

THE HENRY L. STIMSON CENTER

**Combatting Chemical  
Weapons Proliferation:**

*The Role of Sanctions and Assurances*

**Lewis A. Dunn**

**and**

**James A. Shear**

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*Pragmatic steps toward ideal objectives*



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The Henry L. Stimson Center  
21 Dupont Circle, NW  
Fifth Floor  
Washington, DC 20036  
(202) 223-5956 Fax (202) 785-9034

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## *The Multilateral Verification Project*

These essays are products of the Stimson Center's Multilateral Verification Project which is made possible by grant support from the Carnegie Corporation of New York and the Rockefeller Brothers Fund. The Multilateral Verification Project is designed to promote constructive approaches for international security problems and multilateral negotiations. Our work has focused primarily on useful applications for "Open Skies" and constructive ways to strengthen a prospective Chemical Weapons Convention. Our goals are to generate understanding and appreciation of problem-solving approaches that are practical, equitable, prompt, and as resistant to manipulation as possible. We also wish to call attention to multilateral verification proposals that are likely to cause more harm than good. Luncheon meetings are held in Washington where concept papers are presented and discussed by representatives of the executive and legislative branches, the diplomatic corps, non-governmental organizations, and the media. These papers and notes of the meetings are then distributed to government offices and research institutes.

### *About the Authors*

Lewis A. Dunn is an Assistant Vice President and Manager of the Negotiations and Planning Division of Science Applications International Corporation. The views herein are his own and not necessarily those of SAIC or any of its sponsors. He wishes to thank his colleague at SAIC, Burrus Carnahan.

James A. Schear serves as a consultant-advisor to the Under-Secretary-General of the United Nations for Disarmament Affairs. The opinions expressed here are solely his own. He wishes to thank Gordon Burke, Amy E. Gordon, Elisa Harris, Michael Krepon, James Leonard, Robert Mikulak, Jane E. Stromseth, and Victor Utgoff for helpful comments on an earlier draft of this essay.



# **COMBATTING CHEMICAL WEAPONS PROLIFERATION**

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# 1

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## COMBATTING CHEMICAL WEAPONS PROLIFERATION: THE ROLE OF SANCTIONS

**Lewis A. Dunn**

In the wake of Iraq's invasion of Kuwait, the role of sanctions in support of U.S. foreign policy goals has been a subject of great attention. Congress intensely debated whether or not the wide-ranging punitive measures imposed by the United Nations Security Council against Iraq would suffice to force Saddam Hussein to withdraw from Kuwait. Despite the eventual conclusion that military force alone could free Kuwait, the potential longer-term contribution of sanctions to U.S. pursuit of a "new international order" should not be overlooked. In particular, sanctions policy can play an important role in chemical weapons control, whether in support of an eventual global chemical weapons ban or more interim non-proliferation efforts.

Development and implementation of such a sanctions policy for chemical arms control requires that four questions be addressed. What lessons can be drawn from past experience with sanctions? What are the potential benefits and risks of chemical weapons-related sanctions? What sanctions could be threatened? What steps can be taken now to begin to implement a chemical weapons sanctions strategy?

### LESSONS OF PAST EXPERIENCE

In thinking about the potential role of sanctions in supporting chemical arms control, it is useful to review briefly the lessons of past experience. That experience suggests that it is critical to distinguish the imposition of sanctions — whether to coerce, to punish, or simply "to do something" — from the threat of sanctions. Also important is the further distinction between the direct impact of sanctions on the country or party sanctioned and the indirect impact on onlookers.

## The Imposition of Sanctions

Most usually, discussion of and thinking about sanctions focuses on the imposition of sanctions. Imposition of sanctions may be undertaken, for example, as a means of coercion, designed to force a change in the policy of the target nation by inflicting economic or other punishment or penalties. This was the case with U.N. sanctions against Iraq after its invasion of Kuwait as well as with U.N.-mandated sanctions in the last decade against South Africa. A half-century earlier, a similar ambition animated the imposition of sanctions by the League of Nations in response to the Italian invasion of Ethiopia. On the bilateral level, to take a different example, U.S. economic and military assistance to Pakistan has been cut-off three times over the past fifteen years in an attempt to induce that country to rein in its nuclear weapons-related activities.

The record of actual imposition of sanctions as a means to coerce a country into changing its policy, however, is mixed at best. As one recent comprehensive analysis of over one hundred instances in which sanctions were imposed concluded:

Although it is not true that sanctions “never work,” they are of limited utility in achieving foreign policy goals that depend on compelling the target country to take actions that it stoutly resists. Still, in some instances, particularly sanctions involving small target countries and relatively modest policy goals, sanctions have helped alter foreign behavior.<sup>1</sup>

Examples to illustrate the difficulties of using sanctions to coerce a change of policy come readily to mind.

Though recourse to force in the Gulf by the United States and its coalition partners made the issue moot, Saddam Hussein’s resistance to military measures — as well as his steady record of living up to his threats — strongly suggest that sanctions alone would not have forced an Iraqi withdrawal from Kuwait.<sup>2</sup> For his part, Mussolini continued his campaign to conquer Ethiopia,

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<sup>1</sup> See Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: History and Current Policy*, Institute for International Economics, Washington, D.C., 1990, p. 92.

<sup>2</sup> Skepticism about the ultimate impact of sanctions on Iraq was expressed, not unexpectedly, by CIA Director William Webster in a January 10th letter to Representative Les Aspin. Webster argued, for example, that “... even if sanctions continue to be enforced for an additional six to twelve months, economic hardship alone is unlikely to compel Saddam to retreat from Kuwait or cause regime-threatening popular discontent in Iraq.” Text released by House Foreign Affairs Committee Chairman Aspin.

though admittedly the sanctions against Italy were undercut both by non-participation of key countries and the inability to agree to embargo oil shipments. Similarly, neither U.S. imposition of economic and military assistance sanctions against Pakistan nor related U.S. cut-offs of nuclear cooperation with other countries that refused to accept U.S. conditions for nuclear supply have had their desired effect in the Third World.

The South African case is mixed. Many considerations other than concern about the impact of economic sanctions undoubtedly entered into the calculations of the de Klerk government to free Nelson Mandela and seek to negotiate an acceptable power-sharing arrangement. This includes persistent internal unrest; a lessening of the external military threat, with the prospective withdrawal of Cuban troops from Angola; the demands of running a modern economy; and generational change within South Africa. Nevertheless, economic sanctions and growing international isolation appear to have had an impact in encouraging flexibility in the new generation of political leaders, not least by triggering decisions by major European financial institutions to cut their ties on the grounds that the risks of continued investment were too high.<sup>3</sup>

Imposition of sanctions, however, has sometimes been for other purposes than forcing a change of policy. Sanctions have been undertaken to satisfy a desire to “punish” a country and increase the costs of its activities. This was largely the case, for example, with U.S. sanctions against Castro’s Cuba in the 1960s. Periodic U.S. recourse to grain sales embargoes have also been seen as a means to punish Soviet misbehavior, as was the case following its invasion of Afghanistan in 1979. Imposing sanctions also clearly has been a means, on some occasions, by which governments could “do something” in response to public pressures for action.

### **The Threat of Sanctions**

A pessimistic assessment of the utility of sanctions, focused only on their “after the fact” coercive, punitive, or political utility, is too narrow. On a number of occasions, the explicit or implicit threat of adverse economic, political, or diplomatic costs — sanctions broadly defined — appears to have had a more significant impact in influencing state behavior. Consider some examples from the fields of nuclear and missile non-proliferation, both relevant to that of chemical weapons proliferation.

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<sup>3</sup> This analysis reflects discussions with South African officials responsible for economic matters related to the author.

In the mid-1970s, for example, U.S. threats to terminate economic and military assistance, including possibly our military presence, were critical in convincing the South Korean government to mothball what could have become a full-blown nuclear weapons program. A reluctance to risk U.S. economic, political, and other responses also reined in Taiwan at much the same time. Continuing U.S. diplomatic pressures in the late 1980s also played a part in convincing Beijing to desist from further sales of medium-range ballistic missiles as well as not to sell short-range ballistic missiles to Middle East countries. Concern about the adverse impact on U.S.-Egyptian relations figured, as well, in Cairo's 1989 decision to sever its participation in the joint Argentinian-Egyptian-Iraqi Condor ballistic missile development program.

Examples of past successful recourse to the threat of diplomatic, economic, political, or even military sanctions, of course, should not be exaggerated. For example, the extent of U.S. influence with both South Korea and Taiwan in the mid-1970s was exceptional, while their incentives to acquire nuclear weapons were still limited. More generally, past experience suggests that the potential utility of the threat of sanctions as a deterrent drops sharply once rising incentives or pressures for specific actions result in a firm policy decision. That said, when the balance of incentives and disincentives is more fluid or mixed, past experience also suggests that the threat of sanctions may be able to tip that balance.

### **Influencing Onlookers and Deterring "Repeat Offenders"**

Despite the past poor record of actual recourse to sanctions in forcing countries to change their policies, there may be reasons to impose sanctions in the event that deterrence fails. Credibility requires that threatened sanctions be imposed to demonstrate both the capability to execute sanctions and the will to do so. The distinction between the impact of imposing sanctions on the sanctioned party and on onlookers takes on importance here. Even if imposition of sanctions fails to coerce the direct target to change policy, it could well affect the calculations of onlookers with more to lose and less to gain.

