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**THE ORGANIZATION FOR THE PROHIBITION
OF CHEMICAL WEAPONS**

by Andrea de Guttry

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1. General Introduction

In the framework of a Treaty on Chemical Weapons (CW), numerous issues are considered highly sensitive. One very delicate problem is the creation of an International Organization. The reasons for the cautious attitude of the States are multiple; suffice it to recall that there are few precedents on the establishment of specific organizations in the field of multilateral disarmament agreements.

One of the most significant examples of the establishment a specific organization can be found in the 1967 Tlatelolco Treaty for the Prohibition of Nuclear Weapons in Latin America. This Treaty created a specific international organization to be known as the Agency for the Prohibition of Nuclear Weapons in Latin America, whose organs are the General Conference, the Council and the Secretariat.

The Agency introduced by the Tlatelolco Treaty represents the first (and, to date, only) precedent of an international organization instituted in the framework of a disarmament treaty and dealing exclusively in this field.

Another example -- although a very peculiar one -- which deserves mention in this context, is the International Atomic Energy Agency (IAEA), which safeguards nuclear material under the Nuclear Non-Proliferation Treaty (NPT).

Other disarmament or similar treaties provide for nothing of the sort or at the most, simply refer to the UN Security Council as the body responsible for initiating investigations. This procedure can be activated by a complaint lodged by a State which has reason to believe that any other Party to the Treaty is acting in breach of an obligation deriving from the provisions of the Convention (see Art. VI of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction, as well as Art. V, para. 3 of the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques).

During the 1980 UN Conference which adopted the texts of the Convention and Protocols on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, an attempt was

made to introduce a specific article on the establishment of a consultative Committee of Experts authorized to verify facts which might constitute violations of the undertaking subscribed to.

This proposal, which was originally introduced by the Federal Republic of Germany and gained support, amongst others, from Italy and the nine members of the EEC, was aimed at strengthening the credibility and the effectiveness of the Convention. Unfortunately it was not adopted by the Conference.

It is in this context that the pertinent rules concerning the institution of an Organization for the Prohibition of Chemical Weapons set down in the draft of a Convention on Chemical Weapons (CCW) must be analyzed.

2. The Conference of the State Parties: Composition and Procedure

According to the Rolling Text of 27 August 1991, the Conference shall be composed of all the States party to the Convention. Each State Party shall have one representative in the Conference, who may be accompanied by alternative delegates and advisors. In any case, each member of the Conference shall have one vote.

In accordance with several proposals submitted to the Conference, the first session of the Conference shall be convened by the Depositary at a venue to be defined not later than 30 days after the entry into force of the Convention on CW. In this regard, it is worth mentioning that the precise definition of the conditions which should exist for the entry into force of the Convention is still being debated.

The Conference is to meet in regular sessions which should be held annually unless otherwise decided. Although bi-annual meetings were proposed during negotiations, annual sessions seem adequate in light of the tasks assigned to the Conference: the General Conference of the IAEA also meets annually, while the General Conference -- the supreme organ of the Agency for the Prohibition of Nuclear Weapons in Latin America -- provided for by the Treaty of Tlatelolco, holds regular sessions every two years.

In any case, special sessions may be convened in addition to the regular sessions: a) when decided by the Conference itself (by a simple majority of the members present and voting) or b) when requested by the Executive Council or c) by any State party to the Convention and supported by one-third of the States parties.

Unless otherwise specified in the request, these special sessions shall be convened not later than 30-45 days after lodgement of the request with the Director-General.

The formulation of para. 8 of Art. VIII pertaining to these special sessions basically reflects the major trends existing in this regard in other international treaties and therefore deserves no further comment. It seems appropriate, however, to stress that there are no formal limits to the agenda of a special session: according to a well-founded interpretation, this means that a special sessions may deal either with exceptional and urgent matters that occurred after the closing of the previous regular session or with special topics which, due to their complexity, must be carefully addressed in an ad hoc meeting.

