Banning the "Poor Man's" Weapons of Mass Destruction: The Philippines in the Organisation for the Prohibition of Chemical Weapons

J. Eduardo Malaya[★]
Ma. Theresa M. Alders[★★]

★ '86 LL.B., University of the Philippines College of Law. The Author is a foreign service officer and lawyer who served twice as Assistant Secretary for Treaties and Legal Affairs (Legal Adviser) (2017-2019; 2009-2011) at the Department of Foreign Affairs. The Author was also the Philippine Ambassador to Malaysia (2011 to 2017). He authored, co-authored, or contributed as an editor for nine books on Philippine diplomacy, the Philippine presidency and law — notably, Philippine Treaties in Force 2020 (University of the Philippines Law Center ((UPLC), 2021); Treaties: Guidance on Practices and Procedures (UPLC, 2019); Stewards of the Nation: Aguinaldo to Duterte and Their Inaugural Visions (Anvil Publishing, 2018); Forging Partnerships: Philippine Defense Cooperation Under Constitutional and International Laws (UPLC/Foreign Service Institute, 2017); & Frontlines of Diplomacy: Conversations with Philippine Ambassadors (Anvil Publishing, 2011; second printing, 2017). He has been the Vice President of the Philippine Society of International Law since 2017, a Member of the Board of Editorial Consultants of the Philippine Yearbook of International Law since 2017, and a Member of the Executive Council of the Asian Society of International Law since 2021. The Author also wrote *Conflict and Cooperation in the Crafting and Conduct of Foreign Policy*, 55 ATENEO L.J. 126 (2010).

I. INTRODUCTION

> *The more decisive a weapon is*[,] *the more surely it will be used in any real conflict and no agreements will help.*
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> — *Edward Teller*[1]

In April 2021, an unprecedented vote took place at an "obscure but important international organization based in The Hague"[2] on whether to suspend the

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** '17 Ph.D., Murdoch University, Perth, Western Australia. The Author has been a foreign service officer at the Department of Foreign Affairs since 2009. She was assigned as a First Secretary and Consul at the Philippine Embassy in The Hague and, in 2021, as the Deputy Permanent Representative of the Philippines to the CWC. The Author wrote a dissertation entitled "Floodwaters of Death, Vulnerability and Disaster in Ormoc City, Philippines: Assessing the 1991 Flood and Twenty Years of Recovery." She is currently Director at the Pacific Division of the Office of Asian and Pacific Affairs, Department of Foreign Affairs.

The positions stated in this Article do not constitute the official views of the Department of Foreign Affairs of the Republic of the Philippines. As such, any errors in the Article are the sole responsibility of the Authors.

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1. Letter *from* Edward Teller *to* Leo Szilard (July 4, 1945) (*available at* https://www.atomicarchive.com/resources/documents/manhattan-project/teller-petition-response.html (last accessed Jan. 30, 2022)). This is an excerpt from Teller's Reply to Szilard's Request. Teller, the Father of the Hydrogen Bomb, responded to Szilard's objections as to the immediate military use of certain weapons. *Id.*
2. Anthony Ruggiero & Andrea Stricker, A Chance to Stop Syria and Russia from Using Chemical Weapons, *available at* https://foreignpolicy.com/2021/04/08/opcw-syria-russia-chemical-weapons-biden-allies (last accessed Jan. 30, 2022) [https://perma.cc/EJY3-QHU6]. The said international organization is the OPCW, also known as the Organisation for the Prohibition of Chemical Weapons, which determined whether the world will return to the norm of not using chemical weapons. *Id.*

voting rights of a State Party for alleged violations of the Chemical Weapons Convention.[3]

The investigations by the Organisation for the Prohibition of Chemical Weapons (OPCW) into 77 allegations of chemical weapons use by the Syrian Arab Republic had concluded that chemical weapons were likely or definitely used in 17 cases, notably the chemical weapons attack in the Damascus suburb of Ghouta in August 2013 and in Khan Shaykhun and Ltamenah, both in 2017.[4]

The debate and voting on the consequences of Syria's alleged continuing violations of the Convention during the 25th Session of the Conference of States Parties (CSP) were contentious.[5] Departing from the decision-making by consensus that characterizes most meetings of the OPCW, a roll call vote had to be called.[6] Of the 136 delegations in

3. Decision Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic, OPCW Doc. C-25/DEC.9 (Apr. 21, 2021).

4. U.N. SCOR, 76th Sess., 8785th mtg. at 4, U.N. Doc. S/PV.8785 (June 3, 2021).

5. *See* Decision Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic, *supra* note 3.

6. Organisation for the Prohibition of Chemical Weapons, Rules of Procedure of the Conference of the States Parties of the Organisation for the Prohibition of Chemical Weapons [OPCW RULES OF PROCEDURE], rule 72 (Apr. 8, 2013).

attendance,[7] 87 voted in favor of the draft decision,[8] while 15 voted against,[9] and 34 abstained.[10]

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7. There were 149 States Parties that submitted credentials to attend the Twenty-Fifth Session of the Conference of the States Parties on 30 November 2020, as follows: Afghanistan, Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, the Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, the Gambia, Georgia, Germany, Ghana, Greece, Guatemala, the Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, the Lao People's Democratic Republic, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, the Marshall Islands, Mauritania, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Namibia, Nauru, Nepal, the Netherlands, New Zealand, Nicaragua, Nigeria, North Macedonia, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, the Philippines, Poland, Portugal, Qatar, the Republic of Korea, the Republic of Moldova, Romania, the Russian Federation, Rwanda, Saint Lucia, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, the State of Palestine, the Sudan, Sweden, Switzerland, the Syrian Arab Republic, Tajikistan, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, and Zimbabwe. However, only 136 countries were in actual attendance, while 13 were declared absent at the roll call voting process.

8. Report of the Twenty-Fifth Session of the Conference of the States Parties, ¶ 9.24, OPCW Doc. C-25/5 (Apr. 22, 2021). The States Parties that voted in favor are Albania, Andorra, Argentina, Australia, Austria, Bahrain, Belgium, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Kuwait, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, the Marshall Islands, Monaco, Montenegro, Morocco, the Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, the Philippines, Poland, Portugal, Qatar, the Republic of Korea,

Although the number of abstentions was substantial, the Rules of Procedure of the CSP provide that for matters of substance, only yes and no votes have relevance, and abstentions are considered as "not voting."[11] Thus, the Conference suspended Syria's rights and privileges as a State Party,[12] marking the first time that the OPCW had taken such action since its establishment in 1997.[13] On said occasion, Philippine Secretary of Foreign Affairs Teodoro Locsin, Jr. posted on Twitter stating, "[*t*]*he Philippines voted for the resolution condemning the use of chemical weapons against anyone, anywhere for any purpose whatsoever; not even for the sake of Third World solidarity. We scorn the company of savages*."[14]

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the Republic of Moldova, Romania, Saint Lucia, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Vanuatu, and Zambia. *Id*.

9. *Id*. The countries that voted against are Armenia, Belarus, Bolivia, China, Iran, Kazakhstan, Kyrgyzstan, Myanmar, Nicaragua, Pakistan, the Russian Federation, the State of Palestine, the Syrian Arab Republic, Tajikistan, and Zimbabwe. *Id*.

10. *Id*. The countries that abstained are Afghanistan, Algeria, Bangladesh, Burkina Faso, Burundi, Cameroon, Eswatini, Ethiopia, the Holy See, India, Indonesia, Iraq, Jordan, Kenya, the Lao People's Democratic Republic, Lebanon, Madagascar, Malawi, Malaysia, Mali, Mexico, Mongolia, Nepal, Nigeria, Oman, Rwanda, South Africa, the Sudan, Thailand, Tunisia, Uganda, the United Arab Emirates, Uzbekistan, and Vietnam. *Id*.

11. OPCW RULES OF PROCEDURE, *supra* note 6, rule 71.

12. Press Release *by* Organisation for the Prohibition of Chemical Weapons, *Conference of the States Parties Adopts Decision to Suspend Certain Rights and Privileges of the Syrian Arab Republic Under the CWC* (Apr. 22, 2021) (*available at* https://www.opcw.org/media-centre/news/2021/04/conference-states-parties-adopts-decision-suspend-certain-rights-and (last accessed Jan. 30, 2022) [https://perma.cc/TA7K-RTHQ]).

13. Leanne Quinn & Julia Masterson, States Censure Syria for Chemical Weapons Violations, *available at* https://www.armscontrol.org/act/2021-05/news/states-censure-syria-chemical-weapons-violations (last accessed Jan. 30, 2022) [https://perma.cc/T3K6-FFNQ].

14. Teodoro Locsin, Jr., @teddyboylocsin, Tweet, TWITTER, Apr. 22, 2021: 6:44 pm, *available at* https://twitter.com/teddyboylocsin/status/1385182736453750784 (last accessed Jan. 30, 2022) [https://perma.cc/QLZ4-7MAH] (emphasis supplied).

Russia and China vigorously campaigned against the measure.[15] Syria responded, stating that it was a "dangerous precedent" and an illegitimate decision.[16] South Africa's explanation of its abstention reflected the deep divide on the issue when its representative stated that "no effort should have been spared to rally the entirety of the membership of the OPCW behind a shared approach, based on consensus, in dealing with a matter of such great delicacy."[17] Yet, as two-thirds majority of the Members present and voting supported the decision, including the Philippines, the measure to penalize Syria passed.[18]

Despite the critical issues addressed at the OPCW, this entity has largely been unnoticed,[19] mainly because concerns about chemical weapons have been overshadowed by anxieties over the proliferation of nuclear weapons and the prospects of catastrophic nuclear war.[20] And yet, progress in the elimination of chemical weapons has been dramatic in recent decades, offering

15. Devirupa Mitra, UNSC Watch: India Joins Russia, China in Disputing OPCW's Latest Report on Syria, *available at* https://thewire.in/diplomacy/uncs-watch-india-russia-china-chemical-weapons-syria-opcw (last accessed Jan. 30, 2022) [https://perma.cc/3MKH-FQHD].

16. *See* Press TV, *Why Is Syria Condemning the OPCW?*, ALBAWABA, Apr. 22, 2021, *available at* https://www.albawaba.com/news/why-syria-condemning-opcw-1423783 (last accessed Jan. 30, 2022) [https://perma.cc/4QXY-C7CE].

17. Organisation for the Prohibition of Chemical Weapons, South Africa's Explanation of Vote on the Draft Decision: 'Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic', Presented During [the] Second Segment of the Conference of the States Parties to the Chemical Weapons Convention, para. 3, *available at* https://www.opcw.org/sites/default/files/documents/2021/04/South%20Africa%27s%20Explanation%20of%20vote%20on%20the%20Decision%20Addressing%20the%20Possession%20and%20Use%20of%20chemical%20weapons%20by%20the%20Syrian%20Arab%20Republic%201.pdf (last accessed Jan. 30, 2022) [perma.cc/UN5R-F2Z7].

18. Decision Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic, *supra* note 3.

19. Alastair Hay, *Weapons Expert: We Are All Safer Because of Nobel Winning OPCW*, CNN, Oct. 11, 2013, *available at* https://edition.cnn.com/2013/10/11/opinion/opinion-hay-nobel-opcw/index.html (last accessed Jan. 30, 2022) [https://perma.cc/CJC2-DV3U].

20. *Id.*

lessons on how to better manage arms control and disarmament in other fields.[21]

What is the Chemical Weapons Convention (CWC) and its implementing agency, the OPCW? How has it come about that a sitting Member State can have its voting rights suspended? As a State Party to the CWC and a Member of the OPCW Executive Council, what is the interest of the Philippines in this field? What is the country's position on chemical weapons and on arms control, non-proliferation, and disarmament in general? What are the benefits and obligations under the Convention, and how does it implement the latter? Is multilateralism at the OPCW flourishing or floundering? What lies ahead for the OPCW and the Philippines in the said organization?

This Article has a three-fold objective. *First*, it situates the role and engagement of the Philippines in the OPCW amidst a rapidly changing regional and international political, economic, and technological environment. It discusses the rights and privileges that the country derives from its membership in the Convention, while keeping in view the policy and practical challenges of its responsibilities and obligations. *Second*, as a stock-taking process, the Article explores a way forward in policy-making with the objective of maximizing the country's participation in the OPCW, while balancing its interest for economic growth through the promotion of the peaceful uses of chemistry on the one hand, and advocacy for domestic, regional, and international stability and security through compliance and implementation measures on the other hand. *Lastly*, the Article offers some views on the place of the CWC and OPCW in international law, notably the compliance mechanism for key obligations.

21. *See, e.g.*, Government of Canada, Non-Proliferation, Arms Control, and Disarmament Efforts, *available at* https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/peace_security-paix_securite/non_proliferation.aspx?lang=eng (last accessed Jan. 30, 2022) [https://perma.cc/C8RH-T8U6] & Republic of Turkey, Arms Control and Disarmament, *available at* https://www.mfa.gov.tr/arms-control-and-disarmament.en.mfa (last accessed Jan. 30, 2022) [https://perma.cc/DDP4-FJV5].

A. The Race to Ban "Asphyxiating, Poisonous, or Other Gases" in War

Chemicals, as organized weapons of warfare,[22] have been used since the First World War.[23] There is evidence, however, proving that toxic chemicals have been deployed in combat since 256 B.C.[24] Chemical weapons are theoretically ideal weapons of warfare — relatively cheap to produce, store, and deploy; tactically and strategically effective as these are almost odorless and colorless; able to poison the body through inhalation or penetration to the skin; and, best of all, existing chemicals are susceptible of refinements with advances in science and technology.[25] The speaker of the Iranian parliament, Hashemi Rafsanjani, called it the "poor man's weapon of mass destruction."[26]

Stigmatized as unnecessarily cruel and unjust, attempts by countries in history to control the use of chemical weapons in war resulted in the signing of early agreements.[27] These are the Strasbourg Agreement between France and Germany in 1675 prohibiting the use of poison bullets;[28] the Brussels

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

23. United Nations Office for Disarmament Affairs, Chemical Weapons, *available at* https://www.un.org/disarmament/wmd/chemical (last accessed Jan. 30, 2022) [https://perma.cc/5UHN-2E48].