In addition, even when sanctions appear to have "failed" in the short-term — as in the case of international sanctions against Rhodesia in the 1970s or South Africa in the 1980s — they can often increase the costs to the target state of continuing its objectionable behavior. These costs may be bearable initially. But if the party imposing sanctions is prepared to maintain its position over a period of years, the target regime may eventually be worn down, or that regime may change to one that is less prepared to pay that price.

Further, imposition of sanctions may influence the sanctioned party's assessment of the relative costs and benefits of repeating its initial act. This could be especially pertinent in situations in which the goal of policy is not to reverse an action but to keep a situation from deteriorating further or from being formalized. For instance, imposition of sanctions following the initial Iraqi use of chemical weapons in its war with Iran might have deterred Iraq's repeated later use of those weapons, when Iraq no longer faced the prospect of imminent defeat. The imposition of sanctions might also have prevented the later use of chemical weapons against the Kurds.

### **SANCTIONS IN CHEMICAL ARMS CONTROL**

Turning specifically to chemical arms control, the threat of sanctions could prove useful across the board: to deter use of chemical weapons; to strengthen support for a Chemical Weapons Convention; to buttress export controls; and to influence national decisions concerning pursuit of a chemical weapons capability. Each of these will be considered in turn.

### **The Threat of Chemical Weapons Sanctions**

A credible threat by the United States and other governments to impose punitive measures in response to future use of chemical weapons could help to deter such use. A country thinking about chemical weapons use would have to weigh the costs of that use — whether in terms of loss of foreign assistance, of access to conventional military equipment, or of diplomatic and political support — against the putative gains. In situations in which use of chemical weapons would be one military option — and not the only option — the choice could well be not to use those weapons.

Creation of a presumption that chemical weapons use would not be "cost-free" also could help influence decision-making in various Third World countries now thinking about whether or not to launch significant chemical weapons acquisition programs. A commitment to sanctions by the major powers would help as well to neutralize the perception that a world of many dozens of chemical weapons states, is now unavoidable.

In addition, the threat of sanctions could affect adherence to a future Chemical Weapons Convention in several different ways. For small Third World countries facing a potential chemical weapons threat from a neighbor, the prospect that outsiders would come to their support to deter or punish use of chemical weapons against them would likely make them somewhat more willing to join a Chemical Weapons Convention. In turn, assuming that a

Convention is in place, the readiness of outsiders to support weaker parties by threatening or implementing sanctions on their behalf could prove vital in preventing the Convention's unraveling. Otherwise, countries suddenly faced with a neighbor seeking chemical weapons could withdraw, setting in motion still other defections elsewhere. In support of the Convention, parties might also be more prepared to threaten reduced cooperation with the chemical industry of non-parties, reduced economic dealings, and worsened political relations. This would provide another incentive to adhere.

Threatened sanctions against persons or firms that assisted countries to acquire chemical weapons — such as those measures included in legislation vetoed by President George Bush but partly implemented by Executive Order — could buttress chemical arms control efforts in several ways. While the actual economic impact of such measures would be limited, it could convince some firms overseas to look more closely at questionable exports — particularly if the gain from those exports was marginal. Such sanctions also would signal U.S. commitment to chemical weapons non-proliferation. This could help to convince other suppliers to take the task of chemical export controls seriously and to support international efforts to restore a presumption that use of chemical weapons would not go unpunished.

More broadly, the threat posed by legislatively imposed sanctions can strengthen both the influence and the resolve of U.S. officials in pursuit of U.S. chemical arms control objectives with other countries. Legislation adds clout to the diplomatic message; legislation makes it harder for other countries to believe that U.S. officials will find a way not to respond; and legislation makes it easier for lower-level U.S. officials to raise issues of concern to the highest decision-making levels. In that last regard, legislated sanctions may have an impact at home as well as abroad.

### **The Limits and Costs of Chemical Weapons Sanctions**

Against these potential benefits, it is necessary to acknowledge the limits and possible costs of a sanctions strategy. As already noted, past failures of sanctions that have been imposed to force the targeted countries to change policy make clear that sanctions will very likely prove unavailing against a country committed to acquisition and use of chemical weapons. In addition, the threat of sanctions also reduces U.S. flexibility and freedom of action. Having threatened sanctions, the United States and other countries may find themselves unable to pursue other foreign policy, political, or economic objectives. Further, the United States and other countries that might choose to impose such sanctions could be vulnerable to countermeasures.

These are all real concerns. But steps can be taken to lessen these potential costs. Declaratory policy, as discussed below, can preserve some flexibility with regard to the specific actions, conditions, and circumstances associated with the imposition of sanctions. Other suppliers for particular commodities (e.g., oil) or other markets for goods (e.g., arms) can be sought. In the final analysis, whether to accept these costs will be a matter of political judgment. In making that judgment, however, the corrosive impact on efforts to slow the spread of chemical weapons capabilities of the failure of the United States and other countries to respond effectively to Iraqi use of chemical weapons in the mid-1980s should weigh heavily in the balance. It lends strength to the argument that there are important potential benefits for chemical arms control.

#### **WHAT SANCTIONS COULD BE THREATENED?**

Although economic measures frequently figure prominently in consideration of sanctions, the range of sanctions is much wider. As partly evidenced by the U.N. imposed embargo on Iraq, possible sanctions could include:

- Termination of selected chemical exports or imports;
- Complete or selective cutoff of imports (from countries or firms) and exports;
- Loss of access to import preferences;
- Loss of civilian chemical export preferences;
- Cutoff of bilateral or multilateral economic aid;
- A ban on private investment;
- A freeze on financial assets;
- Expulsion of foreign students in related technical areas;
- Refusal to refinance debt;
- Termination of airline landing rights;
- Oil import embargoes;
- Bans on military sales and assistance;

- A reassessment of security ties;
- Termination of security ties;
- Severance of diplomatic relations;
- Loss of political support; and
- Expulsion from international bodies.

Many of these measures are generic. Still others are more directly related to chemical arms control. To the extent possible, additional measures that are so linked to the chemical weapons field need to be identified since recourse to such measures could help legitimize the threatened sanction.

### **Vulnerability to Sanctions**

With regard to the relative impact and deterrent value of any of these sanctions, several points stand out for more detailed analysis. Quite clearly, some countries will be more vulnerable to some types of sanctions than to others. That vulnerability is likely to shift depending on trade and aid patterns, military procurement activities, indigenous industrial capabilities, foreign economic and political ties, dependence on foreign political support and degree of global isolation, type of domestic political and economic order, and many other considerations. The specific choice of sanctions needs, therefore, to be tailored to particular countries. For virtually all countries, however, measures are available that would at the least exact a price for activities in violation of global chemical arms control norms or agreement — and in some instances a considerable price.

How many and which like-minded countries' support would be needed to threaten such a significant punitive impact would vary from case to case. The particular countries, whose support would be needed, also appears likely to vary. But contrary to the popular view that support for sanctions needs to be near-universal, only a limited number of countries frequently may be able to have a significant punitive impact — measured, for example, in a high percentage (over 50%) of aid cut-off, loans withheld, debt servicing denied, arms sales terminated, economic assets frozen, and so on.

### **IMPLEMENTING A SANCTIONS STRATEGY**

Most of the burden of creating a credible sanctions policy to back-up chemical arms control and non-proliferation efforts will



fall on action by the United States and like-minded countries. In part, this can take place through multilateral and international bodies and forums; in part, national action will be essential. There are several steps that could be taken now.

### **Sanctions Declaratory Policy**

The threat of sanctions needs to be communicated to countries thinking about the potential utility or actual use of chemical weapons. In the United States, the threat of sanctions has often been made in a highly formal and visible manner. Congress has legislated specific sanctions in the areas of trade, human rights and nuclear non-proliferation, as well as the sanctions in the chemical arms control area vetoed by President Bush. The White House has also made more general declarations, as exemplified by the warning in President Reagan's 1981 Nuclear Non-Proliferation Policy Statement that violations of International Atomic Energy Agency (IAEA) safeguards or a nuclear detonation would have serious consequences for relations with the United States.

The United States and other countries could issue comparable declarations of their readiness to take actions against violators of chemical arms control norms. These statements need not specify what actions would be taken, but only send a signal that use of chemical weapons, violations of a future chemical weapons ban, or even refusal to adhere to such a ban would not go unpunished.

Such declarations could build on President Francois Mitterand's September, 1988 statement at the United Nations proposing agreement to "an embargo on all deliveries of products, technologies and, more generally, weapons to that state [using chemical weapons]." National statements also could be patterned on the recent statement in the communique from the June, 1990 U.S.-Soviet summit that the two countries "affirm their intention to consider the imposition of sanctions against violators of the [1925 Geneva] Protocol, including those under Chapter VII of the United Nations Charter". Statements by groups of nations, by the European Community and by the U.N. Security Council would also be helpful.