At the beginning of each regular session the Conference shall elect its chairman and such other officers as may be required. These elected authorities shall remain in office until election of new authorities by the next regular session. In the event of special sessions, the chair will be assigned to the president elected in the last regular session.

2.1. The Decision-making Process

Delicate and controversial, the decision-making process within the Conference has been the subject of long and labourious negotiations.

In fact, the formulation of the pertinent rule, Art. VIII, para. 13 of the Rolling Text raises a number of doubts and may potentially complicate the future functioning of the Convention.

As in other international accords establishing international organizations (such as the UN Charter and the Tlatelolco Treaty), Art. VIII, para.13 distinguishes between matters of procedure and matters of substance. In procedural matters (such as the decision to convene special sessions of the Conference), relevant decisions shall be taken by a simple majority of the members present and voting.

Decisions on matters of substance, on the other hand, should be taken, as far as possible, by consensus. This is particularly important in light of the nature of the subject matter of the Convention, but it must be emphasized that the quest for consensus should not hinder the efficiency and effectiveness of the Organization. According to the article in question:

if consensus is not attainable when an issue comes up for decision, the Chairman shall defer any vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Conference prior to the end of the period. If consensus is not possible at the end of 24 hours, the Conference shall take the decision by a two-thirds majority of members present and voting unless otherwise specified in the Convention.

This time limit on the achievement of consensus is exceedingly important: the 24-hour limit avoids excessive delays in decision making which could have negative repercussions on the effectiveness of the Conference's actions.

However, there is some perplexity about the last part of para. 13 which reads

When the issue arises as to whether the question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Conference by the majority required for decisions on questions of substance.

A literal interpretation of the rule would suggest that in the event of even a single objection or doubt about the nature (procedural or substantial) of the question under discussion, the question will automatically be treated as one of substance (and the voting mechanism described previously applied) unless otherwise decided by the Conference by a two-thirds majority of the members present and voting. Doubts are strengthened by comparison with corresponding rules in the Tlatelolco Treaty, for example. That treaty states that the determination of which question must be decided by a two-thirds majority shall be taken by a simple majority of the members present and voting.

The majority called for by the Rolling Text would make Conference decision making very difficult indeed and would inevitably undermine the credibility and effectiveness of the Conference.

The gravity of the situation is accentuated by the fact that only in a limited number of cases is the procedural nature of a question directly defined by the provisions of the Convention.

2.2. "Internal" Powers and Functions

According to the rules devoted by the draft Convention on CW to the Organization, the Conference of the State Parties is "the principal organ of the Organization".

As a matter of fact, it is among the competences of the Conference to

consider any questions, matters or issues within the scope of the Convention, including those relating to the powers and functions of the Executive Council and the Technical Secretariat. It may make recommendations and take decisions on any questions, matters or issues related to the Convention raised by a State Party or brought to its attention by the Executive Council.

According to para. 15 of Art. VIII

The Conference of the State Parties shall oversee the implementation of the Convention, and act in order to promote its objectives. It shall review compliance with it. It shall also oversee the activities of the Executive Council and the Technical Secretariat and may issue guidelines in accordance with the Convention to either of them in the exercise of their functions.

In addition to those competences, formulated in a rather general way, the Rolling Text assigns additional powers and functions to the Conference. They may be divided into two distinct groups: internal and external. The following functions are included among those of a mainly internal nature:

- a) to consider and adopt at its regular sessions the reports of the Organization, consider other reports and consider and adopt the programme and budget of the Organization submitted by the Executive Council (the budget and financial matters generally will be discussed in more detail in para. 5).
- b) to elect the members of the Executive Council
- c) to appoint the Director-General of the Technical Secretariat
- d) to approve rules of Procedure of the Executive Council submitted by the latter
- e) to establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with the Convention.

2.3. The "External Powers"

The external powers and functions of the Conference are very important and include encouraging and promoting "international cooperation for peaceful purposes in the field of chemical activities" and concluding agreements with States and international organizations.