24. Diego Vilches, et al., *One Hundred and One Years After a Milestone: Modern Chemical Weapons and World War I*, 27 EDUCACION QUIMICA 233, 234 (2016) (citing Samir S. Patel, *Earliest Chemical Warfare - Dura-Europos, Syria*, ARCHAEOLOGY ARCHIVE, Jan/Feb 2010, *available at* https://archive.archaeology.org/1001/topten/syria.html (last accessed Jan. 30, 2022) [https://perma.cc/T4KV-PZEE].

25. *See* Demetrius Evison, et al., *Chemical Weapons*, 324 BRITISH MED. J. 332, 332 (2002).

26. Can Kasapoğlu & F. Doruk Ergun, The Syrian Civil War: Chemical Weapons Assessment (EDAM Discussion Paper Series No. 2013/7, June 2013), at 1, *available at* https://www.jstor.org/stable/pdf/resrep14066.pdf (last accessed Jan. 30, 2022) [https://perma.cc/GLS8-AFQY] & Michael Horowitz & Neil Narang, *Poor Man's Atomic Bomb? Exploring the Relationship Between 'Weapons of Mass Destruction'*, 58 J. CONFLICT. RESOL. 3, 509, 509 (2014).

27. Organisation for the Prohibition of Chemical Weapons, History: Looking Back Helps Us Look Forward, *available at* https://www.opcw.org/about/history (last accessed Jan. 30, 2022) [https://perma.cc/9C88-VGPL].

28. Tejal Chandan & Ramesh Thakur, The Chemical Weapons Convention: Implementation, Challenges and Opportunities (United Nations University

Convention on the Law and Customs of War signed in 1874, which did not enter into force;[29] the 1899 Hague Convention[30] to prohibit the use of asphyxiating gas projectiles;[31] and the 1907 Second Hague Convention reiterating earlier bans against poison or poisoned weapons.[32] Notwithstanding the rhetorical abhorrence for chemical weapons at the turn of the 20th century, the first large-scale chemical weapons use still took place in Ieper, Belgium on 22 April 1915.[33] At the time, Germany unleashed chlorine gas from its trenches and towards the Allied lines.[34] By the end of World War I, "some 124,400 [tons] of chlorine, mustard, and other chemical agents had been released, and more than 90,000 soldiers died from exposure. Close to a million more men left battlefields blind, disfigured[,] or with debilitating injuries."[35]

The Geneva Protocol of 1925 — held under the auspices of the League of Nations — was later signed, prohibiting the use of "asphyxiating, poisonous[,]or other gases [in war], and all analogous liquids, materials[,] or devices" and "bacteriological methods of warfare."[36] This is "understood to be [the] common prohibition on chemical weapons and biological weapons."[37] It prohibited, however, only the use and not the production, storage, or transfer of these substances because some States chose to keep

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Policy Brief No. 8, 2006), at 2, *available at* https://collections.unu.edu/eserv/UNU:3092/pb8_06.pdf (last accessed Jan. 30, 2022) [https://perma.cc/28Q4-872Q].

29. *Id.* & International Committee of the Red Cross, Project of an International Declaration Concerning the Laws and Customs of War. Brussels, 27 August 1874, *available at* https://ihl-databases.icrc.org/ihl/INTRO/135 (last accessed Jan. 30, 2022) [https://perma.cc/FYP9-WGCW].

30. Convention (II) with Respect to the Laws and Customs of War on Land, *signed* July 29, 1899, U.S.T.S. 403.

31. Chandan & Thakur, *supra* note 28, at 2.

32. Convention (IV) Respecting the Laws and Customs of War on Land art. 23 (a), *signed* Oct. 18, 1907, U.S.T.S. 539.

33. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

34. Gerard Fitzgerald, *Chemical Warfare and Medical Response During World War I*, 98 AM. J. PUB. HEALTH 611, 611 (2008) & Ulrich Trumpener, *The Road to Ypres: The Beginnings of Gas Warfare in World War I*, 47 J. MOD. HIST. 460, 460 (1975).

35. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

36. Geneva Protocol, *supra* note 22, paras. 1 & 3.

37. Jamal Barafi, *Prohibition of Chemical Weapons in International Law*, 9 INT'L J. ARTS & SCI. 83, 86 (2016).

stockpiling these weapons.[38] It may be noted that despite the vintage nature of the 1925 Protocol, the Philippines acceded to and became a State Party to the Convention in 1973,[39] given its significance to the arms control and disarmament regime.

During the first half of the 20th century, many developed countries heavily invested in chemical weapons development and production.[40] Alongside the rapid growth of chemical industries in the western hemisphere during the industrial revolution, public discussions on concerns over chemical weapons proliferated, most notably in the League of Nations.[41] Surprisingly, despite widespread fear, chemical weapons were not used in European battlefields during World War II,[42] though deployed in the Asian theater.[43]

The Chemical Weapons Convention — officially known as the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction — opened for signature on 13 January 1993 and entered into force on 29 April 1997.[44] It is administered not by a United Nations body, but by an intergovernmental

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38. Geneva Protocol, *supra* note 22, para. 1. *See also* Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, *signed* Jan. 13, 1993, 1975 U.N.T.S. 45 [hereinafter Chemical Weapons Convention].

39. *See* J. EDUARDO MALAYA & GALE DAMPIL-MANDIGMA, PHILIPPINE TREATIES IN FORCE 263-64 (2021).

40. Fitzgerald, *supra* note 34, at 612.

41. Ulf Schmidt, *Preparing for Poison War: The Ethics and Politics of Britain's Chemical Weapons Program, 1915-1945*, *in* ONE HUNDRED YEARS OF CHEMICAL WARFARE: RESEARCH, DEVELOPMENT, CONSEQUENCES 89 (Bretislav Friedrich, et al. eds., 2017). "A pamphlet published by the League of Nations noted that 'everywhere except Germany, experiments in Chemical Warfare openly proceed ... . It will not necessarily inflict more pain than high explosive, but will tend to aggravate the burden of war upon the civilian population.'" *Id.* at 94.

42. *See* John Ellis van Courtland Moon, *Chemical Weapons and Deterrence*, *The World War II Experience*, 8 INT'L SEC. 4 (1984); Jeffrey Legro, *Why Were Chemical Weapons Not Used in World War II?*, *in* HISTORY IN DISPUTE: WORLD WAR II, 1943-1945 101-04 (Dennis Showalter, et al. eds., 2000); & Stephen L. McFarland, *Preparing For What Never Came: Chemical and Biological Warfare in World War II*, 2 DEF ANALYSIS 107, 107-21 (1986).

43. *Id.*

44. *See generally* Chemical Weapons Convention, *supra* note 38.

organization called the Organisation for the Prohibition of Chemical Weapons (OPCW) based in The Hague, Netherlands.[45]

Intense discussions and negotiations within the Conference on Disarmament and Preparatory Commission characterized the first 20 years prior to the Convention's entry into force.[46] It is notable that earlier debates revolved around the security issue of the international transfer of chemical weapons and, in particular, the "proliferation of protective means."[47] The latter refers to the situation where abiding by and committing to the tenets of the Convention placed a State Party in a security dilemma, as commitments are individually and unilaterally made by States irrespective of the commitments of other States.[48]

The issue of verification was a concern that appeared insurmountable, especially for the superpowers during the Cold War era.[49] Ambassador Henry Allen Holmes, who was the U.S. Assistant Secretary of State for Politico-Military Affairs from 1985 to 1989, recalled the atmosphere of distrust during an interview[50] —

> We were all a bunch of Cold War warriors. We had a certain mentality about the Soviets. We didn't trust them. We didn't like them. ... The series of arms control negotiations that we had with the Soviets in those days were hard fought.
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> [Shultz] (referring to Secretary of State George Shultz) said, '[D]o you mean to tell me that if we challenged you (referring to Soviet Minister of Foreign Affairs Eduard Shevardnadze) and thought that here in the Kremlin, right inside your government offices, that we had detected a chemical weapons laboratory and we demanded to inspect it, that you would allow that?' He (referring to Shevardnadze) said, 'Absolutely.' Shultz looked at me ... in

45. Organisation for the Prohibition of Chemical Weapons, About Us: We Want to Live in a World Free of Chemical Weapons, *available at* https://www.opcw.org/about-us (last accessed Jan. 30, 2022) [https://perma.cc/75PH-SJEJ].

46. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

47. *See* Jean Pascal Zanders, *The CWC in the Context of the 1925 Geneva Debates*, 3 NONPROLIFERATION REV. 38, 38 (1996).

48. *Id.* at 40.

49. DAVID S. YOST, STRATEGIC STABILITY IN THE COLD WAR: LESSONS FOR CONTINUING CHALLENGES 9 (2011).

50. Interview *by* Charles Stuart Kennedy, Association for Diplomatic Studies and Training, *with* Ambassador Henry Allen Holmes (Mar. 9, 1999).

> disbelief, and I looked at him in disbelief. That was the sort of the end of it. We didn't make any progress on the chemical front at that meeting.
>
> That summer, the Soviet Foreign Ministry had a three-day conference, which was Soviet only ... To my utter astonishment, Shevardnadze, at this meeting, was blasting other Soviets and the lingering 'barbarism' — he used the word barbarism — of certain Soviet leaders and thinkers and strategists to continue to develop chemical weapons ... .
>
> This guy really believ[ed] this. He was sincere. He [was] fighting his own bureaucracy, his own Cold War warriors in the Kremlin, and he wanted to move this process forward. The next session, which was a few months after that, it was a very different session. We moved the ball forward.[51]

Formal negotiations on the Convention itself began in 1980 through the establishment of an *ad hoc* working group on chemical weapons.[52] The developments after — the improvement in U.S.-USSR relations in the late 1980s,[53] the Halabja chemical attack in Iraq in 1988,[54] the fears generated by the Khamisiyah chemical munitions destruction in Iraq in 1991,[55] and the 1990 signing of the bilateral U.S.-USSR Chemical Weapons Agreement[56] — all provided the impetus for the adoption of an ambitious treaty against chemical weapons proliferation.

In 1992, after seemingly endless negotiations and conferences involving militaries, governments, and civilian chemical industries,[57] the Conference on Disarmament formally adopted a draft decision on chemical weapons prohibition.[58] By January 1993, it was opened for signature in Paris.[59] On that

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51. *Id.*

52. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

53. Ian R. Kenyon, *The Chemical Weapons Convention and OPCW: The Challenges of the 21st Century*, THE CBW CONVENTIONS BULLETIN, Issue No. 56, June 2002, at 1.

54. Harvard Sussex Program CBW Chronicle, *News Chronology: February Through April 2002*, THE CBW CONVENTIONS BULLETIN, Issue No. 56, June 2002, at 31.

55. *Id.* at 47.

56. Kenyon, *supra* note 53.

57. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

58. *Id.*

59. Chemical Weapons Convention, *supra* note 38 & Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

day, in a show of solidarity, 130 countries, including the Philippines,[60] signed the Convention.[61]

As of 2021, 193 States are parties to the Convention, with only a few remaining outside its legal mandate.[62] Israel signed but has yet to ratify the treaty.[63] It is presently sitting, however, as an observer in the Conference of the States Parties.[64] Only three other UN Member States, namely, Egypt, North Korea, and South Sudan, have neither signed nor acceded to the Convention.[65]

The Convention has the distinction of being the first and, thus far, the only treaty to comprehensively and verifiably ban an entire category of weapons of mass destruction within a fixed time frame.[66]

B. Concept of Chemical Weapons

Chemical weapons are defined as chemicals intended to cause death or harm through its toxic properties.[67] These weapons may be toxic chemicals or their

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60. Chemical Weapons Convention, *supra* note 38, at 5.

61. *Id.*

62. Daryl Kimball, Chemical Weapons Convention Signatories and States-Parties, *available at* https://www.armscontrol.org/factsheets/cwcsig (last accessed Jan. 30, 2022) [https://perma.cc/P92Z-WZUU].

63. *Id.*

64. *Id.*

65. *Id.*

66. Daryl Kimball, Chemical Weapons Convention (CWC) at a Glance, *available at* https://www.armscontrol.org/factsheets/cwcglance (last accessed Jan. 30, 2022) [https://perma.cc/52TV-NLZZ].

67. Chemical Weapons Convention, *supra* note 38, art. II. Chemical Weapons are defined as:

> (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes[;]
> (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices; [and]
> (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

Id.

precursors, munitions or devices, or any equipment specifically designed to be used directly in connection with munitions and devices.[68] "[T]he basic prohibitions in Article I of the [Convention] apply to any toxic chemical ... intended for hostile use, regardless of its origin or method of synthesis."[69] This purpose-based approach, known as the "general purpose criterion" in arms control literature, was adapted from a similar language in the 1972 Biological Weapons Convention, and allowed the Convention to cover future advances in chemical science and technology.[70]

Chemical weapons are generally classified as choking agents that inflict injury mainly on the respiratory tract, such as chlorine; blister agents, one of the most common chemical weapon agents, which affect the eyes, respiratory tract, and skin initially as an irritant and then as a cell poison, such as sulfur mustard commonly known as mustard gas; blood agents that effectively cause the body to suffocate, such as hydrogen cyanide, cyanogen chloride and arsine; and nerve agents that essentially block an enzyme called Acetylcholinesterase (AChE) in the nervous system, such as tabun, sarin, soman, and VX.[71]

As munitions, chemical weapons may be delivered through bombs, rockets, artillery shells, spray tanks, and missile warheads.[72] It may be dispersed as vapors, aerosols, or liquids.[73] These chemicals could be used in liquid, gas, or solid form and could cause blisters and choking, as well as affect the nerves and blood.[74] Several types have been developed since World War I, including choking agents, blister agents, blood agents, nerve agents, riot-control agents, and herbicides.[75] Some types of these weapons are highly lethal; a few drops can kill victims within minutes, while some evaporate in minutes or hours and

68. *Id.*

69. Jonathan B. Tucker, Verifying the Chemical Weapons Ban: Missing Elements, *available at* https://www.armscontrol.org/act/2007_01-02/Tucker (last accessed Jan. 30, 2022) [https://perma.cc/2GYV-PK74].

70. *Id.*

71. Organisation for the Prohibition of Chemical Weapons, What is a Chemical Weapon?, *available at* https://www.opcw.org/our-work/what-chemical-weapon (last accessed Jan. 30, 2022) [https://perma.cc/3ZZN-89U3].

