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DRAFT RESOLUTION ESTABLISHING THE PREPARATORY COMMISSION FOR THE ORGANISATION FOR THE PROHIBITION OF BIOLOGICAL WEAPONS

by Ian R. Kenyon[#] & Nicholas A. Sims^{*}

Introduction

1. The next stage after the completion of the negotiation of the Protocol is to consider the language for the resolution establishing the Preparatory Commission for the Organization for the Prohibition of Biological Weapons. As a proposed complete text was presented in Evaluation Paper No. 17¹ in March 2000, it is now timely to consider the resolution to establish the Preparatory Commission.

2. This analysis draws upon the Paris Resolution² adopted by the Signatory States to the Chemical Weapons Convention on 13 to 15 January 1993 and the comparable Resolution³ establishing the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization which was adopted on 19 November 1996.

Draft Resolution

3. For clarity, the OPCW Paris Resolution, the CTBTO Resolution and the Draft OPBW Resolution are shown side by side together with a comment column in which a brief explanation is provided for the text proposed for the draft OPBW resolution.

4. Following the comparative tabulation, the principal points where different language is proposed based on the experience particularly of the Preparatory Commission and the Provisional Technical Secretariat of the Organization for the Prohibition of Chemical Weapons are summarized.

5. Finally, in a concluding section, the recommended text for the draft Resolution to establish the Preparatory Commission for the Prohibition of Biological Weapons is provided.

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¹Graham S. Pearson, Nicholas A. Sims, Malcolm R. Dando & Ian R. Kenyon, *The BTWC Protocol: Proposed Complete Text for an Integrated Regime*, Evaluation Paper No. 17, Department of Peace Studies, University of Bradford, March 2000. Available on <http://www.brad.ac.uk/acad/sbtwc>

²*Paris Resolution* in Lisa Tabassi (ed), *OPCW: The Legal Texts*, T.M.C. Asser Press, The Hague, 1999, pp. 523-530.

³Resolution establishing the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization, Meeting of States Signatories, New York, 19 November 1996, CTBT/MSS/RES/1, 17 October 1996. Available at <http://www.ctbto.org>

Click this link to go to the comparative tabulation →

6. The principal points where different language has been proposed for the draft Protocol Resolution are the following:

a. Annex Para 2. The 60 day period after signature by 50 States is preferred to the 30 day period in the OPCW Resolution because this will give the Secretary-General a little more flexibility in finding suitable conference facilities.

b. Annex Para 5 b). The Preparatory Commission to the OPCW had no legal basis under which actions could be taken against non-payers who had failed to make their contributions to the expenses of the Preparatory Commission and of the Provisional Technical Secretariat. As the OPCW Preparatory Commission only had a four year life, this was not in the event a serious problem although there were a number of States which failed to meet their financial obligations. The CTBTO language provides a clear solution should problems arise with non-payers and this language is therefore recommended for the OPBW resolution.

c. Annex Para 5 c). As it is unlikely that the Prepcom will be given any operational functions with regard to Protocol verification, it is judged unnecessary to propose parallel language to the CTBTO para 5 c). However, if it were decided, for example, that the Provisional Technical Secretariat should collect, collate, analyze and distribute the information provided by the States Parties to the BTWC under the Confidence-Building Measures agreed at the 2nd and 3rd Review Conferences, a clear mandate to do so should be included here.

d. Annex Para 7. The shorter version in the OPCW resolution was enough for the four year OPCW Prepcom whilst the expanded CTBTO version was appropriate for a Prepcom likely to have a longer life and to have operational functions. The expanded version is recommended here as providing increased flexibility.

e. Annex Para 8d. The shorter version in the OPCW resolution is recommended as the CTBTO version simply states the obvious which apply to all international bodies with government funding.

f. Annex Para 10. The OPCW experience has shown that questions relating to the delegation of authority and to decision taking **after entry into force** of the Protocol within the Technical Secretariat are matters for the Director-General of the OPBW. The draft resolution is accordingly worded to focus on the functions appropriate to the Preparatory Commission.

g. Annex Para 11 e). The draft OPBW resolution has been extended to include both the Executive Council and the Cooperation Committee.

h. Annex Para 12. The draft OPBW resolution will need to include a listing, as in the OPCW resolution, of the specific draft agreements, provisions and guidelines for consideration and approval by the Conference of States Parties in accordance with the Protocol.

i. Annex Para 17. It is assumed that an annex will be provided to embody the detailed provisions in the Host Country bid.

Conclusions

4. It is recommended that the following language be adopted for the draft OPBW Resolution:

DRAFT RESOLUTION ESTABLISHING THE PREPARATORY COMMISSION FOR THE ORGANISATION FOR THE PROHIBITION OF BIOLOGICAL WEAPONS

The States Signatories of the Protocol to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, adopted by [...] at [...] on [...],

Having decided to take all necessary measures to ensure the rapid and effective establishment of the future Organisation for the Prohibition of Biological Weapons,

Having decided to this end to establish a Preparatory Commission,

1. *Approve* the Text on the Establishment of a Preparatory Commission for the Organization for the Prohibition of Biological Weapons, as annexed to the present resolution;
2. *Request* the Secretary-General, in accordance with paragraph [...] of resolution [...], adopted by the General Assembly on [...], on the Protocol to the Convention on the Prohibition of the Development, Production, and Stockpiling of Biological Weapons and on Their Destruction, to provide the services required to initiate the work of the Preparatory Commission for the Organisation for the Prohibition of Biological Weapons, including the Meeting of States Signatories and the first session of the Preparatory Commission.

