look to the CWC as a model to emulate in order to maximize effectiveness.

150. Rep. of the Third Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention, Third Review Conference, Apr. 8-19, 2013, U.N. Doc. RC-3/3 (Apr. 19, 2013) [hereinafter Report of the Third Special Session].

151. See Trapp, *supra* note 96, at 35.

152. Mathews, *supra* note 61, at 63-64.

153. Asada, *supra* note 107, at 88.

1. Allegation

While the media devoted much attention to the use of chemical weapons during the Syrian Civil War in August 2013,¹⁵⁴ the Syrian government actually first reported the use of chemical weapons on March 19, 2013 in the Khan Al-Asal area of the Aleppo Governorate.¹⁵⁵ The next day, Syria requested the Secretary-General to initiate an investigation under the authority of the SGM, rather than the CWC, since Syria was not yet a party to the convention.¹⁵⁶ The Secretary-General assured the international community that all credible allegations would be investigated and would dispatch a special team of experts comprised of individuals from the OPCW and World Health Organization to investigate three of the reported incidents.¹⁵⁷

Shortly after the team's arrival in Damascus on August 18, 2013,¹⁵⁸ reports emerged that chemical weapons were allegedly used in a major attack in the Ghouta area of Damascus.¹⁵⁹ UN Member States requested that the Secretary-General order an investigation "making use of the Mission already in Syria," to which the Secretary-General assented on August 22.¹⁶⁰ That same day, the UN Security Council held an emergency meeting in which the Council's President encouraged a "thorough, impartial, and prompt investigation" of whether chemical weapons were used.¹⁶¹ The Secretary-General also ordered his High Representative for Disarmament Affairs travel to Damascus to ensure that the Syrian Government cooperated so that the incident in Ghouta could be properly investigated.¹⁶² Syria granted permission to the investigative team and the Mission commenced its on-site work the next day.¹⁶³

154. See Joe Lauria, *U.N. Chief Hints at Findings in Syria*, WALL ST. J. (Sept. 14-15, 2013), <http://online.wsj.com/article/SB10001424127887324576304579073362942072786.html>; see also Carl Bialik, *Syria Clouded by Chaos of War*, WALL ST. J. (Sept. 14-15, 2013), <http://online.wsj.com/article/SB10001424127887324755104579071332905941934.html>; Catherine E. Shoichet & Tom Watkins, *Strike Against Syria? Obama backs it, but Wants Congress to Vote*, CNN (Aug. 31, 2013), <http://www.cnn.com/2013/08/31/world/meast/syria-civil-war/>.

155. *FAQ about the U.N. Mission to investigate the Allegations of the Use of Chemical Weapons in the Syrian Arab Republic*, *supra* note 94.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *FAQ about the U.N. Mission to investigate the Allegations of the Use of Chemical Weapons in the Syrian Arab Republic*, *supra* note 94.

162. *Id.*

163. *Id.*

2. *Verification and Violation*

On September 16, 2013, the initial findings of the OPCW Mission team determined that chemical weapons were used in the attack on Ghouta.¹⁶⁴ The Mission found: (1) impacted and exploded surface-to-surface rockets still found to contain sarin; (2) environments around the rocket impact sites contaminated with sarin; (3) a number of survivors who clearly demonstrated symptoms of exposure to chemical compounds; and (4) virtually all blood samples taken from the survivors were found positive for sarin.¹⁶⁵

In a note transmitting the findings of the Mission to the Security Council and General Assembly, the Secretary-General expressed “profound shock and regret” that chemical weapons were indeed used in Syria.¹⁶⁶ Moreover, the Secretary-General pointed out that the use was on a large scale, resulting in numerous casualties, particularly among civilians, which included many children.¹⁶⁷ He condemned “in the strongest possible terms” the use of chemical weapons and asserted that the CW use was a war crime, a violation of the 1925 Geneva Protocol, and a violation of customary international law.¹⁶⁸

While the Mission was required to determine *whether* chemical weapons were used, it was not required to determine *who* used them.¹⁶⁹ The Governments of Syria, Russia, and Iran claimed that opposition rebels were responsible for the attack.¹⁷⁰ While who is responsible remains an open question for the UN, the nature of the Missions findings appear to suggest blame on the Syrian Government.¹⁷¹

3. *Consent and Accession*

Opinions of how to respond to Syria’s chemical weapons use varied. The United States considered a unilateral military strike,¹⁷² citing Syria’s “flagrant actions” as being in violation of international norms,

164. Head of United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, Report on the Alleged Use of Chemical Weapons in the Ghouta area of Damascus on 21 August 2013, transmitted by Note of the Secretary-General, U.N. Doc. A/67/997-S/2013/533 (Sept. 16, 2013), available at http://www.un.org/disarmament/content/slideshow/Secretary_General_Report_of_CW_Investigation.pdf [hereinafter Report on the Alleged Use].

165. *Id.* ¶ 29.

166. *Id.* ¶ 1.

