

PSGICC-7: The CWC at Entry into Force

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This was the fourth of the current CBW workshop series to be hosted by the Netherlands Pugwash Group, held at De Baak Conference Centre in Noordwijk. [Participating](#) by invitation were 41 people from 23 countries. (Australia, Belgium, Cameroon, China, Cuba, Ethiopia, France, Germany, India, Iran, Italy, the Netherlands, New Zealand, Pakistan, the Russian Federation, South Africa, Sri Lanka, Sweden, Switzerland, Taiwan, United Kingdom, United States, Zimbabwe), all of them doing so in their private capacities. The present record is the responsibility solely of its joint authors, who were asked by the meeting to prepare a report. It does not necessarily reflect a consensus of the workshop as a whole, or of the Study Group.

The entry into force of the Chemical Weapons Convention, on 29 April, a matter of weeks before the Workshop, naturally resulted in an emphasis on the political and practical challenges facing the Organisation for the Prohibition of Chemical Weapons (OPCW) as it starts its work of implementing the treaty. Nonetheless, the first report heard in the opening session of the workshop provided an overall assessment of the achievements of the Preparatory Commission, which has now concluded its work. Participants were reminded of the uncertainty which had complicated the Commission's work even after the trigger-point of the deposit of the 65th instrument of ratification resulting in entry into force being definitively set for 29 April 1997. The underlying cause of the uncertainty was the continued absence of key states, in particular the United States and the Russian Federation, given their declared possession of chemical weapons. Thus, the difficulties which were reported to the Study Group at its meeting the previous October remained, with the preparations towards entry into force unable to progress smoothly and core activities such as the training of future inspectors being severely disrupted. The same uncertainties made it impossible to formulate a draft budget for the OPCW as this would have necessitated an estimate of how many, and which, states would be party to the Convention as it entered into force. The opinion was expressed that there were also negative consequences, such as a delay in completing the tasks assigned to the Commission. Assessing the performance of the Preparatory Commission as a whole, it was argued that, although more could have been achieved, the final results had to be assessed in the context of the difficulties which were passed on from the Geneva negotiations and the political entrenchment which arose in the course of the preparatory process itself. It was also pointed out that of the tasks remaining incomplete, only very few were totally unresolved and enough work was accomplished to provide an operational base immediately on entry into force.

There followed an authoritative account of the work of the OPCW, with the Workshop being informed that despite the short time which had elapsed since entry into force, a great deal of the requisite organisational structure was already in place. The Conference of States Parties, which had convened its first session within thirty days of entry into force as required by the Convention, had approved recommendations put forward by the Preparatory Commission, which put in place the procedures for verification-related activities. This included agreement on a programme of work and budget for the Organisation, amounting to 88.9 million Dutch guilders, with approximately 30 million assigned to administrative costs and 60 million for verification costs. Ambassador Jose Mauricio Bustani of Brazil had been appointed as the first Director-General, the 41 member Executive Council has also been appointed.

The remainder of the report focused on the future work of the OPCW, identifying some short-term priorities. These include finalising the recruitment of staff, (there are 405 approved posts within the Secretariat for 1997 which includes 140 inspectors), commencing verification activities and consolidating the confidentiality regime (the newly created Confidentiality Commission is scheduled to meet in September). In terms of actual verification activities, the very first task to be undertaken is to visit the chemical weapons destruction facilities operating in the United States to put in place transitional verification arrangements pursuant to paragraph 51 of Part IV(A) of the Verification Annex. Priority tasks will also include work in the area of international cooperation and assistance.

In the discussion which followed, it became clear that there are major problems with chemical analytical issues, specifically what should be included in the OPCW's analytical database and the role of OPCW designated laboratories in sampling. The latter issue was raised in the context of the restriction on removing samples from the United States imposed by the US Senate in its resolution of ratification. Unfortunately there is no obvious solution to the problem at this stage. Discussion also focused on what will happen in the event of non-compliance with the Convention. In this context, it was explained that non-compliance includes failing to notify the Technical Secretariat of a State Party's National Authority, or designated points of entry, or failure to acknowledge receipt of the list of

proposed inspectors. The Workshop heard that for all questions of non-compliance, a report would be prepared and forwarded to the Executive Council for consideration. It would be in the hands of the Executive Council to decide on what should be made public.

The Workshop was then briefed on the Fourth Review Conference of the Biological Weapons Convention (BWC) which had been held in Geneva from 25 November to 6 December 1996. This Conference took place at a particularly interesting time in terms of developments in the international security scene, for example, the Non-Proliferation Treaty's indefinite extension in 1995, the opening for signature of the Comprehensive Test Ban Treaty and the impending entry into force of the Chemical Weapons Convention. It was noted that NGO representatives, among them a representative of Pugwash, had been permitted to make statements to the Review Conference in an informal session.

Next the Group heard an authoritative account of recent chemical-weapons-related work by the UN Special Commission on Iraq. UNSCOM had succeeded in uncovering important information that Iraq had attempted to conceal.

In its second session, the Workshop considered the requirement in the Convention that each State Party enact penal legislation prohibiting chemical-weapons offences and provide appropriate legal assistance to other States Parties (Article VII.2). The Workshop heard a presentation which argued that when States Parties provide details to the OPCW of the legislative and administrative measures taken to implement the treaty, as required to under Article VII.5, the OPCW in turn should collate and analyse the information. This would then form the basis of a process of harmonization of legislation among States Parties.