The significance of the first provision lies in its recognition of the importance of chemical production for peaceful purposes; there is widespread concern that chemical production could be negatively affected by increasingly strict controls carried out in the framework of CCW.

The need to safeguard and not interfere with "civilian" production of chemical products is reasserted in both the Preamble which states that "the achievements in the field of chemistry should be used exclusively for the benefit of mankind" and in Art. VI, which establishes that

each State Party "has the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and precursors for purposes not prohibited under the Convention".

But Art. XI is also pertinent in this regard:

The provisions of this Convention shall be implemented in a manner designed, in so far as is possible, to avoid hampering the economic or technological development of Parties to the Convention and international cooperation in the field of peaceful chemical activities including the international exchange of scientific and technical information and chemicals and equipment for the production, processing or use of chemicals for peaceful purposes in accordance with the provisions of the Convention.

As for the second function -- concluding agreements with States and international organizations -- these accords will be signed on behalf of the Organization by the Executive Council subject to approval by the Conference of the State Parties.

Such accords may be entered into with other international organizations (for example, those concerned with similar problems, above all, the United Nations, to improve exercise of its responsibilities) as well as with single States (both with non-members -- in order to extend to them some forms of control over chemical productions -- and with members -- in order to conclude a seat agreement).

In both cases, the activity of the Organization for the Prohibition of Chemical Weapons will be very important in providing the all-important liaison among the bodies operating in the disarmament sector needed to achieve significant results.

3. The Executive Council: Composition and Decision Making

The question of the size, the composition, the allocation of seats and the decision-making process within the Executive Council continues to be highly controversial.

A clear picture of the different ideas on the table is reproduced in Appendix II to CD/1108 (p.108) in the document "Outcome of the 1989 Open-ended Consultations on the Executive Council". It may be worth recalling that during the 1990 session, the Chairman of the Ad Hoc Committee carried out open-ended consultations on the composition and decision-making process of the Executive Council, as well as on its powers and functions. During the 1991 session, the Chairman of the Ad Hoc Committee continued consultations on these issues. Before making a detailed analysis of the various proposals, one consideration must be made: in working out the final rules for the functioning of the Executive Council, due account must be taken of its delicate role as the permanent organ of the Convention. Thus, the rules must provide for rapid and effective action by it.

The following points are currently under discussion: **a)** the size, **b)** the composition, **c)** the allocation of seats, and **d)** the decision making process within the Executive Council.

a) Size

As far as the size is concerned, there are indications that would suggest that the Executive Council shall be composed of about 25 States parties (actually, the proposals

formulated by individual States provide for 15-35 members), which would be elected for a period of three years, with one third of the members being elected annually.

The discussion regarding the extent of membership of the EC is not merely a theoretical debate and should not be considered as such. It involves two requirements that are not easily reconcilable: on one hand, the need to ensure that the EC may act rapidly and effectively (which would tend to keep the number of its members relatively low); on the other hand, the need to guarantee adequate representation in the EC (which would entail a wider membership).

Considering previous experience with Treaties of a similar nature, it would seem that the proposed membership of 25 would constitute a good compromise between the two opposing requirements, both of which merit attention. This would be the case if the Treaty were to be ratified by a significant number of States.

As regards the chairmanship of the EC, there is still no agreement. Proposals include monthly rotation; election for a specified term by the EC or by the Conference of the States Parties (CSP); service by the chairman of the CSP as a non-voting chairman of the EC.

These proposals will not be dealt with here as they do not have, or at least do not appear to have, much effect on issues of substance. It will suffice to point out that since the EC has quite specific functions, interests and equilibria which reflect its composition (as will be discussed further in the following sections) it would be desirable that the nomination of the EC chairman be made without interference from other differently composed organs, as this could jeopardize precarious equilibria.

b) Composition

In general terms, assuming the principle stands that each State party is eligible to serve on the Executive Council, trends would indicate that its composition

"1) shall be based on the representation of the five regional groups of the United Nations;

b) and on/the national capacity in the relevant/chemical industry/ and on /the political factor".

