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**FROM PAPER TO REALITY: VERIFICATION AND
COST ISSUES**

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Paper presented at the the “Tenth anniversary of the chemical weapons convention: assessment and perspectives”,
Rome, 19 April 2007

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Verification Put to Paper – CWC Provisions on Disarmament and Its Verification

The destruction of all chemical weapons (CW) stockpiles as well as CW production facilities are among the key obligations contained in the Chemical Weapons Convention (CWC). They are mandated by Article I, paragraph 2 and paragraph 4, respectively. In order to allow for the verification of these destruction activities, Article III, paragraph 1 (a) of the CWC requires CW possessor states to *inter alia* declare their CW stockpiles and provide a general plan for destruction. Similar provisions apply to CW production facilities.

Articles IV and V, together with Parts IV (a) and V of the Verification Annex, deal systematically with the rules applying and procedures to be followed by states parties possessing either CW or CW production facilities. Chemical weapons stockpiles must be destroyed and CWPFs must be either destroyed or converted to be used for activities not prohibited under the Convention. Importantly, Articles IV and V provide for on-site inspection and monitoring of all locations at which chemical weapons are stored or destroyed. This provision mandates the OPCW to be present whenever and wherever chemical weapons are being destroyed. Furthermore, the movement and storage of chemical weapons cannot be undertaken without informing the Organization.

According to Article IV, paragraph 6, CW must be destroyed within 10 years of the entry into force (EIF) of the Convention—by 29 April 2007—and this destruction must begin within two years of the Convention entering into force for a given state party. Destruction or conversion activities at CW production facilities must begin within one year of the Convention entering into force for a state party, and be completed within 10 years. On the way towards the total destruction of all CW holdings, intermediate destruction targets are established in Part IV (a), paragraph 17 of the Verification Annex to be achieved three, five and seven years after the CWC's EIF. In case a state party is unable to meet either any of the intermediate destruction deadlines or the 10-year deadline for complete CW destruction, the Verification Annex in Part IV (a), paragraphs 20 to 23 and 24 to 28, respectively, spells out the procedures to be followed for deciding on an extension of the original CW destruction deadlines. In case of complete CW destruction a maximum extension of up to five years—until April 2012—can be granted by the Conference of States Parties of the Organisation for the Prohibition of Chemical Weapons (OPCW).

Lastly, Article IV, paragraph 16 and Article V, paragraph 19 stipulate that the cost of destruction of both CW and CW production facilities, as well as monitoring and inspection must be met by the CW possessor state itself. This is accomplished in part by reimbursing the OPCW for the costs incurred during on-site monitoring and inspections.

CW Destruction and Its Verification in Practice

Teething Problems: Just What is an Inspector's Salary ...

The exact meaning of this latter provision of the Verification Annex was contested during the initial phase of CWC implementation. The bone of contention in this context was the question what exactly constitutes an inspector's salary. Notwithstanding a provisional compromise that was found during the first CSP in May 1997 in the absence of the Russian Federation, the debate on the reimbursable part of an inspector's salary was kept alive during the intersessional period.¹ In order to overcome the impasse during the second session of the Conference, a temporary solution for the 1998 OPCW budget was negotiated - leaving an ever wider margin for Member States' interpretations.²

What became increasingly clear during these debates was the desire of the big CW possessor states to keep the reimbursable part of verification costs for the destruction of CW and CW production facilities as small as possible. Thus, after the second session of the CSP there was considerable concern that the wording agreed to might allow an interpretation by the Russian government that salaries of inspectors do not have to be reimbursed and only the "operational" verification cost would have to be covered. This Russian approach to cost of verification was fully consistent with a distinction introduced by the then Soviet representative to the CD during the negotiation of the CWC. In a statement the budget of the future organization was divided in two categories: administrative expenses which cover personnel, administrative activities, meetings, and the like. Operational expenses, to the contrary are those "expenses required for systematic international verification *on the territory of that State party*".³ According to the compromise that was eventually reached during the ninth meeting of the Executive Council "a daily salary will be calculated by dividing an annual base salary by 365 days;" in competing calculation schemes it was proposed to divide the annual base salary by smaller numbers of actual working days or even working days minus vacation periods and the like. Yet, since these alternative models for calculating the daily salary of an inspector would have resulted in higher figures for reimbursements to the Organization they proved unacceptable to the larger CW possessor states. In a similar vein the Executive Council recommended to the Third Session of the CSP "to include reimbursement for the involvement of members of an inspection team in inspection planning before and inspection report generation after an inspection."⁴ According to the compromise eventually reached, for CW storage and production facilities the inspected states parties will have to reimburse 10 inspector-days in addition to the duration of the inspection and 8 inspector-days for CW destruction facilities. Furthermore, the Council recommended that the CSP task the

¹ See the decision of the First Session of the Conference of State Parties contained in *Decision. Programme and Budget and Working Capital Fund*, document C-I/DEC.73, The Hague, 23 May 1997.

