

JUL 14 1992

Ad Hoc Committee on Chemical Weapons

Chairman of the Ad Hoc Committee on Chemical Weapons

EXPLANATORY NOTE

on the draft Chemical Weapons Convention contained in
Document CD/CW/WP.400/Rev.1

Table of Contents

	<u>Page</u>
I. INTRODUCTION	3
II. MAIN ELEMENTS OF THE OVERALL COMPROMISE PACKAGE	6
III. DETAILED OUTLINE OF MAJOR ISSUES	7
A. General Obligations and Definitions (Articles I and II)	8
B. Chemical Weapons and Chemical Weapons Production Facilities	9
C. Old and Abandoned Chemical Weapons	15
D. Executive Council: Composition and Decision-Making	16
E. Challenge Inspections (Article IX and Part X of the Verification Annex)	19
F. Verification in Chemical Industry (Article VI and Parts VII to IX of the Verification Annex)	23
G. Economic and Technological Development (Article XI)	28
H. Annex on Chemicals	31
J. Financing of the Organisation	32
K. Amendments (Article XV)	33
L. Seat of the Organisation	35
M. Note on Questions of Editing	35

I. INTRODUCTION

1. The draft Chemical Weapons Convention bears witness to a unique endeavour of the international community. There is no precedent of an international treaty which, like this draft Convention, provides for a co-operative, non-discriminatory instrument to resolve a global issue of security and disarmament once and for all. The negotiating effort resulting in the draft Convention has also been unique in many respects like the breadth and diversity of its objectives as well as its duration and intensity, to name only a few aspects. Today, the Ad Hoc Committee on Chemical Weapons of the Conference on Disarmament is finally in a position to meet the expectations of governments and peoples around the world, to accomplish its task, and to see the fruit of work of many dedicated negotiators brought to maturity.

2. The Conference on Disarmament and its predecessors have discussed a complete ban on chemical weapons since 1961, and negotiated it on the basis of a formal mandate since 1983. Since the mid-1980s, achievement has seemed reachable. Only since last year, however, a real sense of urgency has developed. This year, finally, has seen a growing awareness in the Ad Hoc Committee that the main issues have been mostly resolved, or at least discussed and negotiated in all their aspects and brought as close as ever possible to a solution. Thus, the Chairman of the Ad Hoc Committee has been asked to record the results of negotiations in a Chairman's draft. This has been done in document CD/CW/WP.400/Rev.1.

3. On the vast majority of substantive matters covered by the Convention, the Chairman was in the fortunate position of having simply to record the solutions which the Ad Hoc Committee had already agreed upon or which had been brought so close to consensus that the Chairman could clearly sense the solution. Some of these solutions have been found only recently, especially in the course of the extraordinarily intensive negotiations of the past weeks. The list of fully or at least tentatively agreed provisions is impressive:

- Preamble** (including recognition of the prohibition of the use of herbicides as a method of warfare)
- Article I** **General Obligations** (all basic obligations effecting a total ban on CW, including the prohibition of military preparations to use CW, the obligations on destruction with an ad referendum solution to the difficult problem of abandoned chemical weapons, and the obligation not to use riot control agents as a method of warfare)
- Article II** **Definitions and Criteria** (including all key terms whose clear and unambiguous definition was extremely difficult)
- Article III** **Declarations** (setting forth the most important obligations to declare, in particular, CW and CW production facilities)
- Article IV** **Chemical Weapons** (comprising, in conjunction with Part IV of the Verification Annex, the detailed provisions on the destruction of chemical weapons and its verification)
- Article V** **Chemical Weapons Production Facilities** (comprising, in conjunction with Part V of the Verification Annex, the detailed provisions on the destruction of chemical weapons production facilities and its verification)
- Article VI** **Activities not Prohibited Under this Convention** (comprising, in conjunction with the relevant Parts of the Verification Annex, the provisions on verification in chemical industry - basically agreed upon with regard to chemicals listed in Schedules 1, 2, and 3, as well as facilities related to such chemicals)
- Article VII** **National Implementation Measures**
- Article VIII** **The Organization** (including the provisions on composition, procedures, and decision-making of the Conference of the States Parties and the Executive Council - though the composition of the latter is not yet fully agreed upon, and the decision on the seat of the Organization)
- Article IX** **Consultations, Co-operation and Fact-Finding** (agreed upon with regard to general provisions and the procedure for requesting clarification, as well as, partly, challenge inspections)
- Article X** **Assistance and Protection Against Chemical Weapons**
- Article XI** **Economic and Technological Development** (agreed in its general outline, not yet in its specific contents)

Article XII	Measures to Redress a Situation and to Ensure Compliance, including Sanctions
Article XIII	Relation to Other International Agreements
Article XIV	Settlement of Disputes
Article XV	Amendments
Article XVI	Duration and Withdrawal
Article XVII to XXIV	(technical provisions)
Annex 1:	Annex on Chemicals (agreed in its concept, but not yet in a number of details)
Annex 2:	Annex on Implementation and Verification - "Verification Annex" - (Parts I, II, III, IV, V, VI, XI basically agreed; Parts VII and VIII basically agreed in terms of substance, but not yet in terms of structure; Part X basically agreed except for some details)
Annex 3:	Annex on the Protection of Confidential Information - "Confidentiality Annex"

4. On some issues, however, a final consensus has remained elusive despite of all efforts, most notably on:

Article VI	Activities not Prohibited Under this Convention (with regard to monitoring and verification of "other chemical production facilities", cf. also Part IX of the Verification Annex)
Article IX	Consultations, Co-operation and Fact-Finding (with regard to some details of challenge inspections, cf. also Part X of the Verification Annex)
Article XI	Economic and Technological Development (with regard to the question of export controls in the field of chemistry among States Parties)
Annex 1:	Annex on Chemicals (with regard to the position of some chemicals on the Schedules and some points in the guidelines)

Here, the Chairman has developed solutions by applying two principles: overall balance and adaptability of the Convention to future needs. His "leitmotif" was the desire to offer to future States Parties a balanced legal instrument providing clarity on the fundamental obligations and, at the same time, enough subtlety on matters of implementation so that, with the consent of States Parties, the respective provisions may still mature and evolve in

the course of future practice. The result reflects in his judgement the solutions best suited to be finally adopted by consensus.

II. MAIN ELEMENTS OF THE OVERALL COMPROMISE PACKAGE

1. The following features of the draft Convention - relating to the agreed text as well as to the few provisions suggested by the Chairman - are considered by the Chairman as key components of the overall compromise package. They may be looked upon separately, but their real significance flows from their entirety. All of the following paragraphs represent only parts of one single body of provisions - the Convention:

2. The comprehensive scope of general obligations set forth in Article I and supplemented by the Preamble. This exhaustive list of basic obligations, which was fought for long and hard, bans all conceivable actions in contravention to the object and purpose of the treaty in an absolutely non-discriminatory way.

