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THE CWC PARIS RESOLUTION: UNRESOLVED ISSUES

by Daniel Feakes* and Ian R. Kenyon#

Introduction

1. In Briefing Paper No 30[1] it was recognized that 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. 17[2] in March 2000 and updated in Evaluation Paper No. 18[3] in July 2000, Briefing Paper No 30 analysed the Paris Resolution[4] adopted by the Signatory States to the Chemical Weapons Convention on 13 to 15 January 1993 and the comparable Resolution[5] establishing the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization which was adopted on 19 November 1996 in order to develop language for a draft resolution establishing the Preparatory Commission for the Organization for the Prohibition of Biological Weapons.

2. The draft resolution in paragraph 12 has the following language:

> *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 [...]*
> >
> > *c) The Headquarters Agreement with the Host Country pursuant to Article [...]*

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[1] Ian R. Kenyon & Nicholas A. Sims, *Draft Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Biological Weapons,* Briefing Paper No. 30, Department of Peace Studies, University of Bradford, July 2000. Available on http://www.brad.ac.uk/acad/sbtwc

[2] Graham 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

[3] Graham S. Pearson, Nicholas A. Sims, Malcolm R. Dando & Ian R. Kenyon, *The BTWC Protocol: Revised Proposed Complete Text for an Integrated Regime,* Evaluation Paper No. 18**,** Department of Peace Studies, University of Bradford, July 2000. Available on http://www.brad.ac.uk/acad/sbtwc

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

[5] Resolution 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

together with the comment that a full list of *draft agreements, arrangements and guidelines* will need to be developed when the Protocol is complete.

3. This Briefing Paper examines the comparable listing of draft agreements, provisions and guidelines specified in the Paris Resolution which established the Preparatory Commission (PrepCom) for the Organisation for the Prohibition of Chemical Weapons (OPCW) and identifies the extent to which these were successfully resolved by the PrepCom. It then considers how the unresolved issues -- which included additional unresolved issues identified by the PrepCom -- have subsequently been addressed by the OPCW. It is concluded that many of the issues which appear to still be unresolved have been resolved de facto, either on an ad-hoc basis with States Parties or by the Technical Secretariat implementing its own approach with tacit acceptance from States Parties.

The Unresolved Issues

4. In addition to a number of organisational and financial matters (in paragraphs 9, 10 and 11), the Paris Resolution also included (in paragraph 12) a list of 23 draft agreements, provisions and guidelines which were to be drafted by the PrepCom for approval by the First Session of the Conference of the States Parties. Of those 23 issues, a total of 10 were indeed resolved by the PrepCom and adopted by the First Session of the Conference. In addition most of the organisational and financial matters in paragraphs 9, 10 and 11 were also resolved by the PrepCom and adopted by the First Session of the Conference.

5. However, 13 issues from paragraph 12 of the Paris Resolution remained unresolved after the First Session of the Conference. In addition, during its four years of deliberations from 1993-97 the PrepCom had elaborated upon some of the remaining 13 issues, splitting them down into separate sub-issues and had also come up with another 46 issues requiring resolution.[6] Only two of these additional issues were resolved by the First Session of the Conference.

6. Despite being burdened by this list of around 60 unresolved issues the OPCW was still able to function from the entry into force of the CWC on 29 April 1997. The PrepCom had provided the basis for a functioning organisation and there was nothing which the OPCW could not do from entry into force, even if only on an ad-hoc basis. States Parties began submitting their initial declarations in May and the Technical Secretariat launched its first inspections in June, while at the same time taking on many extra staff members.

7. The First Session of the Conference adopted a procedure for addressing the remaining unresolved issues[7]. This procedure remained essentially the same until the Fourth Session of the Conference in June/July 1999 when responsibility for resolving the issues passed from the Committee of the Whole to the Executive Council[8].

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[6]These additional issues are detailed in Section 4 Unresolved Issues of Preparatory Commission for the Prohibition of Chemical Weapons, *Final Report of the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons to the First Session of the Conference of States Parties of the Organisation for the Prohibition of Chemical Weapons and to the First Meeting of the Executive Council of the Organisation for the Prohibition of Chemical Weapons*, PC-XVI/37, 15 April 1997. Available at http://www.opcw.org

[7]Organization for the Prohibition of Chemical Weapons, Conference of the States Parties, First Session, 6 - 23 May 1997, *Procedure for Addressing Unresolved Issues During the First Intersessional Period*, C-I/DEC.70.

