
UNITED KINGDOM

CHEMICAL WEAPONS CONVENTION
VERIFICATION AND COMPLIANCE - THE CHALLENGE ELEMENT

1. To be effective and to maintain international confidence the proposed Convention will include procedures for mandatory routine international on-site inspection. However, to ensure that the Convention is properly observed in every respect, an additional element of challenge inspection is essential. The latter cannot be a substitute for routine international on-site inspection. But it can be an effective way of dealing with instances of suspected non-compliance which would not necessarily be revealed by regular inspection of declared facilities.
2. At the summer 1983 session of the Committee on Disarmament, valuable discussion took place in Contact Group B on the structure and functions of the proposed Consultative Committee and its subsidiary organs, on the specific issue of initiation of a challenge, on an ensuing request for on-site inspection, and the obligation of countries to accept such inspections as a result of a challenge. These issues were addressed in CD Documents CRP/87 and CRP/73 respectively. We hope that this paper, which deals with the challenge element, will help to clarify further the essential requirements for this important aspect of verification, thus enabling negotiations on this particular issue to reach a satisfactory conclusion.

The mandatory routine international on-site inspection regime

3. In summary, the proposed regime for mandatory routine international on-site inspection to ensure adequate verification of a CW Convention will fall into four parts
 - (i) (a) regular verification of declared stocks and
 - (b) continuous on-site inspection of their destruction,
 - (ii) verification of the destruction of CW manufacturing and filling facilities, through on-site inspection and monitoring means,
 - (iii) verification of permitted facilities for production of super-toxic chemicals for protective purposes,
 - (iv) effective verification of non-production.

These requirements should be accomplished through routine international on-site inspection carried out by a team of regular inspecting teams following agreed procedures. This procedure should take into account inter alia the experience gained from the inspection procedures conducted by the IAEA. Such inspection procedures would be supplemented by continuous and comprehensive monitoring involving the use of appropriate instruments.

The purpose of challenge inspection

4. Without generating political controversy, "routine" inspection of the sort just discussed should give a high degree of confidence that the Convention is being observed. However, because this category of inspection would be confined to declared sites and facilities, suspicions about possible or potential non-compliance with the Convention could still arise. To remove the grounds for any such suspicions would be the primary task of the challenge inspection regime. Separate and different from all the routine inspection procedures, and applying to all aspects of the Convention and irrespective of whether or not a site was declared, this regime would therefore:

- (i) deter evasion of obligations under the Convention by providing a means of uncovering and drawing attention to breaches of the Convention,
- (ii) provide a means of clarifying ambiguous situations, settling disputes and, on the assumption that allegations of evasion proved unfounded, restoring confidence;
- (iii) provide advance notice of possible breaches of the Convention, thus enabling States parties to take necessary action to ascertain the facts.

5. Given the role of the routine inspection regime, and provision in the Convention for States Parties to consult and co-operate amongst themselves, challenge inspection would only be requested in the event of a suspicion of a breach of the Convention, either at a declared facility or location which "routine" inspection had not revealed or at a non-declared facility or location for which the challenged country had not accounted in the course of co-operation and consultation.

6. The detailed arrangements for challenge inspection would fall under five main headings:

- (i) the machinery for carrying out challenge inspection,
- (ii) the criteria for ensuring that the inspections are objective and impartial,
- (iii) the basis for requesting challenge inspection,
- (iv) the rights and obligations of a challenged State,
- (v) the action to be taken in the case of refusal.

Machinery

7. It has emerged from Group B discussions that there should be a Consultative Committee of States Parties, assisted in the discharge of its functions, including routine inspection and challenge inspection, by an Executive Council responsible for fact finding. To ensure the handling of cases of suspected non-compliance with the speed that will be necessary, it might be appropriate to provide in the Convention the means for the establishment of a separate fact-finding panel.

8. A State party which had reason to believe that another State party might not be in compliance with the provisions of the Convention or that an ambiguous situation had arisen, neither of which could be resolved through normal inspection in the case

of a declared facility, might seek clarification of the position through the appropriate organ of the Consultative Committee, by requesting the authorization of an on-site inspection and by submitting pertinent information. The Consultative Committee should seek within seven days, or such shorter period as it may decide, of receipt of such a request the necessary clarification from the State party in question. If no acceptable clarification is received within seven days, or such shorter period as the Consultative Committee may decide, of the request, then the Executive Council or fact-finding panel (if one is established) on behalf of the Consultative Committee should within a further seven days, or such shorter period as the Consultative Committee may decide, set in train an investigation involving prompt ad hoc on-site inspection, in order to clarify the position. A report on its work, whether interim or final, should be transmitted to the Consultative Committee within three months of the date of the start of the investigation. There should be provision for rapid decisions by voting in the Consultative Committee and its subsidiary organs.