3. The built-in safeguards to deal with situations where the basic obligations had not been respected, in particular Articles X (Assistance and Protection against Chemical Weapons) and XII (Measures to Redress a Situation and to Ensure Compliance, including Sanctions).

4. The very clear and unambiguous provisions on the destruction, including its verification, of chemical weapons and chemical weapons production facilities as elaborated in Articles IV and V in conjunction with Parts IV and V of the Verification Annex.

5. The extremely delicate and equitable balance which has been established in Article VIII in the provisions on the Executive Council, its composition, procedure, decision-making, powers and functions.

6. The general verification package beyond the specific provisions for verification of destruction, which consists of

challenge inspections (Article IX and Part X of the Verification Annex) and verification in chemical industry (Article VI and Parts VII to IX of the Verification Annex):

- The political instrument of challenge inspections which reconciles the diverging objectives of maximum assurance against non-compliance, protection of the inspected State Party's sovereign rights, and the prevention of abuse; key elements of these provisions must also be seen in the context of the Executive Council's composition, powers and functions.
- The graduated regime of verification in industry which balances the objectives of reliable confidence-building, simplicity of administration, and non-interference with perfectly legitimate activities in chemical industry; which, furthermore, contributes to reducing the need for challenge inspections to a minimum as well as to enhancing international co-operation and exchange in the field of chemistry.

7. The evolutionary concept for economic and technological development as contained in Article XI and highlighted in the Preamble, which, in conjunction with an equally evolving confidence-building regime of verification in chemical industry, opens the door to increased and intensified co-operation and exchange in the future.

III. DETAILED OUTLINE OF MAJOR ISSUES

1. The following detailed notes focus on issues of particular importance for the overall balance where consensus proved most difficult to be established. These notes are not intended to provide a comprehensive commentary on the provisions of the Convention.

A. General Obligations and Definitions (Articles I and II)

1. Article I incorporates the basic undertakings of the Convention, adding up to a total ban of chemical weapons and any activities aiming at or contributing to their use, and providing for the destruction of all chemical weapons and chemical weapons production facilities. The differing wording in paragraphs 2, 3 and 4 ("chemical weapons", "all chemical weapons", "any chemical weapons") on the destruction obligations emerged as a precondition of a compromise on the particularly sensitive issue of responsibility for the destruction of abandoned chemical weapons (cf. Section C below).

2. Due to compromises and concessions in summer 1991, the basic obligations regarding the ban of chemical weapons and their destruction as contained in the draft Convention are unreservedly comprehensive and absolutely non-discriminatory.

3. In the final stages of the negotiations, also two seemingly less important issues rose to fresh controversy and, finally, compromise: in many years of negotiations, positions had remained contentious on whether and how the possible war-time use of so-called "herbicides" and "riot control agents" should be dealt with in the Convention, as witnessed by footnotes and bracketed text which stayed untouched until recently.

4. Particularly riot control agents constitute a real problem. These irritants, physically disabling agents are used around the world in law enforcement and riot control, by police and other organs responsible for maintaining law and order. The same agents, however, would constitute an immediate risk and danger if they were allowed to develop into a new generation of non-lethal but nonetheless effective chemical agents of warfare, causing insurmountable problems in trying to distinguish in the ensuing grey area between "real" and "non-lethal" chemical weapons as well as between "real" and "non-lethal" chemical warfare units.

5. Only in the last week of negotiations a point near consensus has been reached on this important issue touching upon the very scope of the Convention. It was possible because a common view has

emerged among delegations that the preparation and application of any method of warfare dependent upon the toxic properties of chemicals should be banned under the Convention.

6. The compromise package consists of a new seventh paragraph in the Preamble, reiterating the already existing prohibition of the use of herbicides as a method of warfare, and a new paragraph 5 in Article I banning the use of riot control agents as a method of warfare. This solution drew largely on document CD/CW/WP.403 of 4 June 1992, presented by twelve delegations. Since all important terms used in Article I are defined in Article II, the term "riot control agent" required to be defined as well. Consensus on that definition could finally be reached, but some resistance remained against the obligation to declare riot control agents under Article III.

7. The suggested solution to this question in Article III strikes a balance between the latter position and those who argued for much more detailed declarations, including toxicity data on the chemicals and types of munitions and devices deployed for riot control purposes. This compromise should contribute to avoiding verification problems as well as to confidence-building and transparency.

8. As to other questions regarding the definitions under Article II, consensus was reached during the final, very intensive phase of negotiations on all outstanding issues. As a result of agreements on the definitions of "chemical weapons", "toxic chemical", "precursor" and "key component of binary or multicomponent chemical systems", the positions of document CD/CW/WP.404 of 4 June 1992, presented by twelve delegations, are largely reflected.

B. Chemical Weapons and Chemical Weapons Production Facilities

Time period for the destruction of chemical weapons

9. The provision that all chemical weapons of the States Parties shall be completely destroyed until the end of the tenth year

after entry into force of the Convention was consensus throughout the negotiations on the Chemical Weapons Convention over the past years. It is one of the core provisions of the Convention, setting out one of the basic obligations, and at the same time defining the time frame within which chemical weapons, the issue the Convention is all about, will still remain in existence.

10. Yet, as is well known, the Conference on Disarmament was informed, in a speech by the Foreign Minister of the Russian Federation on 12 February 1992, that there would be serious problems in meeting this deadline for Russia, and that the Russian Federation would find it very difficult indeed to ratify the Convention in its then wording as Russia could not guarantee correct implementation of the Convention. Since Russia is one of the two major possessors of chemical weapons, a serious situation developed. Neither ignoring the Russian problem nor overlooking the security concerns of other States which would be affected by simply extending the ten year destruction deadline would have been an appropriate and acceptable solution.

11. In order to better understand the problem and thus base any decision on solid ground, the Chairman of the Ad Hoc Committee on Chemical Weapons sent, as part of a Questionnaire, a set of specific questions to the Russian authorities. Although the answers have not yet arrived, the understanding that the problem is real and needs a solution has become widely held in the Ad Hoc Committee.

12. The compromise solution that has been incorporated in the draft Convention builds to a very large extent on the results of the work undertaken by the friends of the Chair on Destruction Matters, Mr. Canonne from France and Dr. Saghafinia from Iran, by the Moderator on this issue in the final round of negotiations before the draft was tabled, Ambassador Garcia Moritan from Argentina, and on results achieved in bilateral consultations between the Russian and American delegations.