² See the decision of the Second Session of the Conference of State Parties contained in *Decision. Programme and Budget for 1998 and Working Capital Fund*, document C-II/DEC.17, The Hague, 5 December 1997.

³ See the plenary statement of the Soviet representative Nazarkin, reprinted in Document CD/PV.473, Geneva, 11 August 1988, pp.8-12; quote on p.10, emphasis added.

⁴ See the decision of the Executive Council as contained in Document EC-XI/DEC.1 of 4 September 1998.

Technical Secretariat to apply and develop further cost saving methods in its verification activities under Articles IV and V.⁵

In sum, these debates surrounding the organization's miscellaneous income, with particular reference to cost of verification under Articles IV and V of the Convention was occupying the first three Sessions of the Conference of States Parties, the Executive Council and a facilitator in between these CSP sessions. The fact that CW possessor states - from the point of view of other member states - were on the verge of violating the "possessor pays"-principle enshrined in the Convention in relation to the cost of verification for CW destruction related activities did not prevent both the United States and Russia from attempting to keep the reimbursable part of verification costs as small as possible. The less CW possessor states were willing to pay for verification of their CW-related storage and destruction activities, the bigger was the portion of these costs that had to be covered by all States Parties through the regular budget of the Organisation. With the benefit of hindsight and in relation to the overall effort required to destroy all CW stockpiles, the figures being discussed in this context are almost negligible.

Continued Challenges: Growing Numbers, Slipping Deadlines

Initially four states parties—India, Russia, South Korea, and the United States—declared the possession of CW stockpiles, which were stored at 33 locations in the four countries.⁶ These countries have declared a total of nearly 70,000 metric tons of chemical agents and about 8.6 million munitions and containers.⁷ Of these 70,000 tons the Russian federation had declared some 40,000 metric tonnes, the US 28,575 metric tons, India around 1,000 metric tons and South Korea around 600 metric tons. In 2003 the number of CW possessor states increased to 5 when Albania declared in April of that year that it had discovered some 16 tons of CW agents on its territory. In early 2004 Libya acceded to the CWC and became the 6th CW possessor state when it declared possession of 23.62 tons of CW agents.⁸ Due to the late discovery of CW stocks in Albania and the late accession of Libya to the CWC, both states had to apply for an extension of the intermediate destruction deadlines as stipulated in the Verification Annex to the CWC. Such decisions to extend in principle the phase 1, 2, and 3 destruction deadlines were taken by the Conference of States Parties at its Ninth Session in November/December 2004.⁹

⁵ See the decision of the Third Session of the Conference of State Parties contained in *Decision. Cost of Verification Under Articles IV and V*, document C-III/DEC.8, The Hague, 17 November 1998.

⁶ OPCW, *Annual Report 1999*, July 2000, p. 20.

⁷ Mills, "Progress in The Hague: Quarterly Review no. 35," p. 13.

⁸ See John Hart and Shannon N. Kile, 'Libya's renunciation of nuclear, biological and chemical weapons and ballistic missiles' in *SIPRI Yearbook 2005: Armaments, Disarmament and International Security*, Oxford: Oxford University Press, pp.629-648.

⁹ See *Decision. Request by the Libyan Arab Jamahiriya for Extension of the Intermediate Deadlines for the Destruction of Its Category 1 Chemical Weapons Stockpiles*, document C-9/DEC.7, The Hague, 30 November 2004; *Decision. Request by Albania for Extensions of the Intermediate Deadlines for the Destruction of Its Category 1 Chemical Weapons Stockpiles*, document C-9/DEC.8, The Hague, 30 November 2004.

Already well before these requests had to be dealt with, because of a delay in commencing the CW destruction process, the Russian Federation was unable to meet the first intermediate deadline for destroying one percent of its highest-risk (Category 1) chemical weapons stocks three years after the CWC's EIF.¹⁰ In November 1999, as permitted under the Convention, Russia asked the Executive Council to extend the intermediate destruction deadline.¹¹ The Russian Federation argued that although the construction of CW destruction facilities had been impeded by economic difficulties, she intended to meet the next intermediate destruction deadline on 29 April 2002, when 20 percent of the Category 1 chemical weapons had to be destroyed.¹² The Conference of the States Parties, in addition to retaining the 10-year deadline for destruction of the entire stockpile, requested the Russian Federation to submit a revised destruction plan as early as possible. Moscow fulfilled this request in October 2000.¹³ In 2001, the Russian government re-assessed its plan for the destruction of its chemical weapons stockpiles. The plan approved by the Russian government in July 2001 included significant changes, intended in part to comply with conditions set down by the U.S. Congress for the reinstatement of U.S. contributions to the Russian destruction programme. In addition, the plan expected completion of the destruction effort in 2012. The new plan was formally presented to the OPCW Executive Council in September 2001, and, in November, Russia submitted the required request for an extension of both the intermediate and final deadlines for the destruction of its Category 1 chemical weapons. Under the plan, 1 percent will be destroyed by 2003, 20 percent by 2007, 45 percent by 2009, and 100 percent by 2012. The request for the extension of the 1 percent deadline was approved by the Conference of States Parties at its 7th