72. Daryl Kimball, Chemical Weapons: Frequently Asked Questions, *available at* https://www.armscontrol.org/factsheets/Chemical-Weapons-Frequently-Asked-Questions (last accessed Jan. 30, 2022) [https://perma.cc/T2KW-NLJC].

73. *Id.*

74. *Id.*

75. *Id.*

lose their effect rapidly.[76] Sarin is a lethal, but non-persistent nerve agent.[77] VX, on the other hand, can persist for days or weeks in lethal form.[78]

The definition of chemical weapons in the Convention only covers "toxic effects on human beings and animals, not effects on plants (e.g., herbicides). In order to qualify as a chemical weapon, the toxic effect of the munitions must not necessarily be lethal. Other forms of harm (incapacitation) are sufficient even if they are only temporary."[79] The Conference of the States Parties at its November 2021 session was expected to also ban the aerosolized use of central nervous system-acting chemicals for law enforcement purposes, but was opposed by Russia and some other States.[80] The Convention itself is currently ambiguous on the classification of incapacitants and riot control agents, notably pepper spray and tear gas, which are by nature non-lethal chemicals designed to incapacitate individuals temporarily rather than cause long-term injuries or even death.[81]

"Toxic chemicals can spread over large areas and affect large numbers of people."[82] Thus, chemical weapons fit squarely in the definition of "weapon

76. *Id.*

77. *See* Centers for Disease Control and Prevention, Emergency Preparedness and Response: Facts About Sarin, *available at* https://emergency.cdc.gov/agent/sarin/basics/facts.asp (last accessed Jan. 30, 2022) [https://perma.cc/R4ZV-GYVX].

78. *See* Centers for Disease Control and Prevention, Emergency Preparedness and Response: Facts About VX, *available at* https://emergency.cdc.gov/agent/vx/basics/facts.asp (last accessed Jan. 30, 2022) [https://perma.cc/67GA-QN64].

79. Michael Bothe, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, at 1, *available at* https://legal.un.org/avl/pdf/ha/cpdpsucw/cpdpsucw_e.pdf (last accessed Jan. 30, 2022) [https://perma.cc/F4B5-VP2X].

80. Press Release *by* Office of the Spokesperson, *U.S. Leads International Action to Address the Aerosolized Use of Central Nervous System-acting Chemicals for Law Enforcement* (Dec. 1, 2021) (*available at* https://www.state.gov/u-s-leads-international-action-to-address-the-aerosolized-use-of-central-nervous-system-acting-chemicals-for-law-enforcement (last accessed Jan. 30, 2022) [https://perma.cc/F92K-7QNU]).

81. Sean P. Giovanello, *Riot Control Agents and Chemical Weapons Arms Control in the United States*, J. STRATEGIC SEC., Volume No. 5, Issue No. 4, at 3 (2012).

82. Bothe, *supra* note 79, at 1.

of mass destruction" (WMD), which Republic Act No. 10697 of the Philippines also defines as

> any destructive device or weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of *toxic or poisonous chemicals, or their precursors, any weapon involving a biological agent, toxin*, or vector, or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. This includes, but [is] not limited to: (a) nuclear and radiological explosive devices and their major subsystems; (b) *chemicals covered by Schedule I, II*[,] *and III of the Chemical Weapons Convention*; and (c) biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment, or damage crops.[83]

II. THE CHEMICAL WEAPONS CONVENTION

The 172-page Convention comprises a preamble, 24 articles, and three annexes — the Annex on Chemicals, the Verification Annex, and the Confidentiality Annex.[84] With the objective of prohibiting the development, production, acquisition, stockpiling, retention, transfer, or use of chemical weapons by States Parties, it mandates States Parties to take necessary steps to enforce prohibition in respect of persons (natural or legal) within their jurisdiction.[85]

A. Obligations, Verification, and Compliance

The success of the CWC is in its simultaneous application of different aspects of prohibition.[86] *First*, as an arms control prohibition, States Parties are not allowed to "develop, produce, otherwise acquire, stockpile, retain[,] or transfer chemical weapons."[87] *Second*, States Parties have a disarmament obligation to destroy or recommit to peaceful uses of the chemical weapons that they may possess, including abandoned chemical weapons and chemical

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83. An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for Other Purposes [Strategic Trade Management Act (STMA)], Republic Act No. 10697, § 5 (cc) (2015) (emphases supplied).

84. *See* Chemical Weapons Convention, *supra* note 38.

85. *Id.* art. vii (1) (a).

86. Bothe, *supra* note 79, at 2.

87. *Id.*

weapons production facilities.[88] *Lastly*, States Parties are prohibited to use chemical weapons as a method of warfare.[89] On herbicides, the Convention refers in the Preamble to other relevant rules of international law.[90]

To accomplish the above objectives, States Parties are required to make declarations on their possession of certain chemicals that are subject to verification.[91] The compliance regime of the CWC is an elaborate mechanism consisting of a number of different elements:

(1) Routine verification of the destruction activities, which are required;

(2) Routine verification of the non-diversion of certain chemicals from peaceful to military purposes;

(3) Inspections in cases of doubt about compliance (challenge inspections);

(4) Reactions to non-compliance (enforcement, settlement of disputes); and

(5) National measures of implementation.[92]

The Verification Annex to the Convention sets out detailed procedures to be followed by the States Parties and OPCW inspection teams during verification/inspection activities at chemical weapons facilities and industrial

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88. *Id.*

89. *Id.*

90. *Id. See also* Chemical Weapons Convention, *supra* note 38. The preambular paragraph 7 of the CWC states, "Recognizing the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare." *Id.*

91. Bothe, *supra* note 79, at 2.

92. *Id.* at 2. *See also* Tucker, *supra* note 69. Tucker calls this mechanism a "safety net" consisting of:

> (1) a provision for routine inspections of 'other' chemical production facilities that do not currently manufacture scheduled chemicals but may have the technical capability to do so;
> (2) the use of sampling and analysis during on-site inspections of chemical industry;
> (3) the right of any member state to request a challenge inspection of a suspect facility, declared or undeclared, on the territory of another state-party; and
> (4) the obligation on each state-party to create a national authority and pass domestic implementing legislation to monitor the general purpose criterion at the national level.

Id.

facilities.[93] Such a sophisticated and complex system aims to strike a delicate balance between the various interests at stake. On the one hand, in order to detect covert violations, controls require a degree of intrusiveness and sufficient information in order to be effective. On the other hand, maintaining the integrity of the chemical industry, while ensuring national security, protecting industrial secrets, and safeguarding chemical production processes require a level of restraint in such controls.

The Verification Division and Inspectorate Division of the OPCW work hand in hand in planning, conducting, and reviewing all OPCW inspections.[94] Verification activities "bolster confidence building through [an objective and non-discriminatory] review, compilation, and evaluation of declared data, and through the inspection of declared sites related to chemical weapons, as well as within the chemical industry."[95] The Verification Division comprises four branches: Declarations Branch (DEB), Chemical Demilitarization Branch (CDB), Industry Verification Branch (IVB), and Policy Review Branch (PRB), together with the OPCW Laboratory.[96]

The DEB handles all verification-related matters, while the CDB plans, monitors, and reviews all verification activities relating to previously destroyed and/or converted chemical weapons production plants, chemical weapons storage facilities, continuous verification of chemical weapons destruction facilities, and all matters related to abandoned or old chemical weapons and their destruction.[97] The IVB handles all industry inspections of scheduled and non-scheduled organic chemicals, while the PRB provides the overall guidance on verification policy matters.[98] The OPCW Laboratory, located in Rijswijk, Netherlands, prepares the sampling methods and analysis for inspection missions.[99] As the OPCW moves into the post-declared chemicals

93. Organisation for the Prohibition of Chemical Weapons, Chemical Weapons Convention, *available at* https://www.opcw.org/chemical-weapons-convention (last accessed Jan. 30, 2022) [https://perma.cc/C53Y-52FT] & Chemical Weapons Convention, *supra* note 38, annex.

94. Peter Boehme, The Verification Regime of the Chemical Weapons Convention: An Overview, *available at* https://www.opcw.org/media-centre/news/2008/11/verification-regime-chemical-weapons-convention-overview (last accessed Jan. 30, 2022) [https://perma.cc/USG2-W976].

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

destruction phase by 2023, it is envisioned that the Verification Division will gradually focus on Article VI-related tasks[100] and on supporting the implementation activities of National Authorities.[101]

The Convention envisions to provide a transparent and verifiable process of chemical weapons declarations, as follows:

Table 1
Declaration Requirements for Scheduled Chemicals[102]

Type of scheduled chemical	*State Party Obligation*	*Exceptions*	*Number of chemicals*
Schedule 1 (those posing high risk to CWC (e.g., nerve agents))	States Parties are required to notify the Technical Secretariat of any transfer of Schedule 1 chemicals, at least 30 days before planned transfer.[103]	five milligrams or less of Schedule 1 chemical Saxitoxin for medical or diagnostic transfer[104]	16 toxic chemicals and four precursors
	States Parties are required to make an annual declaration on transfers during the previous year to be submitted no later than 90 days after the end of that year.[105]	—	—

100. Chemical Weapons Convention, *supra* note 38, art. VI.

101. Boehme, *supra* note 94.

102. Chemical Weapons Convention, *supra* note 38, Annex on Implementation and Verification [hereinafter Verification Annex].

103. *Id.* pt. VI, ¶ 5.

104. *Id.* ¶ 5bis.

105. *Id.* ¶ 6.

Schedule 2 (those posing significant risk to CWC)	States Parties are required to make initial and annual declarations on aggregate national data for the previous calendar year on quantities of each Schedule 2 chemical produced, processed, consumed, imported, and exported; quantities of each Schedule 3 chemicals produced, imported, and exported; quantitative specification of import and export of each country and chemical involved.[106]	—	three toxic chemicals and 11 precursors
Schedule 3 those posing risk to CWC (e.g., hydrogen cyanide))		—	four toxic chemicals and 13 precursors
Discrete organic chemicals (those containing elements phosphorus, sulfur, and fluorine)	No restrictions or reporting requirements on transfers of these chemicals.[107]	—	—
	States Parties are required to provide in initial declarations a list of all plant sites that produced by synthesis during the previous calendar year more than 200	—	—

106. *Id.* pt. VII, ¶ 1.

107. *Id.* pt. II, ¶ 27.

	tons of unscheduled discrete organic chemicals; or of one or more plants which produced by synthesis more than 30 tons of an unscheduled discrete organic chemical containing elements of phosphorus, sulfur, or fluorine.[108]		

Routine verification ensures that detailed declarations submitted by State Parties on their chemical weapons, chemical weapons storage facilities, chemical weapons destruction facilities, chemical weapons production facilities, and facilities used in the past for the development of chemical weapons are correct.[109] It takes two forms — verification of destruction and verification of non-diversion.[110] The diversion of chemicals from beneficial civilian uses to military purposes has been identified as a major problem.[111] "The Verification Annex contains several lists of chemicals which have the potential of being diverted in this way and subjects chemicals contained in these lists to controls of different intensity, the control being most intensive for chemicals having the greatest potential of use for weapons purposes."[112]

The fundamental challenge of the OPCW verification relates to the "Janus-faced nature of chemical technology."[113] Because chemicals in question are, as a rule, in the hands of private industry, governments are constrained to know about all sites where the listed chemicals are handled to enable them to make the required declarations.[114] The basis of the control is a

108. Verification Annex, pt. VIII, ¶ 8 (b).

109. Bothe, *supra* note 79, at 2.

110. *Id.* at 2–3.

111. *Id.* at 3.

112. *Id.*

113. Tucker, *supra* note 69.

114. Bothe, *supra* note 79, at 3.

balance sheet (input-output) of the substances in question, thus ensuring that the government must be able to engage the chemical industry in its design and implementation.[115]

> If a State [P]arty has doubts about compliance by any other State [P]arty, ... a clarification [may be sought]. It may also request an on-site challenge inspection of the location where the doubtful activities allegedly take place. This is a necessary complement to the routine verification procedures which are all limited to 'declared' facilities. ...
>
> The procedural barriers to this request are low, but access by inspectors is strictly regulated.[116]

The "challenge inspection," which is unique to the Convention, is the procedure whereby any State Party can request the Director-General of the OPCW to send an inspection team to another State Party in case of doubt about the latter's compliance.[117] This type of inspection applies the "anytime, anywhere, without right of refusal" provision,[118] which for many countries provides a safety net to spot and prevent the clandestine development, production, or stockpiling of chemical weapons in undeclared facilities, and to ensure compliance on declarations.[119]

These two types of inspections are envisioned to work synergistically and are meant to complement each other to reduce the gap that is necessarily created between what is declared through routine inspections and what actually exists through challenge inspections.[120] Despite theoretically being available, however, the challenge inspection regime has never been invoked due to legal, political, and other reasons.[121] Political considerations, therefore, will affect the timing of

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115. *Id.*

116. *Id.*

117. Tucker, *supra* note 69.

118. Tatsuya Abe, *Challenge Inspections Under the Chemical Weapons Convention: Between Ideal and Reality*, 24 NONPROLIFERATION REV. 167, 168 (2017) (citing Masahiko Asada, *Effectiveness and Limitations of Challenge Inspections*, *in* TRILATERAL PERSPECTIVES ON INTERNATIONAL LEGAL ISSUES: FROM THEORY INTO PRACTICE 229 (Thomas J. Schoenbaum et al., eds., 1998)).

119. Chemical Weapons Convention, *supra* note 38, art. IX.

120. Bothe, *supra* note 79, at 3.

121. JONATHAN B. TUCKER, THE CONDUCT OF CHALLENGE INSPECTIONS UNDER THE CHEMICAL WEAPONS CONVENTION 1 (2002). *See also* Abe, *supra* note 119, at 168 (2017).

a CWC inspection request and the target of the inspection.[122] It will necessarily compromise intelligence sources and methods, as well as raise concerns about the possibility of a retaliatory challenge inspection.[123]

In accordance with the Convention's confidentiality provisions, data from declarations and inspections are disseminated to States Parties, serving to improve transparency and build confidence in the effectiveness of the regime.[124]

The OPCW implements the Convention through 500 personnel recruited from over 80 Member States, a small number compared to those in the United Nations system.[125]

To date, over 98% of the 72,000 metric tons of declared chemical weapons stockpiles have been verified as eliminated.[126] According to OPCW Director-General Fernando Arias, safe and steady destruction continues as small remaining fraction from the one remaining possessor State Party is on track to be destroyed by 2023.[127]

B. The Conference of States Parties and the Executive Council

The OPCW comprises three main bodies: the Conference of States Parties, the Executive Council, and the Technical Secretariat.[128] Issues on the implementation of the Convention are discussed and decided at the Conference of the States Parties, which is the principal and plenary body of

122. TUCKER, *supra* note 121, at 2.

123. *Id.*

124. Organisation for the Prohibition of Chemical Weapons, *supra* note 27.

125. U.N. Secretary-General, Composition of the Secretariat: Staff Demographics, 75th Session of the General Assembly, U.N. Doc. A/75/591 (Nov. 9, 2020). The UN system employs a total of 36,574 as of Dec. 31, 2019. *Id.* at 1.