13. The solution retains the ten year destruction period and makes any extension an unlikely but not entirely impossible event. It adjusts the sequence and pace of the destruction of chemical

weapons in a way that gives the Russian Federation some flexibility at the beginning while assuring that chemical weapons will be destroyed at a higher rate at the end of the overall destruction period in order to meet the ten year goal. If extension becomes unavoidable, it puts this decision in the hands of the highest decision making body of the Organization, the Conference of States Parties, and at the same time gives the Executive Council, in which States Parties from all regions are presented in a carefully balanced manner, the right to set a number of conditions for the State Party that requests an extension. The compromise includes the following elements:

14. In Article IV, the ten year time-line for destruction is retained in an unqualified manner. It is thus the fundamental obligation of all States Parties possessing chemical weapons to destroy them within ten years, in accordance with the provisions of the Convention.

15. In Part IV (A) of the Verification and Implementation Annex, the provisions for the Order of Destruction of chemical weapons in paragraphs 15 to 19 have been adjusted to the new situation, by dropping the concept of destroying chemical weapons in a linear manner, in equal annual increments, as foreseen so far. Instead, a later beginning and a lower initial rate of destruction is now foreseen, followed by accelerated destruction in the later years. This takes into account the fact that a major element of the problem relates to the difficulty to begin destruction of chemical weapons sufficiently early. At the same time, the draft Convention contains more detailed requirements and provisions for the preparation, design and conduct of international verification activities at these destruction facilities than the Rolling Text did.

16. As that in itself would not have solved the problem, two more adjustments became necessary. The first relates to the possibility that even under the new Order of Destruction, a State Party might not be able to meet one or more of the newly set intermediate time lines, thus violating the Convention. This is not entirely unlikely as the new intermediate aggregate destruction goals, expressed in percentages of the initial chemical weapons stocks,

have been drawn up with too little detailed knowledge of the problems the Russian Federation faces or will face in destroying its chemical weapons stocks. Hence, the new paragraphs 20 to 23 of Part IV (A) of the Verification Annex have been added, to provide for the possibility to adjust an intermediate deadline, yet without in doing so automatically affecting later intermediate deadlines or the overall destruction deadline of ten years. Adjustment will require the submission of detailed explanations as to why the State Party proposing that change cannot meet the original deadline, and it will require approval by the Executive Council, thus taking care of a balance of interests of all States Parties potentially affected by such a decision. Any change of a later intermediate deadline will, under these provisions, require another application for decision by the Executive Council.

17. Even with these adjustments, however, it is not certain that the Russian Federation, and for that matter perhaps even other States Parties possessing of chemical weapons, will be able to destroy all their chemical weapons within ten years after entry into force. Hence, and based on all consultations on that issue which took place over the past weeks, it was inevitable to foresee also provisions for a possible extension of that overall destruction goal. To take the decision to include such provisions was not at all easy because it affects the very heart, the object and purpose, of the Convention. A simple extension to, for example, 15 years, or a mechanism for extending the destruction period that would be almost routine, would have been unacceptable. It was necessary to find a solution that would make an extension unlikely but not entirely impossible, and that would take care of the interests, including the security interests, of all concerned future States Parties. On that basis, the following solution has been included in the draft, under paragraphs 24 to 28 of Part IV (A) of the Verification Annex:

18. In the understanding that a request for extending the ten year deadline cannot be made at the outset of the Convention but that in the earlier years requests for adjustment of intermediate deadlines will be made instead, a State Party may require extension of the ten year deadline not later than 9 years after entry into force. That request would then be scrutinized by the

Executive Council which may recommend to the Conference that extension be granted under certain conditions. These conditions can relate to specific verification measures, to provisions on how the costs resulting from the extension shall be met, and to specific actions the State Party requesting the extension will be required to undertake in order to overcome the problems that delayed implementation of the destruction programme.

19. Taking into account the gravity of such a decision, and the fact that the security interests of all other States Parties will be affected by it, it seemed appropriate to have such a decision taken by the highest body of the Organization where all States Parties can take part in the decision making, the Conference. This is foreseen in paragraph 26. At the same time, and with a view to address the security concerns of all, there will be enhanced reporting, and specific verification measures, during the extension period, with reports to be provided every three months rather than annually, and the reports will be available to all States Parties on request.

Conversion of chemical weapons production facilities to purposes not prohibited under the Convention

20. As in the case of destruction of CW, the provisions on the destruction of CW production facilities also enjoyed consensus over the years. So far, the understanding of all negotiating States had been that all CW production facilities will be destroyed in order to assure that no stand-by capacity for production of chemical weapons will be retained by any State Party.

21. However, as the Conference on Disarmament was informed by the Foreign Minister of the Russian Federation on 12 February 1992, there is, given the present political and economic situation in his country, a strong desire and in fact a compelling need to convert certain CW production facilities for purposes not prohibited under the Convention. As in the case of the time frame for destruction of chemical weapons, the understanding that this problem should be solved in a balanced manner has become widely shared.

22. The solution that has been incorporated in the draft Convention builds again to a very large extent on the results of the work undertaken by the friends of the Chair on Destruction Matters, Mr. Canonne from France and Dr. Saghafinia from Iran, by the Moderator on this issue in the final round of negotiations before the draft was tabled, Ambassador Garcia Moritán from Argentina, and on results achieved in bilateral consultations between the Russian and American delegations.

23. In Article V, provisions are now included which allow States Parties to request the Executive Council to permit the conversion of a CW production facility for purposes not prohibited, in cases of compelling need. The new paragraph 14 underscores the requirement that, if such conversion were permitted, it would have to be done in such a manner that the State Party would not retain a standby CW production capability. Finally, paragraph 15 of Article V establishes the legal basis for stringent verification of the facility to be converted, the conversion itself, and the converted facility after conversion.

24. The detailed provisions for conversion have been included in a new Section under Part V, Section D, of the Verification Annex. The main provisions which made incorporation of conversion acceptable, and balanced the economic and political needs of the Russian Federation with the security concerns of others, are these:

25. Irrespective of whether the request relates to a plant already converted in the past or planned to be converted in the future, a detailed declaration will be required. Furthermore, in case of a facility still to be converted, a detailed justification of the economic needs causing the request is to be submitted. There is, thus, no automaticity in reaching a favourable decision by the Executive Council for conversion.

26. There is a cut-off date after which requests for conversion cannot be made any more, which is 4 years after the Convention enters into force for the State Party.

27. There are well-defined conditions in Section D which lists activities that a converted CW plant will never be allowed to undertake, in particular chemical production of Schedule 1 or Schedule 2 chemicals and of chemicals which would require a technological lay-out somewhat similar to what is needed for Schedule 1 production. These provisions were included to assure that no CW stand-by capacity will be retained.

28. Conversion is dependent upon a decision by the Executive Council which in turn will base its decision on a sound and thorough verification of the facility and the plan for conversion. Thus, interests of other States concerned by the planned conversion will be taken into due account. If a favourable decision is taken, a combined plan for conversion and verification will be agreed upon between the Technical Secretariat and the State Party, subject to scrutiny by each Executive Council Member.