Session in November 2002, as was the in principle extension of the 20 per cent intermediate deadline.¹⁴ The revised phase 2 deadline was set for 29 April 2007 by the subsequent 8th Session of the Conference of States Parties, which also agreed in principle to extend the 45 and 100 per cent deadlines for destruction of the Russian CW stockpiles.¹⁵ The date for the destruction of 45 per cent of Russian CW stockpiles was set by the 11th Session of the Conference of States Parties for 31 December 2009.¹⁶

It had become clear in the meantime that not only the Russian Federation, but also most other CW possessor states would not be able to meet the April 2007 deadline for the complete destruction of their CW stockpiles. According to one estimate, in late 2006 the US had destroyed somewhat in excess of 40 per cent of its category 1 CW, India around 70 per cent, South Korea more than 80 per cent, and the Russian Federation around 16

¹⁰ The intermediate deadline is specified in paragraph 17 of Part IV (A) of the Verification Annex to the CWC, Document C-V/DEC/CRP.12, May 2, 2000.

¹¹ According to paragraph 22 of Part IV (A). See Document C-V/3, p. 11.

¹² *CBW Conventions Bulletin*, no. 46, December 1999, p. 13.

¹³ Mills, "Progress in The Hague: Quarterly Review no. 32," p. 9.

¹⁴ See *Decision. Request of the Russian Federation for an Extension of the Intermediate and Final Deadlines for the Destruction of its Category 1 Chemical Weapons*, document C-7/DEC.19, The Hague, 11 October 2002.

¹⁵ See *Decision. Extension of the Intermediate and Final Deadlines for the Destruction by the Russian Federation of its Category 1 Chemical Weapons*, document C-8/DEC.13, The Hague, 24 October 2003.

¹⁶ See *Decision. Proposal for a Date for the Completion of Phase 3 of the Destruction by the Russian Federation of its Category 1 Chemical Weapons*, document C-11/DEC.14, The Hague, 8 December 2006.

per cent. This last figure has been somewhat controversial in so far as it relies on an accounting point at the end of first phase of the destruction process – which is the way Russian authorities prefer to account for their progress in CW destruction – and not at its end point – which would be in line with existing facility agreements. However, there seems to be a consensus emerging that the Russian way of accounting for its CW destruction is acceptable, as this is likely to allow Russia to meet the interim deadline for the destruction of 20 per cent of its category 1 CW on 29 April 2007. It also seems that the Russian willingness to accept verification measures for phase 2 destruction activities has been conducive to reaching this consensus. Destruction in Libya has not yet begun. These delays required the extension of the final destruction deadline for practically all CW possessor states. In the case of India, the extension granted calls for all CW stockpiles to be destroyed by 28 April 2009¹⁷, for South Korea the CSP set the deadline at 31 December 2008¹⁸, and for both the Russian Federation and the US the deadline has been set at the latest possible date allowed under the CWC, i.e. 29 April 2012.¹⁹ A similar decision was made for Libya with the deadline set for completion of destruction of its CW arsenal at 31 December 2010. This decision of the Conference also specifies the intermediate deadlines for Libyan CW destruction for earlier in 2010.²⁰ Practically all of these decisions require the CW possessor states to report every 90 days on the progress made in the destruction process, as well as the continued submission of annual plans of destruction and annual reports on the destruction activities on their territories.

In the case of Albania, which at the end of 2006 had destroyed around 20 per cent of its category 1 CW stockpiles, no extension request had been put forward. Here, completion of the destruction process is expected sometime in May or June 2007. However, as it is the prerogative of the Conference of States Parties to decide on such requests and the next Session of the Conference takes

place only towards the end of 2007, such a request would have been overtaken by events, i.e. the completion of CW destruction. Instead, Albania has been found to be in technical non-compliance and was tasked by the Executive Council at its 48th session in March to redress the situation and report back to the Council meeting at the end of June 2007.

¹⁷ See *Decision. Request by India for an Extension of the Deadline for Destroying all of its Category 1 Chemical Weapons*, document C-11/DEC.16, The Hague, 8 December 2006.

¹⁸ See *Decision. Request by a State Party for an Extension of the Final Deadline for Destroying all of its Category 1 Chemical Weapons*, document C-11/DEC.12, The Hague, 8 December 2006.