### **Including Sanctions in the Chemical Weapons Convention**

The question of whether, and in what way, to include provisions in the Chemical Weapons Convention for sanctions — or as it is currently put, "Measures to Redress a Situation and to Ensure Compliance" — still is under discussion at the Conference on Disarmament in Geneva. The draft "rolling text" now provides that the Executive Council of the Organization for the Prohibition

of Chemical Weapons — the main administrative body — shall “consider any issue or matter within its competence...including concerns regarding compliance, and cases of non-compliance...” (Article VIII, C.2.(d)) Additional language is not yet agreed, however, concerning what actions the Executive Council, and its parent body, the Conference of States Parties, should be empowered to take in the event of non-compliance.<sup>4</sup>

In particular, still outstanding is whether the Executive Council, as has been proposed:

...in cases of particular gravity and urgency...shall [if it deems necessary,] bring the issue, including all relevant information [and recommendations], directly to the attention of the United Nations Security Council.<sup>5</sup>

Similarly, as proposed by another draft provision, disagreement remains concerning whether:

In cases where serious damage to the objectives and purposes of the Convention may result from actions prohibited by the Convention, in particular by Article I, the Conference of States Parties may recommend collective measures to the States Parties in conformity with international law.

For the most part, divisions at the Conference on Disarmament over the issue of responses to non-compliance with the Chemical Weapons Convention have been on North-South lines. While developing countries have pressed for stronger language, the developed countries have been reluctant to lessen their freedom of action. The inclusion of such language, however, would appear to be the least that can be done to put some teeth in the Convention itself.

### **Legitimizing National Chemical Weapons Sanctions**

Still other steps could be taken to facilitate and legitimize actions by individual countries to backstop chemical arms control and non-proliferation efforts. In particular, additional language could be developed and included in the Convention to authorize sanctions by specific countries in the event of use of chemical weapons or another violation. Such language could call on any or

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<sup>4</sup> See especially the material in Appendix II to the “rolling text,” CD/1033, pp.226-227.

<sup>5</sup> Bracketed text indicates areas of proposed language that have not yet been agreed upon.

all parties to take such action. Article 56 of the U.N. Charter, for example, obligates all members of the United Nations “to take joint and separate action in cooperation with the Organization” to support human rights and social development. This language has recently been widely invoked as the international basis for national sanctions on human rights issues.

Pending inclusion of such a provision in the Convention — or in its absence — legitimacy for coordinated unilateral action in response to violations might be obtained from some other source, such as a resolution of the governing bodies of the Organization, or of the U.N. Security Council. Steps to legitimize sanctions also would be required if a Chemical Weapons Convention is not concluded, requiring non-proliferation efforts to continue on a less formal basis.

A particularly difficult problem would be to try to legitimize sanctions not against violation of existing or future chemical weapons arms control agreements, but against countries that refuse to adhere to a future chemical weapons ban. Adding language to the Convention which called on parties to provide favorable treatment to parties in development funding for industrial chemical activities or for chemical exports — but placing restrictions on dealings with non-parties — could be explored. Policy statements by many governments on the need for adherence to a future chemical weapons ban also could help to establish a norm of chemical weapons non-proliferation which might be used to legitimize discriminatory treatment of non-parties by parties.

Such measures to legitimize chemical arms control sanctions can make a difference in the readiness of countries to support sanctions. Perhaps of equal importance, an ability to appeal to broader norms can help to ensure that other states, if they do not actively cooperate with sanctions imposed by such a group, at least do not undercut them in practice.

### **Too Much vs. Too Little Flexibility**

Care also is required, as already suggested, in determining the precision with which to threaten sanctions as well as how automatic to make their imposition. This would entail a careful balance between too much and too little flexibility. More general statements preserve freedom of action. Specific, precisely drafted conditions for imposing sanctions may encourage target countries to believe they can come very close to violating the conditions without actually precipitating the imposition of sanctions. A classic example is section 670 of the Foreign Assistance Act, prohibiting any American economic or military assistance to a non-nuclear weapon state that “detonates a nuclear explosive device.” This appears to have influenced several countries merely

to defer nuclear testing while actively continuing their nuclear weapons programs.

On the other hand, lack of precision can undermine the credibility of threatened sanctions, while increasing the likelihood of a misunderstanding between the United States and the target country. Such misunderstandings, in turn, could result in failures of deterrence and probably ineffective imposition of sanctions.

### **Sanctions Legislation: How Automatic is Too Automatic?**

How automatic to make the imposition of sanctions is another difficult issue. For a variety of reasons, the executive branch has traditionally opposed sanctions that had to be automatically imposed by the President. Concern about separation of powers as well as a desire to maintain maximum freedom of action to make a judgment about how to balance competing foreign policy interests has often played a role.

The executive branch's uneasiness about automatic sanctions also has reflected a legitimate recognition that situations in which sanctions might be imposed are not all black and white; policy decisions are frequently required when shades of gray predominate. Experience in the Iran-Iraq War, for instance, indicates that it may sometimes be difficult even to confirm with high confidence that chemical weapons have been used. Further, automatically imposing sanctions on foreign companies could backfire, making it harder to win their governments' support for export control and other chemical arms control initiatives.

These considerations played an important part in President Bush's decision last to veto the Omnibus Export Amendments Act of 1990.<sup>6</sup> Section 401 of that Act, entitled the "Chemical and Biological Weapons Control Act of 1990," would have mandated sanctions against countries that used chemical weapons or foreign persons that materially contributed to other countries' efforts to use, develop, or acquire chemical weapons. Of particular concern to the Administration was the provision that imposed a minimum one year prohibition on U.S. trade with foreign companies found to have violated the Act's provisions.

Although the President has signed an Executive Order providing authority for the imposition of sanctions on countries that use chemical weapons and companies that help spread them, new chemical weapons sanctions legislation is likely to be on the Congressional agenda during 1991. As argued above, passage of legislation would send an important global signal, while strengthening the hand of U.S. officials. Efforts are needed,

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<sup>6</sup> See "Bush Vetoes Weapons Sanctions Bill," *Washington Post*, November 17, 1990.

therefore, to try to find ways to bridge the differences between the executive branch and Congress in this area.

One possible compromise approach to the problem would be to make automaticity relate to the seriousness and clarity of the violation. Imposition of sanctions, for example, could be automatic in response to confirmed use of chemical weapons. Less automatic sanctions, with more executive branch leeway, could characterize imposition of sanctions against firms. This would reflect the lesser level of violation and greater uncertainties about the facts.

More generally, in designing a sanctions policy for chemical arms control, attention also is needed to what specific violations of chemical weapons non-proliferation norms should trigger sanctions. Possible gradations of sanctions might be warranted. In turn, the actions by the sanctioned party that would lead to a lifting of the threat or imposition of sanctions have to be considered. This could be especially important to provide sufficient incentive for the country to cease and desist. But past experience also suggests that legislative definitions of such actions may be very hard for the violator to accept or meet.

### **Coordination and Planning of CW Sanctions**

Finally, it is none too soon to begin the types of advance planning that will be needed for a successful sanctions policy to support chemical arms control. Many of these planning requirements have already been noted. In summary, such sanctions planning should include an assessment of:

- The vulnerabilities to specific sanctions of the most likely potential violators of a Chemical Weapons Convention or non-parties that use chemical weapons;
- Which countries' support would be needed to pose a credible threat of sanctions against different specific potential violators or users of chemical weapons;
- The political and economic acceptability of alternative sanctions to potential supporters of sanctions; and
- Triggers for specific sanctions as well as actions by the country in question that would lead to lifting of the threat or imposition of sanctions.

**Toward a Chemical Weapons Sanctions Strategy**

Iraq's successful and unpunished repeated use of chemical weapons in its war with Iran contributed to the acceleration of chemical weapons programs in other countries as well as the broader erosion of the norm against chemical weapons. Destruction of Iraq's chemical weapons production capabilities in the Gulf War — and successful conventional response to any Iraqi use of chemical weapons against coalition forces — will only partly offset that earlier signal. Efforts by the United States and other countries to put in place a credible chemical weapons sanctions strategy would be an important corrective to earlier failure in responding to Iraq's use of chemical weapons. It also would help to check the growing perception that runaway chemical weapons proliferation is becoming unavoidable. Not least, such measures would be a first step to establish a presumption that future users of chemical weapons would pay a price. For all these reasons, it is time to move towards a chemical weapons sanction strategy.

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# COMBATTING CHEMICAL WEAPONS PROLIFERATION: THE ROLE OF ASSURANCES

James A. Schear

### INTRODUCTION

In the wake of the Cold War, the enforcement of international legal norms through collective means is becoming a practical possibility. Generally, such activity aims at the imposition of sanctions and other penalties, up to and including the use of force, against aggressor states. Yet, as Iraq's invasion of Kuwait has demonstrated, sanctions and other coercive measures represent only one dimension of collective security. Just as important is the need to assist states that are threatened by a neighboring state's menacing actions. Indeed, as the crisis over Kuwait escalated in the latter part of 1990, the provision of military and other forms of assistance to Saudi Arabia and its neighbors became a focal point of intensive diplomatic activity.