29. Finally, the converted plant will be under very strict verification indeed, with unimpeded access for inspectors to the facility at any time and access to other parts of the plant site as required. The State Party will, during the first ten years, be obliged to annually report about the activities at the facility. At the end of this period, the Executive Council will decide on the nature of the future verification regime at the facility.

C. Old and Abandoned Chemical Weapons

30. The compromise solutions on both of these issues have emerged as the result of private and open-ended consultations of the Friend of the Chair charged with this task, Ambassador Brotodiningrat of Indonesia.

31. The Draft Convention contains special provisions in Part IV B of the Verification Annex for destruction of old chemical weapons produced before 1946. These provisions take into account that such old chemical weapons can either be considered as toxic waste and do no longer pose a security risk at all, or, at least, pose a lesser security risk.

32. Part IV B of the Verification Annex also contains detailed provisions for destruction of chemical weapons which a State abandoned on the territory of another State, which build on the general obligations contained in Article I, paragraphs 2 and 3.

33. The question of responsibility for destruction of abandoned chemical weapons was a much disputed issue in the negotiations. Whilst many delegations insisted that the obligation to destroy these weapons must remain with the State on whose territory the abandoned weapons are located, others argued that such a solution would "punish the victim" and that the responsibility for destruction should lie with the abandoning State.

34. The draft Convention includes a clear message on this issue. Part IV B paragraph 14 of the Verification Annex puts the main burden for destruction of the abandoned chemical weapons on the shoulders of the abandoning State by stipulating that "the abandoning State shall provide all necessary financial, technical, expert, facility as well as other resources. The territorial State shall provide appropriate co-operation".

D. Executive Council: Composition and Decision-Making

35. The composition of the Executive Council has been one of the most controversial and politically sensitive issues in the negotiations. The text contained in the draft Convention is the result of a long and intensive consultation process, conducted by the Friend of the Chair on this question, Ambassador Toth of Hungary. This consultation process included bilateral and open-ended meetings with CD members as well as meetings with observers to the CD and separate meetings with the regional groupings.

36. Diverging or even contradicting interests had to be harmonized:

- the need for a relatively small and effectively functioning but at the same time representative body,
- the interests of all future States Parties to have a fair chance for participation in the work of the Executive Council,

- the particular interests of future States Parties with large chemical industries most affected by the implementation of the Convention.

37. At the beginning of this year's session most delegations still favoured an Executive Council with approximately 30 members. Negotiations showed, however, that the diverging interests could only be harmonized by increasing the number of seats up to now 40 members.

38. The proposed composition of the Council is based on five regional groups as they exist in the United Nations. There was considerable support for a different approach based on four groupings, namely Africa, the Americas, Asia and Europe. Many delegations felt, however, that it was not appropriate, at this stage, to depart from the UN pattern in a security-related Convention. As a compromise solution the pattern of the UN-grouping has been maintained and a provision added in paragraph 25 which allows for review of the composition of the Council after full implementation of Articles IV and V.

39. The key concepts and interests that dominated the discussion are reflected in the chapeau of paragraph 23: effective functioning of the Convention; equitable geographical distribution of seats; the importance of chemical industry; political and security interests. As such, these concepts have been undisputed. Their translation into provisions for the distribution of seats, however, was the focus of controversies, particularly on the following issues:

- number of seats to be given to each region;
- ratio between seats allocated on the industrial criteria and other seats;
- the question of whether distribution of seats within the region should be spelled out in more detail or left completely to arrangements within each regional group.

40. Article VIII, paragraph 23, suggests a text which has undergone several revisions in order to integrate the variety of ideas. This text seems to be very close to consensus. The proposed solution is based on the following considerations:

41. The CW Convention is a security agreement which will affect the security of all States Parties. It should be designed to enable universal adherence. Therefore it is essential that each State Party has the right to serve on the Executive Council. It is also essential that, through equitable geographical distribution of seats, all States Parties obtain a fair chance to participate in the work of the Council. The different number of seats allocated to the five regions is the result of consultations and seems to be an acceptable compromise.

42. The implementation of the Convention will - apart from those countries that will have to destroy chemical weapons or chemical weapons production facilities - put the largest burden on those countries that have a particularly significant chemical industry. Presence of these countries in the work of the Executive Council and their contributions will be essential for the effective functioning of the body. Whilst this importance of the "industrial criterion" was generally recognized, its practical application for allocation of seats was disputed. In the draft Convention, the importance of chemical industry for implementation of the Convention is taken into account in two respects:

43. It plays a role in the number of seats allocated to regional groups.

44. It is reflected in the approach taken for distribution of seats within the regional groups. The number of seats allocated on this criterion is differing from group to group as a result of consultations. There are groups which were ready to concede permanent seats to some of their members having the most significant chemical industry, whereas other groups chose not to do so. In the latter groups other criteria such as security-related considerations or aspects of adequate representation of sub-regions were taken into account. As the approach for distribution of seats within each region should be the same for all groups, it was not possible to translate the different positions prevailing in the groups into different wording for allocation of the seats under subparagraphs (a) to (d).

45. The draft Convention tries to balance the differing positions by stating that, "as a basis for designation", special seats shall be allocated "as a rule" to "the States Parties with the most significant chemical industry in the region". The regional group shall also take into account other regional factors in designating these members. By using this balanced approach, regional groups are given some flexibility in designating the special seats.

46. Article VIII, paragraph 29, on decision-making in the Executive Council follows an approach quite frequently used in such international bodies. It allows for quick decision-making while assuring that no group be in a dominating position.

E. Challenge Inspections (Article IX and Part X of the Verification Annex)

47. Challenge inspections are intended to resolve concerns regarding possible non-compliance. The challenge inspection regime can be regarded as a means for a State Party to re-establish confidence in the compliance of another State Party, thus relieving also the international community of a concern about possible non-compliance.

Negotiating Problems

48. There is consensus in the Conference on Disarmament that a challenge inspection regime is required in the CW Convention. It is the common assessment of all delegations that this regime constitutes a novelty in the verification of a universally applicable arms control and disarmament treaty; that, furthermore, it constitutes a politically sensitive concept which must carefully balance

- the verification interests of a State Party and of the international community and the interest of the inspected State Party to protect sensitive information not related to the CW Convention; and

- the right of any sovereign State Party to request a challenge inspection, the national sovereignty of the inspected State Party, and the rights of the community of States Parties as represented by the Executive Council and executed by the Technical Secretariat.

However, very diverging national priorities of CD delegations on how to strike this multi-dimensional balance made negotiations and the development of a consensus extremely difficult.

49. Some delegations gave the verification interests of a State Party or of the community of States Parties to the CW Convention a high priority. This would have resulted in a very stringent and intrusive challenge inspection regime.