167. *Id.*

168. *Id.*

169. Lauria, *supra* note 154.

170. *Id.*

171. *Id.*

172. Shoichet & Watkins, *supra* note 154.

laws of war, and threats to the security of the Middle East and the United States respectively.¹⁷³ The U.S. pointed out that an overwhelming majority of nations were parties to the CWC.¹⁷⁴ Syria, however, was not a party to the CWC at the time of the August 2013 attack in the Ghouta region.¹⁷⁵ As a result, the UN asserted that Syria's use of chemical weapons violated the 1925 Geneva Protocol (which banned the use of chemical weapons), rather than the CWC, and that the Secretary-General had authority under the SGM to investigate alleged CW use by states not party to the CWC.¹⁷⁶

Critics asserted that Syria's use of CW posed a serious challenge for the international community and the OPCW.¹⁷⁷ While "[v]erified destruction of chemical weapons facilities by the OPCW would validate its commitment to disarmament and global peace," some doubted whether the OPCW even had a legal mandate to intervene at all, since Syria was not party to the CWC.¹⁷⁸ Furthermore, observers opined that the role of the Syrian government would be crucial in facilitating OPCW inspections, because it would have to ensure the inspectors' safety while they carried out their investigation in the midst of a civil war.¹⁷⁹ Complicating matters more was the difficulty of determining the exact number of deaths in the midst of a chaotic war zone, inevitably influenced by the agendas of nations seeking to craft an appropriate response or lack of response.¹⁸⁰ Estimates of the death toll ranged from 281 to roughly 1,500 persons in Damascus.¹⁸¹

The U.S. plan for force was widely opposed domestically and abroad.¹⁸² Britain's Prime Minister supported a potential American intervention, but its Parliament rejected the plan.¹⁸³ President Obama mus-

173. Letter from President Obama to the Speaker of the House and the President of the Senate (Aug. 31, 2013), available at <http://online.wsj.com/public/resources/documents/SyriaLetter.pdf>.

174. *Id.*

175. *Report on the Alleged Use of Chemical Weapons*, *supra* note 164.

176. *Id.* ¶¶ 1, 3.

177. *Weapons in Mideast Serious Challenge for International Community*, BUSINESS-STANDARD (Sept. 12, 2013), http://www.business-standard.com/article/news-ians/use-of-chemical-weapons-in-mideast-serious-challenge-for-international-community-113091200979_1.html.

178. *Id.*

179. *Id.*

180. Bialik, *supra* note 154.

181. *Id.*

182. *America, Russia, and Syria: Style and Substance*, ECONOMIST (Sept. 21, 2013), <http://www.economist.com/news/united-states/21586553-it-may-not-look-it-barack-obamas-presidency-tied-syria-style-and-substance>.

183. Lele & Singh, *supra* note 1.

tered support from only half of the G-20 members.¹⁸⁴ UN Members disagreed about threatening Syria with use force, and many countries adopted a wait-and-see approach.¹⁸⁵ The international community appeared to be in a stalemate.¹⁸⁶ Would Syria's CW use go unpunished and therefore make a mockery of the international community, the 1925 Geneva Protocol, the aims of the CWC, and customary international law?

Making matters more serious, experts believed Syria's chemical weapons program to be extensive.¹⁸⁷ Intelligence suggested that Syria had at least a dozen geographically dispersed sites associated with the storage, production, and preparation of some 1,000 tons of chemicals as well as missile warheads, aerial bombs, and artillery rockets that could be used to deliver those agents.¹⁸⁸

Meanwhile, while the international community awaited the findings of the investigatory mission of alleged CW use in Syria, the U.S. began discussing alternatives to military force with Russia.¹⁸⁹ The U.S.-Russia negotiations cleared an initial hurdle by agreeing on the scale of Syria's chemical weapons stockpile, and it cleared a second hurdle when the U.S. was willing to delay immediate military action.¹⁹⁰ The U.S., however, continued to assert that an ultimate threat of force, perhaps through a Chapter 7 UN resolution, was vital to any successful disarmament of Syria.¹⁹¹ President Obama maintained that any agreement with Russia and Syria must be "verifiable and enforceable."¹⁹²

Perhaps seeking a safe haven in anticipation of the official UN findings of CW use in Syria, the Syrian Government decided to accede to the CWC on September 14, 2013, which entered into force on Octo-

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*; Anthony Deutsch and Khaled Yaoub Oweis, *Syria's Chemical Weapons Programme was built to counter Israel*, REUTERS, (June 4, 2013), <http://www.reuters.com/article/2013/06/04/syria-crisis-chemical-idUSL6N0E20AS20130604>.

See also Jonathan Masters, *The Chemical Weapons Test in Syria*, COUNCIL ON FOREIGN RELATIONS, (June 15, 2013), <http://www.cfr.org/middle-east-and-north-africa/chemical-weapons-test-syria/p30935>.

189. Jay Solomon & Carol Lee, *U.S. Backs off Syria Strike for More Talk*, WALL ST. J. (Sept.14-15, 2013), <http://online.wsj.com/article/SB10001424127887324576304579072951108768752.html>. See Masters, *supra* note 188.

190. Solomon & Lee, *supra* note 189 at 1.

191. *Id.* at 2.