126. UNITED NATIONS, DISARMAMENT YEARBOOK 52 (2020) [hereinafter DISARMAMENT YEARBOOK].

127. Fernando Arias, OPCW Director-General, *Reinforcing the Norm Against Chemical Weapons: The April 20-22 Conference of States Parties to the Chemical Weapons Convention*, Opening Remarks at Arms Control Association and Chemical Weapons Convention Coalition Webinar (May 10, 2021) (transcript *available at* https://www.opcw.org/sites/default/files/documents/2021/05/20210510_DG%20Opening%20Remarks_ACA%20and%20CWCC%20Webinar_WEB.pdf (last accessed Jan. 30, 2022) [https://perma.cc/TS2Y-GQSS]).

128. Chemical Weapons Convention, *supra* note 38, art. VIII (A) (4).

the Convention that meets annually in The Hague, Netherlands.[129] All States Parties are members who each have one vote.[130] The functions of the Conference include

> taking measures necessary to ensure compliance with the Convention; adopting the program[ ] and budget and deciding on the scale of the financial contributions to be paid by States Parties; ... electing the members of the Executive Council; appointing the Director-General; [and] fostering international cooperation for peaceful purposes in the field of chemical activities.[131]

Member States are generally represented in the Conference by their permanent representatives, who in most cases are also their ambassadors accredited to the Kingdom of the Netherlands, the host country of the OPCW.[132] Ambassadors are accepted by the Director-General as Permanent Representatives through the presentation of credentials signed by the Head of that State Party.[133] As of early 2021, there are 109 permanent representations of Member States based in The Hague, 58 in Brussels, seven in New York, six in London, one in Paris, one in Berlin, and seven in their respective capitals.

While the Conference ultimately makes the decisions on matters relevant to the Convention, it is the Executive Council that recommends decisions for the Conference's consideration.[134] Article VIII of the Convention sets forth the composition of the Executive Council, which has 41 members from the five regional groups that comprise the Organisation's membership.[135] These 41 seats are allocated as follows: nine seats for the Africa Group; nine for the

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129. Organisation for the Prohibition of Chemical Weapons, Conference of the States Parties: Setting the OPCW's Strategic Direction, *available at* https://www.opcw.org/about/conference-states-parties (last accessed Jan. 30, 2022) [https://perma.cc/BHV4-498W].

130. Chemical Weapons Convention, *supra* note 38, art. VIII (B) (17).

131. Organisation for the Prohibition of Chemical Weapons, *supra* note 129.

132. *Id.*

133. OPCW Executive Council, *Draft Report on the OPCW on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction in 2020*, ¶ 4.12, OPCW Doc. EC-97/2 (July 7, 2021).

134. Organisation for the Prohibition of Chemical Weapons, Executive Council: Governing Body of the OPCW, *available at* https://www.opcw.org/about-us/executive-council (last accessed Jan. 30, 2022) [https://perma.cc/3C5N-W8SK].

135. *Id.* & Chemical Weapons Convention, *supra* note 38, art. VIII (C).

Asia Group, with one seat rotating with the Latin America and Caribbean Group; five for the Eastern Europe Group; seven for Latin America and Caribbean Group; and 10 for the Western Europe and Other States Group.[136] Membership into the Executive Council is through designation by their respective regional groups and formally elected by acclamation at the Conference for a term of two years.[137] The Philippines is the Coordinator of the Asia Group, having been chosen to act as such coordinator in 2019.[138]

The Executive Council is responsible for promoting the effective implementation of and compliance with the Convention and supervising the activities of the Technical Secretariat.[139] Important functions of the Council include

> taking of measures in cases of non-compliance by a State Party, including the submission of recommendations for action to be taken by the Conference; considering and submitting to the Conference the draft OPCW program [ ] and budget [for the prospective year]; ... and making a recommendation to the Conference on the appointment of the Director-General.[140]

C. Significance of CWC to Disarmament Regimes and International Law

Central to international law is the issue of the enforceability of and compliance with treaty provisions.[141] By nature, the Chemical Weapons Convention is a legally binding and enforceable multilateral convention with obligations of States Parties phrased in imperative terms and its provisions on settlement of disputes clearly defined, including possible referral of disputes to the International Court of Justice.[142] In addition, it has provisions empowering the Conference of States Parties to take measures to redress a situation and to ensure compliance, including suspending an offending State Party's voting rights, as was taken against Syria in April 2021,

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136. Organisation for the Prohibition of Chemical Weapons, *supra* note 134.

137. *Id.*

138. Department of Foreign Affairs, PH Elected as New Regional Group Coordinator for Asia in the OPCW, *available at* https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/23479-ph-elected-as-new-regional-group-coordinator-for-asia-in-the-opcw (last accessed Jan. 30, 2022) [https://perma.cc/5XNX-69UA].

139. Organisation for the Prohibition of Chemical Weapons, *supra* note 134.

140. *Id.*

141. Thomas M. Franck, *Legitimacy in the International System*, 82 AM. J. INT'L L. 705, 707 (1988).

142. Chemical Weapons Convention, *supra* note 38, art. XIV (2).

and bringing cases of particular gravity to the attention of the UN Security Council.[143]

The CWC belongs to the realm of arms control, non-proliferation, and disarmament treaties, which include the 1968 Nuclear Non-Proliferation Treaty (NPT),[144] 1972 Biological Weapons Convention (BWC),[145] and the 2017 Treaty on the Prohibition of Nuclear Weapons, which the Philippines ratified on 18 February 2021.[146] These instruments are intended to reduce the likelihood of war and to delimit its effects should said war occur.[147]

With its robust provisions, the CWC broke new grounds not only in the disarmament regimes but also in international law in general.[148] It is recognized as revolutionary in arms control as it is the first multilateral disarmament agreement that completely eradicates an entire category of weapons of mass destruction within a fixed timeframe.[149] While the CWC has the OPCW as an implementing entity and provides for verification procedures, there are yet no similar organizations nor verification procedures for biological weapons. It has "the most comprehensive and intrusive system of verification to date of any disarmament treaty applied on a global scale (or

143. *Id.* art. XII (4).

144. Treaty on the Non-Proliferation of Nuclear Weapons, *signed* July 1, 1968, 729 U.N.T.S. 161.

145. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction, *signed* Apr. 10, 1972, 1015 U.N.T.S. 163.

146. Treaty on the Prohibition of Nuclear Weapons, *opened for signature* Sept. 20, 2017, 57 I.L.M. 347-57.

147. *See* Adam Daniel Retfold, *The Future of Arms Control and International Security*, *in* A FUTURE ARMS CONTROL AGENDA, PROCEEDINGS OF NOBEL SYMPOSIUM 118, 1999 3 (Ian Anthony & Adam Daniel Retfold eds., 2001).

148. A. Walter Dorn & Douglas Scott, The Compliance Provisions in the Chemical Weapons Convention: A Summary and Analysis, *available at* https://walterdorn.net/17-compliance-provisions-in-the-chemical-weapons-convention (last accessed Jan. 30, 2022) [https://perma.cc/PB6Q-2HMJ].

149. Barafi, *supra* note 37, at 87 (citing Robert J. Matthews, *Chemical and Biological Weapons*, *in* ROUTLEDGE HANDBOOK OF THE LAW OF ARMED CONFLICT 9 (Rain Liivoja & Tim McCormack eds., 2016)).

in any area of international law for that matter),"[150] certainly more robust than those in the NPT.[151]

D. Incorporating Lessons from the Nuclear Disarmament Field

The International Atomic Energy Agency (IAEA)[152] — as the only earlier organization with a mandate for implementing an international verification system — was an important model for the structure and functioning of the OPCW. This body was created in 1957, and was 10 years later given the responsibility for administering aspects of nuclear treaties, including the Non-Proliferation Treaty.[153] From its headquarters in Vienna, it sends inspectors to all nuclear facilities that have been declared by various treaty parties.[154] The IAEA serves as the primary model for the OPCW and is similar in structure and function to it.[155]

"Many provisions in the CWC benefit from the lessons learned through the [implementation] of the IAEA's safeguards system in such matters as rights of access for inspectors, the designation of inspectors, and procedural arrangements."[156] The IAEA carries out verification activities in connection with its Statute as well as a number of treaties.[157] On the other hand, "the OPCW [operates] only under the CWC, which has the distinctive feature of combining in a single instrument the general obligations of the States Parties ... and the verification system designed to ensure compliance with those

150. Dorn & Scott, *supra* note 148.

151. Treaty on the Non-Proliferation of Nuclear Weapons, *supra* note 144.

152. Statute of the International Atomic Energy Agency, *signed* Oct. 26, 1956, 276 U.N.T.S. 3.

153. International Atomic Energy Agency, History, *available at* https://www.iaea.org/about/overview/history (last accessed Jan. 30, 2022) [https://perma.cc/RX3L-PYB4].

154. International Atomic Energy Agency, IAEA Safeguards Overview: Comprehensive Safeguards Agreements and Additional Protocols, *available at* https://www.iaea.org/publications/factsheets/iaea-safeguards-overview (last accessed Jan. 30, 2022) [https://perma.cc/25VT-7CAG].

155. A. Walter Dorn & Ann Rolya, The Organisation for the Prohibition of Chemical Weapons and the IAEA: A Comparative Overview, at 44, *available at* https://www.iaea.org/sites/default/files/35301094447.pdf (last accessed Jan. 30, 2022) [https://perma.cc/T943-4U9V].

156. *Id.*

157. *Id.*

obligations."[158] The CWC also requires all signatories to destroy any existing chemical weapons within 10 years, i.e., by 29 April 2007, subject to certain extensions.[159]

Furthermore,

> [i]n order to verify the complete elimination [of chemical] weapons, the OPCW inspections [ ] cover a larger variety of activities, and the inspections are more intrusive than those of the IAEA. Provisions in the CWC for the notification and frequency of inspections are more detailed, reflecting the comprehensiveness of its verification system.[160]

While the IAEA covers specifically identified nuclear materials which are comparatively easier to detect and quantify, the materials of concern in the CWC cover a wider range, where toxic chemicals and their precursors are placed in three broad categories that could potentially include thousands of chemicals.[161]

E. Intrusive Compliance Regime

There are 13 provisions in the Convention designed "to promote compliance and to help prevent non-compliance."[162] As noted earlier,

> [h]ighly intrusive inspections, including challenge inspections which may occur at any site in any State Party, ... [are] the backbone of the verification process. ... The reports from the inspectors are sometimes kept confidential and sometimes circulated to all States Parties[ ] depending on the content of the reports. ... If the inspection system uncovers uncertainties about compliance on the part of a particular State Party, the next stage of the compliance system is activated, beginning with steps by the Director-General to obtain clarification of dubious information, and in the case of problems, the Director-General attempts to persuade the State [P]arty involved to rectify [the situation] ... . The Convention does not directly state who determines whether non-compliance has occurred[,] but it gives the organs of the OPCW sufficient latitude to make decisions on the [matter]. If a finding of non-compliance is made, the OPCW can request the State [P]arty to rectify its [behavior,] and may take various measures to persuade and

158. *Id.*

159. *Id.*

160. *Id.* at 47.

161. Dorn & Rolya, *supra* note 155, at 47.

162. Dorn & Scott, *supra* note 148.

> pressure the latter to do so... . [I]n extreme cases, [OPCW] may refer the matter to the UN Security Council for stronger action[.][163]

On the other hand, the CWC offers States Parties incentives for compliance.[164] "If a State Party is attacked with chemical weapons, [including an attack against an individual within its territory,] the OPCW will provide assistance and protection. Also, the [Convention] offers a degree of free trade in chemicals ... [and] suggests mechanisms for the peaceful resolution of disputes[.]"[165]

Notably,

> [p]ossibly the most important innovation in the Convention's compliance system is its requirement that States Parties enact legislation to make the Convention binding on its citizens and to criminalize any [behavior] that is prohibited to States Parties. The Convention also mandates the creation or designation of a National Authority in each State Party to communicate with and assist the OPCW[,][166]

which for the Philippines, is the Anti-Terrorism Council.[167] Thus, the CWC is path-breaking for it has provisions on verifying compliance, promoting compliance, and dealing with non-compliance.

> The importance of compliance provisions is [hardly] overestimated. The provisions adopted for the [CWC] are likely to set the pattern for future disarmament treaties... Strong compliance provisions will help make treaties more robust so that the world can move towards an international system based on law and order, a world in which chemical warfare and indeed all warfare waged with weapons of mass destruction becomes increasingly improbable and eventually unthinkable.[168]

At the same time, some weaknesses in the CWC have been noted. As expected, "the Convention has no direct power over non-party States, but, over time, [it] has prohibited States Parties from trading chemical technology with non-party States. Second[ ], possession of chemical weapons by terrorist

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163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. Office of the President, Designating the Anti-Terrorism Council as the Philippine National Authority on the Chemical Weapons Convention and Other Disarmament Issues, Executive Order No. 39, Series of 2011 [E.O. No. 39, s. 2011], § 1 (Apr. 28, 2011).

168. Dorn & Scott, *supra* note 148.

groups and other organizations also falls outside the [coverage] of the treaty."[169]

Nonetheless, Article VII provides that States Parties have the obligation to prohibit natural and legal persons, including "terrorists" and "terrorist groups" that may operate within their territories or within its jurisdiction, from pursuing activities in violation of the Convention.[170] The Convention also provides no "power [to the OPCW] to react immediately to flagrant behavior against States Parties ... even if the reaction may require military force."[171] As mentioned earlier, some countries with chemical warfare ability have not joined the treaty, and they do not have much incentive to join anytime soon.

