

Challenge Inspection Regime of the CWC: Salient Features*

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Summary

The most significant aspect of the CWC is the provision for a Challenge Inspection (CI) mechanism, to address any possible concerns of any member state regarding the possible non-compliance to the provisions of the CWC by any other member state.

* This article is based on the Article IX of the CWC. For details see <http://www.opcw.org/chemical-weapons-convention/articles/article-ix-consultations-cooperation-and-fact-finding/>

Introduction

The Chemical Weapons Convention 1993 (CWC) entered into force (EIF) in April 1997 and presently has 190 members covering nearly 98% of the world population. The Organisation for Prohibition of Chemical Weapons (OPCW) is the watchdog body for the CWC. Even then, in the past, there have been instances wherein the CWC provisions were violated by some of the member states. As a consequence, disarmament critics have been skeptical and apprehensive of the effectiveness of the Convention on the possible non-compliance by some member states despite having voluntarily joined the CWC.

Provisions For Challenge Inspection (CI)

The most significant aspect of the CWC is the provision for a Challenge Inspection (CI) mechanism, to address any possible concerns of any member state regarding the possible non-compliance to the provisions of the CWC by any other member state. The Convention provides for a graduated and systematic approach and mechanism for addressing these concerns.

Consultation & Cooperation

As a first step, States Parties to the Convention can consult and cooperate, directly among themselves, or through the Organization on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of the Convention. States Parties should, whenever possible, first make every effort to clarify and resolve, through exchange of information and consultations among themselves, any matter which may cause doubt about compliance

with this Convention, or which gives rise to concerns about a related matter which may be considered ambiguous. A State Party which receives a request from another State Party for clarification of any matter which the requesting State Party believes causes such a doubt or concern shall provide the requesting State Party as soon as possible, with information sufficient to answer the doubt or concern raised along with an explanation of how the information provided resolves the matter.

Procedure For Requesting Clarification

Clarification

A State Party shall have the right to request the OPCW to assist in clarifying any situation which may be considered ambiguous or which gives rise to a concern about the possible non-compliance of another State Party with this Convention. The OPCW shall provide appropriate information in its possession relevant to such a concern. In such a case, the OPCW shall forward the request for clarification to the State Party concerned. The requested State Party shall provide the clarification to the OPCW as soon as possible.

The OPCW shall take note of the clarification and forward it to the requesting State Party. If the requesting State Party deems the clarification to be inadequate, it shall have the right to request the OPCW to obtain from the requested State Party further clarification; For the purpose of obtaining further clarification the OPCW may call on to establish a group of experts from the Technical Secretariat (TS), OPCW, or from elsewhere, to examine all available information and data relevant to the situation causing the concern. The group of experts shall submit a factual report to the OPCW on its findings.

Request for Special Session of EC and CSP

If the requesting State Party considers the clarification obtained to be unsatisfactory, it shall have the right to request a special session of the Executive Council (EC) in which States Parties involved that are not members of the EC shall be entitled to take part. In such a special session, the EC shall consider the matter and may recommend any measure it deems appropriate to resolve the situation. A State Party shall also have the right to request the EC to clarify any situation which has been considered ambiguous or has given rise to a concern about its possible non-compliance with this Convention. The EC shall respond by providing such assistance as appropriate.

If the doubt or concern of a State Party about a possible non-compliance has not been resolved within 60 days after the submission of the request for clarification to the EC, or it believes its doubts warrant urgent consideration, notwithstanding its right to request a CI, it may request a special session of the Conference of States Party (CSP). At such a special session, the Conference shall consider the matter and may recommend any measure it deems appropriate to resolve the situation.

CWC: Procedures For Requesting Challenge Inspection

Each State Party has the right to request an on-site CI of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of this Convention, and to have this inspection conducted anywhere without delay by an inspection team designated by the Director

General (DG), OPCW and in accordance with the CWC.

Each State Party is under the obligation to keep the inspection request within the scope of this Convention and to provide in the inspection request all appropriate information on the basis of which a concern has arisen regarding possible non-compliance with this Convention as specified in the Convention. Each State Party shall refrain from unfounded inspection requests, care being taken to avoid abuse. The CI shall be carried out for the sole purpose of determining facts relating to the possible non-compliance.