To the extent that the diplomacy surrounding the gulf war is indicative of the type of multilateral cooperation that might be necessary in the future, it poses an intriguing question for arms control policy-making. Can the tools of collective security be adapted for the purposes of enforcing compliance with particular treaties? "Enforcement" has different connotations in bilateral and multilateral agreements. In strictly bilateral accords, parties have little incentive to designate a higher authority to impose penalties or offer protection. It is a self-help situation. In the event of non-compliance, the victimized state may pursue a diplomatic remedy, invoke offsetting measures (e.g., programs to neutralize the violation), or in extreme cases withdraw from the agreement entirely. This is not necessarily the case under multilateral agreements, however. A larger group of states parties can in theory act collectively as an enforcing agent on behalf of particular states that face threats from other parties or non-parties. As argued below, collective action of this kind may well be critical in safeguarding the first and possibly most far-reaching global

agreement of the post-gulf war era — a ban on chemical weapons (CW).

To be sure, the idea of assisting parties at risk under multilateral agreements is not new. During talks on the Non-Proliferation Treaty (NPT), formal commitments on assistance, known as “positive security assurances,” were advocated by some states as a way to bolster non-nuclear NPT parties against threats of nuclear blackmail. In response to a joint U.S.-U.K.-U.S.S.R. initiative, the U.N. Security Council in June, 1968 adopted Resolution 255 which, among other things, exhorted parties to “provide or support immediate assistance...to any non-nuclear-weapon State Party (to the NPT) that is a victim of an act or an object of a threat of aggression in which nuclear weapons are used....”<sup>1</sup> Subsequently, general formulations on assistance for victims found their way into the 1972 Biological Weapons Convention (BWC) and the 1977 Environmental Modification (ENMOD) Convention.<sup>2</sup>

Unfortunately, assurances of this kind, especially in the NPT case, have never been viewed as very credible by any parties that might have a stake in them. At the time they were negotiated, such measures were seen mainly as a sop to neutrals and developing countries; and they have never been put to the test. Now, more than two decades later, as the international community moves closer to banning chemical weapons, there is good reason to rethink the role of assurances in upholding and strengthening a future Chemical Weapons Convention.

While security assurances quite obviously could comprehend the use of sanctions as an indirect form of assistance to victims, others have ably covered this ground.<sup>3</sup> This essay will focus on such assurances as commitments to provide assistance to states at risk, which is how these measures have been defined traditionally. First, I will look at the rationales for security assurances in general. Why are they important? What benefits do they provide, and how realistic are these contributions in light of their limitations? Second, I will examine the operational dimensions of security assurances in the chemical weapons

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<sup>1</sup> United Nations Security Council Resolution on Security Assurances, June 19, 1968, S/Res/255, 1968, reprinted as Appendix B in Mason Willrich, *Non-Proliferation Treaty: Framework for Nuclear Arms Control* (Charlottesville, VA: Michie, 1969), p. 198.

<sup>2</sup> Article VI of the BWC provides that: “Each State Party...undertakes to provide or support assistance...to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention,” see USACDA, *Arms Control and Disarmament Agreements*, 1982 edition, (Washington, D.C.: USGPO, 1982), p. 126. Article V(5) of the ENMOD agreement conditions assistance on a Security Council finding that a state “has been harmed or is likely to be harmed....” *Ibid.*, p. 195.

<sup>3</sup> See Lewis A. Dunn’s companion essay in this occasional paper.



context. What types of measures are possible, and what practical issues and obstacles bear upon their effective implementation? Based on this analysis, I will conclude by discussing some general guidelines for U.S. policy on security assurances in the chemical weapons case.

## **THE IMPORTANCE OF BEING ASSURED**

At first glance, the case for building security assurances into multilateral arms agreements appears simple and noncontroversial. If responses to treaty violations should aim at penalizing violators, why not also assist the victims of violations? If multilateral regimes are to be truly effective in promoting common security, it seems only logical that such regimes should include durable procedures for aiding states which are denied the benefits that they sought to obtain under the terms of a particular agreement.

The argument seems even more compelling when the treaty violation in question involves chemical weapons use. Chemical weapons have long been viewed not only as a repugnant means of armed struggle between combatants, but also as a threat that poses far greater harm to civilians than to protected troops and equipment on the battlefield. The "neutron bomb" suffered from the same stigma. Although chemical arms were used repeatedly during the Iran-Iraq War in violation of the Geneva Protocol, it was not until the international community was confronted with shocking visual evidence of Kurdish civilian casualties that world opinion became seized with the dangers posed by Iraq's chemical arsenal. In such cases, there are bound to be strong moral and humanitarian impulses to alleviate the suffering of civilian populations which are subjected to chemical weapons attack. States, even undemocratic ones, generally do not ignore such impulses in developing their positions on international security negotiations.

Beyond their intrinsic moral worth, security assurances can assume great importance when the type of arms limitation in question requires active cooperation in promoting compliance incentives. Certain kinds of agreements are more prone to being violated than others. Treaties can remain intact without much ongoing active support if the military capabilities subject to control are technologically immature, operationally unattractive (e.g., environmental modification, seabed basing of nuclear weapons, etc.), or difficult to acquire without the construction of complex and expensive dedicated facilities (e.g., nuclear materials production). Yet, chemical arms control cannot rely upon any of these sympathetic factors to help reinforce compliance. Military "market forces" in the CW context are being shaped by a

pernicious mix of growing demand and plentiful supply from a variety of sources.

The gulf war illustrates this point. Even before its invasion of Kuwait, Iraq's CW capability was a factor for instability in the region. There also was a widespread perception, based on the Iran-Iraq war experience, that Iraqi forces could use CW effectively on the battlefield, even though their chemical arms might not be the weapons of choice in all (or even most) circumstances. The wherewithal to sustain a CW capability was not hard for Iraq to acquire. While chemical arms did nothing to improve Iraq's political stature -- indeed, CW has tended to validate the image of Saddam Hussein as a sinister, ruthless dictator -- their utility was widely perceived.<sup>4</sup>

How the gulf war will affect the prospects for a global CW ban cannot be known as yet. Whatever the outcome, however, no one seriously believes that the CW problem is going to disappear with the defeat of Saddam Hussein or the entry into force of a chemical weapons ban. The task of gaining broad adherence to any future CW regime beyond that which regulates use (the only activity now subject to legal restriction) probably will be extremely difficult, and the specter of violations by parties will always linger. Accordingly, a concerted diplomatic effort will be needed to strengthen prohibitions on CW, one that seeks to contain the existing risks posed by CW proliferation and is sensitive to the security needs of states that face CW threats in their own regions. Security assurances will almost certainly be part of such an effort.

### **Assessing the Contributions of Security Assurances**

At the CW talks in Geneva, strong support for security assurances has come from the neutral/non-aligned group, a number of whose members argue that such assurances are a core security issue for many non-CW states once a Convention begins to take effect. Pakistani ambassador Ahmad Kamal states: "As long as some countries with a chemical weapons capability remain outside the Convention, those which have given up the option would continue to feel threatened and the prohibition regime would remain incomplete and fragile. It is, therefore, necessary that the Convention should contain mandatory provisions on assistance...."<sup>5</sup>

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<sup>4</sup> For discussion of the value of chemical weapons to countries in the developing world, see Victor A. Utgoff, "Neutralizing the Value of Chemical Weapons: A Supplement to Chemical Weapons Arms Control," *Occasional Paper* (Washington, D.C.: The Atlantic Council of the United States, 1989), pp. 2-8.

<sup>5</sup> Ahmad Kamal, "The Chemical Weapons Convention: Some Particular Concerns of Developing Countries," *Chemical Weapons Convention Bulletin*, No. 4 (May 1989), 2.

Such assistance, as noted in a proposal tabled by the Pakistani government, “should not be limited to political and diplomatic support but include concrete actions and measures designed to strengthen the ability of the threatened State to meet the danger to which it has been exposed.”<sup>6</sup> Similar sentiments have been echoed by Argentina, Iran, Egypt, and several other countries.<sup>7</sup>

A future CW Convention almost certainly will incorporate assurances in some form. The Soviet and U.S. draft conventions of 1982 and 1984, respectively, contain general obligations to assist parties under certain circumstances.<sup>8</sup> In the “rolling text” currently under negotiation, a general framework of a treaty obligation has been developed and included as Article X in an appendix to the document.<sup>9</sup> The framework identifies the right of parties to protect themselves against chemical weapons; notes some of the categories of assistance that might be provided to parties; and specifies basic functions to be performed by the Treaty Organization and its components, including the dissemination of information on defensive CW measures.

Beyond these areas of agreement, however, lie some fundamental differences. Generally, neutral/non-aligned states want assurances that are substantial or even automatic in some cases; that give latitude to the requesting state in determining the magnitude of the threat and what is required to meet it; and that maximize the role of the Organization. In contrast, some delegations from industrialized countries have argued that commitments under Article X should be essentially voluntary; that they should give maximum discretion to states to decide what types and levels of assistance might be appropriate; and that the role of the Organization should be minimal.

It would be tempting to view these differences over security assurances as simply a variant of the usual resource transfer controversies that plague rich and poor countries everyday. As in the world of international development, security assurances in the arms control domain tend to box countries into two categories: states which are on balance the “suppliers” of assurances naturally shy away from open-ended obligations, while those states who are

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<sup>6</sup> Conference on Disarmament (CD)/752, 23 April 1987, p. 2.

<sup>7</sup> See CD/809 (Argentina), 23 March 1988; CD/PV.453 (Iran), 31 March 1988, p. 6; CD/PV.459 (Egypt), 21 April 1988, p. 7.