It has been suggested that

> [c]onsidering the huge number of States [Parties to] the Chemical Weapons Convention, the provisions of the treaty on the development, production, stockpiling, and the transfer of a whole category of [w]eapons [of mass destruction] could be recognized as customary international law and bind non-[party States], as is the case of the banning of the use of chemical and biological weapons stated in Geneva Protocol of 1925.[172]

Given the divisive issues that have often confronted States Parties, it is advisable to allow more time for the CWC provisions to further crystallize into customary international law.

III. THE PHILIPPINES IN THE CWC AND OPCW

The Philippines was among the first countries to sign the Convention when it was opened for signature in Paris on 13 January 1993 — just 45 days after the UN General Assembly approved the Convention on 30 November 1992.[173]

The Convention was ratified by President Fidel V. Ramos on 17 July 1995 and its ratification was concurred in by the Philippine Senate on 19 August 1996.[174] The country's instrument of ratification was deposited on 11

169. Barafi, *supra* note 37, at 87.

170. Chemical Weapons Convention, *supra* note 38, art. VII (1) (a).

171. Barafi, *supra* note 37, at 88.

172. *Id.* at 94. *See generally* Geneva Protocol, *supra* note 22.

173. Organisation for the Prohibition of Chemical Weapons, Member States: Philippines, *available at* https://www.opcw.org/about-us/member-states/philippines (last accessed Jan. 30, 2022) [https://perma.cc/NKV4-3UXT].

174. MALAYA & DAMPIL-MANDIGMA, *supra* note 39, at 256-57.

December 1996, along with 19 other States.[175] It entered into force generally, including for the Philippines, on 29 April 1997, 180 days after the deposit of the 65th instrument of ratification.[176]

The CWC has relevance to the Philippines as its chemical industry is fairly large. The industry is the third largest manufacturing sub-sector, comprising about 11% share of total manufacturing value-added, with revenues reaching ₱330 billion in 2009.[177] The industry employs some 147,000 workers and is composed of some 1,405 manufacturers, both local and multinational in origin.[178] Among the larger manufacturers are Petron Corporation, JG Summit, Chemrez Technologies, United Coconut Chemicals, Pacific Paint (Boysen) Inc., Atlas Fertilizer Corporation, Pioneer Adhesives Inc., as well as locally-based multinational companies Dow Pacific and Chemicals, Dupont Far East, Bayer, Sygenta Philippines, Monsanto Philippines, Pilipinas Kao, and 3M Philippines.[179] Thus, it is a significant sector that requires engagement and monitoring.

A. Policy and Implementing Agency

In 2015, Congress enacted Republic Act No. 10697 entitled An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for Other Purposes (Strategic Trade Management Act),[180] which articulated, among others, the country's policy on weapons of mass destruction, including chemical weapons. Thus —

> Section. 2. *Declaration of Policy* — It is declared a policy of the State to be free from Weapons of Mass Destruction (WMD) in its territory, consistent with

175. Organisation for the Prohibition of Chemical Weapons, *supra* note 173.

176. MALAYA & DAMPIL-MANDIGMA, *supra* note 39, at 256-57.

177. Jed M. Bellen, The Philippine Chemical Industry, *available at* https://www.aiche.org/resources/publications/cep/2017/december/philippine-chemical-industry (last accessed Jan. 30, 2022) [https://perma.cc/U7S6-4LVR] & Technical Education & Skills Development Authority, Labor Market Intelligence Report: Chemical Manufacturing Industry, at 1, *available at* https://www.tesda.gov.ph/uploads/File/Planning2014/LMIR/LMIR%20(8)%20Chemical%20Manufacturing.pdf (last accessed Jan. 30, 2022) [https://perma.cc/2ZVN-6ZSB].

178. *Id.*

179. Bellen, *supra* note 177. Annex A of this Article provides a list of the major chemical corporations in the Philippines.

180. Strategic Trade Management Act (STMA).

> the national interest, to fulfill its international commitments and obligations, including United Nations Security Council Resolution (UNSCR) 1540, to take and enforce effective measures to establish domestic controls to prevent the proliferation of WMDs and their means of delivery; and to maintain international peace and security, and promote economic growth by facilitating trade and investment through the responsible management of strategic goods and the provision of related services.
>
> Towards this end and consistent with its foreign policy and national security interests, and in support of efforts to counter terrorism, control crime, and safeguard public safety, the State shall manage the trade of strategic goods and provision of related services in accordance with international standards and best practices.[181]

The law mandated the drawing of a National Strategic Goods List "to describe with specificity the strategic goods subject to authorization ... in conformity with international commitments and non-proliferation obligations pursuant to bilateral and multilateral treaties, international conventions[,] and international non-proliferation regimes,"[182] and provided for criminal penalties for violations.[183]

Four years earlier, in compliance with the obligation to designate or establish a National Authority pursuant to paragraph IV of Article VII of the Convention,[184] President Benigno S. Aquino III signed Executive Order No. 39 on 28 April 2011, designating the Anti-Terrorism Council (ATC) as the Philippine National Authority on the Chemical Weapons Convention (PNA-CWC), to be headed by the Executive Secretary as Chairperson.[185] Prior to this designation, the Department of Foreign Affairs temporarily functioned as the interim National Authority.[186] The PNA-CWC serves as the national coordinating body for the effective liaison with the OPCW and other States Parties to the Convention and is mandated to be the lead agency in the implementation of the Convention's provisions.[187] In turn, the ATC-

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181. *Id.* § 2.

182. *Id.* § 4.

183. *Id.* § 19.

184. Chemical Weapons Convention, *supra* note 38, art. VII (4).

185. Office of the President, Designating the Anti-Terrorism Council as the Philippine National Authority on the Chemical Weapons Convention and Other Disarmament Issues, Executive Order No. 39, Series of 2011 [E.O. No. 39, s. 2011], § 1 (Apr. 28, 2011).

186. *Id.* whereas cl. para. 5.

187. *Id.* § 1.

Program Management Center (ATC-PMC) functions as the PNA-CWC Secretariat.[188] The ATC was allotted an initial budget of ₱5 million.[189]

The ATC itself was established under Republic Act No. 9372 — "An Act to Secure the State and Protect Our People from Terrorism."[190] Its mandate was "proper and effective implementation of the anti-terrorism policy of the country."[191] The Council's other functions, in addition to being the Philippine National Authority of the CWC, include acting as Secretariat to the National Security Council – Strategic Trade Management Committee;[192] Regional Secretariat to the European Union Chemical, Biological, Radiological, and Nuclear Centre of Excellence (EU CBRN-COE) in Southeast Asia;[193] Representative of the Philippines to the United Nations Interregional Crime and Justice Research Institute;[194] Member of the National Cyber-Security Inter-Agency;[195] and the Chair of the Technical Working Group on Persons of Interest.[196]

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188. *Id.* § 2.

189. *Id.* § 5.

190. An Act to Secure the State and Protect Our People from Terrorism [Human Security Act of 2007], Republic Act No. 9372, § 53 (2007).

191. *Id.*

192. Strategic Trade Management Act (STMA), § 6.

193. Gemeinsame Forschungsstelle, The Regional Secretariat for South East Asia and Project 81 Co-hosted the Webinar "An Overview of International Activities in Response to COVID-19" in Two Sessions, *available at* https://europa.eu/cbrn-risk-mitigation/news-0/sea-regional-secretariat-and-project-81-team-organised-series-webinars-face-covid-19-crisis-2020-09-07_de (last accessed Jan. 30, 2022) [https://perma.cc/9CLR-9P7M].

194. Office of the President, Authorizing the Anti-Terrorism Council - Program Management Center to Sign the Memorandum of Understanding with United Nations Interregional Crime and Justice Research Institute for the Set-Up And Functioning of the CBRN Centres of Excellence Regional Secretariat for South East Asia, Memorandum Order No. 54, Series of 2013 [Memo. O. No. 54, s. 2013] (Mar. 19, 2013).

195. Office of the President, Creating the National Cybersecurity Inter-Agency Committee, Executive Order No. 189, Series of 2015 [E.O. No. 189, s. 2015], § 1 (Sept. 17, 2015).

196. U.S. Department of State, Country Reports: East Asia and Pacific Overview, *available at* https://2009-2017.state.gov/j/ct/rls/crt/2015/257515.htm (last accessed Jan. 30, 2022) [https://perma.cc/U8R6-P5FJ].

The designation of the Anti-Terrorism Council as the Philippine National Authority to the OPCW, given its specialized function as the country's anti-terrorism hub, signifies that the Philippines adopted a limited perspective of chemical weapons as a manifestation of terrorism. The Convention, however, is far more wide-ranging because it covers not just law enforcement and anti-terrorism, but also the trade, local production, research, and development of chemicals for peaceful uses.[197] In fact, discussions in the Scientific Advisory Board, the subsidiary body of the OPCW that enables the Director-General to render specialized advice in science and technology to the Conference of the States Parties, the Executive Council, or the States Parties to the Convention, manifest the diversity of issues pertaining to chemical weapons that are beyond the prism of terrorism.[198]

B. Implementation Through Legislation on Related Subject Matters

The Convention, in Article VII, calls for national implementation of its provision and requires States Parties to enact implementing legislation at the national level.[199]

As of July 2020, 32 of the 56 OPCW Member States from the Asia region have enacted their respective legislations implementing the Convention.[200] In total, there are 119 States with national implementing legislations covering all initial measures of the Convention, while 39 States have legislations covering some initial measures of the Convention.[201]

In the ASEAN region, as shown in Annex B, Indonesia, Laos, Malaysia, Singapore, and Vietnam have national legislations that fully or partially

197. Oliver Thränert & Jonathan B. Tucker, Freeing the World of Chemical Weapons (SWP Research Paper, July 2007), at 10-11, *available* at https://www.swp-berlin.org/publications/products/research_papers/2007_RP08_trt_tck_ks.pdf (last accessed Jan. 30, 2022) [https://perma.cc/262V-A5ZL].

198. Organisation for the Prohibition of Chemical Weapons, Scientific Advisory Board: Keeping Pace with Scientific and Technological Change, *available at* https://www.opcw.org/about/subsidiary-bodies/scientific-advisory-board (last accessed Jan. 30, 2022) [https://perma.cc/7PWR-2S72].

199. Chemical Weapons Convention, *supra* note 38, art. VII (1).

200. Organisation for the Prohibition of Chemical Weapons, Legislation Compendium, *available at* https://www.opcw.org/resources/national-implementation/legislation-compendium (last accessed Jan. 30, 2022) [https://perma.cc/JR6T-YRF8].

201. *Id.*

implement the provisions of the Convention.[202] The rest of the ASEAN, including the Philippines, have legislations on the trade of chemicals which generally do not fully implement the Convention, but have relevance to the management and trade of controlled chemicals.

There are four Philippine laws that regulate specific activities or penalize prohibited acts relevant to the Convention: (a) Republic Act No. 6969 — Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990,[203] (b) Republic Act No. 11479 — The Anti-Terrorism Act of 2020,[204] (c) Republic Act No. 10168 — The Terrorism Financing Prevention and

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202. *Id.*

203. An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and for Other Purposes [Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990], Republic Act No. 6969, §§ 2 & 8 (1990).

> Section 2. Declaration of Policy. — It is the policy of the State to regulate, restrict[,] or prohibit the importation, manufacture, processing, sale, distribution, use[,] and disposal of chemical substances and mixtures that present unreasonable risk and/or injury to health or the environment; to prohibit the entry, even in transit, of hazardous and nuclear wastes and their disposal into the Philippine territorial limits for whatever purpose; and to provide advancement and facilitate research and studies on toxic chemicals.
>
> Section 8. Pre-Manufacture and Pre-Importation Requirements. — Before any new chemical substance or mixture can be manufactured, processed[,] or imported for the first time as determined by the Department of Environment and Natural Resources, the manufacturer, processor[,] or importer shall submit the following information: the name of the chemical substance or mixture; its chemical identity and molecular structure; proposed categories of use; an estimate of the amount to be manufactured, processed or imported; processing and disposal thereof; and any test data related to health and environmental effects which the manufacturer, processor[,] or importer has.

Id.

204. An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise Known as the "Human Security Act Of 2007" [The Anti-Terrorism Act of 2020], Republic Act No. 11479, § 3 (2020).

Suppression Act of 2012,[205] and (d) Republic Act No. 10697 — Strategic Trade Management Act of 2015.[206]

In particular, the Strategic Trade Management Act requires any person who intends to engage in the export, import, transit, and transshipment of strategic goods under the National Strategic Goods List, or the provision of related services to obtain an authorization from the Strategic Trade Management Office.[207] It also requires any person who intends to engage in the re-export or reassignment of strategic goods to obtain an authorization when this has been made a condition for the authorization of the exports from the Philippines.[208] All persons engaged in the business involving strategic goods are also required to keep for a period of 10 years all records of the transaction and/or books of accounts, business and computer systems, and all commercial and technical data related to the transaction.[209] Furthermore, under the Anti-Terrorism Act, terrorism is committed by "any person who ... develops, manufactures, possesses, acquires, transports, supplies[,] or uses ... biological, nuclear, radiological, or chemical weapons."[210]

The above laws view the presence of, or incidence involving chemical weapons or its precursors as regulated goods or a terrorist act. The Strategic Trade Management Act, in particular, is crucial to the non-proliferation policy vis-á-vis the trade in regulated chemicals, but does not cover the development, production, stockpiling, and destruction of chemical weapons. A matrix showing the Philippines' implementation of key provisions of the Convention is presented in the Annex C.

Other activities that are not covered by these Philippines laws, but are State obligations to implement under the Convention include the prohibition on the use of riot control agents as methods of warfare (subject to Article I of the Convention); the destruction of any chemical weapons it may own or possess or are located within its jurisdiction or control (Article I);[211] destruction of any chemical weapons production facilities it may own or

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205. An Act Defining the Crime of Financing of Terrorism, Providing Penalties Therefor and for Other Purposes [The Terrorism Financing Prevention and Suppression Act of 2012], Republic Act No. 10168 (2012).

206. Strategic Trade Management Act (STMA).

207. *Id.* § 10.