[8]Organization for the Prohibition of Chemical Weapons, Conference of the States Parties, Fourth Session, 28 June - 2 July 1999, *Procedure for Addressing Unresolved Issues During the Fourth Intersessional Period*, C-IV/DEC.18, 2 July 1999. Available at http:www.opcw.org

8. As shown by the accompanying table, in the three years between the First and Fifth Sessions of the Conference, a large number of the unresolved issues have been successfully resolved, either by the Committee of the Whole, or by the Executive Council. The Third and Fourth Sessions of the Conference (in November 1998 and June/July 1999 respectively) between them resolved more than 10 unresolved issues. It was also decided that some issues no longer required resolution and could be deleted from the list. The references in the column headed "Resolved" in the table indicate the decision resolving the issue by showing the Conference of the States Parties (C-I through C-V) together with the Decision number (DEC) or the Executive Council reference (eg EC-XIX/6). Most, but not all, of the Conference of the States Parties decisions are available on the OPCW website at http://www.opcw.org

9. Analysis of the information in the table demonstrates the impact which the practical experience being gained by the Technical Secretariat and by States Parties had on some of the unresolved issues. It was found that a number of issues which the PrepCom had spent years considering without reaching any consensus, could be quite easily resolved with the benefit of the ongoing implementation of the CWC. This practical experience also has had the effect of demonstrating that the OPCW could function perfectly well without the resolution of some issues and that others had simply been overtaken by events. It appears that some issues were better resolved on the ground during implementation than by diplomats during the preparatory phase.

10. An overall appreciation -- although undue precision should not be ascribed to the individual numbers -- can be gained from the following summary table:

		Issue Resolved						
Issue identified	No	C-I	C-II	C-III	C-IV	C-V	Fixed[#]	Unresolved[*]
Paris Resolution	36	19		1		1	12	3
PrepCom Final Report	46[†]	2	2	4	3	1	10	24
Issues since EIF	10					1	4	5

[#] *De facto* resolution by the Technical Secretariat or by the Executive Council.

[*] Has not been resolved by formal decision of the Conference of the States Parties.

[†] This comprises the 46 further issues identified for resolution by the PrepCom.

Thus, just over half of the Paris Resolution issues had been resolved by the First Session of the Conference and it is also evident that about 40% have been the subject of *de facto* resolution by the Technical Secretariat or have not been the subject of a formal decision by the Conference of the States Parties. Of the further issues identified by the PrepCom about 75% have been the subject of *de facto* resolution by the Technical Secretariat or have not been the subject of a formal decision by the Conference of the States Parties.

11. While the number of original unresolved issues from the PrepCom and Paris Resolution have been steadily whittled down, the accompanying table shows that a number of new issues have arisen during the implementation of the CWC, not all of which could be resolved easily. Interestingly, while many of the issues which the PrepCom was unable to resolved related to chemical weapons, many of the issues which have arisen since entry into force have been related to the chemical industry. These issues arose primarily due to the absence during the first three years of a chemical industry declaration from the USA and the consequential

focusing of the attention of the States Parties on the methodologies for selecting industrial sites for inspection. It is unlikely that all of these issues would have arisen if the US industry declaration had not been delayed.

12. These new issues, together with the remaining unresolved issues, are now being addressed by working groups established under the Executive Council. Other issues which arise during the implementation of the CWC will be addressed by these working groups. The issues are categorized currently into four clusters: chemical weapons; chemical industry and other Article VI; administrative and financial; and legal, organizational and other. Many of the issues which appear to still be unresolved have been resolved de facto, either on an ad-hoc basis with States Parties or by the Technical Secretariat implementing its own approach with tacit acceptance from States Parties.

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TABLE OF UNRESOLVED ISSUES

ARISING FROM

THE PARIS RESOLUTION

THE PREPARATORY COMMISSION

AND

AFTER ENTRY INTO FORCE