Annex

TEXT ON THE ESTABLISHMENT OF A PREPARATORY COMMISSION FOR THE ORGANISATION FOR THE PROHIBITION OF BIOLOGICAL WEAPONS

- 1 There is hereby established the Preparatory Commission for the Organisation for the Prohibition of Biological Weapons (hereinafter referred to as "the Commission") for the purpose of carrying out the necessary preparations for the effective implementation of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological(Biological) and Toxin Weapons and on Their Destruction, and for preparing for the first session of the Conference of the States Parties to that Convention
2. The Secretary-General of the United Nations shall convene the Commission for its first session as soon as possible, but not later than 60 days after the Treaty has been signed by 50 States..
3. The seat of the Commission shall be at the seat of the future Organization for the Prohibition of Biological Weapons.

4. The Commission shall be composed of all States which sign the Protocol. Each State Signatory shall have one representative in the Commission, who may be accompanied by alternates and advisers.

5. a) The costs of the Commission and its activities, including those of the Provisional Technical Secretariat, shall be met annually by all States Signatories, in accordance with the United Nations scale of assessment adjusted to take into account differences between the United Nations membership and States Signatories and timing of signature. The Commission and the Provisional Technical Secretariat may also benefit from voluntary contributions;

b) A State Signatory which has not discharged in full its financial obligations to the Commission within 365 days of receipt of the request for payment shall have no vote in the Commission, until such payment is received. The Commission may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

6. All decisions of the Commission should be taken by consensus. If, notwithstanding the efforts of representatives to achieve consensus, an issue comes up for voting, the Chairman of the Commission shall defer the vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Commission before the end of the period. If consensus is not possible at the end of 24 hours, the Commission shall take decisions on questions of procedure by a simple majority of the members present and voting. Decisions on matters of substance shall be taken by a two-thirds majority of the members present and voting. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the Commission by the majority required for decisions on matters of substance.

7. The Commission shall have standing as an international organization, authority to negotiate and enter into agreements, and such other legal capacity as necessary for the exercise of its functions and the fulfilment of its purposes.

8. The Commission shall:

(a) Elect its Chairman and other officers, adopt its rules of procedure, meet as often as necessary and establish such committees as it deems useful;

(b) Appoint its Executive Secretary;

(c) Establish a Provisional Technical Secretariat to assist the Commission in its activity and to exercise such functions as the Commission may determine, and appoint the necessary staff in charge of preparatory work concerning the main activities to be carried out by the Technical Secretariat to be established by the Protocol. Only nationals of signatory States shall be appointed to the Provisional Technical Secretariat;

d) Establish administrative and financial regulations in respect of its own expenditure and accounts.

9. The Commission shall make arrangements for the first session of the Conference of the States Parties, including the preparation of a draft agenda and draft rules of procedure.

10. The Commission shall undertake, *inter alia*, the following tasks concerning the organization and work of the Technical Secretariat and requiring immediate attention after the entry into force of the Protocol:

- a) Elaboration of a detailed staffing pattern of the Technical Secretariat,
- b) Assessments of personnel requirements;
- c) Development of staff rules for recruitment and service conditions;
- d) Recruitment and training of technical personnel and support staff;
- e) Organisation of office and administrative services;
- f) Preparation of administrative and financial regulations;
- g) Purchase and standardization of equipment;

11. The Commission shall undertake, *inter alia*, the following tasks on matters of the Organization requiring immediate attention after the entry into force of the Protocol:

- a) Preparation of programme of work and budget of the first year of activities of the Organization;
- b) Preparation of detailed budgetary provisions for the Organization;
- c) Preparation of the scale of financial contributions to the Organization;
- d) Preparation of administrative and financial regulations for the Organization providing for, *inter alia*:
 - (i) Proper financial control and accounting by the Organization;
 - (ii) Preparation and approval of periodic financial statements by the Organization;
 - (iii) Independent audit of the Organization's financial statements;
 - (iv) Annual presentation of the audited financial statements to a regular session of the Conference of the States Parties for formal acceptance;

e) Development of arrangements to facilitate the designation and election in accordance with Article IX of the Protocol for the first election of the Executive Council and of the Cooperation Committee.

12. The Commission shall develop, *inter alia*, the following draft agreements, arrangements and guidelines for approval by the Conference of the States Parties in accordance with the Protocol:

a) Guidelines on detailed procedures for verification and for the conduct of visits, in accordance with [...]

b) Guidelines on detailed procedures for the conduct of investigations, in accordance with [...]

b) The Headquarters Agreement with the Host Country pursuant to Article [...]

13. The Commission shall:

a) Facilitate the exchange of information between States Signatories concerning legal and administrative measures for the implementation of the Protocol and, if requested by States Signatories, give advice and assistance to them on these matters;

b) Follow the ratification process and, if requested by States Signatories, provide them with legal and technical information and advice about the Protocol in order to facilitate its ratification process; and

c) Prepare such studies, reports and records as it deems necessary.

14. The Commission shall prepare a final report on all matters within its mandate for the first session of the Conference of the States Parties and the first meeting of the Executive Council.

15. The property, functions and recommendations of the Commission shall be transferred to the Organisation at the first session of the Conference of the States Parties. The Commission shall make recommendations to the Conference of the States Parties on this matter.

16. The Commission shall remain in existence until the conclusion of the first session of the Conference of the States Parties.

17. The Commission as an international organization, its staff, as well as the delegates of the States Signatories shall be accorded by the Host Country such legal status, privileges and immunities as are necessary for the independent exercise of their functions in connection with the Commission and the fulfilment of its object and purpose, as outlined in Annex 1 to this text.