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## Book Review: New Chemical Weapons Convention: Implementation and Prospects

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*The New Chemical Weapons Convention: Implementation and Prospects.* Edited by Michael Bothe, Natalino Ronzitti, and Allan Rosas. The Hague, London, Boston: Kluwer Law International, 1998. Pp. xv, 604. Index. Fl 350, \$189, £119.

This book, a fine-grained, expert-level analysis of several of the most intricate legal and policy issues arising in connection with the 1993 Chemical Weapons Convention (CWC), also serves as a vivid symbol of the “coming of age” of arms control. For all their strategic significance and political innovation, earlier generations of arms control treaties—bilateral or multilateral, concerning nuclear, chemical, biological, or other weapons—could not plausibly have spawned this type of 600-page exegesis or inspired the painstaking, inch-by-inch explorations presented in its twenty-three chapters. Only with the modern wave of treaty craftsmanship—embodying attempts to incorporate into the document itself reams of detail, scores of implementation procedures, and page after page of minutiae that had traditionally been left to subsequent phases—has the arms control community been able to generate a treaty of sufficient scope and detail to justify this level of dissection. It remains to be seen, however, whether this refinement of treaty-making mechanisms is salutary or detrimental. Will it improve the arms control process by helping to anticipate, and perhaps thereby to avoid, otherwise-latent controversies over verification procedures, dispute-resolution mechanisms, and other operational specifics? Or do the monumental demands of such a process represent a level of hypertrophy that threatens the sustainability of the entire enterprise by so burdening the treaty negotiators that they can only rarely surmount all the challenges thrown their way and bring such an instrument to fruition?

If the Chemical Weapons Convention represents something of a high-water mark in detail-laden treaty drafting, then the editors of this text (Michael Bothe, a professor of law at Johann Wolfgang Goethe-University in Frankfurt; Natalino Ronzitti of the Istituto di Affari Internazionali in Rome; and Allan Rosas, director of the Institute for Human Rights at Åbo Akademi University in Turku, Finland) have at least marked the occasion in a suitably rich, insightful—and encyclopedic—manner.

The book arose from a series of workshops convened in Germany, Italy, and Finland in 1991–92. The contributors, most of whom are professors or researchers affiliated with various

universities or institutes in those countries, are experts representing a diverse range of perspectives and disciplines within the field of chemical weapons. The book is well-organized, and the chapters not only complement each other, but avoid most of the problems of overlap that frequently afflict such anthologies. It covers a broad range of topics, from "big picture" and background questions, to issues about the creation and operation of the treaty's implementing organization, to the mechanisms designed to ensure verification of compliance with the treaty's fundamental obligations.

Three chapters will be of particular interest. First, Thomas Kurzidem has supplied a remarkably insightful guide to the conflict-management standards and procedures of the CWC. Article IX (Consultations, Cooperation and Fact-Finding) and Article XIV (Settlement of Disputes) provide a state-of-the-art elaboration of the treaty provisions that the parties can employ to avoid disagreements in the first place, that channel parties into more cooperative and problem-solving modes when disagreements do arise, and that provide recourse to whatever "teeth" the international law system has to offer for the most intractable cases.

Kurzidem's chapter admirably provides the reader with a subtle understanding of the context within which the treaty-implementation problems may arise. He starts by analyzing the (mostly quite primitive) efforts of prior arms control instruments, such as the Antarctic Treaty, the Treaty of Tlatelolco, and even the Non-Proliferation Treaty, each of which, despite their myriad accomplishments and inventions, failed to establish reliable, expansive procedures to anticipate or address emerging compliance problems. Building upon this empirical survey, he then catalogues the array of dispute settlement mechanisms that have been grafted onto the existing inventory of arms control accords: bilateral or multilateral consultations, institutional fact-finding, challenge inspections, and so on, the sum of which, Kurzidem notes laconically, "constitutes a very reluctant approach to third party dispute settlement" (p. 294).

In contrast, the Chemical Weapons Convention offers a diverse range of viable options. At the foundation is a verification program so rigorous that potential disputes may be preempted even before they emerge. If problems do arise, a "ladder" of clarification, consultation, and dispute-resolution routes channel the controversies into productive forums. The aggrieved (or merely "concerned") party may select its options with

considerable freedom; there is no established hierarchy or prescribed sequence in which the various mechanisms must be invoked. Thus, exchanges of information, requests for clarification, recourse to the institutional arrangements and organs established by the treaty, and referral to the International Court of Justice are all available. Kurzidem not only describes the choices, but critiques them. He notes, for example, the unfortunately truncated powers available to the "experts group" that might be appointed to assist the parties in assessing the adequacy of exchanged information.

A second valuable chapter is that contributed by Ettore Greco on the CWC's novel "confidentiality" provisions. As Greco notes, modern arms control agreements have become so ambitious, and the subjects they address have become so diverse, that verification arrangements must now encompass both government facilities and, with equal intrusiveness, the domain of private industry. The CWC's innovative mechanisms for "managed access" by the international inspectorate (a process of sufficient importance to be discussed in several chapters) might therefore threaten to expose both classified information concerning national security and confidential business information zealously protected by private industry. He provides a lucid and detailed explanation of the CWC's elaborate safeguards against compromising such information, and of the specific remedies provided when violations occur.