192. *Id.* at 1.

ber 14, 2013, when it also accepted the findings of the UN Mission.¹⁹³ Also on September 14, 2013, the U.S. and Russia agreed on a framework for the elimination of Syrian chemical weapons.¹⁹⁴

a. The United States-Russia Framework

The US-Russia Framework for the Elimination of Syrian Chemical Weapons facilitated fulfillment of Syria's new obligations under the CWC.¹⁹⁵ The Framework accounted for Syria's decision to accede to the CWC and the Syrian authorities' commitment to provisionally apply the Convention *prior* to its entry into force.¹⁹⁶ The Agreement also expressed the U.S. and Russia's "joint determination" to ensure that Syrian chemical weapons were destroyed in the "soonest and safest manner" with "stringent verification thereof."¹⁹⁷ Language in the Agreement referred to its stated provisions as "extraordinary procedures" necessitated by the prior use of CW as well as the ongoing Syrian Civil War.¹⁹⁸ The Joint Paper called upon the OPCW to endorse the agreement for the disarmament of Syria's CW, and it subsequently called for the UN Security Council to reinforce the decision.¹⁹⁹ The U.S. and Russia also called upon the UN to regularly review the implementation of the agreed upon plan, and in the event of non-compliance, to consider Chapter 7 use of force measures.²⁰⁰

The Agreement supported the application of Article VIII of the CWC, which provided for the referral of any cases of non-compliance to the UN General Assembly and the UN Security Council.²⁰¹ The plan required Syria to give, within a week of the Agreement, a "comprehensive" list that included the names, types, and quantities of its chemical weapons agents; types of munitions; and the location and form of stor-

193. *Syria to Come Under Chemical Weapons Treaty Next Month*, RADIO FREE EUROPE (Sept. 15, 2013), available at <http://www.rferl.org/content/syria-cwc-chemical-treaty-join-russia-us/25106444.html>.

194. OPCW, Joint National Paper by the Russian Federation and the United States of America, Framework for Elimination of Syrian Chemical Weapons, Executive Council, Thirty-Third Meeting, Doc. EC-M-33-NAT. (Sept. 20, 2013), available at https://www.opcw.org/index.php?eID=dam_frontend_push&docID=16707 [hereinafter Joint Paper].

195. Lele & Singh, *supra* note 1; *FAQ about Syria*, OPCW, <https://www.opcw.org/media-corner/frequently-asked-questions-faq> (last visited October 21, 2013).

196. Joint Paper, *supra* note 194, at 2.

197. *Id.*

198. *Id.*

199. *Id.*

200. Joint Paper, *supra* note 194.

201. *Id.* at 3.

age, production, and research and development facilities.²⁰² The Joint Paper affirmed that the OPCW would be the most effective engine to facilitate disarmament, and that destruction should take place outside of Syria.²⁰³

The two states acknowledged that the Agreement laid out “ambitious goals” for the removal and destruction of all categories of CW related materials and equipment with the objective of completing such removal and destruction in the first half of 2014.²⁰⁴ The Paper further stated that in order to achieve accountability for their chemical weapons, Syria needed to provide the OPCW, the UN, and other supporting personnel with the “immediate and unfettered” right to inspect any and all sites, and that OPCW and UN personnel should be dispatched “as rapidly as possible” to support the control, removal, and destruction of Syria’s CW capabilities.²⁰⁵ The two states affirmed that they “intend[ed] to work closely together,” along with the OPCW, the UN, Syrian parties, and other interested member states that had “relevant capabilities to arrange for the security of the monitoring and destruction mission,” while also “recognizing [the] primary responsibility of the Syrian Government in this regard.”²⁰⁶ The Agreement acknowledged that details to execute the framework still needed to be addressed, albeit on an “expedited basis,” since “time [was] of the essence.”²⁰⁷

b. OPCW and UN Adoption of the U.S.-Russia Framework

Both the UN Security Council and the OPCW Executive Council endorsed the joint U.S.-Russia Framework on September 27, 2013 through Security Council Resolution 2118.²⁰⁸ Resolution 2118 largely mirrored the agreement struck by the U.S. and Russia, calling for “full implementation of the 27 September decision of the Organisation for

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Joint Paper, *supra* note 194.

207. *Id.*

208. See OPCW, Destruction of Syrian Chemical Weapons, EC-M-33/DEC.1, (Sept. 27, 2013), available at <http://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33dec01e.pdf> [hereinafter Destruction of Syrian Chemical Weapons]; The UN and Syria: It’s a Deal, ECONOMIST (Sept. 28, 2013, 12:50 PM), available at <http://www.economist.com/blogs/pomegranate/2013/09/un-and-syria>; Press Release, Security Council, Security Council Requires Scheduled Destruction of Syria’s Chemical Weapons, Unanimously Adopting Resolution 2118, U.N. DEPT. OF PUBLIC INFORMATION (Sept. 27, 2013), available at <http://www.un.org/News/Press/docs/2013/sc11135.doc.htm> [hereinafter Security Council Press Release].

the Prohibition of Chemical Weapons (OPCW), which contain[ed] special procedures for the expeditious and verifiable destruction of Syria's chemical weapons," and also for inspections to begin by October 1, just four days after which the Resolution was agreed upon.²⁰⁹

The Council specifically "prohibited Syria from using, developing, producing, otherwise acquiring, stockpiling, or retaining chemical weapons, or transferring them to other States or non-State actors," and emphasized that "no party in Syria should use, develop, produce, acquire, stockpile, retain, or transfer such weapons."²¹⁰ The text also demanded that Syria comply with the OPCW's decision, "notably by accepting personnel designated by OPCW or United Nations personnel and providing them with immediate and unfettered access to—and the right to inspect—any and all chemical weapons sites."²¹¹ The Security Council also decided to "regularly review Syria's implementation of the OPCW Executive Council decision and the present resolution, requesting the OPCW Director-General, through the Secretary-General, to report to it within [thirty] days and every month thereafter."²¹² The text pointed to Article VIII of the CWC to reaffirm the Security Council's "readiness to consider promptly any reports of the OPCW" of cases of non-compliance of the CWC,²¹³ as well as to impose Chapter 7 measures in the event that Syria did not comply with the Resolution.²¹⁴

Other notable provisions of the OPCW Decision, adopted by the UN, were: (1) a call to inspect any other site identified by a State Party as having been involved in Syria's CW program, unless unreasonable; (2) authorization to hire short-term, qualified inspectors and technical experts to implement the decision; (3) to meet within twenty-four hours if the UN Director-General reported delays on Syria's part; and (4) to recognize that the decision was made due to the "extraordinary character" of the situation posed by Syrian CW, and that it did not create precedent for the future.²¹⁵

IV. IMPLEMENTATION

The speed with which Resolution 2118 measures were implemented was impressive, especially considering that many believed no

209. Security Council Press Release, *supra* note 208.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.* ¶ 13.

214. *Id.* ¶ 21.