The Group heard a proposal from the Harvard Sussex Program for a treaty which would criminalize, at international law, the development, production, acquisition, transfer or use of biological and/or chemical weapons, thus holding individuals responsible for such activities and obliging States Parties either to prosecute or to extradite offenders.

The Workshop then moved on to discuss the need to improve universal adherence to the CWC and ways in which this might be accomplished. Although the situation is far from completely satisfactory, the composition of the OPCW as it stood at entry into force was impressive. Four out of five of the permanent members of the United Nations Security Council were States Parties, the majority of chemical industry in the world falls within the regime and there is a good spread of ratifying states from across all five regional groups. The Group also heard about Iranian ratification, learning that the Iranian Cabinet had unanimously approved the requisite domestic Bill as had five of the required six sub-committees of Parliament.

The discussion started with a consideration of the Russian Federation, a particularly important state given its possession of the largest chemical weapons stockpile in the world. In considering why Russia did not ratify the Convention prior to entry into force, the view was expressed that it was a result of a combination of factors: the sharp political division between the Executive and the Federal Assembly; the perception that the United States would not ratify before the Convention entered into force; and the high economic cost of chemical-weapons destruction. The military aspects of the treaty do not seem to be a serious obstacle. The Workshop was reminded however, that quite apart from the Convention, Russia is now obliged to destroy its chemical weapons arsenal under independent national legislation. The view was also expressed that the Duma was not made sufficiently aware of the trade sanctions which will result if ratification is not secured in the long term. Ratification by September/October seemed to be a realistic expectation and the hope was expressed that in the interim, Russia would be able to participate to a limited extent in the work of the OPCW.

Concern about continuing trade restrictions even among States Parties to the Convention and the uncertainty surrounding United States ratification resulted in a slow-down in the ratification process. Regional politics and security concerns are also an important factor in deciding when and if ratification will take place.

The discussion then moved on to the African states. While there is strong support for the Convention in the region, there remain a number of states which have not yet ratified the Convention and the discussion focused on what might be done to promote further ratifications. More ratifications from the African region were felt to be particularly important, not only for the general goal of universality, but also for the region itself - to disassociate itself from any perception of involvement with proliferation and also to attract development and avoid export controls. Participants were also reminded that some of the states which have ratified may need assistance in implementing the Convention and the importance of this to true, rather than apparent, universality. In this context, it was felt that the assistance provided in the past by the Secretariat in the form of distributing documents and arranging seminars and workshops should continue.

Finally, the unique situation of Taiwan was discussed. Describing itself as an "excluded state party", Taiwan has a large chemical industry which now lies outside the regime established by the Convention. The Group was told that it is up to the Secretary-General of the United Nations, as Depository of the Convention, to accept or decline an instrument of accession. In the discussion of this issue, it was suggested that the IAEA model could be considered as a possibility which would allow a measure of informal verification activities to be undertaken.

Moving on to the next agenda item, the Workshop heard a report from the Study Group Panel on Article XI (Economic and Technological Development), which had been established following the previous workshop. The Workshop heard that the panel had decided to divide the project into different areas, looking at the Geneva negotiations initially to show how the text of Article XI evolved. The project then considers the fate of Article XI during the preparatory process in The Hague before moving on to address substantive issues arising from Article XI, such as the need for industry cooperation, trade restraints and technical cooperation. The final part of the project considers the Article XI debate in the wider context, drawing comparisons with regimes such as that of the BWC and the Prior Informed Consent procedures. A number of possible contributors have been approached to contribute papers on certain aspects and some papers, which are still in draft, were presented to the Workshop.

In the discussion which followed, the well known views from the debate on Article XI issues were repeated. Unfortunately, this tended to mirror the debate which had taken place in the Preparatory Commission, the very trap which the initiators of the project had hoped to avoid. Specifically, the compatibility of the Australia Group trade controls and Article XI was addressed, as was the role of Article XI in the Convention as a whole. Other aspects of Article XI were also discussed such as ways to exchange technology and information and ways in which to increase transparency. Some participants spoke in favour of searching for a middle ground, acknowledging that the priorities of developing and developed countries are different and that both should be accommodated as far as possible. In looking at why the Preparatory Commission failed to achieve much in the way of implementing Articles X and XI, it was pointed out that the Preparatory Commission failed to resolve a number of issues, not just ones in the area of technical cooperation and assistance.

In the final session of the Workshop, a number of other aspects of CWC implementation were considered. In particular, the workshop discussed issues raised by so-called non-lethal chemicals and, in particular, the conditions under which they fall under the prohibitions and reporting requirements of the CWC. The Group discussed the legality of the use of riot control agents, as defined by the Convention, by a State Party outside its own territory. The question was raised as to whether their use in a peacekeeping operation could constitute "law enforcement". What would be the source of such "law"? For example, could a resolution of the United Nations Security Council resolution provide legal authority sufficient to satisfy Article II.9(d)?

The Group heard of the notably satisfactory experience of a national authority, that of Switzerland, in preparing the initial industry declarations required by the CWC.

Turning to the future work of the Study Group, it was proposed that an appropriate approach would be to consider the new challenges facing the Chemical Weapons Convention, now that the regime has actually started to function. Specifically, this might include study of whether the schedules of the Convention required amendment, of the concerns of the chemical industry in implementing the system, of specific analytical issues, and of the continuing debate over export controls. Further topics proposed for future work were Article XI (once the Panel had completed its work), and a possible convention to criminalize CBW weapons.