208. *Id.*

209. *Id.*

210. The Anti-Terrorism Act of 2020, § 4.

211. Chemical Weapons Convention, *supra* note 38, art. I (2).

possess, or are located within its jurisdiction or control (Article I);[212] provision of declarations with respect to chemical weapons, old chemical weapons and abandoned chemical weapons, chemical weapons production facilities, and other facilities (Articles II, IV, and V);[213] subjecting facilities that produce and develop toxic chemicals and their precursors listed in Schedules 1, 2, and 3 of the Annex on Chemicals to verification measures (Article VI);[214] cooperation with the OPCW and other States Parties on the implementation of the Convention (Article VII);[215] and protection of the State's right to undertake activities not prohibited under the Convention (Article XI).[216]

C. Philippine Membership in the OPCW Executive Council

Philippine involvement in the OPCW has been substantial and meaningful over the years. It was elected as a Member of the Executive Council in May 1997 for a one-year term during the First Session of the Conference of the States Parties,[217] then in December 1997 for a two-year term,[218] and in 2005 at the 10th Conference for the 2006-2008 term.[219] Ambassador Romeo A. Arguelles was elected as Chairperson of the Executive Council for the 2007-2008 term.[220]

Candidatures to the Executive Council from the Asia Group, which has a 56-strong membership from among States Parties in the region, has

212. *Id.* art. I (4).

213. *Id.* arts. II, IV, & V.

214. *Id.* art. VI.

215. *Id.* art. VII.

216. *Id.* art. XI.

217. Executive Council, Report of the Executive Council on the Performance of Its Activities (13 May - 31 October 1997), ¶ 1.1, OPCW Doc. EC-VI/4 (Nov. 7, 1997).

218. Executive Council, Report of the Executive Council on the Performance of Its Activities (5 September 1998 - 29 April 1999), ¶ 1.2, OPCW Doc. EC-MV/2 (June 4, 1999).

219. Executive Council, Report of the Executive Council on the Performance of Its Activities in the Period from 2 July 2005 – 7 July 2006, ¶ 1.3, OPCW Doc. EC-47/3 (Nov. 8, 2006).

220. Organisation for the Prohibition of Chemical Weapons, Summary of the Fifty-Second Session of the Executive Council, *available at* https://www.opcw.org/media-centre/news/2008/03/summary-fifty-second-session-executive-council (last accessed Jan. 30, 2022) [https://perma.cc/KW5X-LFUK].

increasingly become contentious in recent years. The Convention provides a total of nine seats at the Executive Council belonging to the Asia Group at any year, with four seats allocated to States Parties "with the most significant national chemical industry in the region as determined by internationally reported and published data ... [as well as] other regional factors in designating these four members."[221] The working assumption is that the Asia Group, as with other regional groups, is competent to determine which four Member States should be considered as having "permanent" seats. Additionally, it is up to the regional group — facilitated by a regional group coordinator — to determine which other Member States can be designated for the other seats.[222]

The Philippines has been the Asia Group Coordinator since June 2019, after being designated as such by the Asia Group members, and up to the writing of this Article.[223]

For the term 2020-2022, the Philippines submitted its nomination as an ASEAN candidate for consideration at the 25th session of the CSP in November 2020.[224] Bearing in mind a gentlemen's agreement in the Group that one seat is allotted for the ASEAN, and with the support of the ASEAN (through the ASEAN Committee in The Hague composed of the five ASEAN Member States with embassies based in The Hague), the Philippines, along with three other countries, was elected by acclamation by the Conference in November 2020.[225] Thus, the Philippines became a Member of the Executive Council for the term 2020-2022.[226]

D. Key Issues and the Philippine Position

The OPCW has achieved significant successes particularly in its early years. Consensus decision-making is a bedrock precept of the Convention, in that both the Rules of Procedure of the Executive Council and the Conference of

221. Chemical Weapons Convention, *supra* note 38, art. VIII (C) (23).

222. Organisation for the Prohibition of Chemical Weapons, *supra* note 129.

223. Department of Foreign Affairs, *supra* note 138.

224. Executive Council, Report of the Executive Council on the Performance of Its Activities in the Period from 13 July 2020 – 12 July 2021, ¶ 1.2, OPCW Doc. EC-98/4 (Oct. 5, 2021).

225. *Id.*

226. *Id.*

the States Parties prioritize the principle of consensus.[227] The Rules, however, also provide for the use of voting — either by simple majority for questions of procedure or by two-thirds majority on questions of substance.[228] According to Rule 67, each Member of the Organisation is entitled to one vote.[229] Rule 71 further qualifies that only "yes" and "no" votes will be counted, while abstentions are not considered voting.[230]

There have been at least three contentious roll call votes in the history of the OPCW. The first is the removal from office of the first OPCW Director-General, José Bustani, a Brazilian diplomat, after a two-month campaign led by the U.S. in 2002, charging him with financial mismanagement and interference in U.S. foreign policy towards Iraq.[231] The U.S. threatened to cut off its funding for the Organisation, which prompted the Conference to undertake a roll call vote.[232] The decision to dismiss Bustani was taken with 48 votes in favor, six against (Brazil, China, Cuba, Iran, Mexico, and Russia) and 43 abstentions.[233] The Philippines was among those that voted in favor of the resolution to dismiss Bustani.[234] The Administrative Tribunal of the International Labor Organization would later rule that Bustani was unlawfully dismissed from the post of Director-General of the OPCW, citing the

227. OPCW RULES OF PROCEDURE, *supra* note 6, rules 68-69 & Organisation for the Prohibition of Chemical Weapons, Rules of Procedure of the Executive Council [OPCW RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL], rules 35-40 (May 23, 1997).

228. OPCW RULES OF PROCEDURE, *supra* note 6, rule 69 & OPCW RULES OF PROCEDURE OF THE EXECUTIVE COUNCIL, *supra* note 227, rule 36. *See also* Chemical Weapons Convention, *supra* note 38, art. VIII (B) (18).

229. OPCW RULES OF PROCEDURE, *supra* note 6, rule 67.

230. *Id.* rule 71.

231. Seth Brugger, Chemical Weapons Convention Chief Removed at U.S. Initiative, *available at* https://www.armscontrol.org/act/2002-05/news/chemical-weapons-convention-chief-removed-us-initiative (last accessed Jan. 30, 2022) [https://perma.cc/QVY8-4KNK].

232. *Id.*

233. U.S. Department of State Archive, Removal of OPCW Technical Secretariat Director-General Jose Bustani, *available at* https://2001-2009.state.gov/t/isn/cwc/fs/9631.htm (last accessed Jan. 30, 2022) [https://perma.cc/9R4B-DYTC].

234. *Id.*

independence of international organizations and their secretariats from political interference by Member States.[235]

The second divisive roll call vote was conducted at the fourth Special Session of the Conference of the States Parties on 27 June 2018.[236] A draft measure was initiated by the United Kingdom on addressing the threat from chemical weapons use in Syria.[237] Eighty-two States Parties voted yes, and 24 voted no.[238] The vote was the basis for the establishment of a mechanism to investigate the alleged use of chemical weapons in said country — the Investigation and Identification Team (IIT) — and to help identify the perpetrators of chemical weapons use, ushering in the attribution responsibility of the OPCW.[239] The Philippines voted no on the measure as the identification of perpetrators were viewed as going beyond the OPCW's mandate.[240]

The third roll call vote was on the move at the 25th Session of the Conference on 22 April 2021 to suspend the voting rights and privileges of Syria pursuant to paragraph 2 of Article XII of the Convention.[241] The proposed decision was co-sponsored by 46 Member States, majority of which

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235. Ana Stanič, Bustani v. Organisation for the Prohibition of Chemical Weapons, Judgment No. 2232, 98 AM. J. INT'L LAW 4 (2004).

236. OPCW Conference of the States Parties, *Report of the Fourth Special Session of the Conference of the States Parties*, ¶ 3.4, OPCW Doc. C-SS-4/3 (June 27, 2018).

237. *Id.*

238. *Id.* ¶ 3.15. Among those which voted no were Belarus, Bolivia, Botswana, Burundi, Cambodia, China, Eritrea, India, Iran, Kazakhstan, Laos, Myanmar, Namibia, Nicaragua, the Philippines, Russia, South Africa, Sudan, Syria, Tajikistan, Uganda, Uzbekistan, Venezuela, and Vietnam. *Id.*

239. *See* Alexander Orakhelashvili, *The Attribution Decision Adopted by the OPCW Conference of States Parties and Its Legality*, 17 ORG. LAW REV. 664, 665 (2020) & Andrea Stricker, OPCW Member States Must Counter Russian Obstruction, *available at* https://www.fdd.org/analysis/2021/04/8/opcw-member-states-must-counter-russian-obstruction (last accessed Jan. 30, 2022) [https://perma.cc/2FRH-KPSG] (citing Decision Addressing the Threat from Chemical Weapons Use, OPCW Doc No. C-SS-4/DEC.3 (June 27, 2018)).

240. OPCW Conference of the States Parties, *supra* note 236, ¶ 3.15.

241. Report of the Twenty-Fifth Session of the Conference of the States Parties, *supra* note 8, ¶ 9.24.

belong to the Western Europe and Other Group,[242] and later adopted, with 87 voting yes, and 15 voting no.[243] The Philippines voted affirmative on the measure.[244]

Foreign policy, grounded in theory on immutable national interests, is interpreted through the lens of governments and its leaders. Since 2016, the Philippines under President Rodrigo Duterte has pursued a more independent foreign policy, rebalancing traditional partnerships and deepening relations with non-traditional partners Russia and China. This stance was evident in the "no" vote on the establishment of the Investigation and Identification Team.[245]

The April 2021 vote on the suspension of Syria for violation of CWC obligations was in line with the country's traditional adherence to multilateralism and reliance on international organizations in ensuring global peace and security. After the vote, Secretary of Foreign Affairs Teodoro Locsin Jr. posted on Twitter stating that "[t]he Philippines voted for the resolution condemning the use of chemical weapons against anyone, anywhere for any purpose whatsoever; not even for the sake of Third World solidarity. [The country scorns] the company of savages."[246]

In general, the voting pattern of the Philippines in the OPCW tries to steer clear of the geopolitics of the superpowers and their allies on the non-proliferation and disarmament debate, and it thus has abstained on issues when necessary.

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242. *See* Press Release, *supra* note 12. *See also* Report of the Twenty-Fifth Session of the Conference of the States Parties, *supra* note 8, ¶ 9.24. The members of these groups are Albania, Australia, Austria, Belgium, Bulgaria, Canada, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Republic of Korea, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, and the United States of America. *Id.*

243. Report of the Twenty-Fifth Session of the Conference of the States Parties, *supra* note 8, ¶ 9.24.

244. *Id.*

245. Decision Addressing the Threat from Chemical Weapons Use, *supra* note 239, ¶ 3.15.

246. Locsin, Jr., *supra* note 14.

E. Scientific Advisory Board and Trainings

The Philippines derives benefits from its membership in the OPCW, other than keeping the world safe from chemical weapons. The Convention also promotes the safe and peaceful use of these chemicals for the growth and development of its Members' economies.[247] The OPCW is often at the forefront of research and discourse in science and technology, as these impact on the possible development of chemical weapons.

A group of 25 independent experts from the Member States acting in their personal capacities comprise the Scientific Advisory Board (SAB), a subsidiary body that enables the Director-General to render specialized advice on science and technology matters to the Conference, the Executive Council, and the States Parties.[248] Three Filipino experts had served in the SAB: Dr. Titos Anacleto Quibuyen (2004-2010),[249] Professor Flerida Cariño (2011-2017),[250] and Dr. Imee Su Martinez of the University of the Philippines' Institute of Chemistry (2019 to present).[251]

The Philippines has also benefited from the capacity-building programs conducted by the OPCW.[252] As of August 2019, a total of 158 Filipino experts had participated in various courses, notably those from the Institute for Tropical Medicine, Bureau of Fire Protection, Occupational Safety and Health Center, Strategic Trade Management Office, Environmental Management Bureau, Department of Science and Technology, Department of National Defense, Armed Forces of the Philippines, Anti-Terrorism Council, and academic institutions and chemical industry partners.[253]

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247. Chemical Weapons Convention, *supra* note 38, art. XI.

248. Organisation for the Prohibition of Chemical Weapons, *supra* note 198.

249. Scientific Advisory Board, Report of the Fifteenth Session of the Scientific Advisory Board, annex 1, OPCW Doc. SAB-15/1 (Apr. 14, 2010).

250. InterAcademy Partnership, Dr. Flerida A. Cariño, *available at* https://www.interacademies.org/person/flerida-carino (last accessed Jan. 30, 2022) [https://perma.cc/5X4Y-EJ8B].

251. Organisation for the Prohibition of Chemical Weapons, *supra* note 198.

252. Organisation for the Prohibition of Chemical Weapons, Capacity Building, *available at* https://www.opcw.org/resources/capacity-building#:~:text=Capacitybuildingprogrammeshavebeen,atenhancingeconomicandtechnological (last accessed Jan. 30, 2022) [https://perma.cc/YA8C-D5ED].

253. The information was provided by the OPCW at the request of the Permanent Mission of the Philippines to the OPCW for purposes of monitoring the participation of Filipino experts in OPCW training courses.

IV. CHALLENGES AND PROSPECTS

In 2013, the Nobel Peace Prize was awarded to the OPCW for its "extensive work to eliminate chemical weapons."[254] The Nobel Committee stated —

> The conventions and the work of the OPCW have defined the use of chemical weapons as a taboo under international law. Recent events in Syria, where chemical weapons have again been put to use, have underlined the need to enhance the efforts to do away with such weapons.
>
> ...
>
> By means of the present award to the OPCW, the Committee is seeking to contribute to the elimination of chemical weapons.[255]

The OPCW has accomplished much. Seven States Parties which have declared chemical weapons — namely Albania, India, Iraq, Libya, Russian Federation, U.S. (almost completed), and an unnamed State Party — have destroyed their stockpiles, while all 70 of the declared chemical weapons production facilities in 13 States Parties have been deactivated.[256]

At the same time, the Nobel Committee criticized Russia and the United States for not meeting the extended April 2012 deadline for destruction of their chemical weapons and noted that certain countries "are still not members."[257]

A. Continuing Threats and New Issues

Though much has been achieved by the States Parties and the OPCW, a lot remains to be done. There are still chemical weapons in some forms, and its use as recent as 2017 against two communities in Syria shows that these hitherto banned weapons still pose clear and present danger to the international community, underscoring the dire warning from Edward Teller that "the more decisive the weapon is[,] the more surely it will be used ... ."[258]

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254. The Nobel Prize, The Nobel Peace Prize for 2013, *available at* https://www.nobelprize.org/prizes/peace/2013/press-release (last accessed Jan. 30, 2022) [https://perma.cc/9QY2-7ZMQ].