215. Security Council Press Release, *supra* note 208, ¶¶ 2(d-e), 3(b), 3(d).

framework could bring about the disarmament of Syria,²¹⁶ whose CW stockpile was one of the largest in the world.²¹⁷ Secretary-General Ban described the operation as “the likes of which, quite simply, have never been tried before.”²¹⁸ The CWC Executive Council called for the activities necessary for the destruction of Syria’s chemical weapons program to start within the week.²¹⁹ Syria extended an immediate invitation to receive a technical delegation from the OPCW and to cooperate with the OPCW in accordance with a provisional application of the CWC prior to its entry into force on Syria.²²⁰ In anticipation of the Security Council Resolution, Syria submitted detailed information on September 19, 2013, concerning its chemical weapon stockpile, “including names, types, and quantities of its chemical weapons agents; types of munitions; and location and form of storage, production, and research and development facilities.”²²¹

On October 1, 2013, exactly according to plan, an OPCW-UN advance team arrived in Damascus to oversee the destruction of Syria’s CW program.²²² The Syrian government provided visas and facilitated the team’s transportation.²²³ The inspection team planned to complete verification of Syria’s CW production and storage facilities and oversee the destruction of Syria’s CW production, mixing, and filling equipment by November 1,²²⁴ and it aggressively aimed to eliminate Syria’s entire CW stockpile by June 2014.²²⁵

The plan further called for the transportation of the most critical chemicals (“Category 1” chemicals) out of Syria by December 31,

216. Jean Pascal & Ralf Trapp, *Internationalization of Syria’s Chemical Weapons Stockpile?*, TRENCH (Sept. 10, 2013), <http://www.the-trench.org/internationalisation-of-syrias-chemical-weapon-stockpile/>.

217. Patrick J. McDonnell, *Syria Meets Chemical Weapons Deadline*, LA TIMES (Oct. 27, 2013), <http://articles.latimes.com/2013/oct/27/world/la-fg-wn-syria-deadline-chemical-arsenal-20131027>; and see *The Syria Crisis: Going Another Round*, ECONOMIST (Sept. 28, 2013), <http://www.economist.com/news/briefing/21586359-russias-plan-provides-breathing-space-it-probably-unworkable-going-another-round>.

218. *Ban Seeks 100-Member Joint Mission to Oversee Destruction of Syrian Chemical Weapons*, UN.ORG (Oct. 8, 2013), <http://www.un.org/apps/news/story.asp/html/story.asp?NewsID=46218&Cr=syria&Cr1=#.Uv6ulPldWSo>.

219. Destruction of Syrian Chemical Weapons, *supra* note 208.

220. *Id.*

221. *Id.*

222. *News Release from the Organization for the Prohibition of Chemical Weapons and the United Nations*, UNITED NATIONS (Oct. 1, 2013), <http://www.un.org/sg/offthecuff/index.asp?nid=3113>.

223. *Id.*

224. *Id.*

225. *Id.*

2013, and for their destruction in descending order of risk that the chemicals posed.²²⁶ Chemical weapons facilities within Syria would be destroyed according to the same risk model, with all chemical weapons facilities also to be destroyed by June 2014.²²⁷

The final phase, the actual destruction of the chemicals themselves, would be the most complex.²²⁸ The weapons were to be first packaged in “special containers” and transported across Lebanon’s border. They would then travel by road from multiple location sites to Latakia, Syria’s biggest port, where they were subsequently loaded onto ships provided by Norway and Denmark, and finally onto the *Cape Ray*, an American government-owned vessel. The *Cape Ray* had equipment capable of breaking down “lethal chemical agents into sludge similar to industrial toxic waste.”²²⁹ The biggest challenge from this phase was getting the chemical-filled containers to the port, since civil war hostilities surrounded the main highway to the port.²³⁰

Predictably, the OPCW altered some deadline goals due to the difficulties of disarming Syria in the midst of a civil war as well as countering other setbacks along the way.²³¹ The Syrian government, for example, missed a February 5, 2014 deadline to remove all of its most dangerous Category 1 chemicals (which included sulphur mustard and precursors for sarin nerve gas) from the country, and managed to remove only 11% by the deadline date.²³² While all CW producing

226. *OPCW Adopts Plan for Destruction of Syria’s Chemical Weapons Programme in the First Half of 2014* (Nov. 15, 2013), <http://www.opcw.org/news/article/opcw-adopts-plan-for-destruction-of-syrias-chemical-weapons-programme-in-the-first-half-of-2014/>.

227. *Id*; *Syria’s Chemical Weapons: Can it be Done?* *ECONOMIST* (Oct. 5, 2013), <http://www.economist.com/news/middle-east-and-africa/21587239-destroying-chemical-arsenal-midst-civil-war-unprecedented-can-it>.