9. If the State party's concerns about compliance have not been resolved within the three months referred to above it may request the Chairman of the Committee to convene a special meeting of the Consultative Committee to consider the outstanding issues of compliance.

Criteria for effective verification

10. As the Chairman of the Contact Group C has said in the context of discussions about a ban on the use of chemical weapons, reference to criteria for effective verification should be included in the Convention. He has put forward the following criteria for the verification of non-use of chemical weapons, some of which are generally applicable.

- (i) urgency, promptness of the procedure, access to site (if considered necessary) within such time-lapse from the reported event as would theoretically permit the identification of a sample taken,
- (ii) objectiveness, undisputed scientific quality of inspectors possibly assisted by experts from specialized international organizations such as WHO;
- (iii) availability of information on occurrence of the chemicals under consideration in the region under consideration that can be explained to be of a non-hostile nature, co-operation with the national authorities of the parties to the conflict,
- (iv) establishment of an indisputably impartial "chain of custody" with respect to a sample from the moment it is being taken to the moment of its scientific analysis,
- (v) introduction of the result of the investigation in the relevant permanent body established by the Treaty for consultation.

11. These proposals raise a number of questions when applied to challenge inspection for all aspects of the Convention. There is a need for adequate urgency in carrying out an inspection. Time limits should be as short as possible, if international

confidence in the Convention is to be maintained. Hence the detailed proposals made in paragraph 8 above. They should provide an acceptable basis for this aspect of the Convention, although further details will still need to be resolved by further work (e.g. any necessary arrangements for objection to a particular inspector; difficulties about ensuring the safety of inspectors in zones of combat; and definition of the area of the site to be investigated).

Basis for Inspection Requests

12. Because of the wide range of different incidents which may concern the Consultative Committee and its subsidiary organs in the event of a challenge, it would be premature to specify in advance precise guidelines for determining whether a request for a challenge inspection was supported by adequate information. Each request for a challenge inspection would obviously need to be judged against the particular circumstances at the time. However, it is important that the relevant provisions of the Convention should reflect clearly that any request for challenge inspection should be considered where reasonable grounds for concern appear to exist. If an application for challenge on-site inspection were considered to be admissible, it would be necessary to follow up such a decision in whatever ways were most appropriate including the conduct of on-site inspection.

Rights and Obligations

13. Every State party should be under a stringent obligation to accept challenge on-site inspection. However, a State party may be reluctant to undertake the obligation to accept the principle of challenge inspection without any means of refusing it in exceptional circumstances. It is therefore vital to ensure that the scope for refusing an inspection is as small as possible and that any refusal will be a most unusual event. Refusal of a challenge inspection, for which reasonable evidence has been presented, and by extension repeated refusals, would be a serious action and call into doubt the purposes of the Convention. It would lead to follow up action as set out in paragraph 14 below and in certain circumstances would amount to prima facie evidence of a breach of the Convention.

Follow-up to refusals

14. The purpose of follow-up action would be to deter States parties from refusing a challenge inspection. A refusal to accept a challenge on-site inspection would, as a first step, automatically require the challenged party to propose within seven days of such a refusal, some alternative on-site inspection measures which could establish beyond reasonable doubt whether or not a case of non-compliance had occurred. If a State party were seen to be in breach of the Convention by refusing to propose alternative and acceptable measures, then the following actions could be taken:

- (i) such a refusal could lead to a more detailed presentation of information by the country making the request for a challenge inspection to the subsidiary organs conducting the investigation, and justify a renewed request for an inspection on that basis,
- (ii) in the case of a further refusal, there would then be immediate reference to the full Consultative Committee,

- (iii) if agreement still could not be reached within the Consultative Committee, the matter could be referred to the United Nations Security Council (notwithstanding the right of any State to refer to the Security Council at any time),
- (iv) in the last resort, withdrawal from the Convention, for which provision would be needed in its text.

15. This paper has dealt with the modalities for initiating a challenge on-site inspection. States parties to the Convention will also need to reach agreement on the arrangements for handling the outcome of any such inspection.