<sup>8</sup> The Soviet and U.S. proposals included formulations based on the BWC and ENMOD precedents. See CD/294 (Soviet Union), 21 July 1982, p. 8; and CD/500 (U.S.), 18 April 1984, p. 11.

<sup>9</sup> Report of the Ad Hoc Committee on Chemical Weapons to the Conference on Disarmament on its work during the period 16 January to 1 February 1990, CD/961, pp. 189-191.

most likely the net “consumers” of assurances naturally want the best deal they can get. What this simple dichotomy fails to capture, however, is the idea that assurances can offer a number of benefits for the regime overall, provided that the kind of assistance envisaged appears credible both to would-be violators and victims.

First, assurances in theory could *provide a positive inducement for states to sign-up to agreements*, especially smaller states and those which sit outside of existing alliance systems. Most developing countries have little inherent capacity to mitigate the adverse impact of CW use and would require foreign assistance in coping with threatened or actual damage. Moreover, as the Pakistani delegation has argued: “...these (chemical) weapons are most likely to be employed against those countries which have little or no capacity to retaliate in kind or to protect themselves....”<sup>10</sup> Given these considerations, credible assurances would help to reduce inherent disparities between the defensive capacities of strong and weak parties to the agreements. Equally important, such measures would introduce a preferential distinction favoring parties over non-parties, and thus give non-CW states an added incentive to sign-up.

Some experts have voiced skepticism that security assurances could in fact offer any unique inducement for states to join a convention. According to this view, states already facing CW threats are not likely to join even with ironclad guarantees of assistance, while most other states would join irrespective of any assurances because the convention is meritorious in any event. Clearly, there is a logic to such an argument, and it suggests the need for caution in advocating security assurances based solely on their purported impact on adherence. At the same time, there are other benefits beyond simply adherence that need to be considered.

Credible security assurances, for example, can help to *inhibit treaty violations or analogous behavior by non-parties*. They would do this by negating the benefits of such behavior in the eyes of the perpetrator. By definition, any damage that is threatened or inflicted as a result of illicit behavior represents a gain for the aggressor — unless it is denied the full payoff of its action. In addition, the prospect that assistance to the victimized state might come from other (stronger) states could help further to deter threatening or noncompliant behavior.

Security assurances also can *reduce the likelihood that a victim state would opt to engage in reciprocal violations* or to withdraw entirely from the agreement. The twin goals of any sensible enforcement policy are to deny the violator any advantage

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<sup>10</sup> CD/752, p. 2.

and also to keep the basic agreement intact. Responses that achieve the former at the expense of the latter are inherently self-defeating and can only contribute to a further unraveling of the agreement. Under certain conditions, assistance from external sources could offer parties a mode of response that does not put the treaty in greater jeopardy than it already is.

Finally, security assurances could serve as a formal mechanism for *allocating the burdens of assistance* within the community of states from which such aid would come. As the gulf war demonstrates, collective security behavior involves a fairly explicit international division of labor. Certain states have supplied air, sea, and land power in varying degrees to the defense of the Arabian peninsula and in prosecution of the war, while other countries have helped to offset economic and social burdens of states caught up in the crisis or damaged by the trade embargo. On a smaller scale, such a division of labor has considerable merit in the CW treaty context. The fact that CW-related assistance could be mandated as a collective act might to reinforce habits of multilateral cooperation and thus help to reduce excessive reliance upon purely bilateral forms of assistance.

In fashioning security assurances under a CW Convention, a range of prohibited activities must be considered, not simply chemical weapons use. In particular, threatening actions such as the acquisition or manufacturing of chemical munitions — actions that clearly enable or even foreshadow use — also need to be dealt with. While it is difficult to tailor assistance to such “pre-use” violations, it is equally difficult to imagine that any of the above-cited benefits would look as attractive to parties if assistance were withheld until actual use had occurred. To every extent possible, parties to a CW Convention should act on the principle that *any* effort to develop, possess, or otherwise to acquire chemical weapons by any state (whether or not they are a party to the convention) would represent a serious threat that might require assistance to neighboring states.

The same kinds of calculations also apply in considering the roles that sanctions might play. Nevertheless, there are important differences between assurances and sanctions, both in terms of implementation and effects. It may prove easier, for example, to muster public support for assistance measures than for sanctions. The non-coercive nature of certain types of assistance would tend to make them less controversial to many countries than more punitive sanctions. In addition, the financial burdens of assistance, which come mainly from public expenditure, would be much easier to calculate, and thus to offset, than might be the case with sanctions which could hurt the export, banking, and other sectors of the domestic economies.

Another difference between assistance measures and sanctions is that the former are less likely to require extensive

multilateral participation to be effective in many instances. Granted, multilateral support would always be desirable, but it may not be necessary. It would seem far easier to meet the specific needs of a particular victim state than to cut off all forms of economic commerce with the violator. A third difference is that assistance can be offered more clearly as a “perk” of membership, whereas a commitment to impose sanctions is inherently a more generalized one, and should apply to any behavior that violates a CW agreement, whether or not the state in question is actually a party.

While assistance measures appear to be more flexible instruments of policy in some circumstances, it would be folly to think that a CW Convention could be sustained without measures for directly confronting aggressor states. Assistance is in no way an alternative to sanctions or other punitive measures; rather, the two are complementary.

### **Weighing the Complications**

What kinds of complications are raised by security assurances? The first, and most fundamental, concerns the *extent of the obligation and to whom it is made*. Any large multilateral arms control regime is bound to include a diverse collection of states whose motives and stakes in the regime will vary widely. There is, thus, no comparison to an alliance of like-minded states, and security assurances are not security “guarantees” in the sense that an attack on one is necessarily an attack on all. In any situation of risk, states that “supply” assurances will want to weigh their stakes in upholding the treaty regime in light of the consequences which flow from actively assisting a particular state.

The Iran-Iraq war offers a stark illustration of this dilemma. Any assistance that might have been triggered in response to Iraqi CW use would have meant actively helping Iran, something that few states wanted to do. Another, possibly more germane example is Chad’s urgent request for CW protective measures in 1987. The United States dispatched some 2,000 gas masks to Chadian forces, then engaged in a border war with Libya and reportedly the target of CW attacks by the Libyans. The government of Chad had previously approached France, but Paris declined to provide assistance at the time, apparently out of concern that the request was an attempt to lure France into war with the Libyans.<sup>11</sup>

In hindsight, many believe that a more concerted international response to Iraqi CW use in the 1980s would have

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<sup>11</sup> Elaine Sciolino, “U.S. Sends 2,000 Gas Masks to the Chadians,” *New York Times*, September 25, 1987, p. A6.

helped to stem the spread of chemical weapons. Arguably, other developing countries might have been less inclined to contemplate the chemical option if Iraqi use had triggered some countervailing action. To the extent this view is valid, however, it is simply a very good reason for governments to give greater weight to the problem of CW proliferation in their decision-making and export control policies; it is not an argument for automatically imposing sanctions or assisting any state that may need to defend itself against CW. It is unrealistic to expect that governments would surrender political control over such matters.<sup>12</sup>

Much the same can be said about the likely “consumers” of security assurances. Any state that faces a threat of aggression, CW or otherwise, is going to think twice about requesting help from outside parties if such assistance would tend to aggravate local tensions or to heighten the potential for conflict. Just as “supplier” states may be loath to be seen embracing the aims of a state requesting assistance, potential “consumer” states may not want to be seen as a weak client of a major military power, especially a superpower outside the region. Thus, prior to the Iraqi seizure of Kuwait, the Gulf states and Saudi Arabia had sought to keep U.S. armed forces “over the horizon” precisely for fear that a highly visible American presence would create domestic instabilities and invite opprobrium from radical Arab states. Such fears were not overcome until after aggression had already occurred.

Multilateral negotiations are not immune to this kind of concern. In the NPT talks, a number of neutral/non-aligned countries expressed fears that the nuclear powers might see security assurances not as a burden but as an opportunity to recruit allies and exert pressure on some countries to shed their non-aligned status. Given the depth of Soviet-American tensions during the 1960s, such fears were pervasive in many parts of the developing world. One Arab delegation complained that security assurances could lead to a situation where “vast areas (of the world) were divided under a nuclear trusteeship of this or that power.”<sup>13</sup> Such concerns were an important factor in steering nuclear negotiations away from the idea of enabling or “positive”

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<sup>12</sup> When I speak of governments I am including the legislative branch as well. “Political control” over decisions in the sense that I use it here presumes domestic agreement between the branches of government on how such decisions should be made.

<sup>13</sup> Cited in Enid C.B. Schoettle, *Postures for Non-Proliferation: Arms Limitation and Security Policies to Minimize Nuclear Proliferation* (London: SIPRI and Taylor & Francis, Ltd., 1979), p. 104.

assurances and toward “negative” ones -- i.e., assuring non-nuclear states against the threat of nuclear attack.<sup>14</sup>

If the encumbering aspects of offering or receiving assistance represent one kind of complication, choices regarding the *type and magnitude* of assistance are certainly another. Just as arms control regimes are not political alliances, so they are not insurance policies that provide unlimited coverage against all hazards. From the “suppliers” standpoint, the obligation to come to the aid of another party will require hard choices on how detailed to be in specifying assistance in advance, and how to set priorities in a regime where all parties are presumptively equal.