Summarized this way, the proposal would seem, at least at a theoretical level, to be appropriate for ensuring that the Executive Council be highly representative and, therefore, authoritative.

The geopolitical criterion and reference to national chemical industries undoubtedly constitute important points in the present analysis. In the light of recent international events, however, it would not seem entirely out of place to raise the issue of whether it is in fact still possible to distinguish as many as five regional groups.

c) Allocation of seats

Assuming the fundamental decision outlined in the preceding paragraph stands, several concrete proposals have been put forth for the allocation of seats in the EC.

For the purposes of the present analysis, these proposals will not be discussed in detail; rather, it should be noted that they do not lead to very different results, with the exception of the proposal which provides for the allocations of seats to the five permanent members of the UN Security Council with the remaining seats allocated equally among the five regional groups. But it does not seem that this proposal would have any real chances of being carried through, considering, among other things, the criticism that has long been raised regarding the specific and particular composition of the Security Council.

d) Decision making

The decision making process is of course the most delicate aspect of the mechanism as a whole. While there is now full agreement that each member of the EC shall have one vote, a clear understanding has not yet been reached on the specific rules governing the right to vote and the majority required for adoption of a given act by the EC.

Nevertheless, it would seem that a trend is emerging that could well constitute the core of a definitive solution.

Essentially, the voting procedures that are to characterize the decision making process in the Conference of the States Parties would also apply to the EC.

That is, a distinction is made between matters of procedure and matters of substance. In the case of the former, decisions would be taken on the basis of a simple majority; questions of substance would require consensus, and if consensus were not reached within a specified number of hours, then majority voting would apply (a 2/3 majority?).

The proposed solution would seem to constitute an acceptable compromise between those (e.g. the USSR) who have a strong preference for consensus and those (e.g. the US and Western States in general) which have expressed a clear preference for majority voting. In the current climate, consensus alone does not seem to be a realistic option; in fact, it could seriously undermine the degree of efficiency of the functioning of the EC, with consequences that would be all but positive in a sector as sensitive as chemical disarmament. In conclusion, it is also worth mentioning the possibility of introducing an *ad hoc* rule that would apply to the issue of determining the type of majority voting required when the issue arises as to whether the question is one of substance or not.

With reference to the Conference of States Parties, this is addressed by Article 18, paragraph 3 which states that a question shall be treated as one of substance unless otherwise decided by the Conference by the majority required for decisions on questions of substance.

A similar rule, which has been discussed elsewhere in this paper, could be adapted to the decision making process in the EC.

3.1. Powers and Functions

The Executive Council has been conceived as the executive organ of the Conference to which it shall be responsible. This is of great importance because it sets up a precise inter-institutional relationship among the various bodies of the Organization. The peculiar nature of this relationship must be taken into account in examining the tasks assigned to the various bodies and in tracing internal relations.

The functions of the Executive Council can also be divided into two groups: on the one hand are the powers and functions directly predetermined by the Rolling Text, while on the other are the functions delegated to it by the Conference of the State Parties.

Given its almost permanent nature, it is likely that the Executive Council will frequently be charged with specific functions by the Conference. The Executive Council is required "to act in conformity with the recommendations, decisions and guidelines of the Conference and to assure their continuous and proper implementation.

In other words, whenever functions are delegated to the Executive Council by the

Conference, they must be accompanied by precise indications on the principles and guiding criteria to be observed by the Executive Council in carrying out its mandate (more on this in para.7).

The functions directly assigned to the Executive Council by the Rolling Text include those at Art. VIII, para. 20.

- a) Promote the effective implementation of, and compliance with, the Convention;
- b) Supervise the activities of the Technical Secretariat;
- c) Cooperate with the appropriate national authorities of State Parties and facilitate consultations and cooperation among State Parties at their request;
- d) Consider any issue or matter within its competence, affecting the Convention and its implementation, including concerns regarding compliance, and cases of non-compliance, and, as appropriate, inform State Parties and bring the issue or matter to the attention of the State Parties; etc.