50. Other delegations accorded overriding importance to security interests regarding areas not related to the CW Convention. Views to which extent these security needs should be allowed to impact on the execution of a challenge inspection differed widely: while some delegations were prepared to concede only a few hours preparation time for the inspected State Party to provide access to a facility or location, others would have accepted 72 hours, while a third group wanted to allow for 144 hours preparation time; there was even a proposal in the air to give six months preparation time.

51. For some delegations, access to the facility or location to be inspected should have been permitted to be nearly unrestricted, only limited in rather exceptional situations. Others asked for full access limited by a managed access regime to protect sensitive installations and to prevent disclosure of sensitive information not related to the Convention. A third position suggested a managed access regime which would have allowed to give, in exceptional cases, only aerial access in the form of an overflight.

52. Some delegations emphasized the right of a State Party to request a challenge inspection, the request to be implemented by the Technical Secretariat without any questioning. As a result, the Executive Council, the executive organ of the CW Organisation,

would not have been involved before the start of a challenge inspection and would have had no substantial role in evaluating the results of the inspection with regard to the question of possible non-compliance. Furthermore, as national security interests are involved whenever a State Party requests a challenge inspection, some delegations were in favour of having the right to send an observer to participate in the challenge inspection as an additional element of assurance.

53. Other delegations emphasized the assurance against an excessive use of the right of the requesting State Party. The inspected State Party should be protected against any frivolous or abusive inspection requests. One group wanted the Executive Council to decide on the carrying out of an inspection request by a two-third majority. Others felt that in the exceptional case of a decision against the request for a challenge inspection by a sovereign State, a consensus decision was required. Furthermore, some delegations stressed their reluctance to concede the infringement on their sovereignty by the participation of an observer.

Solutions in the Draft CW Convention

54. The draft Convention establishes a credible challenge inspection regime, striking a very carefully crafted balance between the diverging views summarized before:

(a) Before filing a request, the requesting State Party may ask the Director-General of the Technical Secretariat if capacity is available to start the challenge inspection immediately. If not, the requesting State Party can delay the request and consequently guard all the information linked with it until after capacity is available. This procedure ensures prompt action of the Technical Secretariat after having eventually received the request; at the same time, it prevents the inspection request from becoming public knowledge long before it is carried out.

(b) The inspected State Party has to file two copies of the inspection request at the same time; one to the Executive Council, another to the Director-General of the Technical Secretariat. This two-track approach allows the Technical Secretariat to prepare immediately for the challenge inspection while, at the same time, the inspection request can be examined by the Executive Council.

(c) The inspected State Party has the right to withhold the information on the location of the inspection site up to 12 hours before the planned arrival of the inspection team at the point of entry. This provision, as much as the provision on the prior inquiry on available inspection capacity mentioned before, permits the requesting State Party to keep the preparation time for the State Party to be inspected to a minimum, if so desired. This contributes to the deterrent effect of the challenge inspection regime.

(d) The Executive Council may decide, within 12 hours after having received the inspection request, by a three-quarter majority of all its members, against carrying out the challenge inspection. Such a decision may be taken only if the request is considered to be frivolous, abusive or clearly beyond the scope of the CW Convention. This provision, on the one hand, emphasizes the right of the sovereign State Party to request a challenge inspection by limiting the number of criteria preventing the implementation of an inspection request, and by prescribing a three-quarter majority for such a decision. On the other hand, it protects the State Party to be inspected effectively against inspection requests clearly frivolous, abusive or beyond the scope of the CW Convention.

(e) The time period usable for preparing for a challenge inspection by the inspected State Party ranges from up to 48 hours in a situation when the inspected State Party is able to conform fully with the inspection request (this should be the normal case) and up to 120 hours when the inspected State Party, for reasons not related to the CW Convention, is not able to provide access earlier, and to the perimeter as requested. This flexibility granted to the inspected State Party balances the verification needs and the right to protect sensitive installations and information not related to the CW Convention.

(f) The inspected and the requesting States Parties may agree to have a representative of the requesting State Party, or of a third State Party, observing the challenge inspection. While the right to send an observer could have been interpreted as an element of distrust in the Technical Secretariat, and for a number of delegations was not acceptable, a jointly agreed observer constitutes a great chance for confidence building. It should be expected that a great majority of States Parties will take advantage of this provision in the course of the implementation of the CW Convention.

(g) The inspected State Party has the responsibility to transport the inspection team from the point of entry to the inspection site. Conditions for transportation vary from country to country and are dependent on weather conditions. While all States Parties should select as many points of entry as necessary on their territory in order to ensure a regular transportation time of 12 hours from the point of entry to any inspection site, the draft CW Convention provides flexibility for the inspected State Party. If necessary, and this is meant to be an exceptional case, the inspected State Party can use up to 24 hours for transportation while continuing other activities at the same time, such as negotiating on perimeters.

(h) Access to the inspection site is to be given fully and comprehensively. If the inspected State Party has to protect sensitive installations and confidential information not related to the CW Convention, it can do so under a managed access regime. However, in exceptional cases, at least individual inspectors must be given access to certain parts of the inspection site and, furthermore, the inspected State Party is under the obligation to make every reasonable effort to demonstrate its compliance with the CW Convention and to enable the inspection team to fulfill its mandate. The provisions on access again strike a balance between the verification needs and the legitimate right of a State Party to protect sensitive installations and confidential information not related to the CW Convention.

(i) Quotas, neither passive nor active, found sufficient support with CD delegations, although desired by some. Those delegations against quotas considered that quotas might lead to institutionalizing challenge inspections as a normal means of verification, while it has been designed to constitute an exceptional one. Others, in favour of quotas, regarded them to be an appropriate means to protect States Parties as well as the Technical Secretariat against an excessive number of challenge inspection requests. The draft CW Convention does not suggest any quotas; however, it contains a provision which allows the Director-General to ask the Executive Council to take appropriate action if, as a result of too many inspection requests, the Technical Secretariat cannot fulfill its task in such way as States Parties would expect.

(k) The Executive Council shall, after a challenge inspection, review the final report of the inspection team. While this is to be done in accordance with the powers and functions of the Executive Council, which would not exempt any question in connection with a particular challenge inspection from review, special attention is to be given to the questions of non-compliance, scope and abuse. While some delegations favoured a formal decision after this review process, others rejected such a provision. The draft CW Convention designs a procedure which, as a result of the review, would allow the Executive Council to conclude that further action may be necessary and appropriate measures, including specific proposals to the Conference, are to be taken. This compromise provides sufficient flexibility to the Executive Council to take any action necessary for safeguarding the functioning and credibility of the CW Convention, while, at the same time, avoiding a formal decision, which could be misused as a verdict in the public domain.