255. *Id.*

256. Associated Press, *What Is the OPCW and What Does It Do?*, NDTV, Oct. 11, 2013, *available at* https://www.ndtv.com/world-news/what-is-the-opcw-and-what-does-it-do-537414 (last accessed Jan. 30, 2022) [https://perma.cc/G6H6-LX88].

257. The Nobel Prize, *supra* note 254.

258. Teller, *supra* note 1.

1. Incidents of Chemical Attacks Against Individuals

Chemical weapons use has also shifted in more sophisticated forms — initially against mass formation of soldiers, then against community groups, and apparently for political purposes against dissident individuals. In February 2017, the nerve agent VX was used to poison North Korean Kim Jong-nam while transiting the Kuala Lumpur international airport.[259] In 2018, there were two episodes of Novichok poisoning — those of Sergei and Yulia Skripal on 4 March in Salisbury, United Kingdom, and Dawn Sturgess and Charlie Rowley on 30 June in Amesbury, United Kingdom.[260] Although there are suspicions as to the involvement of the Russian Federation, the latter has denied the allegations.[261] In August 2020, an apparent poisoning of opposition figure Alexei Navalny became an explosive issue involving Russia and the Western states, notably Germany and the U.K.[262] Navalny is in a Russian jail as of this writing.[263]

These chemical attacks highlight the increasing challenge to States in enforcing the ban, enhancing their ability to respond to incidents and ensuring effective law enforcement within their territories. In all these incidents, the OPCW provided technical assistance. In the case of the Kuala Lumpur attack, technical assistance was provided to the Malaysian government for its national investigation.[264] In the Salisbury attacks, the OPCW undertook independent analysis of the blood samples of Sergei and Yulia Skripal and Nicholas Bailey,

259. Oliver Holmes & Tom Phillips, *Kim Jong-nam Killed by VX Nerve Agent, Say Malaysian Police*, GUARDIAN, Feb. 24, 2017, *available at* https://www.theguardian.com/world/2017/feb/24/kim-jong-nam-north-korea-killed-chemical-weapon-nerve-agent-mass-destruction-malaysian-police (last accessed Jan. 30, 2022) [https://perma.cc/L9H9-CU2A].

260. BBC News, *Salisbury Poisoning: Police 'Identify Novichok Suspects'*, BBC NEWS, July 19, 2018, *available at* https://www.bbc.com/news/uk-44883803 (last accessed Jan. 30, 2022) [https://perma.cc/5MT6-YND2].

261. *Id.*

262. *Alexei Navalny: Russia's Jailed Vociferous Putin Critic*, BBC NEWS, Oct. 8, 2021, *available at* https://www.bbc.com/news/world-europe-16057045 (last accessed Jan. 30, 2022) [https://perma.cc/TQ5X-6HES].

263. *Id.*

264. Decision, Chemical Weapons Incident in Kuala Lumpur, Malaysia, ¶ 3, OPCW Doc. No. EC-84/DEC.8 (Mar. 9, 2017).

and confirmed the presence of a high purity toxic chemical.[265] The Organisation also deployed a technical assistance team to independently determine the nature of the substance of the toxic chemical used in the Amesbury attack which cost the life of Dawn Burgess.[266] It later confirmed that the substances used in both the Salisbury and Amesbury incidents were similar.[267] In the 2020 attack on Mr. Navalny, the OPCW collected biomedical samples from Navalny and confirmed that the cholinesterase inhibitor found in these samples are not listed in the Annex on Chemicals to the Convention.[268]

As shown earlier, the CWC and OPCW have gone through great lengths in building an effective compliance system. The fact that the system has shortcomings means that continuing efforts still need to be undertaken to devise improvements. It is time to review and update the Convention's schedules of chemicals and treaty compliance methodology, among others, hopefully without getting mired in the Convention's complicated amendment procedures.

2. Addressing Threats of Use of CW by Non-State Actors

The parties to the CWC are States and the Convention does not directly address non-State actors, including terrorist groups. It obligates States Parties, however, to "prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction ... from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity."[269]

In December 2001, the Executive Council established an open-ended Working Group on Terrorism, and noting the continued interest in the development, acquisition, and use of chemical weapons by non-State actors, the Council adopted in October 2017 a decision emphasizing the obligation

265. Technical Secretariat, *Summary of the Report on the Activities Carried Out in Support of a Request for Technical Assistance by the United Kingdom of Great Britain and Northern Ireland (Technical Assistance Visit TAV/02/18)*, ¶¶ 8-11, OPCW Doc. S/1612/2018 (Apr. 12, 2018).

266. *Id.* ¶ 2.

267. *Id.* ¶ 11.

268. Organisation for the Prohibition of Chemical Weapons, Featured Topics: Case of Mr. Alexei Navalny, *available at* https://www.opcw.org/media-centre/featured-topics/case-mr-alexei-navalny (last accessed Jan. 30, 2022) [https://perma.cc/Y3W2-BJPN].

269. Chemical Weapons Convention, *supra* note 38, art. VII (1) (a).

of States Parties for full and effective implementation of the Convention, and reminded them to enact implementing legislations penalizing violations of the Convention by natural and legal persons within their territories.[270]

The above measure reflects the earlier policy taken by the UN Security Council when it passed Resolution No. 1540 in April 2004, calling on all States to refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer, or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes.[271] The Resolution also required all States to adopt and enforce appropriate laws to this effect, as well as other effective measures to prevent the proliferation of these weapons and their means of delivery to non-State actors.[272]

> The UN Office for Disarmament Affairs [(UNODA)] provides support for [the] activities of the Committee established pursuant to the [UN] Resolution 1540[ ], which is tasked to report to the Security Council on the implementation of the resolution.
>
> ...
>
> In cooperation with the 1540 Committee and relevant regional and subregional organizations, UNODA assists Member States in their efforts to fully implement the key requirements of [the] resolution ... , including the preparation of voluntary national implementation and capacity building plans.
>
> ...
>
> The 1540 Committee [engages] relevant international, regional[,] and subregional organizations to share experiences and lessons learned in the areas covered by the resolution. UNODA actively promotes [ ] cooperation between relevant entities, such as the [OPCW, IAEA,] ... World Customs Organization, and the World Health Organization, in support of the [ ] implementation of the resolution by their respective Member States. [273]

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270. Decision Addressing the Threat Posed by the Use of Chemical Weapons by Non-State Actors, OPCW Doc. No. EC-86/DEC.9 (Oct. 13, 2017).

271. S.C. Res. 1540, ¶ 1, U.N. Doc. S/RES/1540 (2004) (Apr. 28, 2004).

272. *Id.* ¶ 2.

273. U.N. Office for Disarmament Affairs, UN Security Council Resolution 1540 (2004), *available at* https://www.un.org/disarmament/wmd/sc1540 (last accessed Jan. 30, 2022) [https://perma.cc/ZWX4-33HB].

The enactment of the Strategic Trade Management Act of 2015 and measures for its implementation are the Philippines' compliance with the UNSC Resolution 1540 and the CWC.[274]

3. Promoting Peaceful Uses of Chemistry

In a bold move to strengthen the OPCW's capabilities to tackle new and emerging chemical weapons threats, the OPCW is upgrading its 20-year-old chemistry laboratory by building the Centre for Chemistry and Technology (ChemTech Centre).[275] In September 2021, a First Pillar ceremony was held marking the start of the construction of the new facility in Pijnacker-Nootdorp, outside The Hague.[276] The construction of the 33.5 million-euro Centre is scheduled to be finished by the end of 2022.

"The risks have not been eradicated," OPCW Director General Fernando Arias noted, adding that the organization is not only meant for destruction and non-reemergence of chemical weapons, but also for protecting civil society of dangerous chemicals. "We have to adapt to new risks and challenges. Capacity, knowledge, skills, experience, and high professional quality are crucial in the organization," he said.[277]

The ChemTech Centre "bring[s] together the OPCW Laboratory, Equipment Store, and a range of state-of-the-art training facilities for enhanced research, analysis, and capacity building."[278] It boosts the OPCW's ability to address the threat from chemical weapons use and to enhance capacity building activities to the benefit of its 193 Member States in areas like analytical chemistry skills, chemical safety and security, first response, sampling techniques, and emergency management.[279] "The Centre will also serve as a

274. Strategic Trade Management Act (STMA), § 2.

275. Organisation for the Prohibition of Chemical Weapons, OPCW Initiates Construction of New ChemTech Centre — A Major Step Forward in Implementing Global Ban on Chemical Weapons, *available at* https://www.opcw.org/media-centre/news/2021/09/opcw-initiates-construction-new-chemtech-centre-major-step-forward (last accessed Jan. 30, 2022) [https://perma.cc/R2UQ-RDGK].

276. *Id.*

277. XinhuaNet, OPCW Calls for Funds to Upgrade Its Lab into ChemTech Center, *available at* http://www.xinhuanet.com/english/2018-11/14/c_129993324.htm (last accessed Jan. 30, 2022) [https://perma.cc/WF9M-84C3].

278. Organisation for the Prohibition of Chemical Weapons, *supra* note 275.

279. *Id.*

knowledge repository to tackle chemical threats worldwide as well as a platform to promote expert dialogue, exchange, and collaboration [in the peaceful uses of chemistry.]"[280]

In April 2021, the Philippines contributed U.S.$15,000 to a special OPCW Trust Fund to support the construction of the ChemTech Centre.[281] The Philippines joined 47 countries that so far have contributed or pledged to contribute financially to the ChemTech Centre project, together with the European Union and four other donors.[282] The contribution was made during a call on Director-General Arias by the first co-author of this Article, in his capacity as Philippine Permanent Representative to the OPCW. During the turnover ceremony, Malaya stated that

> [t]he Philippines is committed to disarmament and non-proliferation of weapons of mass destruction, notably chemical weapons. [We] commend the work of the OPCW and its vision to establish the ChemTech Centre, which aims to strengthen the Organisation's capability against new and emerging chemical weapons threats and support capacity building among OPCW Member States.[283]

B. Necessity for Philippine Implementing Legislation

There has been no documented terrorist-related use of high-risk chemical, biological, radiological nuclear (CBRN) materials in the Philippines[284] and in the assessment of the Anti-Terrorism Council, the probability of development and deployment of CBRN materials for terrorist attacks is relatively low, but still has the potential to exist.[285] High-risk CBRN materials may be prone to theft, diversion, and sabotage, and may be released accidentally, naturally, or deliberately, and would pose a significant threat to public health, the environment, and the country.

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280. *Id.*

281. Organisation for Prohibition of Chemical Weapons, Philippines Contributes $15,000 to Future OPCW Centre for Chemistry and Technology, *available at* https://www.opcw.org/media-centre/news/2021/04/philippines-contributes-15000-future-opcw-centre-chemistry-and-technology (last accessed Jan. 30, 2022) [https://perma.cc/S68F-P28E].

282. *Id.*

283. *Id.*

284. Anti-Terrorism Council, Chemical, Biological, Radiological, and Nuclear National Action Plan 2018-2022 (May 2019) (on file with the Authors).

285. *Id.*

Recent world events, particularly the chemical attacks in Syria, the accessibility of precursor materials, and the rapid developments in science and technology compel close attention to this field and the strengthening of the country's prevention, preparedness, detection, response, and recovery plans to a CBRN security incident, otherwise the damage can be catastrophic.

In 2014, the Philippine Government, through the Anti-Terrorism Council, adopted the Chemical, Biological, Radiological and Nuclear National Action Plan (CBRN NAP) to bring together the range of institutions and organizations for a harmonized, whole-of-government strategic approach to CBRN risk mitigation and governance.[286] The National Action Plan is a living document, which is continually updated and now in its 2018-2022 iteration.[287] It also facilitates compliance with the requirements of UNSC Resolution 1540, the CWC and other treaty obligations.[288]

The CBRN National Action Plan lists the following objectives with respect to chemical materials: (a) to reduce the accessibility of high-risk chemical materials; (b) to strengthen implementation of the CWC in the country and other related international obligations; (c) to develop mapping analysis and enhance intelligence-sharing and threat analysis on high-risk chemicals of concern; (d) to strengthen collaboration with other agencies and countries (operational sharing of information and good practices); and (e) to strengthen collaboration with academia, scientific organizations, and the private sectors, such as the chemical industry, on responsible care procedures and risk analysis (criminal and accidental).[289]

Though not mentioned in the CBRN National Action Plan, the Anti-Terrorism Council has also advocated the enactment by Congress of a specific legislation implementing the Chemical Weapons Convention, which is a requirement under the Convention. For this purpose, House Bill No. 2709[290] and Senate Bill No. 2042[291] proposed the Chemical Weapons Prohibition Act,

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286. *See id.*

287. *Id.*

288. *Id.*

289. *Id.* at 6.

290. An Act Prohibiting the Development, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes, H.B. No. 2709, 16th Cong., 1st Reg. Sess. (2013).

291. An Act Prohibiting the Development, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes, S.B. No. 2042, 16th Cong., 1st Reg. Sess. (2013).

which were filed in 2013 during the 16th Congress and subsequently refiled in the succeeding 17th and 18th Congresses.[292] The House version passed the House Committee on Public Safety in May 2021, and is up for First Reading.[293] The proposed legislation will provide the missing framework particularly on banning the use and transfer of chemical weapons, and the regulation of other harmful but controlled chemicals, as well as commercial precursors.[294] It remains to be seen if it can be acted upon by both chambers of Congress and promulgated into law soon.

As stated earlier, in the absence of a specific implementing legislation, the Philippine Government implements the CWC through four related laws, namely the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990,[295] the Anti-Terrorism Act of 2020,[296] the Terrorism Financing Prevention and Suppression Act of 2012,[297] and the Strategic Trade Management Act of 2015.[298] These cover the requisite provisions on scheduled chemicals but not the chemical weapons themselves.