A third complication, though one that is not independent from the other two, concerns the domestic implications of security assurances. It stands to reason that the more encumbering and costly a treaty obligation is perceived to be, the more scrutiny it will receive from public opinion and legislatures. Domestic groups may be caught between a desire to assist states at risk and a real fear of being drawn into someone else’s quarrel.<sup>15</sup>

The NPT experience is particularly noteworthy in this regard. In the ratification hearings, several senators questioned whether the NPT and in particular Resolution 255 were so open-ended that they might draw the United States into future nuclear confrontations with the Soviet Union or China. The issue was a sensitive one for the United States, given strong statements of reassurance to Asian countries offered by President Lyndon Johnson after China’s first nuclear test explosion.<sup>16</sup> Even so, Secretary of State Dean Rusk stressed that Resolution 255 in no way went beyond existing obligations assumed under the U.N. Charter. “We have made it very clear,” Rusk observed, “that we

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<sup>14</sup> Some states have argued that as long as the United States and other countries reserve the right to retaliate to CW first-use under the Geneva Protocol, there would be an unwanted element of discrimination in the CW Convention during the period prior to full destruction of stocks. While this may be so, it is nevertheless hard to see that this constitutes a real security problem for non-CW states, given that, unlike the NPT case, first-use of CW is already ruled out.

<sup>15</sup> Perhaps the most celebrated example of this problem of the rejection of the Covenant of the League of Nations by the U.S. Senate. The primary grounds for opposition was concern that the provision of the Covenant (ironically, also Article X) which obliged each member to “respect and preserve, as against external aggression” the territorial integrity of other member States, would bind the United States to pursue foreign interventions on behalf of the League irrespective of any domestic opposition to such action.

<sup>16</sup> In a speech on October 18, 1964, President Johnson said: “The nations that do not seek national nuclear weapons can be sure that if they need our strong support against some threat of nuclear blackmail then they will have it.” Reprinted in U.S. Congress, Senate Committee on Foreign Relations, *Nonproliferation Treaty*, 90th Cong., 2nd sess. (Washington, D.C.: USGPO, 1968), p. 169.



are not directly or indirectly making ourselves a bilateral ally with every non-nuclear state.”<sup>17</sup>

To drive this point home, Rusk and other U.S. officials stressed repeatedly the requirement of collective decision-making under the resolution, and the fact that the United States would retain a veto over the process: “This resolution is aimed at aggression by nuclear weapons or the threat of such aggression by nuclear weapons, *as determined by the Security Council*, including all its permanent members (emphasis added)...There is nothing in this resolution which requires us in advance to vote for resolutions on a hypothetical basis.”<sup>18</sup> Nor was there any obligation to act unilaterally if the Security Council could not reach consensus. “This resolution,” Rusk added, “does not contemplate unilateral action, so we can eliminate that from consideration.”<sup>19</sup>

In the Cold War atmosphere, no one placed high odds on the possibility of concerted action by the Security Council. And, arguably, the language of Resolution 255 was too vague and general to appear very credible in any event. It is very fortunate in hindsight that none of the crises of the past forty years has forced the international community to act in response to imminent nuclear attacks upon non-nuclear, non-aligned states. While nuclear threats are ever-present in the Third World, they also tend to stay in the background. Chemical weapons are an entirely different matter; the threats they pose are more commonplace. The grim irony here is that while chemical arms historically have been subject to greater international restrictions on use than nuclear weapons, the practical inhibitions on their use have never been nearly as strong and have eroded badly in recent years.

For all these reasons, it is quite likely that national legislatures — notably the U.S. Congress — will have an incentive to shape governmental decision-making in regard to the provision of assistance to states at risk from chemical weapons threats. Legislative action to enable or constrain executive branch decisions need not preclude timely action, but it would undoubtedly make the process more complex.

In sum, security assurances raise hard questions of credibility and commitment. There are obvious limitations on the degree to which states can convincingly reassure each other while maintaining diplomatic flexibility. At the same time, none of the complications noted above is necessarily a “show-stopper,” and perfect assurance is not plausible goal in any event. Given the magnitude of the CW problem, security assurances can have a

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<sup>17</sup> *Ibid.*, p. 45.

<sup>18</sup> *Ibid.*, pp. 15-16

<sup>19</sup> *Ibid.*, p. 35.

definite value under a CW prohibition, and both the likely “suppliers” and “consumers” of such assurance should have a stake in making them work.

### **THE OPERATIONAL DIMENSION: HOW AND WHEN TO ASSIST**

To make security assurances “work” in the CW context, parties to a future convention will have to reach detailed agreement on the mechanics of asking for and receiving assistance, based on a realistic appreciation of how those mechanics might or might not work in situations of high tension or conflict. Past experience provides little helpful guidance in this regard. No previous arms control-related assurances have ever specified when and how assistance would be offered or by whom. Nor have previous assurances ever been tested. The NPT-related commitments on positive security assurances were never viewed as very credible because no state would want to subject its own society to nuclear threats in coming to the defense of a non-ally. Conversely, the perceived threats of biological and environmental warfare were not very real at the time. Thus, CW negotiators are venturing into uncharted territory: the threat of CW use is very real, but arguably less apocalyptic than in the nuclear case.

#### **Types of Assistance**

In principle, numerous types of assistance might be forthcoming in response to CW use or to other violations of a CW ban that would foreshadow use. The main categories are four-fold:

**MEDICAL AND HUMANITARIAN AID.** Hospital supplies and equipment, antidotes, medical personnel, and technical advice on the treatment of gas victims would help developing countries to prepare for or deal with the human suffering associated with CW attacks. Emergency relief measures, including food, clothing, and shelter, could also be envisaged, if actual attacks occurred.

Like motherhood and apple pie, humanitarian aid is inherently noncontroversial. The important question is whether the CW regime itself should bear these burdens directly, or seek to enlist the services of humanitarian and relief organizations like the Red Cross, which are better suited to providing this kind of assistance. The organization set up to administer the CW Convention could be given a clear coordinating role, and it could arrange logistical support for the provision of such aid. Parties should at a minimum strive to ensure that adequate attention and funding is given to the CW issue within these other organizations.

**CW PROTECTIVE MEASURES.** Defensive and protective measures, and technical advice on their use, are types of military assistance that are clearly relevant and potentially quite useful. Such aid could be delivered in advance of actual use or in response to the threat of continuing attacks if conflict had already broken out. At the lower end of the spectrum, individual defensive gear -- gas masks, suits, detection systems -- could be provided in appropriate quantities, not only to soldiers but also to civilians. More substantial "collective" measures, including shelters and decontamination equipment, are also possible.

In general, such equipment would help the victim's armed forces to contain the immediate casualty-inducing effects of CW. While protective gear alone cannot completely offset the benefits to the aggressor of using CW, it would nevertheless make defensive operations more sustainable in the face of initial or continuing attacks.

**MILITARY SUPPORT ASSISTANCE.** Provision of military support unrelated to CW, including communications equipment, transport vehicles, spare parts, and energy supplies, represent a further step up the ladder of possible responses. Assistance of this kind would be based on the perception that non-CW measures were necessary to offset the overall effects of the offending state's likely or actual CW use upon the victim's capacity to resist aggression. Extensive use of chemical weapons on the front lines or serious threat to rearward lines of communication and resupply might be the appropriate triggers for such assistance. One type of extremely useful military support assistance could be tactical intelligence on the location and movement of the enemy's military forces and on the disposition of its chemical warfare capability.<sup>20</sup>

**DIRECT MILITARY AID.** Finally, provision of major military equipment, technical advisors, and even the active intervention of outside parties could help further boost the capacity of the would-be victim to repel aggression without having to contemplate acquisition of its own chemical weapons. Again, the triggering calculation behind such assistance would hinge on the magnitude of the perceived threat, specifically that protective gear alone was insufficient to close the overall gap in the imbalance of forces.

In making choices between and among various types of assistance, two factors need to be kept in mind. The first is to exercise care in not *focusing sole attention on actual CW use* to the detriment of other types of violations of a CW ban. As argued above, assistance that is provided before a state is able to use its chemical weapons will likely provide the greatest payoff. Thus,

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<sup>20</sup> Utgoff, "Neutralizing the Value of Chemical Weapons," p. 9.

treaty provisions on assistance should not limit or tie any specific form of aid to actual use only. Responses to pre-use violations, however, must clearly be defensive in nature lest they give the would-be aggressor an incentive to preempt or a tool with which to drive political wedges between assisting parties.

It is also important to relate assistance options to those measures which are required to *offset the specific threats posed by CW*. Certain forms of medical aid and CW protective measures fall unambiguously into that category. Requests for other types of aid, including economic development assistance (not included in the above list) as well as non-CW military aid, while perhaps justified in particular cases, should be subject to a higher standard of scrutiny. The Convention cannot operate very credibly if it becomes a port-of-call for any party seeking general assistance against the threats posed by nearby neighbors. By the same token, in working to delegitimize CW, the international community obviously does not want to remove the stigma on other forms of aggression. It is in no one's interest to convey the impression to would-be aggressors that cross-border attacks are only going to trigger international support to victims if chemical weapons are somehow involved.