F. Verification in Chemical Industry (Article VI and Parts VII to IX of the Verification Annex)

55. Monitoring by data reporting and international on-site verification in chemical industry is intended to confirm that "Activities not Prohibited Under this Convention" (title of Article VI) remain within the bounds of the Convention, to provide

a reasonable assurance against misuse of industrial facilities, and to strengthen the ground for growing international co-operation and exchange between chemical industries.

56. Thus, the nature of verification in industry is very different from that of the challenge inspection regime: verification in industry aims at steady and continuous confidence building, it does not provide for highly political action to answer concrete concerns about possible non-compliance. At the same time, verification in industry and the challenge inspection regime are complementary: ideally, smooth and efficient implementation of verification measures under Article VI will greatly reduce the need for challenge inspections, which, however, remain the ultimate safety net also to answer concrete concerns about possible non-compliance in industry.

57. There has long been a broad consensus on these basic objectives of verification measures under Article VI. The task of translating them into concrete treaty provisions, however, proved to be particularly thorny. Many very detailed, laboriously prepared, but contradictory concepts were developed over the years, presented and fought for with equal conviction. Finally, a basic consensus on a three-tiered regime emerged, which is reflected in Parts VII, VIII, and IX of the Verification Annex, and which provides for a graduated approach distinguishing between:

- Chemicals listed in Schedule 2 of the "Annex on Chemicals" and facilities related to such chemicals;
- Chemicals listed in Schedule 3 of the "Annex on Chemicals" and facilities related to such chemicals; and
- Other chemical production facilities.

(The special regime for Schedule 1 chemicals, i.e. chemical warfare agents, and related facilities has already been agreed upon for some time; it is contained in Part VI of the Verification Annex. Given the extremely limited use of these chemicals for industry, this regime is usually not considered as part of general verification in industry).

58. Despite of the basic consensus on the three-tiered regime, a number of technical details and some political questions continued to elude consensus. Thus, the solutions incorporated in the draft Convention necessarily had to fill in some gaps. In doing that, the Chairman could build largely on the results of the work undertaken by the Chairman of the Working Group on Verification, Mr. Morris from Australia, reflected in his "Paper No.12 Rev.2" of 29 May 1992; on the work by the Moderator on this issue in the final round of negotiations before the draft was tabled, Ambassador Hyltenius from Sweden; on the document CD/CW/WP.406 tabled on 4 June 1992 by twelve delegations; and on the results of many private consultations.

59. During year-long negotiations, it had become more and more apparent that there are inherent limitations in the hypothetical search for rigid solutions to practical problems whose nature will fully emerge only in the course of future implementation. Therefore, the draft Convention contains a regime for industry verification which is:

- conducive to enhancing confidence and international co-operation, but not excessively ambitious in its verification goals;
- simple to administer; and, above all,
- flexible and open to future adjustment in the light of practical experience gained.

60. The goal of simplicity led to the application of a common structure in the provisions for all three types of facilities. The general structure applied throughout Parts VII to IX of the Verification Annex uniformly uses "plant site" as unit of reference for declarations and "plant" as unit of reference for verification measures:

- **"Plant site" as unit of reference for declarations** avoids a fragmentation of declarations, which would render the task of the Technical Secretariat very difficult indeed. It also liberates both national authorities and the Technical Secretariat from unnecessary red tape by avoiding the listing of all individual plants in the declarations under Part IX;

- "Plant" as unit of reference for verification measures, on the other hand, helps to focus inspections on those parts of a plant site that are of particular relevance for the objectives of the Convention. At the same time, this focussing of inspections meets the concerns about undue interference in industrial activities.

- (The distinction between the larger unit "plant site" and the smaller unit "plant" - both defined in Part I of the Verification Annex - had provided an example of how prima facie technical questions sometimes acquired a surprising political prominence which led to most intractable negotiating problems).

61. The goal of simplicity has, however, not led to an undue levelling out of the different verification requirements for the different types of industrial facilities, which are briefly outlined in the following paragraphs.

Part VII of the Verification Annex - Regime for chemicals listed in Schedule 2 and facilities related to such chemicals:

62. The Schedule 2 regime reflects the long-held position of most delegations that these facilities deserve the relatively highest degree of attention. It is assumed that the substance of Part VII of the Verification Annex comprises all the essential consensus elements elaborated in the Ad Hoc Committee. Part VII covers producers, processors, and consumers of Schedule 2 chemicals; it builds on the distinction between Schedule 2 A and 2 B; thresholds triggering declarations and inspections represent agreed figures; it contains compromise provisions on initial and subsequent inspections, on inspection aims, facility agreements, allocation of resources earmarked for verification, duration of inspections, and notification. The emphasis on Schedule 2 facilities has been maintained, their inspections will not be downgraded to the same procedures as applied in Schedule 3 and other production facilities.

Part VIII of the Verification Annex - Regime for chemicals listed in Schedule 3 and facilities related to such chemicals:

63. This Part may not be so easily acceptable as Part VII. Whilst it reflects the essence of document CD/CW/WP.406 of 4 June 1992, it contains some features consistently put into question by a

number of delegations: it covers only producers of Schedule 3 chemicals; thresholds triggering inspections are closer to the high end of figures under discussion; no national nominations are foreseen in the selection process for inspections; the access for inspectors is largely limited to plants only. On the other hand, it contains compromise provisions on the duration of inspections, on the notification time, and on inspection quota. Seen in conjunction with Parts VII and IX, also Part VIII should meet general support as part of a larger package.

Part IX of the Verification Annex - Regime for other chemical production facilities.

64. The most difficult question of verification in chemical industry, which had to be answered in Part IX, has always been the question of "scope". To what extent should industry come under a verification regime at all? "Deep and narrow", "broad and shallow", and "nothing beyond Schedule 3 facilities" were catch-words for extremes in a multi-faceted, very technical, and extremely complex debate. This debate has led the Chairman to two conclusions:

- **Firstly:** it might not be possible to find a definite hypothetical answer to practical questions of future implementation;
- **Secondly:** this, however, should not lead to a hasty choice of the lowest common denominator since such a choice might prove to be very harmful to the potential of the Convention to enhance security as well as future co-operation in the chemical field.

65. Building on these two conclusions, Part IX strikes a careful balance. It does not foreclose the confidence-building potential of a wide scope. Withholding this potential would seem politically very unfortunate because it might undermine the further evolution of the co-operative approach to economic and technological development outlined in Article XI. Therefore, Part IX of the Verification Annex sets forth a simple, but broad declaration regime for a "List of Other Chemical Production Facilities". This

list shall contain some basic data on all plant sites which meet either one of two "triggers":

- All plant sites that produced by synthesis during the previous calendar year more than 200 tonnes of non-scheduled discrete organic chemicals;
- Likewise, all plant sites that comprise one or more plants which produced by synthesis during the previous calendar year more than 30 tonnes of a non-scheduled discrete organic chemical containing the elements phosphorus, fluorine, or sulphur (so-called "PSF-plants").