¹⁹ See *Decision. Request by the United States of America for Establishment of a Revised Date for the Final Deadline for Destroying all of its Category 1 Chemical Weapons*, document C-11/DEC.17, and *Decision. Proposal by the Russian Federation on Setting of a Specific Date for Completion of Destruction of its Stockpiles of Category 1 Chemical Weapons*, document C-11/DEC.18, The Hague, 8 December 2006.

²⁰ For the details see *Decision. Proposal by the Libyan Arab Jamahiriya for the Establishment of Specific Dates for Intermediate Destruction Deadlines, and its Request for an Extension of the Final Deadline for the Destruction of its Category 1 Chemical Weapons*, document C-11/DEC.15, The Hague, 8 December 2006.

Addressing Challenges of Verification and Cost Issues Related to CW Destruction

In addition to the CW destruction activities to be undertaken by CW possessor states and the verification activities to be conducted by the OPCW's Technical Secretariat, the Executive Council has been tasked by the Conference of States Parties at its 11th Session in December 2006 to conduct additional visits in two of the CW possessor states, i.e. the Russian Federation and the United States. In addition, a number of financial support measures have been undertaken by several CWC states parties in the framework of the so-called G8 Global Partnership. The first of these two sets of activities will be briefly discussed in the following section.

Executive Council Activities 2008 – 2012

It is noteworthy that the decision taken by the 11th Session of the Conference of States Parties to conduct visits by representatives of the Executive Council to CW destruction facilities in Russia and the US, or the construction sites of such destruction facilities, heavily emphasize the obligation of those two CWC states parties to complete the destruction of their category 1 CW stockpiles by 29 April 2012 at the latest. This follows similar reminders contained in the abovementioned decisions to extend the final destruction deadline for the US and Russia to the said date and has to be seen in the context of 1) statements by former high-ranking members of the US government, according to which the destruction of US CW stocks might only be two thirds accomplished by 2012 and take several more years to be completed,²¹ and; 2) the fact that the construction of some of the Russian CW destruction facilities is not making the progress that would be required to meet the 2012 deadline. In line with this assessment, the decision stresses the “need for States Parties to take measures to overcome the problems in their chemical weapons destruction programmes”.²²

It also has to be emphasized that these visits are not part of the regular verification system applied by the OPCW's Technical Secretariat. In contrast, the decision document points out that these “visits to consider progress and efforts to meet an extended deadline established in accordance with the provisions of the Convention” are intended as an “additional transparency and confidence building measure”.²³ It is on the basis of such an understanding that the US and the Russian Federation are offering to host such visits beginning in 2008 with a view to having “each relevant facility ... visited at least once during the extension period.” The details of the visits are to be worked out between the Chair of the Executive Council and the State Party concerned, visits are to be carried out in a way that they do not disrupt the destruction activities or their preparations and should “include discussions with senior representatives of relevant government authorities as identified by the State party hosting the visit”.²⁴ The decision by the Conference of States Parties furthermore specifies the composition of the visiting group, requests the drafting of a factual report on each visit – on which the

²¹ See for example the letter by former US Secretary of Defense Donald Rumsfeld quoted in “Rumsfeld: U.S. will miss chemical weapons disposal deadline”, in *Army Times*, 13 April 2006.

²² *Decision. Visits by Representatives of the Executive Council*, document C-11/DEC.20, The Hague, 8 December 2006, p.1.

²³ *Ibid.*, p.2

²⁴ *Ibid.*

State Party hosting the visit is allowed to comment – and addresses the financial implications of the visits.

In sum, this decision sets out to accomplish three goals: first, it serves as an additional reminder to the US and the Russian Federation of their obligation under the Convention to completely destroy their category 1 CW stockpiles by 29 April 2012; second, it allows the OPCW's Executive Council to closely monitor the progress made by these two states in their destruction efforts and thereby to ascertain that all possible efforts are being undertaken to meet the extended deadline. This could thirdly provide the basis for a way out of the dilemma the OPCW will find itself in, should one or both of the States Parties of concern be unable to meet the extended CW destruction deadline in 2012. In such a scenario, and if the remaining time needed to complete the destruction process is measurable in months, not years, this decision and the resulting visits process might serve as the basis for the argument that both the US and Russia have undertaken everything possible to meet the destruction deadline – which can be confirmed by the visits process established – but due to factors beyond their control have been unable to achieve the goal. In such a scenario the state(s) of concern might be found to be in technical non-compliance with the provisions of the CWC and be tasked to redress the situation as quickly as possible.

It needs to be emphasised, though, that this scenario is something most, if not all CWC states parties would like to see avoided. It is for this reason that the monitoring arrangement by the Executive Council has been drawn up in the first place.