This situation is not unique to high-risk chemicals and perhaps other CBRN materials. Professor Rommel J. Casis made similar observations in his study of the Philippines' implementation of multilateral environmental agreements (MEAs), such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the Convention on Biological Diversity, where there is a dearth of treaty-specific implementing

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292. An Act Prohibiting the Development, Production, Stockpiling, and Use of Chemical Weapons, Providing for Their Destruction, Imposing Penalties for Violations Therefor, H.B. No. 1840. 17th Cong., 1st Reg. Sess. (2016) & An Act Prohibiting the Development, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes, H.B. No. 928, 18th Cong., 1st Reg. Sess. (2019).

293. RG Cruz, *House Panel OKs Bill vs Chemical Weapons*, ABS-CBN NEWS, May 25, 2021, *available at* https://news.abs-cbn.com/news/05/25/21/house-panel-oks-bill-vs-chemical-weapons (last accessed Jan. 30, 2022) [https://perma.cc/EY69-XDTU].

294. *See generally* An Act Prohibiting the Development of, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes, H.B. No. 8954, 18th Cong., 2d Reg. Sess. (2021).

295. Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.

296. The Anti-Terrorism Act of 2020.

297. The Terrorism Financing Prevention and Suppression Act of 2012.

298. Strategic Trade Management Act (STMA).

statutes.[299] To comply with the obligations under the MEAs, the relevant government agencies like the Department of Environment and Natural Resources, have to rely on legislation on related subject matters and resort to "action plans" and administrative issuances.[300] The first Author of the present Article also found the same lack of treaty-specific implementing statutes in his examination of the country's implementation of the Apostille Convention and the Service Convention, both adopted under the auspices of the Hague Conference on Private International Law.[301] A practical approach is often pursued to operationalize an international agreement by working on existing legal authorities, with the core issue being a balancing of the need to give immediate effect to an international agreement and attain the benefits from it, and the adequacy of existing domestic legal frameworks or authorizations to support it.

Though relevant Philippine agencies have expressed the view that they are able to substantially comply with the reportorial and other requirements under the CWC on the basis of existing legislations on related subject matters,[302] the enactment of a treaty-specific legislation is necessary in order to have the comprehensive regulatory framework required to ensure the safety and security of the Filipino people against chemical weapons and high-risk chemical materials.

The Philippines is among the original States Parties to the Convention, having signed it as early as 1993.[303] Its officials have often stated that the country does not possess, manufacture, store, or use chemical weapons, even

299. Rommel J. Casis, *Developing Country Implementation of Multilateral Environmental Agreements: The Philippine Experience*, 16 PHIL. Y.B. INT'L LAW, 57, 59 (2017).

300. *Id.* at 92.

301. J. Eduardo Malaya & Jilliane Joyce R. De Dumo-Cornista, *Implementation of International Agreements and the Self-Executing and Non-Self-Executing Dichotomy: The Case of Three HCCH Conventions*, 19 PHIL. Y.B. INT'L LAW 56, 104 (2020) (citing Carlo Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 712 (1995)).

302. Embassy of the Philippines, Ambassador J. Eduardo Malaya Leads an Online Inter-Agency Meeting on the PH Implementation of the Chemical Weapons Convention, *available at* https://thehaguepe.dfa.gov.ph/login/timeline-of-filipino-dutch-relations/79-about-us/1537-ambassador-j-eduardo-malaya-leads-an-online-inter-agency-meeting-on-the-ph-implementation-of-the-chemical-weapons-convention (last accessed Jan. 30, 2022) [https://perma.cc/JU93-BU7D].

303. *See generally* Chemical Weapons Convention, *supra* note 38.

for law enforcement purposes. A treaty-specific legislation will facilitate the implementation of a more systematic and institutionalized approach to monitoring the clandestine vis-à-vis allowed use and production of chemicals and close a critical loophole in the country's law enforcement and non-proliferation apparatus. By doing so, the country can strengthen its foreign policy thrust on disarmament and demonstrate its firm commitment to global peace and protection of our people and the environment. To accomplish this, further action and guidance from Congress is recommended.

For the Philippines and other countries, the growth of the chemical industry, dramatic breakthroughs in science and technology, which facilitate the synthesis of high-risk chemicals into chemical weapons (often available in the dark web), and the presence of terrorist and criminal groups with easy access to these chemicals around the world, are among the global trends that necessitate strengthening adherence to the letter and spirit of the CWC.

The Chemical Weapons Convention and the Organisation for the Prohibition of Chemical Weapons came into being in 1996 at the thawing of the Cold War — that rare window of opportunity during which collaboration between the superpowers led to unprecedented progress in arms control, non-proliferation, and disarmament, including the nearly complete dismantling of chemical weaponries. Verily, over 98% of the declared chemical weapons stockpiles have been verified as eliminated, and the small remaining fraction seems on track to be destroyed by 2023.[304] This has been the successful outcome of the sustained movement to outlaw and shun chemical weapons which entail unnecessary cruelty and unfair play, something beneath the standards of civilized warfare.

The threat, however, of access to and use of chemical weapons by rough states and terrorist and similar non-state actors remains. The revival of great-power competition in recent decades has also made it more challenging to maintain the momentum against the so-called "poor man's" weapons of mass destruction. Without renewed commitment to the CWC and OPCW by all countries and other stakeholders, rougher times lie ahead.

304. DISARMAMENT YEARBOOK, *supra* note 126.

ANNEXES

Annex A. Chemical Companies Operating in the Philippines [305]

Filipino-owned companies	*Multinational companies*
Petron Corporation crude oil refinery, marketing, and distribution of refined petroleum products	Dow Pacific and Chemical Ltd. adhesives and sealants; polyethylene; polyurethane; silicones, silicone-organic hybrids, and silanes; elastomers, and plastomers; additives and modifiers
JG Summit petrochemical manufacturing	Dupont Far East Philippines, Inc. polymeric coating
Chemrez Technologies powder coatings, biodiesel	Bayer pharmaceuticals, consumer health, crop science (biological pest management)
Mabuhay Vinyl Corp. chlor-alkali	Air Liquide Philippines, Inc. fully-owned subsidiary of Air Liquide (FR) industrial gases and services
RI Chemical Corp. synthetic resins	Linde Philippines, Inc. industrial gases and services
United Coconut Chemicals, Inc. oleochemicals	Syngenta Philippines, Inc. Headquartered in Basel, Switzerland crop protection (including herbicides, fungicides, and insecticides), seeds, and related products; biofuels (biodiesel)
Pacific Paint (Boysen) Philippines, Inc. coatings/paints	Monsanto Philippines, Inc. headquartered in Missouri, USA agrochemical and agricultural biotechnology

305. Bellen, *supra* note 177.

Atlas Fertilizer Corp. compound inorganic fertilization	Sojitz Philippines Corp. Headquartered in Tokyo, Japan trading and business of basic chemicals (such as ethanol), functioning materials (plastics), and inorganic chemicals (industrial salts and rare earth)
Philippine Phosphate Fertilizer Corp. (PhilPhos) partly owned by the government of Nauru fertilizers	Ecolab Philippines, Inc. Headquartered in Minnesota, USA water treatment
Pioneer Adhesives Inc. (formerly Republic Chemical Industries, Inc.) adhesives	Tosoh Polyvin Corp. Headquartered in Japan advanced materials (battery materials), bioscience, cement, chlor-alkali, olefins, organic chemicals, polymers, polyurethanes
Charter Chemical & Coating Corp. marine and industrial coatings	WR Grace Philippines, Inc. headquartered in Maryland, USA refining technologies; chemical processing; plastics and polymers; coatings

Annex B. Matrix of ASEAN States Parties with National Implementing Legislations of the CWC and Other Laws Relevant to the CWC

State	*National Implementing Legislation of the Chemical Weapons Convention*[306]	*Legislations with Relevance to Chemical and Biological Weapons Prohibition; Hazardous Substances*
Brunei Darussalam	—	Biological Weapons Act (1983)[307]
		Hazardous waste (control of export, import and transit) Order (2013)[308]
Cambodia	—	Declaration No. 110 on the management and control of uses, import, export and distribution of chemical substances in industry sector (2004)[309]
		Promulgation of the Law on Managing Agricultural Drugs and Fertilizers, Royal Kram No. NS/RKM/0112/005 (Royal Palace) (14 January 2012)[310]

306. Organisation for the Prohibition of Chemical Weapons, *supra* note 200.

307. An Act to Prohibit the Development, Production, Acquisition and Possession of Certain Biological Agents and Toxins and of Biological Weapons [Biological Weapons Act] (1983) (Brunei).

308. Hazardous Waste (Control of Export, Import, and Transit) Order, No. S-94 (2013) (Brunei).

309. Ministry of Industry, Mines, and Energy, Declaration No. 110 on the Management and Control of Uses, Import, Export and Distribution of Chemical Substances in Industry Sector, Declaration No. 110 (Feb. 11, 2004) (Cambodia).

310. Promulgation of the Law on Managing Agricultural Drugs and Fertilizers, Royal Kram No. NS/RKM/0112/005 (Royal Palace) (2012) (Cambodia).

Indonesia	Law of the Republic of Indonesia No. 9 year 2008 on the use of chemical materials and the prohibition of chemical weapons (2008)[311]	—
Laos	No. 07/NA Law on the Chemicals (2016)[312]	—
Malaysia	Act 641, Chemical Weapons Convention Act (2005)[313]	—
Myanmar	—	Prevention of Hazard from Chemical and Related Substances Law (2013)[314]
Philippines	—	Toxic Substances and Hazardous and Nuclear Wastes Act (Republic Act No. 6969) (1990)[315]
		An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Services, and for Other Purposes (Republic Act No. 10697) or the Strategic Trade Management Act (2015)[316]

311. Law of the Republic of Indonesia No. 9 Year of 2008 on the Use of Chemical Materials and the Prohibition of Chemical Materials as Chemical Weapons, Law Number 9 of 2008 (2008) (Indon.).

312. Law on the Chemicals, Law No. 07/NA (2016) (Laos).

313. Chemical Weapons Convention Act 2005, Act 641 (2005) (Malay.).

314. Prevention of Hazard from Chemical and Related Substances Law, 2013, Pyidaungsu Hluttaw Law No. 28 (2013) (Myan.).

315. Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.

316. Strategic Trade Management Act (STMA).

Singapore	Chemical Weapons (Prohibition) Act (2000)[317]	Biological Agents and Toxins Act (2005)[318]
	Chemical Weapons (Prohibition) (Amendment) Act (2007)	—
	Chemical Weapons (Prohibition) Regulations 2007	—
Thailand	—	Act on Hazardous Substances (Issue No. 2), E.E. 2544 (2001)[319]
Vietnam	Decree No. 38/2014/ND-CP dated 06 May 2014, on the Management of Chemicals governed by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (2014)[320]	Decree No. 81/2019/ND-CP dated 11 November 2019 of the Government on the prevention and combat of proliferation of weapons of mass destruction[321]

317. An Act to Give Effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction Concluded at Paris on 13 January 1993 [Chemical Weapons (Prohibition) Act 2000] (2000) (Sing.) (as amended).

318. An Act to Prohibit or Otherwise Regulate the Possession, Use, Import, Transshipment, Transfer and Transportation of Biological Agents, Inactivated Biological Agents and Toxins, to Provide for Safe Practices in the Handling of Such Biological Agents and Toxins [Biological Agents and Toxins Act 2005] (2005) (Sing.).

319. Act on Hazardous Substances (No. 2), B.E. 2544 (2001) (Thai.).

320. Decree on the Management of Chemicals Governed by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, No. 38/2014/ND-CP (2014) (Viet.).

321. Decree No. 81/2019/ND-CP dated November 11, 2019 of the Government on Prevention and Combat of Proliferation of Weapons of Mass Destruction, No. 81/2019/ND-CP (2019) (Viet.).

Annex C. The Chemical Weapons Convention and Implementing Laws and Regulations of the Philippines

1	2	3	4	5
Measures to establish domestic controls to prevent the proliferation of chemical weapons, and their means of delivery; controls over related materials	*Relevant provisions in the CWC*[322]	*Philippine implementing legislation covering no. 1*	*Implementing / enforcement agency*	*Other Treaties/Conventions that PH is a signatory/has deposited an instrument of ratification, where CWC provisions are tackled*
Measures to account for production	Article I, no. 1 (a), General Obligations; Article V, Chemical Weapons Production Facilities	Republic Act No. 6969 (An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and For Other Purposes), Sec 3 and 8[323] (first time manufacture; Department of Environment and Natural Resources (DENR) Administrative Order (DAO)	Department of Environment and Natural Resources (DENR)	—
Measures to account for use	Article I, no. 1 (b), General Obligations		DENR	—
Measures to account for storage	Art II, no. 8, Definitions and Criteria		DENR	—
Measures to account for transport	—		—	—
Measures to secure production	—		—	—

322. Chemical Weapons Convention, *supra* note 38.

323. Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990.

		No. 29, series 1992, Section 3; and DAO No. 23, series of 2007, Section 3		
Measures to secure storage	—	Executive Order 197, s. 2016;[324] Implementing Rules and Regulations of Executive Order	Department of Transportation (DOTr)	Implementing International Ship and Port Facility Security (ISPS) Code
Measures to secure transport	—			
Verification	Article IV	—	—	—
Destruction of chemical weapons and its verification pursuant to Article IV	Part IV (A), General provisions of verification	—	—	—
Old chemical weapons	Part IV (B), General provisions of verification	—	—	—
Destruction of chemical weapons production facilities and its verification	Article V	—	—	—
Activities not prohibited under the Convention	Article VI	R.A. No. 10697 (An act preventing the proliferation of weapons of	Strategic Trade Management Office, Department	—

324. Office of the President, Designating the Secretary of Transportation and Communications as the Authority Responsible for the Security of Sea Transport and Maritime Infrastructure in the Country, and for Other Purposes, Executive Order No. 197, Series of 2016 [E.O. No. 197, s. 2016] (Feb. 4, 2016).

		mass destruction by managing the trade in strategic goods, the provision of related services, and for other purposes)[325]	of Trade and Industry (DTI)	
Assistance and protection against chemical weapons	Article X	—	—	—
Economic and technological development	Article XI	—	—	—

325. Strategic Trade Management Act (STMA).