66. A number of elements balance the decision for a "wide scope": the high declaration threshold of 200 tonnes annual production for plant sites which do not include "PSF-plants"; the possibility of asking for the assistance of the Technical Secretariat in compiling the list of other chemical production facilities; in the suggested verification regime, the focus of inspections on "PSF-plants" and the only limited access for inspectors; the Schedule 3 regime contained in Part VIII as outlined above.

67. The main element of balance, however, lies in the evolutionary approach with regard to verification: the implementation of verification measures is deferred into the fourth year after entry into force of the Convention. In the third year, the Conference of States Parties may decide otherwise, if experience gained by then led to a different conclusion. The question of applying national proposals to the selection for inspections has also been left to a future decision by the Conference of States Parties. Furthermore, the eventual adaptation of verification in industry as a whole has been put on the agenda of the first review conference of the States Parties.

G. Economic and Technological Development (Article XI)

68. In preparing the language of Article XI, a wide range of views with regard to the question of export controls among States Parties to the Convention had to be taken into consideration. On the one side, it was felt that no restrictions in international regimes parallel to the Convention should be maintained after

entry into force of the Convention. On the other side, it was argued that the Convention should not put into jeopardy the sovereign right of a State to control its national exports and imports.

69. In order to strike a reasonable balance between these views a flexible and dynamic approach to the issue had to be adopted. In particular, the approach had to lay the basis for a solution of the export control issue which can evolve in parallel with the implementation of verification in chemical industry, thus taking into account the confidence generated by the Convention, and providing the framework for a future-oriented co-operative political process after entry into force of the Convention. This approach seems best suited to command consensus since the Convention itself - as explicitly provided for in Article VI, paragraph 6 - is based on the assumption of a gradual implementation of verification in chemical industry.

70. With these considerations in mind, it was felt that the proposals contained in "Working Paper No.7" of the Friend of the Chair on Article XI, Mr. Felicio from Brazil, would constitute a solid basis for the missing language in Article XI. The proposals put forward in Document CD/CW/WP.409 of 4 June 1992, and recent intensive consultations led, however, to an in-depth review and improvement of these suggestions.

71. On the basis of Working Paper No. 7 and in the light of the recent proposals and deliberations the Chairman decided to propose the following key elements for his version of Article XI:

- Additional language in the Preamble now reflects the thrust of Article XI in the very beginning of the Convention itself: (The States Parties ...) "Desiring to promote free trade in chemicals as well as international co-operation and exchange of scientific and technical information in the field of chemical activities for purposes not prohibited under the Convention in order to enable economic and technological development of States Parties".

(This is relevant language for the interpretation of Article XI since the Preamble - including also its part "to exclude completely the possibility of use of chemical weapons, through the implementation of this Convention" - constitutes according to Article 31 paragraph 2 of the Vienna Convention on the Law of Treaties an integral part of the Convention.)

- Paragraph 1 of Article XI stipulates that the provisions of the Convention shall be implemented in a manner which avoids hampering the economic or technological development of States Parties, and international co-operation in the field of chemical activities for purposes not prohibited under this Convention.

(The language for Article XI, paragraph 1, contained in "Working Paper No.7" has thus been reinforced by deleting "as far as possible" after "avoids").

- Paragraph 2 c of Article XI sets forth that subject to the provisions of the Convention and without prejudice to the principles and applicable rules of international law, States Parties shall not maintain among themselves any restrictions, including those in any international agreements, inconsistent with the object and purpose of this Convention, which would restrict or impede trade in the field of chemistry for industrial, agricultural, research, medical and pharmaceutical or other peaceful purposes

(The language proposed in "Working Paper No.7" has thus been amended in two respects: in order to meet concerns about the term "arbitrary" this word was deleted and replaced by "inconsistent with the object and purpose of this Convention". Furthermore, language capturing the idea that no international agreement inconsistent with the object and purpose of the Convention should be maintained after entry into force of the Convention was inserted.

The notion of consistency with the object and purpose of the Convention is referring, according to the relevant wording in the Preamble, to both: "to exclude completely the possibility of use of chemical weapons, through the implementation of this Convention" as well as "to promote free trade in chemicals". Thus, in the view of the Chairman, to the extent that successful implementation of the Convention realizes the objective "to exclude completely the possibility of use of chemical weapons" other restrictions specifically designed to curb the spread of chemical weapons lose their legitimacy under this Convention. At the same time the Chairman feels - against the background of the object and purpose of this Convention - that the sovereign right of States Parties to maintain export control for non-CW-related purposes is not affected by this paragraph.)

- Paragraph 2 d provides that, subject to the provisions of the Convention and without prejudice to the principles and applicable rules of international law, the States Parties shall not use the Convention as grounds for applying any measure other than those provided for by, or permitted under, the Convention nor use any other international agreement for pursuing an objective inconsistent with the object and purpose of this Convention.

(This new language was incorporated to specify further the thrust of Article XI. The former paragraph 3 d becomes paragraph 3 e).

72. As to transfers of scheduled chemicals to Non-States Parties the Chairman refrained from including specific provisions in the draft Convention. It was felt that the obligation of a State Party not to assist anyone to engage in any activity prohibited under this Convention stipulated in Article I paragraph 1 d could serve as a sufficient basis for measures against Non-States-Parties. In the view of the Chairman such an approach would allow for the indispensable flexibility to take the specifics of a given case duly into account while at the same time provide for a framework for relations between States Parties and Non-States Parties to the Convention.

H. Annex on Chemicals

73. After years of tough negotiations, no complete consensus could be reached with respect to the Schedules of Chemicals. Remaining problems of some delegations who could not accept the Schedules as contained in CD/CW/WP.400 focussed on the shifting and/or exclusion of certain chemicals. A balanced solution has been developed, building on the work done by the Friend of the Chair on Technical Issues, Dr. Cooper from the United Kingdom:

(a) Botulinum toxin was deleted from Schedule 2, although some delegations argued for keeping this chemical on Schedule 2, pointing to the lack of a verification system under the Biological Weapons Convention, which continues to be a reason of concern to many delegations. However, support prevailed in favour of a deletion of botulinum toxin from Schedule 2, since the coverage of toxins by the CW Convention was felt to be sufficiently marked by the two toxins on Schedule 1.

(b) Support was prevailing for keeping chlorosarin and chlorosoman on Schedule 1, BZ and pinacolyl alcohol on Schedule 2 (as suggested in CD/CW/WP.400). The particular risk posed by BZ is reflected by the marker "*" referring to much lower thresholds for declaration and verification.