228. McDonnell, *supra* note 217.

229. *Syria’s Civil War: An Inconvenient Truth*, *ECONOMIST* (Dec. 14, 2013), [available at http://www.economist.com/news/middle-east-and-africa/21591632-destroying-chemical-weapons-depends-governments-military-success](http://www.economist.com/news/middle-east-and-africa/21591632-destroying-chemical-weapons-depends-governments-military-success).

230. *Id*.

231. Sam Dagher, *Battle Rages Around Syria Chemical Weapons Sites*, *WALL ST. J.* (Oct. 11, 2013), [available at http://online.wsj.com/news/articles/SB10001424052702303382004579127881524159704](http://online.wsj.com/news/articles/SB10001424052702303382004579127881524159704); *Russia in the World: Preening*, *ECONOMIST* (Sept. 28, 2013), [available at http://www.economist.com/news/europe/21586888-vladimir-putin-tries-his-hardest-look-world-statesman-preening](http://www.economist.com/news/europe/21586888-vladimir-putin-tries-his-hardest-look-world-statesman-preening); Roba Alhenawi & Jason Hanna, *Safety Concerns Keep Inspectors from 2 Syrian Weapons Sites*, *CNN* (Oct. 28, 2013), [available at http://www.cnn.com/2013/10/28/world/meast/syria-civil-war/](http://www.cnn.com/2013/10/28/world/meast/syria-civil-war/).

232. Salma Abdelaziz & Jim Sciutto, *OPCW: Only 11% of Chemical Weapons Removed From Syria* (Feb. 13, 2014), <http://www.cnn.com/2014/02/12/world/meast/syria-civil-war/>; Paul Richter, *Syria Unlikely to Meet Deadline On its Deadline Chemical Agents*, *LA TIMES* (Jan. 29, 2014), <http://articles.latimes.com/2014/jan/29/world/la-fg-syria-chemical-20140130>.

equipment had been destroyed, Syria argued for destruction of CW production and storage sites through inactivation, which essentially means “just locking some doors.”²³³ The OPCW, however, maintained that while the CWC does not define “destruction” of CW production and storage sites, the “OPCW ‘common law’ offers a definition that has come to mean ‘taken down to the foundations.’”²³⁴

Other concerns included the possibility that Syria would maintain hidden stocks of CW and would remain hesitant to give a full history of its chemical weapons program as required by the CWC.²³⁵ Most alarmingly, new reports of CW use arose in April 2014, alleging that the Syrian regime had “dropped bombs filled with . . . chlorine gas in the rebel-held village of Kfar Zita, injuring and terrifying [at least] dozens of civilians,” and potentially killing two children.²³⁶ Because of its widespread industrial use, chlorine gas is not banned by the CWC; however, using chlorine to maim or kill would be a clear breach of the CWC.²³⁷

While the identifying, gathering, and transporting of toxic material from twenty-three different sites through a war-torn country onto awaiting ships “has gone in fits and starts,”²³⁸ important deadlines were met, and “much [was] achieved.”²³⁹ Syria met its October 27, 2013 deadline to submit a detailed and comprehensive declaration of its CW facilities along with a proposal to destroy its chemical arsenal.²⁴⁰ The OPCW verified that Syria had dismantled twenty-two of the twenty-three declared CW production sites, and that it had destroyed all of its declared CW production equipment by the November 1st deadline initially set by the U.S.-Russia Framework.²⁴¹ The OPCW directed the verification of two sites remotely by live video, since they were unreachable due to war on the ground.²⁴² The Syrian Government’s cooperation has been, according to Sigrid Kaag, the Dutch diplomat leading the OPCW Mission in Syria, “all that could have been hoped for.”²⁴³

233. *Eliminating Syria’s Chemical Weapons: Getting There*, ECONOMIST (April 26, 2014), available at <http://www.economist.com/news/middle-east-and-africa/21601260-deadlines-are-being-met-regime-still-cannot-be-trusted-getting-there>.

234. *Id.* at 1.

235. *Id.* at 3.

236. *Id.*

237. *Eliminating Syria’s Chemical Weapons: Getting There*, *supra* note 233.

238. *Id.*

239. *Syria’s Civil War: An Inconvenient Truth*, *supra* note 229.

240. McDonnell, *supra* note 217.

241. Naftali Bendavid, *Inspectors Check Hard-to Reach Syrian Site Remotely*, WALL ST. J. (Nov. 7, 2013), available at <http://online.wsj.com/news/articles/SB10001424052702303763804579183750157467052>.

242. *Id.*

243. *Syria’s War: An Inconvenient Truth*, *supra* note 229.