The tasks assigned the Executive Council in Art. VIII, para.20 substantially correspond to those assigned similar bodies established by agreements resembling those in question (see, for example, the competences assigned the Council by the Tlatelolco Treaty or those assigned the Board of Governors by the IAEA Statute).

Two aspects characterizing the activity of the Executive Council must be underlined here.

First, its general role in promoting the effective implementation of, and compliance with, the Convention. As will be shown elsewhere, the Executive Council is entrusted with specific powers for prompt denunciation to the Conference of the State Parties and to the whole international community of every case of non-compliance with the Convention. As the Executive Council is a so-called "permanent body", it should be able to promptly assure the effective implementation of the Convention.

Second, the Executive Council's competence to conclude agreements with States and international organizations on behalf of the Organization. Although this power will be carried out "subject to approval by the Conference of the State Parties," it is significant that this task has been assigned to the Executive Council. It is felt that the permanent nature of the Executive Council makes it the most suited to carrying out the delicate (and often lengthy) task of negotiating international agreements.

4. The Technical Secretariat: Competences and Powers

In addition to the Conference of the State Parties (defined as "the principal organ of the Conference") and the Executive Council (which is, as mentioned, "the executive organ of the Conference"), the Rolling Text provides for the establishment of a Technical Secretariat (hereinafter referred to as TS) to assist the Conference and the Executive Council in the performance of their functions.

The TS shall carry out the functions entrusted to it under the Convention and its Annexes, as well as such functions assigned to it by the Conference or by the Executive Council. The powers and functions of the TS are listed in para. 23 of Art. VIII of the Rolling Text.

In addition to the functions of support of the activities of the Conference, the Executive

Council and the single Member States, the TS is also responsible for carrying out international verification measures provided for in the Convention.

Since the verification procedure is examined thoroughly in other papers, it may suffice to recall here that this task of verification should be carried out by the Inspectorate which is a unit of the TS and shall act under the supervision of the Director-General of the TS.

At this point the hierarchy of internal relations can be summarized: the activity of the Inspectorate is subject to the supervision of the Director-General of the TS, who is, in turn, responsible to the Conference of the Party States and the Executive Council. The latter supervises the activities of the TS, but is also responsible to the Conference which is, as previously mentioned, charged with overseeing "the activities of the Executive Council".

This rather clear definition of the hierarchy of internal relations will undoubtedly prevent internal conflicts which could easily arise given the relatively large number of organs instituted by the Convention on CW.

4.1. The Staff of the Technical Secretariat with Special Reference to its International Status

"The Technical Secretariat shall comprise a Director-General, who shall be its head and chief administrative officer, and inspectors and such scientific, technical and other personnel as may be required.

In the most recent version of the Rolling Text (27 August 1991), the various delegations were finally able to come to an agreement on the procedure for appointing the Director General of the TS.

According to paragraph 26 of Article VIII, the DG shall be appointed by the Conference of the States Parties, upon the recommendation of the Executive Council.

The majority required is that laid down by paragraph 13: consensus, or, if no consensus were reached within a period of 24 hours, a two-thirds majority of present and voting members. The procedure for nominating the Director General formulated in the course of the work of the Ad Hoc Committee on Chemical Weapons essentially follows the procedure for electing the Secretary General of the United Nations (according to art. 17 of the UN Charter, the SG is appointed by the General Assembly on nomination by the Security Council) and the appointment of the Director General of the IAEA (art. VII of the IAEA Statute, "The Director General shall be appointed by the Board of Governors with the approval of the General Conference").