### **Issues of Implementation**

The mechanics of implementing concrete measures of assistance is a good deal more complex than simply identifying the kinds of aid that might be appropriate. Four specific issues need to be addressed: what kind of evidence is required to substantiate a request for assistance; who decides on a request; who provides the aid; and what safeguards should be used to preclude the diversion of aid to illicit purposes.

**THE STANDARD OF PROOF ISSUE.** No issue is potentially more important than the requirement to confirm that the request for assistance is legitimate. Unless there is a generally agreed standard of proof, it will be difficult to sort out spurious requests for assistance from genuine ones. It also will be more difficult for assisting parties to prevent any in their number from stonewalling requests by imposing higher standards of proof in order to avoid an awkward or embarrassing vote on assistance (or, for that matter, on sanctions).

Verifying CW use should not be much of a problem in principle, if the victim state is able to provide prompt access to the relevant sites and victims. The U.N.-sponsored investigations into CW use during the Iran-Iraq war provide some helpful experience in this regard. The far harder problem is how to acquire persuasive (and usable) evidence on other types of violations,

especially possession, which in some cases may not be known even to the states at risk.

As currently drafted, Article X contemplates short-notice inspections “to establish the facts related to a request as well as the types and scope of assistance...necessary.”<sup>21</sup> In many, if not most cases, however, the suspect state will not be a party to the treaty; and even if it is, on-site inspections probably would be inconclusive at best. There is also the non-trivial problem that if national technical means are required to confirm noncompliance, those few states which possess NTMs may find it difficult to persuade other parties that the problem exists.<sup>22</sup>

Conceivably, one way around this problem is to peg decisions on assistance to clear violations of procedure rather than substance. Thus, if a suspected party refused or handicapped an OSI in response to a specific allegation, a breach of its inspection obligations would be sufficient to trigger at least some form of assistance.<sup>23</sup> Another option might be to establish a “watch list” of suspected violators, both parties and non-parties, in cases where the case was credible but not proven.<sup>24</sup> Armed with incriminating evidence, the parties could ask the suspect state to supply evidence to allay their suspicions. If none were forthcoming, the parties would then act favorably upon requests from would-be victim states.

**THE “WHO DECIDES” ISSUE.** One of the most thorny unresolved issues is how truly “collective” a decision to authorize assistance should be. Article X currently provides only that the CW Treaty Organization would receive a request, inform its various constituent bodies, and undertake the investigation noted above. There is no agreed approach as yet on how decisions would be made, and the issue is caught up in a larger disagreement over the functions of the Organization and the mechanics of executive decision-making in general.

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<sup>21</sup> CD/961, p. 190.

<sup>22</sup> Outside the formal CW treaty framework, arrangements such as “open-skies” involving the use of aerial surveillance might provide a source of information that would be more usable and widely available than purely national means of verification. There also could be limited forms of multilateral means, depending in part on the direction of future developments in the U.N. system. For a useful discussion, see United Nations General Assembly, *Study by the Group of Qualified Governmental Experts on the Role of the United Nations in the Field of Verification*. Doc. A/45/392, 28 August 1990., pp. 82-87.

<sup>23</sup> This option evidently has been under study within the U.S. government. Author’s interviews, U.S. executive branch.

<sup>24</sup> One important argument against this idea is that it could prove politically awkward to find one’s own friends or allies on a “watch list.” For this reason, it might be better for outside organizations to take the lead in maintaining such a list.

Clearly, a CW Treaty Organization cannot play a very credible role if it is held hostage to a requirement to achieve consensus among a large number of parties in order to act. While concerns about this problem are widely shared by industrial and developing countries alike, their proposed solutions tend to run in opposite directions. Some developing countries want to make the decision process highly automatic, at least in some cases, while some Western countries would prefer that final decisions be left up to individual states, and that the treaty simply not preclude countries from deciding to act alone or together. In both cases, the directive power of the Organization would be quite circumscribed.

There are no optimal solutions to the issue of timely collective decision-making. One option would be to place authority to authorize assistance into the hands of a small executive body of a few parties. A variety of proposals already have been made to establish an executive council to direct the verification and consultative functions of the Organization.<sup>25</sup> The challenge here is the usual one of defining membership criteria that strike the right balance between selective participation and balanced representation from various regions and political groupings. Within such a mechanism, one could easily imagine ways to delineate types of assistance, pegging each to a different voting rule. Illustratively:

- **Type 1** aid could include basic information on CW defensive measures which would be freely available to any member *at any time*. States seeking such information would not have to show that they face any specific threat; such access would simply be a perquisite of membership. Under such an arrangement, no actual decision would be required on the dissemination of information, although a vote might be taken to suspend membership privileges if the party is found to be in violation of any part of the Convention.
- **Type 2** aid could include the emergency provision of medical aid, humanitarian relief, gas masks, and other defensive CW equipment, and would require a majority vote within, say, twenty-four hours after a confirmation of impending or actual use.
- **Type 3** assistance could encompass more extensive forms of defensive and military support equipment, and might require consensus of parties on an executive council, again within a specified time frame.

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<sup>25</sup> See "Outcome of Open-Ended Consultations on the Executive Council," CD/961, pp. 179-181.

Admittedly, it is an open question whether these or other categorizations would be too fine-grained to be implemented effectively in a highly politicized setting. Absent any collective decision, of course, states could still act individually to provide assistance.

There is also the possibility of going outside the CW Treaty Organization for help. Hitherto, it has been the Soviet and the U.S. view that the need for assistance should be subject to review by the United Nations Security Council, where, not coincidentally, they exercise veto power. While many countries in the past have been critical of the Security Council, where East-West discord virtually guaranteed deadlock, perceptions of the Council are changing and the institution may evolve into a more effective instrument in the post Cold-War era.

What precise role should the Security Council play? Clearly, Council members have broad authority under Chapter VII of the U.N. Charter to act on measures aimed at maintaining and restoring international peace and security. Conceivably, after a global CW ban was concluded, the five permanent members might take an initiative to signal that any activity inconsistent with the Convention or with the Geneva Protocol in fact would represent a threat to peace requiring Security Council action. Provisions for "mutual assistance" (Article 49 of the Charter) could be invoked by the Council in cases of CW use. On the other hand, problems could arise if members of the Security Council, in particular the five permanent members, were not also parties to the CW Convention. Some will question why a state serving on the Security Council should be able to exercise decision-making power in connection with a convention to which it does not belong.

**THE "WHO PROVIDES" ISSUE.** Closely connected to the decision-making issue is the question of where the assistance would come from: the Organization, individual parties, or outside groupings or coalitions of like-minded states. If institution-building were the main goal, it would be desirable to channel as much assistance as possible through formal treaty mechanisms. Conceivably, the Organization could stockpile certain types of assistance for emergency distribution and retain a corps of technical experts to advise parties on CW protection. There is also a realpolitik argument that favors use of organizational channels: as noted earlier, certain states, especially developing countries and neutrals, will find it preferable to offer or receive assistance through an "impartial" organization than to interact directly with the major powers in any situation other than imminent attack.

Realistically, however, it would be unwise to rely solely or even extensively upon a CW Treaty Organization for implementing

the full range of possible assistance. Timely, tailored responses to the security needs of victim states presume a capacity for flexibility and responsiveness (as well as logistical capability) of which most international organizations are not capable. And certain types of aid (e.g., military aid) would fall entirely outside the charter of a global disarmament organization such as the one contemplated under a CW Convention. It is one thing for an institution to "take sides" in calling for assistance to some of its members which are vulnerable to aggression; but it is quite another matter to expect that organization to involve itself actively in the provision of military aid or extensive assistance in conflict situations.

This leads to the question of whether outside enforcing mechanisms can play a role. Victor Utgoff has proposed the idea of setting-up an "anti-CW coalition" of states "to guarantee immediate offsetting aid to any state that becomes the victim of chemical attacks by another."<sup>26</sup> In a similar vein, Robin Ranger and Raymond Cohen have suggested the establishment of an International Chemical Weapons Authority to monitor technology transfer, to verify chemical attacks, to impose sanctions, and to assist victims in obtaining defensive and offensive means to resist attack.<sup>27</sup>

Without question, coalitions or other mechanisms could be very useful in laying the groundwork for timely and decisive action. Discussions on export controls and intelligence-sharing are already occurring within the "Australia group" of countries.<sup>28</sup> The main drawback of formal non-treaty coalitions is the risk that some states would seek to portray them as exercises in old-fashioned "gunboat diplomacy" by former colonial powers who are bent upon punishing their foes while protecting their friends. Furthermore, unlike the Iraqi-Kuwaiti case, most threats posed by CW violations probably are not going to be so acute as to trigger near-unanimous support for international intervention into a regional dispute. In such circumstances, if enforcing states appear, rightly or wrongly, to be acting in a precipitous way, their behavior could alienate many parties to the Convention in the developing world, a number of whom already favor the idea of

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<sup>26</sup> Utgoff, "Neutralizing the Value of Chemical Weapons," pp. 8-16.

<sup>27</sup> Raymond Cohen and Robin Ranger, "Enforcing Chemical Weapons Limits: An International Chemical Weapons Authority," (unpublished draft manuscript), Spring 1989.