(c) There was also a proposal to delete six chemicals from Schedule 3. On the other hand, two of these chemicals, the precursors for the nitrogen mustards HN1 and HN2, were even considered as candidates for Schedule 2, rather than Schedule 3, in terms of risk to the object and purpose of the Convention and

of the quantities produced. As a compromise, the precursors to the nitrogen mustards remained in place, while the three chemicals exempted from Schedule 2 were deleted. (This compromise on the Schedules should be evaluated also in connection with the exclusion of the wide area of consumers of Schedule 3 chemicals from the declaration requirement in Part VIII of the Verification Annex).

(d) All of the Schedules were re-structured and divided in parts A, toxic chemicals, and B, precursors. This does not only represent an additional element of compromise as proposed earlier this year in open-ended consultations, but seems to be an editorial improvement as well, making reference to particular categories of scheduled chemicals easier.

(e) The language of the guidelines had to be adjusted accordingly and streamlined in places where this was believed to facilitate the understanding of the text. In doing so, elements of guidelines as proposed in CD/CW/WP.407 were included. However, the structure of the guidelines remained unchanged as compared to CD/CW/WP.400.

J. Financing of the Organisation

74. The fundamental provision for financing of the Organization is contained in Article VIII paragraph 7 which stipulates that "the costs of the Organizations' activities shall be paid by States Parties in accordance with the United Nations scale of assessment adjusted to take into account differences in membership between the United Nations and this Organization.

75. Intensive discussions and study of the UN scale of assessment and the principles underlying its elaboration by the General Assembly indicated that, by and large, this process is taking into account all criteria that are of relevance for the distribution of costs of the Organization. Therefore, and in order to avoid time-consuming and difficult discussion at each yearly session of the Conference, agreement on paragraph 7 was reached.

76. The distribution of costs of verification for destruction of chemical weapons and chemical weapons production facilities was the only issue where consensus could not be reached in the discussion. Some delegations argued that costs of verification should also be allocated according to the UN scale of assessment since this verification was in the security interest of all States

Parties and CW possessor States already shouldered a particularly heavy financial burden by paying the costs of destruction of CW. Other delegations, including all developing countries, argued that such a solution would be unacceptable to them and might create a disincentive to join the Convention.

77. The compromise solution proposed takes into account the interests of the two large CW-possessor States that have already concluded a bilateral agreement on destruction of chemical weapons while, at the same time, safeguarding the interests of all States Parties. The compromise solution provides that:

- Those States that are obliged to destroy CW or CW production facilities also bear the costs of verification of destruction.
- States Parties may, however, conclude between them bilateral verification agreements. In this case the Organization can decide to limit its verification to complementary activities. These complementary verification and monitoring measures by the Organization would then be paid according to the UN scale of assessment.

78. This solution does allow States Parties that conclude a bi- or multilateral agreement to use respective national inspectors equipment, airlines etc. for inspection activities, which is likely to be cheaper than inspection through the Organization. On the other hand, costs for complementary verification and monitoring are likely to be quite low and should certainly not lead to considerable increases in States Parties financial contributions.

K. Amendments (Article XV)

79. Article XV contains a rather unique procedure for amendments and changes to the Convention. The text has been elaborated mainly under the Chairmanship of Mr. Wadhwa of India, and been adopted by the Ad Hoc Committee on June 19, 1992.

80. The discussion on the issue was difficult for the following reasons:

- Delegations felt that the CW Convention as a security treaty should not allow for any split regime whereby different provisions would apply to different States. As a consequence, the provision in Article XV had to be such that any amendment would enter into force for all States Parties at the same time.

- The Convention contains many provisions that require implementation by national law and that affect civil rights protected by national constitutions. Therefore, a number of States maintained that amendments should not enter into force without ratification by their parliaments.

81. Given the two aspects mentioned, one solution would have been to require ratification of all States Parties before an amendment could enter into force. This, however, would have made the Convention unamendable.

82. With the solution chosen, any parliament wanting to ensure its right of ratification can do so by ensuring that the government participates and votes in the Amendment Conference. The fact that the solution provides for a veto right of every State Party was part of an overall compromise and essential for those States who wanted to exclude certain articles completely from any possibility of amendment.

83. Most disputed was the identification of provisions to be subject to a simplified procedure, allowing for changes without ratification, as contained in Article XV, paragraph 4:

- The great majority of delegations spoke in favour of submitting all annexes to a simplified procedure whereby any change to these annexes could enter into force without ratification by parliament. These delegations argued that any other procedure would be very dangerous for the Convention given that the Annexes contain detailed verification procedures which have not yet sufficiently been tested in practice. Asking for ratification of changes in the annexes would endanger the effective adaptation to experience gained in the course of implementation.

- Some delegations felt that amendments to most of the Annexes should remain subject to ratification since such amendments could in many instances be of relevance in terms of national implementation and in terms of protection of civil rights.

84. The solution chosen is a compromise that goes a long way in accommodating the concerns of those States that insisted on a ratification procedure for most Annexes by

- stating in paragraph 4 that only changes related to matters of an administrative or technical nature shall follow the non-ratification procedure,
- stipulating that any amendment to the annexes most sensitive in terms of protection of civil rights would have to follow the ratification procedure.

L. Seat of the Organisation

85. The decision on the seat of the Headquarters of the Organization for the Prohibition of Chemical Weapons, thanks to Ambassador Kamal from Pakistan, was arrived at in a very pragmatic manner.

86. In open-ended consultations and after a thorough and highly transparent analysis of the competing bids of three bidding states - namely Austria (Vienna), the Netherlands (The Hague) and Switzerland (Geneva) - the members of the Conference on Disarmament reached consensus and opted for the Netherlands' offer.

87. It must be commended that the decision-making process on the future seat of the Headquarters of the Organization was not troubled by political factors at all, but was concluded on the basis of factual criteria only.

M. Note on Questions of Editing

88. The draft Convention does not spell out in detail any cross-references where they are made within the same level (i.e. within the same Part, Article, Paragraph, Subparagraph etc.)

- Example 1: Article IV, paragraph 6: "Each State Party shall destroy all chemical weapons specified in paragraph 1..." This cross-reference refers to paragraph 1 of the same Article.

- Example 2: Article III paragraph 1 (a) (ii):
"...except for those chemical weapons referred to in sub-
subparagraph (iii)"
This refers to the same subparagraph (a).

89. In cases where cross references are made to other sections without specifying paragraphs in these sections, the cross reference includes all provisions of the section referred to.

- Example: Part IV B of the Verification Annex: "All chemical weapons shall be destroyed as provided for in Section B".

90. The draft Convention tries to avoid any resort to the formulation "and/or" as it was still frequently contained in CD/1116, since such alternative formulations should not be used in legally binding instruments.

91. In choosing "or" in any listing of different elements, the draft Convention follows the rule that "or" is to be understood in the sense that each of the listed elements, taken separately, is already sufficient to meet a definition or trigger an obligation contained in the paragraph or article. This can perhaps best be seen in Article II paragraph 8 concerning the definition of chemical weapons production facilities.