Aside from these similarities with the electoral procedures tested by other international agreements, it is worth noting that it is rather surprising that it was possible to reach an agreement on the electoral procedure for the Director General in the absence of an agreement on the composition of the Executive Council, i.e. the body having a decisive role in the nomination of the DG of the TS. It should be kept in mind, in fact, that in the preceding Rolling Text (18 January 1991), the proposals regarding the nomination of the DG differed significantly. Thus the posture of the various States on this point may be further evidence that (as has been discussed in depth earlier in this paper) a solution is slowly taking shape also for the composition and voting procedure in the EC.

Finally, as regards the term of office of the DG, a period of 4 years has been recommended, with the possibility of renewal once. The term of office also corresponds to that

of the DG of the IAEA, as well as to that of the General Secretary provided for by the 1967 Treaty of Tlatelolco.

According to Art. VIII, para.26, it follows that the Director-General will be responsible to the Conference of the Party States and to the Executive Council for the appointment of the staff and for the organization and functioning of the TS.

The Director-General is subject to the precise limits laid down in the Convention in the appointment of the staff. According to Part 2 of para. 26 of Art. VIII

The paramount consideration in the employment of the staff and in the determination of the conditions of services shall be the necessity of securing the highest standards of efficiency, competence and integrity. Only citizens of State Parties shall serve as inspectors or as other members of the professional and clerical staff. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. Recruitment shall be guided by the principle that the staff shall be kept to a minimum necessary for the proper execution of its responsibilities.

The rules are formulated in identical or similar terms in numerous accords instituting international organizations. This consideration also applies to the provisions of para. 28 and 29 which state that

In the performance of their duties, the Director-General of the Technical Secretariat, the inspectors and other members of the staff shall not seek or receive instructions from any Government or from any other source external to the Organization. They shall refrain from any action which might reflect on their position as international officers responsible only to the Conference of the State Parties and the Executive Council;

and

Each State shall undertake to respect the exclusively international character of the responsibilities of the Director-General of the Technical Secretariat, the inspectors and the other members of the staff and not seek to influence them in the discharge of their responsibilities.

The Director-General of the TS is also responsible for the organization and functioning of the Scientific Advisory Board. The Director-General shall

in consultation with State Parties, appoint members of the Scientific Advisory Board who shall serve in their individual capacity. The members of the Board shall be appointed on the basis of their expertise in the particular scientific fields relevant to the implementation of the Convention. The Director-General may also, as appropriate, in consultation with members of the Board, establish temporary working groups of scientific experts to provide recommendations on specific issues. In regard to the above, State Parties may submit lists of experts to the Director-General.

The competences of the Scientific Advisory Board will be described in greater detail in para. 8.

It immediately becomes evident from the articles of the Rolling Text listed above that there are no specific rules on the status of the components of the staff of the TS. This is rather surprising since a brief comparison shows that ad hoc rules are codified in almost all accords with similar contents.

For example, after reiterating that the IAEA "shall enjoy in the territory of each member such legal capacity and such privileges and immunities as are necessary for the exercise of its functions", Art. XV, para. B of the IAEA Statute states that

the Director-General and the staff of the agency shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the agency.

The lack of a rule of this kind -- no matter how general -- is perplexing, as it would provide the organization with an invaluable instrument with which to carry out its institutional functions.

At least three considerations attenuate these perplexities: First, the Protocol on Inspection Procedures which is meant to integrate the provisions set down in the CCW contains a detailed list of the immunities and privileges which inspectors and inspection assistants are granted.

Inspection Teams definitely require special international protection in order to be able to perform their tasks scrupulously and without hindrance: the provisions set down in the Protocol on Inspection Procedures ensure optimal working conditions and autonomy. Thus, at least a part of the TS staff -- precisely the part integrating the Inspectorate -- enjoys both the immunity and the privileges demanded by their responsibilities and needs.

Second, it is very likely that as soon as the CCW enters into force, the Executive Council, with the support and approval of the Conference will conclude a special multilateral agreement on the status, the privileges and the immunities of the Organization for the Prohibition of Chemical Weapons which should include rules dealing specifically with the status of the staff of the Organization itself.

