

2011 Libyan Disclosures: 'Take-away' for CWC verification

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Summary

As part of the process of joining the CWC in January 2004, Tripoli made a declaration to the Organisation for the Prohibition of Chemical Weapons (OPCW) wherein it declared the following materials and capabilities, which were verified by OPCW inspections. However, on November 1, 2011, the transitional Libyan government declared a hidden stockpile of chemical weapons.

Introduction

Libya and chemical weapons have a long history going back to the 1930s when the Italian dictator Benito Mussolini authorised the use of sulphur mustard gas against Libyan rebels. The decision led to the use of 24 mustard gas bombs on an oasis that was controlled by the Libyan rebels.¹

After decades as a pariah state, Libya was brought in from the cold following the December 19, 2003 statement where the former Libyan dictator, the late Colonel Qaddafi declared that it would dismantle its weapons of mass destruction (WMD) programmes and open the country to immediate and comprehensive verification inspections. This announcement followed many months of secret negotiations that began with a Libyan offer to the British officials in March 2003 to give up its WMD programmes.² As part of this process, Libya pledged to eliminate its nuclear and chemical weapons programmes subject to the International Atomic Energy Agency (IAEA) and Chemical Weapons Convention (CWC) verification.³

As part of the process of joining the CWC in January 2004, Tripoli made a declaration to the Organisation for the Prohibition of Chemical Weapons (OPCW) wherein it declared the following materials and capabilities, which were verified by OPCW inspections. These included 24.7 metric tonnes (MT) of sulphur mustard; 1,390 MT of precursor chemicals; 3,563 unloaded chemical weapons munitions (aerial bombs) and 3 former chemical weapons production facilities.⁴

A complex interplay of various factors influenced the Libyan decision. This ranged

from economic burden imposed by three decades of economic sanctions that had limited oil exports to a great extent. This in turn resulted in the drying up of new foreign investment which made giving up the WMD programmes so much more enticing. This was buttressed by the fact that Tripoli's efforts at procuring nuclear and biological weapons were not making much headway though it did possess a 'moderately capable' chemical weapons arsenal.⁵ Therefore, in the cost-benefit analysis, the Libyan leadership did not see much merit in continuing its WMD programmes.

Between 2004 and February 2011, Libya destroyed 51% of its sulphur mustard stockpile and 40% of its precursor chemicals under OPCW verification. It also irreversibly destroyed one of the three former chemical weapons production facilities by razing it to the ground and converted the other two into pharmaceutical plants after approval by the Executive Council of the OPCW.⁶ Destruction of the sulphur mustard started in October 2011. However, it was stopped in February 2011 due to breakdown of the heating unit in the disposal station.⁷ The situation has not been remedied as a result of the NATO-led operations in Libya that began in March 2011 when the OPCW inspectors left Tripoli.

November 2011 disclosures

However, on November 1, 2011, the transitional Libyan government declared a "previously undeclared chemical weapons stockpile".⁸ This was confirmed by the British PM David Cameron at the Lord Mayors Banquet where he stated, "In the last few days, we have learnt that the new Libyan authorities have found chemical weapons that were kept hidden from the world."⁹ Reports indicated that chemical weapons were stored at two previously undeclared sites in violation of the 2003 agreement that the former Libyan dictator

had reached with the international community. This declaration by the new Libyan government brought to light several hundred munitions loaded with sulphur mustard, few hundred kilograms of sulphur mustard stored in plastic containers and a limited number of unfilled plastic containers (munitions components). The total amount of sulphur mustard declared by Libya stands now at 26.3 metric tonnes.