At last, achieving a “diplomatic and logistical milestone,” all of Syria’s CW, including the most dangerous chemicals, were removed from its borders on June of 2014.²⁴⁴ “Never before ha[d] a country’s entire chemical arsenal been removed from its borders,”²⁴⁵ noted Wall Street Journal writer, Naftali Bendavid. All 1,290 metric tons of chemicals were scheduled to be destroyed at various locations in the U.K., Finland, and the U.S., with some of the most dangerous chemicals to be destroyed aboard the *Cape Ray*, albeit four months after the original June 30th deadline.²⁴⁶

International investment and cooperation from States Parties to the CWC has played a key role in the safe removal and destruction of chemicals. Tens of millions of dollars in donations were made to OPCW funds, and the States Parties also provided ships, vehicles, and personnel.²⁴⁷ Specifically, China, Denmark, Norway, Britain, Russia, and the U.S. provided technical and naval assistance to the Mission.²⁴⁸ In a rare joint military mission, NATO and Russia made an arrangement to protect the American ship upon which CW destruction took place while it was out at sea.²⁴⁹

V. ABLE MECHANISM: LESSONS FROM SYRIA ABOUT THE CHEMICAL WEAPONS CONVENTION

While the destruction of Syrian chemical weapons is still underway and potential obstacles remain, the global intervention through the CWC framework demonstrates that the CWC is in fact a worthy mechanism, realistically capable of ridding the world of chemical weapons. Even if efforts to destroy Syrian CW are further delayed, or if new CW is found in Syria, the above conclusion remains the same. Not only has the internal framework of the CWC enabled the disarmament of Syria in

244. Naftali Bendavid, *supra* note 241.

245. *Id.*

246. *Id.*; *Transloading of Syrian Chemicals onto the Cape Ray Completed Without Incident at Port of Gioia Tauro*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (July 2, 2014), <http://www.opcw.org/news/article/transloading-of-syrian-chemicals-onto-the-cape-ray-completed-without-incident-at-port-of-gioia-tauro/> [hereinafter *Cape Ray*].

247. Gabriels Baczynska & Adrian Croft, REUTERS, *Exclusive: Russia, NATO Plan Joint Operation ON Syria’s Chemical Weapons*, REUTERS (Feb. 14, 2014), <http://www.reuters.com/article/2014/02/14/us-syria-crisis-russia-nato-idUSBREA1D0Y120140214>.

248. *More Chemical Arms Material Leaves Syria, Joint OPCW-UN Mission Confirms*, UNITED NATIONS (Feb. 10, 2014), http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=47109&Cr=syria&Cr1=#.Uv_20fldWSo.

249. Baczynska & Croft, *supra* note 247.

an extremely challenging and hostile environment, but its ability to do so raises its status in such a way that drafters of future disarmament treaties should look to the CWC as a model.²⁵⁰

1. Internal Capability

The intervention from the international community in Syria demonstrated that the internal framework of the CWC itself, including its provisions and those entities responsible for implementing them, is a capable disarmament mechanism that will be further strengthened by its success in Syria.²⁵¹

First, in accordance with CWC provisions, the amount of international cooperation and support has been monumental. Contrary to doubts about whether the States Parties would maintain the political will to enforce the CWC, a myriad of states have contributed to efforts in Syria through providing financial contributions, CW detection and destruction equipment, technical support, and transportation of the CW itself.²⁵² The OPCW's goal of disarming Syria has even brought traditional foes, NATO and Russia, together for a joint mission in order to help achieve that end.²⁵³

In addition to international cooperation, the Syrian intervention demonstrated that the CWC framework does indeed have the technical capability to inspect, verify, and destroy a state's CW in a short amount of time.²⁵⁴ The OPCW was on the ground in Syria to plan, inspect, and verify its CW declarations within a mere four days of Resolution 2118 authorizing them to do so.²⁵⁵ It is likely that the OPCW and Technical Secretariat's ability to mobilize incentivized Syria to accede to the CWC before the results of the initial UN investigation were released. Furthermore, the fact that the OPCW actually developed a plan for disarmament, and adaptively carried out that plan in the midst of a civil war only serves to strengthen its credibility. The OPCW demonstrated its dexterity by remotely verifying two CW facilities that were physically unreachable due to heavy combat.²⁵⁶ The OPCW has also forged ahead in executing an elaborate plan to transport and destroy CW out-

250. Margaret E. Kosal, *Chemical Weapons Destruction and Public Involvement*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES AND OPPORTUNITIES* 118, 118 (Ramesh Thakur & Ere Haru eds., 2006).

251. See Joint Paper, *supra* note 194.

252. *Id.*

253. See *id.*

254. Thakur, *supra* note 2; Kosal, *supra* note 250, at 119.

255. Security Council Press Release, *supra* note 208.

256. Bendavid, *supra* note 241.

side of Syria in the midst of its civil war, which has thus far led to the destruction of a significant portion of Syria's CW.²⁵⁷ The OPCW has accomplished this despite "[n]ever in the history of [the OPCW]" having "been called on to verify a destruction program within such short timeframes—and in an ongoing conflict."²⁵⁸

The intervention in Syria also furthered the goal of the CWC provisions that call for universality, because Syria ultimately acceded to the CWC when it faced the threat of inspections and was encouraged from States Parties to accede.²⁵⁹ Not only did Syria accede to the treaty, but it also agreed to a provisional accession one month before the CWC formally became binding on Syria.²⁶⁰ By acceding to the CWC, Syria essentially received a "get out of jail free" card for having used CW since it avoided punishment by force.²⁶¹ While allowing states to use CW without being punished is not something the CWC framework desires, ironically, the goal of CWC universality will more easily be achieved if states not party to the CWC know that if they use CW, they can avoid punishment by acceding to the CWC. On the other hand, States Party to the CWC have now seen in Syria how effective the framework can operate to rid a country of CW, thereby deterring future CWC violators from using or secretly stockpiling CW.