Third, the widespread conviction that there are now rules of international customary law safeguarding the status of international officials should not be underestimated. These rules are believed to ensure minimum treatment of members of the staff of international organizations, allowing them to go about their work unhindered. More specific and detailed rules disciplining the status of international officials are indeed needed.

While having attempted to minimize the lack of explicit provisions on the status of officials of the Organization (as well as the Organization itself), it can only be hoped that specific rules -- perhaps of a general character -- will be inserted during the course of the negotiations. Such rules could provide a starting point for a subsequent multilateral treaty on the status, the privileges and the immunities of the Organization for the Prohibition of Chemical Weapons and of its staff.

5. The Budget of the Organization and the Distribution of Costs

Special attention must be given to the procedure for the adoption of the budget; participant States were long divided on this question. The question of the financing of the activities of the nascent Organization was the subject of heated debate after numerous demands for maximum transparency and clarity were voiced.

For the moment, the Rolling Text addresses two groups of problems: the first contains the rules for the examination and adoption of the budget; the second includes the decisions on the scale of financial contribution to be paid by the State Parties.

For the adoption of the Organization's budget, the current version of the Rolling Text introduces a mechanism that is quite complex and could potentially lead to irreconcilable conflicts among the various bodies involved in the procedure.

According to the Rolling Text, budget examination and adoption is undertaken by the TS as part of its tasks to "prepare and submit to the Executive Council the ... budget of the Organization". The Executive Council shall in turn "consider and submit to the Conference of the State Parties the ... budget of the Organization".

As seen, the procedure terminates with the Conference of the State Parties which has the responsibility of considering and adopting the budget of the Organization.

This mechanism raises a number of doubts: first, it is quite unusual that three separate bodies are involved in drawing up the budget. But even more unusual is the fact that the roles, competences and relations among these bodies are not specified. What would happen if the Executive Council were to want to change the budget draft presented by the Technical Secretariat? Would it have to come to an agreement on the changes with the latter? And what would happen if the Conference of the State Parties should decide on a drastic revision of the draft submitted by the Executive Council? If the Conference were given almost unlimited power along those lines, what value would the preparatory/preliminary work of the TS and the Executive Council have?

Such perplexities are made more pronounced and less abstract by comparison with the procedures for budget approval set down in similar accords.

It becomes clear from such comparison that more practical and rational procedures exist. For example, the Tlatelolco Treaty assigns the task of adopting the Agency's budget exclusively to the General Conference. This does not prohibit the General Conference from requesting, should it see fit, the collaboration of the Council or the Secretariat for the drafting of the budget, making best use of their respective experiences and knowledge; but what must be emphasized is that the only organ competent for adoption of the budget is the General Conference.

The budget procedure outlined in Art XIV of the Statute of the IAEA is slightly more complex:

The Board of Governors shall submit to the General Conference the annual budget estimates for the expenses of the agency. To facilitate the work of the Board in this regard, the Director-General shall initially prepare the budget estimates. If the General Conference does not approve the estimates, it shall return them together with its recommendations to the Board. The Board shall then submit further estimates to the General Conference for its approval.

More than one organ is involved in drafting the budget in this case, but the point is that competences and inter-organ relations are regulated in a detailed manner to prevent conflicts that could hamper the correct and regular functioning of the Organization.

Comparative examination of the pertinent provisions in other agreements confirms the need to introduce more specific rules on the procedure for adoption of the budget of the Organization for the Prohibition of Chemical Weapons during the course of the negotiations in the Ad Hoc Committee on Chemical Weapons.

As for the distribution of the costs of the Organization among member states, decisions "on the scale of financial contribution to be paid by State Parties" are among the competences of the Conference of the State Parties.

As a matter of fact, in the discussion on principles and guidelines for the distribution of the Organization's costs among the State Parties, several options have been mentioned. These proposals and ideas have been summarized in the Annex on Financial Aspects of the Organization reproduced in Appendix II, p.201 to the Rolling Text.

This Annex also summarizes a series of general ideas raised in the discussion. As those ideas are formulated in general terms, they need not be commented here.