<sup>28</sup> The Australia Group, which was set-up in the early 1980s, includes over twenty, most Western states. It meets twice a year in Paris to harmonize national export controls on sensitive chemical technologies. The group recently agreed to set-up a database on chemical exports and to expand the its discussions into the area of biological weapons proliferation.



assistance, and provide would-be aggressors with a pretext for playing parties off against each other.<sup>29</sup>

For this reason, any effort to coordinate sanctions, assistance, or other enforcement activity must seek the mantle of legitimacy provided by the CW Convention. At a minimum, there should be a clear provision in Article X or other relevant articles that parties are not precluded from engaging in cooperation on assistance in accordance with the U.N. Charter. It might also be sensible to create a special committee on sanctions/assistance within the executive council of the CW Convention, just as the Security Council has set up a committee to supervise the implementation of sanctions against Iraq.

**THE SAFEGUARDING ISSUE.** Finally, there have to be adequate safeguards in place for preventing abuses by those receiving the aid. The need for verification of violations which trigger aid requests, noted above, is clearly one type of safeguard. But it is also important that the parties dispatching aid are certain that the receiving party is not diverting the aid to illicit purposes, say, to bolster a covert chemical weapons program. As Amy Gordon has suggested, various types of confidence building measures (CBMs) might be applied to assure that defensive training and equipment is not being used as a cover for offensive activity.<sup>30</sup>

For its part, the Organization should have no problems in setting fairly stiff terms with parties on measures for reassurance. Confirmation of proper end-use, after all, is simply a *quid* for assistance in the first place. Any technical advisors or other personnel that the Organization would supply for instructional purposes with the assistance would be in a good position to play a continuous oversight role. The Organization or its states implementing assistance programs also should be in accord that no country on a "watch list" or otherwise under suspicion should be eligible for assistance without first "coming clean" on the nature of its suspected behavior.

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<sup>29</sup> In a different context, this is precisely the problem that the U.S.-led coalition against Iraq encountered during the aerial campaign of the gulf war, even though the coalition was operating under a U.N. mandate.

<sup>30</sup> Amy E. Gordon, *Assistance for Defense and Economic Development Under the Convention on Chemical Weapons*, Report prepared by Science Applications International Corp. (SAIC) for the Office of Arms Control, U.S. Department of Energy, May 23, 1990, p. 14.

## CONCLUSIONS AND RECOMMENDATIONS

Security assurances, along with sanctions and other measures, are an important litmus test of whether truly collective approaches to international security are going to be viable in the post-Cold War era. Collective enforcement action in an arms control context operates from the premise that some states are more vulnerable to aggression than others, and that cooperation between strong and weak states to reduce those vulnerabilities can help to strengthen multilateral treaty regimes.

As the foregoing has stressed, the most difficult questions with respect to security assurances are how to make them credible, and in particular how to manage the tensions between the competing requirements of multilateral cooperation and national discretion. Security assurances that are nothing more than general expressions of intent on the part of individual states are not likely to be taken seriously. Conversely, procedures for implementing assurances that are highly contingent upon collective decision-making risk breaking down when they are most needed. The challenge for negotiators is to strike a balance that avoids these extremes.

### Guidelines for Policy

How, then, should the United States proceed? First and foremost, U.S. policy on CW security assurances should *stress the need for a “compatible division of labor” between national and international centers of decision-making*. Quite clearly, the United States has an important foreign policy stake in not “going it alone.” If the main objective is to uphold CW treaty norms, assistance to would-be victims which is multilateral in character will have much greater legitimacy in the eyes of many states than purely unilateral responses. Multilateral action will also help to reinforce the idea that assistance is a collective responsibility, not just a burden that the United States should shoulder alone. In the Persian Gulf and elsewhere, one does not have to be a naive idealist to see the practical advantages of collective action.

At the same time, the logical alternative to unilateral action is not to overload an international body with functions it cannot realistically handle. Rather, the key is to identify a balance of responsibility — to distinguish between what an organization can do for its members and what member states should do for each other under the organization’s mandate but not its direct control. To invoke a distinction which has gained currency in the gulf crisis, we need to determine which functions might be carried out under the “flag” of a CW Treaty Organization and which other functions would be carried out by parties under the “umbrella” of its general mandate.

Realistically, a CW Organization could play an important leading role in: developing politically viable standards of proof for validating requests for assistance; disseminating information on a day-to-day basis on CW defensive measures and medical treatment to all parties (“Type 1” aid); coordinating the delivery of defensive gear and humanitarian aid in response to specific requests with other organizations, such as the Red Cross; and ensuring that assistance is not diverted or misused (the so-called safeguarding function). To enhance its coordinating role, the Organization could be given authority to enter into bilateral agreements with individual parties specifying the types and amounts of assistance that could be provided.<sup>31</sup>

As for the parties themselves, they would shoulder the basic responsibility of acquiring and maintaining the materiel designated for assistance purposes. They also would retain the right to decide what type of aid to provide in particular cases, and to whom. If a state chooses not to provide or support aid in response to a request that most parties find to be valid, this conceivably might be grounds for suspending that state from participation on certain committees in the Organization, but its inaction should not constitute a breach of the Convention itself — that is, assistance should not have to be “automatic.” Automaticity is an unrealistic requirement politically, and in any event complete unanimity of action appears less important for effective assistance policies than for sanctions. If CW parties could not reach full consensus on a particular aid request, those members favoring assistance would probably pool their resources and seek majority approval of their actions. Nothing in the CW Convention should stop them from doing so.

In general, this notional division of labor is not inconsistent with Article X in its current, rudimentary state of development. The Organization’s roles are mainly to coordinate and to advise; the parties are the actual providers of assistance. The main drawback of Article X, in its current construction, is its narrow scope: only CW defensive measures and certain forms of humanitarian aid (i.e., medical assistance) fall clearly within its purview. The Convention needs to define “assistance” more broadly, so that it can provide a specific legal basis for more extensive forms of aid if necessary.

Building on the theme of a “division of labor,” the United States can take other steps to build an international consensus favoring assistance. As noted earlier, it should *explore the formation of a committee on sanctions/assistance within the executive component of the CW Organization* as a way to

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<sup>31</sup> The Soviet Union suggested this idea at the Conference on Disarmament in 1988, see CD/PV.473, 11 August 1988, p. 10.

strengthen the Convention. A representative committee of parties could become a focal point of discussion on sanctions/assistance matters, and it could help to dispel any perception (or indeed the fact) of reliance upon *ad hoc* arrangements for coordinating enforcement activity under the Convention. Operating as an “anti-CW coalition” within the organizational structure of the Convention, such a committee could lobby states to earmark assistance in advance and generally oversee the Organization’s role in the assistance process. It would be essential to include in the membership of such a committee key countries in the developing world which would act as a voice for the non-aligned group.

As part of overall efforts to coordinate policies on sanctions and assistance, the United States and other key states should do whatever is possible to *muster political support on the critical issue of responding to threatening activity that precedes or foreshadows actual use*. Granted, in the face of circumstantial evidence and heightening political tensions, the job of implementing multilateral assistance measures may be quite difficult prior to the stage when actual harm has been inflicted. Yet, it is also true that failure to respond to “up-stream” violations is only going to raise the prospects of actual use later on. For this reason, there needs to be a strong emphasis on advance, “non-emergency” cooperation. Mutual assistance programs between states on training and equipment for CW defense, and the dissemination of information from the Organization to parties, are useful steps that need not await a validated request in order to be useful to countries which harbor suspicions about their neighbor’s intentions.<sup>32</sup>

At the same time, parties providing the assistance under the authority of the Convention must make it clear *that certain forms of aid will come with “strings attached.”* The act of offering assistance, after all, is a politically sensitive step. At a minimum, the state against which protection is sought will claim that it is the would-be victim which is sparking tensions and planning aggressive action. Thus, it is essential that requesting states open themselves to outside scrutiny as a condition for receiving assistance, if only to show unambiguously that their aims are defensive. Specific obligations for confirming the proper use of assistance should be incorporated into Article X or other relevant provisions of the Convention.

Finally, in order to strengthen the unique stigmas that attach to chemical warfare, further steps might be undertaken to *sensitize international opinion to the dangers and human*

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<sup>32</sup> For some useful suggestions on this point, see Gordon, *Assistance for Defense*, pp. 6-8.

*consequences of chemical weapons use.* The CW Treaty Organization, for example, might issue "victim impact statements" to document the social and economic harm inflicted by actual CW attacks, drawing upon data (including photography) collected through on-site investigations, aerial surveillance, or other sources. In the past, U.N. and other CW-related investigations have focused more on the question of whether use occurred than on its consequences. In the U.S. domestic legal context, however, it has become increasingly commonplace for prosecutors to provide juries with information on the impact of certain crimes upon victims and their families at the time of sentencing. Applied at the international level, this kind of practice could help to sway global public opinion toward greater support for aid to CW victims and other steps to penalize violators. States might then find it harder to procrastinate when faced with direct requests for assistance, and future violators might be deterred from aggressive acts if they think their actions would trigger an outpouring of sympathy for their adversaries.

In the final analysis, no set of procedures can fully assure timely, effective responses to every conceivable risk posed by chemical weapons and the states which seek to acquire them. The essential purpose of the initiatives discussed here is simply to lay a groundwork within the formal treaty framework for consensus-building on the ways and means of collective action. The advent of the post Cold-War era provides a valuable opportunity to develop the habit of collective action; and the gulf war clearly illustrates why such action is necessary.