Following the declaration, the OPCW dispatched its inspectors to Libya. Contrary to fears about possible use of chemical weapons by the Qaddafi regime against rebels, the inspectors did not find any diversion of the undestroyed sulphur mustard and precursors.¹⁰ On November 28, 2011, the new Libyan authorities officially submitted a declaration of these materials to the OPCW.¹¹ This was confirmed by the OPCW Director-General Ahmet Üzümcü at the opening of the week-long annual conference of the parties to the Chemical Weapons Convention (CWC) at in the Hague.¹²

Subsequently, another team of OPCW inspectors visited Libya during January 17-19, 2012 to verify the previously undisclosed chemical weapons. The purpose of the inspection as stated by the OPCW was two-fold; to "verify the new declaration in terms of types and quantities of chemical weapons, and to assist the Libyan authorities in determining whether another set of discovered materials is declarable under the provisions of the Chemical Weapons Convention".¹³

The inspectors found that all the newly declared materials were stored at the Ruwagha depot along with quantities of sulphur mustard and precursor chemicals that were declared by the Qaddafi government in 2004. In addition, at the request of the Libyan authorities the OPWC

inspectors examined munitions mainly in form of artillery shells which they determined were chemical munitions and hence declarable.¹⁴

Current CWC Verification Regime

The CWC is the fastest growing regime amongst the various arms control treaties. The CWC which entered into force in April 1997 currently has 188 members. Israel and Myanmar have not ratified the Chemical Weapons Convention; whereas Angola, Egypt, North Korea, Somalia, South Sudan, Syria are amongst the handful of countries that have neither signed nor acceded to the CWC.¹⁵

Such success is possible as a result of the fact that the CWC is seen as a non-discriminatory as well as a serious attempt at combining arms control and disarmament measures. The non-discriminatory nature of the CWC can be gauged from the fact that it treats all member states equally regardless of whether they possess chemical weapons or not. This is in complete variance with the division of the nuclear 'haves' in form of the five nuclear weapon states (NWS) and the remaining 'have nots' as the non-nuclear weapon states (NNWS). Secondly, the CWC does not grant any special rights to any individual state parties. Nor does it have any conditions for entry into force like the CTBT's Article XIV and Annex II which India and other countries view with great discomfort and suspicion.¹⁶

The second feature as stated by Michael Bothe is the 'system of compliance control' or the verification system that by its comprehensiveness has established the standard. Bothe correctly points out that the arms control verification systems designed under the BWC Verification Protocol and the CTBT owe much to the CWC system.¹⁷

In light of the Libyan case, it is important to re-look at the existing CWC verification regime and analyse the reason as to why it was possible for the Qaddafi regime to keep the materials disclosed from the OPCW. This becomes more intriguing because of the fact that the OPCW inspectors were regularly present in Libya since 2004 towards achieving the goal of destroying the declared chemical weapons stockpile.

The CWC establishes verification systems to four different obligations, namely the obligation to destroy chemical weapons in possession of a country; destroy old or abandoned chemical weapons; destroy or convert chemical weapons production facilities; ensure that toxic chemicals and their precursors are used only for purposes not prohibited by the Convention, i.e. are not diverted to weapons purposes. As Bothe points out, the first three of these are disarmament obligations whereas the fourth obligation is an arms control obligation.¹⁸

One issue that the Libyan case brings forth is that of National Implementation. Although, having universal membership (or near universal in CWC's case) is important, what is equally important is for states to implement the treaty's requirements in letter and spirit. Having a state like Libya as member of the CWC is of little use if it is not adhering to its obligations under the treaty and is not fully disclosing its chemical weapons stockpile/arsenal.

Under the CWC a 'well organised and transparent' system of national implementation, as Sergey Batsanov describes it, reinforces the compliance mechanism. To this end, as Batsanov states, the OPCW has been "...providing assistance to Member States with national implementation, including the preparation and adoption of domestic legislation and

administrative regulations and setting up functional national authorities”.¹⁹ However, the CWC has to carefully walk the very thin line between assistance and impinging on a state’s sovereign right to make laws. It is important to dwell on this point further, as verification involves a fundamental conflict of interest between the state’s interests to not be subjected to intrusive verification and safety of commercial and industrial secrets. On the other hand, the verification system must be able to detect any non-compliance.