Furthermore, the Syrian intervention demonstrated that the comprehensive prohibitions and verification procedures set forth in the CWC are more than idealistic words. The prohibitions outlined in the CWC prohibit the development, production, acquisition, retention, stockpiling, transfer, or use of chemical weapons.²⁶² The OPCW implemented these prohibitions in Syria, essentially undertaking the immediate and total disarmament of Syria's CW and CW facilities.²⁶³ The agreed upon plan for the disarmament of Syria was honest and deliberate when it stated that the short time period and breadth of scope of the disarmament was an "ambitious goal."²⁶⁴ The fact that the OPCW and larger CWC framework did not soften the conditions for disarmament,

257. *Cape Ray*, *supra* note 246.

258. *Statement by the OPCW Director-General on the 2013 Nobel Prize for Peace*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, (Oct. 11, 2013), <https://www.opcw.org/news/article/opcw-receives-2013-nobel-prize-for-peace>.

259. Daniel Flakes, *Getting Down to the Hard Cases: Prospects for CWC Universality*, ARMS CONTROL ASS'N (Mar. 2008); Joint Paper, *supra* note 194.

260. Joint Paper, *supra* note 194.

261. *Id.* at 3; *Syria to Come Under Chemical Weapons Treaty Next Month*, RADIO FREE EUROPE, *supra* note 193.

262. CWC preamble.

263. Joint Paper, *supra* note 194, at 15.

264. Joint Paper, *supra* note 194.

and the fact that Syria has thus far been a willing participant,²⁶⁵ further bolsters the credibility of the CWC as a capable mechanism for the complete eradication of chemical weapons from the globe.

Moreover, the Syrian intervention demonstrated that the provisions in the CWC do indeed allow flexibility in the means by which disarmament may be achieved. Rather than rigidly adhering to a traditional protocol, the provisions in the CWC encouraging regional agreements to bring States into the CWC framework allowed room for the U.S. and Russia to agree upon a joint plan for Syrian disarmament.²⁶⁶ Without the CWC provisions allowing flexibility, the U.S. would likely have been at odds with Russia and many other States Parties as to the proper response to Syria's CW use, and would likely have had to follow its own path, creating dissension and damaging the CWC framework in the process. Because the CWC provisions encourage side agreements to achieve its object and purpose, the U.S. and Russia were able to agree to a plan which both felt would achieve disarmament, and to which Syria could trust and adhere.

Lastly, in response to Masahiko Asada's concern that the CWC would not be fully credible until States Parties had utilized the challenge procedure mechanism,²⁶⁷ the intervention in Syria essentially demonstrates that the challenge inspection and verification system provided for in the CWC is indeed practicable and effective. While the initial investigation of CW use in Syria was under the authority of the Secretary-General's Mechanism since Syria was not yet party to the CWC, one can equate the investigation under the SGM with the challenge inspection mechanism under the CWC for several reasons. First, the international community in a sense "challenged" that Syria had used chemical weapons in the Ghouta region. Only after this challenge did Syria allow inspectors into the region to investigate. Second, before the UN Mission team made the investigation results public, Syria acceded to the CWC and agreed to be provisionally bound by it one month before the CWC officially became binding upon it.²⁶⁸ The Syrian government then proceeded to open its borders to the OPCW team, declare all CW and CW facilities, and allow the process of their immediate verification and destruction.²⁶⁹ Thus, the Syrian intervention showed that the internal CWC framework is indeed fit for the task of universal disarmament in a con-

265. *Id.* at 5.

266. *Id.*

267. *See Asada, supra* note 107, at 88.

268. *See Joint Paper, supra* note 194.

269. McDonnell, *supra* note 217.

stantly evolving world.

2. External Effect of the CWC Framework as Applied in Syria

Because the CWC framework enabled the peaceful disarmament in Syria, drafters of existing and future disarmament treaties should look to the CWC as a credible model to mirror. As discussed in part above, the CWC is “evolutionary compared with earlier treaties and international agreements.”²⁷⁰ Unlike the Nuclear Non-Proliferation Treaty (NPT), the CWC is universal and “does not create a world of chemical apartheid in which a small group of countries holds legitimate possession of weapons that are banned for everyone else.”²⁷¹ Furthermore, unlike the Biological Weapons Convention (BWC), the CWC contains “rigorous,” ambitious, and “state-of-the-art provisions on monitoring and verification.”²⁷² The BWC has been unsuccessful in preventing the proliferation of biological weapons in part because of “weaknesses in its verification system.”²⁷³

Efforts to strengthen both the NPT and BWC verification protocols were either ineffective or not adopted.²⁷⁴ While nuclear and biological weapons can cause more large scale harm than chemical weapons, thus making it harder for a state to surrender them, both the NPT and BWC should look to the CWC for inspiration that international agreement upon universal destruction is at least possible. Once states arrive at that premise, they could then look to the verification and challenge mechanisms codified in the CWC, as well as to the real-world example in Syria, to see that those provisions can be used in appropriate, non-abusive, and effective ways. The demonstration of the effectiveness of the CWC framework in Syria could perhaps motivate drafters of the NPT, BWC, and future disarmament treaties to think in a way that allows for more aggressive disarmament provisions.

3. Unintended Consequences

The successful implementation of the CWC thus far in Syria is not without drawbacks. Ironically, successful verification and disarmament

270. Margaret E. Kosal, *Chemical Weapons Destruction and Public Involvement*, in *THE CHEMICAL WEAPONS CONVENTION: IMPLEMENTATION, CHALLENGES, AND OPPORTUNITIES* 118, 118 (Ramesh Thakur & Ere Haru eds., 2006).