Access to the Inspection Team

For the purpose of verifying compliance with the provisions of this Convention, each State Party shall permit the technical secretariat to conduct the on-site CI. Pursuant to a request for a CI of a facility or location, and in accordance with the procedures provided, the inspected State Party shall have the right and the obligation to make every reasonable effort to demonstrate its compliance with this Convention and, to this end, to enable the IT to fulfil its mandate, the obligation to provide access within the requested site for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance, and the right to take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to this Convention.

Observer on CI

The requesting State Party may, subject to the agreement of the inspected State Party, send a representative who may be a national either of the requesting State Party or of a third State Party, to observe the conduct of

the CI. The inspected State Party shall then grant access to the observer. The inspected State Party shall, as a rule, accept the proposed observer, but if the inspected State Party exercises a refusal, that fact shall be recorded in the final report.

CI Request

The requesting State Party shall present an inspection request for an on-site CI to the EC and at the same time to the DG for immediate processing. The DG shall immediately ascertain that the inspection request meets the requirements specified in the Convention, and, if necessary, assist the requesting State Party in filing the inspection request accordingly. When the inspection request fulfils the requirements, preparations for the CI shall begin. The DG shall transmit the inspection request to the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry. After having received the inspection request, the EC shall take cognizance of the DG's actions on the request and shall keep the case under its consideration throughout the inspection procedure. However, its deliberations shall not delay the inspection process.

Consideration by EC

The EC may, not later than 12 hours after having received the inspection request, decide by a three-quarter majority of all its members against carrying out the CI, if it considers the inspection request to be frivolous, abusive or clearly beyond the scope of the CWC. Neither the requesting nor the inspected State Party shall participate in such a decision. If the EC decides against the challenge inspection, preparations shall be stopped, no further action on the inspection request shall be taken, and the States Parties concerned shall be informed accordingly.

Inspection Mandate

The DG shall issue an inspection mandate for the conduct of the CI. The inspection mandate shall be the inspection request put into operational terms, and shall conform to the inspection request. The CI shall be conducted in accordance with the Convention. The inspection team shall be guided by the principle of conducting the CI in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. The inspected State Party shall assist the inspection team throughout the CI and facilitate its task. If the inspected State Party proposes any arrangements to demonstrate compliance with this Convention or an alternative to full and comprehensive access, it shall make every reasonable effort, through consultations with the inspection team, to reach an agreement on the modalities for establishing the facts with the aim of demonstrating its compliance.

CI Report

The final CI report shall contain the factual findings as well as an assessment by the inspection team of the degree and nature of access and cooperation granted for the satisfactory implementation of the challenge inspection. The DG shall promptly transmit the final report to the requesting State Party, to the inspected State Party, to the EC and to all other States Parties. The DG shall further transmit promptly to the EC the assessments of the requesting and of the inspected States Parties, as well as the views of other States Parties which may be conveyed to the DG for that purpose, and then provide them to all States Parties.

Review of Report

The EC shall, in accordance with its powers and functions, review the final report of the

inspection team as soon as it is presented, and address any concerns as to whether any non-compliance has occurred; whether the request had been within the scope of this Convention; and whether the right to request a challenge inspection had been abused. If the EC reaches the conclusion, in keeping with its powers and functions, that further action may be necessary, it shall take the appropriate measures to redress the situation and to ensure compliance with this Convention, including specific recommendations to the CSP. In the case of abuse, the EC shall examine whether the requesting State Party should bear any of the financial implications of the CI. The requesting State Party and the inspected State Party shall have the right to participate in the review process. The EC shall inform the States Parties and the next session of the CSP of the outcome of the process. If the EC has made specific recommendations to the Conference, the CSP shall consider action in accordance with Convention.

Conclusion

It goes to the credit of member States, that the OPCW has not received any requests for clarifications or for CI in last 16 years of existence of the CWC. It only reflects the mutual confidence and trust between the member states and the excellent role being played by the OPCW to facilitate this trust. In appreciation of its great efforts in chemical disarmament and nonproliferation, the OPCW was bestowed with the Nobel Peace Prize for the year 2013.