Conclusion

There are four types of routine inspections under the CWC, all of which are based on national declarations. The national declarations (Article III), detailing the locations and quantities of chemical weapons and production facilities, thus form the starting point of the verification process. Under the Verification Annex, which is the most voluminous sections of the CWC, states are obliged to declare all facilities where specific chemicals are handled in specific quantities. These are the sites where routine inspections are conducted.

However, the inherent problem in such a method is that the only way to check whether all the relevant sites are declared by a state is through challenge inspections. Interestingly, there has never been an instance where an *ad hoc* (challenge) inspection has been carried out under the CWC. In a case like the Libyan one, ascertaining the completeness of the declaration becomes critical. Currently, under the CWC, the OPCW selects the sites to be inspected either by comprehensive on-site inspection of all sites, random selection or selection based on qualitative thresholds etc.²⁰ Thus, on-site inspections form a key element in establishing the completeness and correctness of the national declarations made

by state parties. It is as a result of the above that the CWC lays out in great detail the requirement relating to national declarations.²¹

It is crucial to ensure that the Technical Secretariat updates the approved inspection equipment list, of course, in consultation with Member States. Given that the CWC does not lay down a procedure or a mechanism to achieve this, it has proved difficult to achieve an agreement among State Parties on the need to update the approved inspection equipment list.²² The need for the inspectors to be armed with the latest equipment becomes much more important when they are dealing with a state like Libya. However, not all problems with verifying the contents at a particular site are equipment related. In many cases, the analyses techniques used like radiography, using portable X-ray equipment, ultrasonic pulse echo have their own particular advantages and disadvantages. It is therefore a continuing challenge to identify the stored munitions with a high degree of confidence at the least expense of resources.

The Libyan case points to the necessity to take remedial measures to strengthen the OPCW’s ability to check the veracity of the national declarations made by states. This becomes doubly important in cases such as Libya. Central in this regard is the continuous training of the organisation’s inspectorate, which has faced problems as a result of financial and other constraints. Simultaneously, updating of the approved inspection equipments and working to develop newer, safer and more cost-effective ways to establish the contents of a chemical weapon munition are needed to make the CWC more effective. The international community would stand in good stead if it remembers, former US President Ronald Regan’s *mantra*, “Trust, but Verify.” This

holds the key to a stronger CWC and ensuring that the regime does not have to bear the brunt of any more surprises.

Endnotes:

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- ⁵ "Libya: Country Profile", Nuclear Threat Initiative, available at <http://www.nti.org/country-profiles/libya/>
- ⁶ "Libya: Fact and Figures", *Organisation for the Prohibition of Chemical Weapons*, available at <http://www.opcw.org/the-opcw-and-libya/libya-facts-and-figures/>
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- ¹¹ "Report of the Secretary-General on the United Nations Support Mission in Libya," United Nations Security Council, S/2012/129, March 1, 2012, pp. 7-8, available at http://unsmil.unmissions.org/LinkClick.aspx?fileticket=v_-F2Xr3c9I%3D&tabid=3543&mid=6187&language=en-US
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- ¹⁴ "OPCW Inspectors Verify Newly Declared Chemical Weapons Materials in Libya", *Organisation for the Prohibition of Chemical Weapons*, January 20, 2012, available at <http://www.opcw.org/the-opcw-and-libya/opcw-inspectors-verify-newly-declared-chemical-weapons-materials-in-libya/>
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- ¹⁶ "Article XIV Entry Into Force Process", CTBT Organisation, <http://www.ctbto.org/the-treaty/article-xiv-conferences/article-xiv-conferenceentry-into-force-process/>
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- ¹⁸ Michael Bothe, "Verification of Disarmament Treaties", in Giovanni Gasparini and Natalino Ronzitti Eds., *The Tenth Anniversary of the CWC'S Entry into Force: Achievements and Problems*, December 2007, Istituto Affari Internazionali, pp.45-56.
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