271. Thakur, *supra* note 2, at 1.

272. *Id.*

273. *Id.* at 5.

274. Asada, *supra* note 107, at 93-94. *See also* Leonard S. Spector, *Slowing Proliferation: Why Legal Tools Matter*, 34 *VT. L. REV.* 619, 624-26 (2010).

in Syria could be its own Achilles' Heel. Assuming that Syria allowed a full inspection of its CW stockpile, states not party, such as Israel and Egypt, could be pressured to do the same if they became party to the CWC.²⁷⁵ Israel has not ratified the treaty due to national security concerns.²⁷⁶ Egypt is believed to be equipped with mustard gas and some nerve agents.²⁷⁷ Both states could be put under the microscope to disarm should they become party to the CWC, which could act as a deterrent to their joining the CWC.²⁷⁸

Furthermore, the effective intervention in Syria could subject the U.S. to a potential retaliatory challenge inspection²⁷⁹ to ensure that it is complying with its own destruction plan set to be complete by September 2023.²⁸⁰ If States Parties became hesitant to issue challenge inspections for fear of a retaliatory challenge, the CWC's credibility would suffer, since states would be free to flagrantly violate the CWC without fear of being challenged.²⁸¹ On the other hand, perhaps the Syrian intervention can serve as a reminder that States Parties should speed up the work of getting rid of chemical weapons—especially if they are demanding that of others.²⁸²

CONCLUSION

Just before 2:30 a.m. on August 21, 2013, poison-filled rockets “streaked through the clear night sky” of the Damascus suburbs.²⁸³ Sarin gas, which instantly kills by attacking the nervous system, spread across sleeping farms and penetrated homes.²⁸⁴ “Men, women, and children began coughing and gagging, with little more than wet handkerchiefs and T-shirts to hold over their mouths.”²⁸⁵ Local doctors quickly ran out of antitoxins, and “in a desperate effort to wash away the poison, flood-

275. Jay Solomon, *Disarming Syria Puts Focus on Israel, Egypt Arsenals*, WALL ST. J. (Sept. 14-15, 2013), available at <http://online.wsj.com/article/SB10001424127887324755104579073472140543250.html>.

276. *Id.* at 1.

277. *Id.* at 2.

278. *Id.* at 1.

279. Asada, *supra* note 107, at 90.

280. OPCW, Report of the Seventy-Fourth Session of the Executive Council, Doc. EC-74/5 (Oct. 11, 2013), available at https://www.opcw.org/index.php?eID=dam_frontend_push&docID=16816.

281. Asada, *supra* note 107, at 89.

282. *Id.*

283. Adam Entous, Nour Malas, & Rima Abushakra, *As Syrian chemical Attack Loomed, Misssteps Doomed Civilians*, WALL ST. J. (Nov. 22, 2013), available at <http://online.wsj.com/news/articles/SB10001424052702303914304579194203188283242>.

284. *Id.*

285. *Id.*

ed clinic floors and dragged unconscious victims through the water.”²⁸⁶ Over 1,400 deaths resulted from the attack, “making it the worst chemical-weapons strike in a quarter century.”²⁸⁷ The chemical attack in Ghouta, Syria, and the possibility of such an attack anywhere in the world, is why effective implementation and ultimate universality of the CWC is so important.

As of October 2013, the OPCW had overseen the elimination of 82% of the world’s declared stockpile of chemical weapons (58,172 tons) and supervised the destruction of nearly 4.97 million munitions and containers.²⁸⁸ The OPCW has even won the Nobel Peace Prize for its mandate to oversee the destruction of Syria’s chemical arsenal in the midst of a civil war.²⁸⁹ The CWC framework deserves such praise for enabling the stringent verification and destruction of Syrian CW thus far.

If one can step back to take a bird’s-eye view of the Syrian situation before any proactive international response, several courses of action were possible: (1) a unilateral U.S. military strike, (2) a non-UN joint military strike, (3) a non-military UN action such as sanctions, and (4) leaving the matter to be resolved internally in Syria. Only the CWC framework, through which the U.S. and Russia were able to negotiate, and to which Syria voluntarily acceded, enabled a deal for the peaceful removal and destruction of chemical weapons from Syria.

The Syrian intervention demonstrated not only that the CWC provisions and mechanism allowed for the flexibility, adaptability, and technical capability for, and that the States Parties had the sheer political will to bring about total disarmament in Syria, it also proved that the CWC is capable to bring about chemical disarmament across the world. Furthermore, the Syrian intervention brings a level of credibility to the CWC to which drafters of current and future disarmament treaties should look to for guidance. Rather than a “dinosaur of international relations” from the Cold War, the CWC is a “model for multilateral undertakings to build global consensus in the field of international security through disarmament.”²⁹⁰ The Syrian intervention gives the CWC a “rising breeze buffeting its sails”²⁹¹ in the eyes of the international commu-

286. *Id.*

287. *Id.*

288. Naftali Bendavid, Kjetil Malkenes Hovland, & Rima Abushakra, *Chemical-Weapons Watchdog Wins Nobel for Peace*, WALL ST. J. (Oct. 12-13, 2013), available at <http://online.wsj.com/news/articles/SB10001424052702304520704579128800087868102>.

289. *Id.*

290. Trapp, *supra* note 96, at 15.

291. Ere Haru, *Conclusion: Seize the Moment*, in THE CHEMICAL WEAPONS CONVENTION:

nity. Let us hope that the breeze grows stronger, and that all states jump onboard the ship.