Greco begins by sketching the comparable structures available in other arms control regimes, especially those created by the International Atomic Energy Agency's safeguards system, which have been a signal success in providing the necessary insight into parties' treaty-related activities while not compromising other data. Greco reminds us, however, that the CWC will present the potential dangers in much sharper relief. The quantity of data to be exchanged is much greater; the degree of intrusion into private-sector industrial operations is much more intense; and the market value of the confidential commercial information at risk is immense.

Greco argues that the CWC should be equal to the task. The treaty's Confidentiality Annex spells out in elaborate detail how the inspectors will operate, what procedural protections will be in place for the acquired information, and how the balance will be struck between the international community's "need to know" about suspicious or problematic activities, and the facility's need to protect itself against unwarranted snooping.

Greco is a most thoughtful commentator in analyzing both the treaty's provisions and its negotiating history. He points out, for example, that the treaty permits only states parties—and not private facilities that are subject to inspection—to author proposals for protecting proprietary business information.

A third especially impressive chapter is that contributed by Allan Rosas, one of the co-editors, who discusses the array of possible responses to noncompliance with the Convention. The task Rosas sets for himself is to parse Article XII of the CWC, which outlines a range of "Measures to Redress a Situation and to Ensure Compliance, including Sanctions." He notes that the treaty's aims here embrace both punishment (to impose a penalty on the violator, thereby deterring similar deviations) and enforcement (to restore the status quo ante). The treaty draws upon a number of substantive remedies, again selecting among the best and most promising types of enforcement actions that have been developed in prior generations of arms control agreements. None of these, it must be admitted, is perfectly satisfactory; the nations of the world have not yet demonstrated a sincere willingness to turn fully to legal tools for resolving problems in this most sensitive arena, national security. Consequently, if Rosas's explication is not fully persuasive on the powers of the CWC to enforce its provisions (especially when confronted with a determined violation by some rogue state) and thereby guarantee each of its parties the "benefit of the bargain," he can hardly be blamed. It is, instead, a reflection of the inherent inadequacy of the treaty, or even of the entire system of international law, which has not yet inspired fully effective legal enforcement.

Other chapters of the book must also be noted, at least in passing. The contribution by Julian Perry Robinson is an excellent historical overview of the negotiations that culminated in the CWC; it could almost stand alone as an entry in a suitable encyclopedia explaining how the instrument came to take its final shape. A chapter by Michael Bothe, another of the co-editors, describes the national implementing legislation crafted by several of the states parties. Of particular interest is the chapter's topic-by-topic analysis of the domestic laws of several leading countries—information that is otherwise very difficult to collect and synthesize. Finally, the chapters by Ronald Sutherland and Thomas Stock are valuable interdisciplinary examinations of the problems of, and prospects for, destroying both the active chemical weapons inventories of parties,

and the old and abandoned chemical weapons detritus they may yet uncover.

Despite its many virtues, the book has several problems. Most important is the unfortunate timing of the book's publication. As noted, most of the essays were based in workshops conducted in 1991 and 1992, at which time the Chemical Weapons Convention was taking its final shape. Since it had not been completely drafted or signed, the outcome, especially with regard to implementation measures, was still uncertain. After the CWC was signed in Paris, many of the essays were updated in a modest way to take new developments into account, such as the initial activities of the Preparatory Commission that paved the way for the treaty to enter into force in 1997. Nevertheless, there has been by now—nearly seven years after the book's chapters were completed in 1993—a wealth of developments concerning the CWC and its implementation. The Preparatory Commission and the permanent institutions of the CWC have taken shape and begun to find their way. Some of the authors' speculations about what the treaty organs might or might not do have already been rendered obsolete and need to be supplemented.

Although the experts contributing to this book bring an admirable range of perspectives to it, still broader levels of diversity might have been helpful and illuminating. There are no voices representing the United States or Russia, the two countries possessing the lion's share of the treaty-relevant chemical weapons, installations, and materials. There is also no contributor representing the developing world, which played a leading role in the negotiation of many of the Convention's provisions. Unfortunately, too, there are no genuine skeptics among the authors, no one prepared to argue that the CWC is, for example, inadequate to the assigned tasks or doomed to fail in its ambitious undertakings.

One comment about the text itself is also in order. Most of the chapters are skillfully and well written, but there are places where an additional round of editing and proofreading would have smoothed out the lingering roughness of expression or idiom.

Overall, this book is an excellent addition to the literature and should be welcome in any collection that seeks to encourage a careful, thorough understanding of what is now the discipline's most sophisticated, highly developed arms control treaty. The book is a most suitable vade mecum for anyone who seeks a painstaking guide to the entrails of the Chemical Weapons Convention,

who wants to compare its provisions to those of prior (or subsequent) arms control accords, or who undertakes to study the process by which arms control agreements of this sort are crafted.

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