6. Measures to Redress a Situation and to Ensure Compliance

In an agreement on prohibition of Chemical Weapons, as in any international agreement on disarmament, the instruments available to the Organization to ensure compliance with conventional obligations and to react in the event of breach are of decisive importance.

Thus, a short review of the measures (including sanctions) available to the Organization for the Prohibition of CW to redress a situation and to ensure compliance, is in order.

Various reactions can be envisaged, depending on the specific nature of the breach. Two organs have the competence to adopt measures: the Conference and the Executive Council. Their specific competences in this respect differ appreciably, but may be considered complementary and directly aimed at ensuring a prompt and determined reaction.

The first step is taken when the Executive Council has doubts or concerns regarding compliance and cases of non-compliance, including *inter alia*, the abuse of rights provided for by the Convention. In such cases,

the Executive Council shall consult with the State Parties involved and, as appropriate, request the State Party to take measures to redress the situation within a specified time. To the extent that the Executive Council considers further action to be necessary, it shall take, *inter alia*, one or more of the following measures:

- i) inform all State Parties of the issues;
- ii) bring the issue to the attention of the Conference of the State Parties;
- iii) make recommendations to the Conference of the State Parties regarding measures to redress the situation and to ensure compliance.

The formulation of these rules clearly shows that there is no binding scale of reactions by the Executive Council: the latter is free to adopt the measure(s) considered adequate and effective in each case.

In cases of particular gravity and urgency, the Executive Council shall bring the issue, including relevant information and conclusions, directly to the attention of the United Nations General Assembly and the United Nations Security Council. It shall at the same time inform all

State Parties of this step.

The aim of these measures is to bring the State in question face to face with its responsibilities in front of the international community in order to put pressure on it and induce it to conform to its incumbent conventional obligations.

The decision to bring the behaviour of a State to the attention of the Security Council could activate the latter if the SC itself feels that the situation constitutes a threat to international peace and security.

Moreover, measures against non-compliant States may also be taken by the Conference of the State Parties in order to ensure compliance with the Convention and to redress and remedy any situation which contravenes the provisions of the Convention.

The steps that the Conference can take against a non-compliant State are graded to the nature of the State's behaviour and are normally complementary to those deliberated by the Executive Council. Above all,

in cases where a State Party has been requested to take measures to redress a situation raising problems with regard to its compliance and where the State Party fails to fulfil the request within the specified time, the Conference of the States Parties may, *inter alia*, restrict or suspend the State Party's rights and privileges under the Convention until it undertakes the necessary action to conform with its obligations under the Convention.

A final consideration is in order in this regard: as the suspension procedure lies in the field of competence of the Conference of the State Parties which meets regularly once a year, decision making could be delayed excessively with respect to the violation.

This consideration must be assessed in light of the measures discretionally undertaken by the Executive Council to redress a situation and to ensure compliance. The Executive Council, which shall meet as often as may be required for the fulfillment of its functions, may in a very short time adopt a series of significant measures against the transgressor State. These will constitute a first, rapid reaction by the Organization to redress a situation and to ensure compliance.

In cases where serious damages to the objectives and purposes of the Convention may result from actions prohibited by the Convention, "the Conference of the States Parties may recommend collective measures to States Parties in conformity with international law."

This provision undoubtedly constitutes an important innovation for guaranteeing compliance with the Convention.

While a detailed examination of the controversial issue of measures and sanctions to be adopted against non-compliant States is beyond the scope of this paper, several particularly significant aspects of the regulations laid down in the Rolling Text, Art. XII, para.3 merit attention as they are without precedents in previous multilateral arms regulations and disarmament agreements.

First, the collective measures may only be recommended by the CSP; it follows that the State Parties will continue to enjoy considerable discretion as regards the adoption of the measures recommended by the CSP.

This discretionary power, which could lead to the adoption of measures against transgressors by some States but not by others, undoubtedly risks undermining the credibility of

the Organization's activities and its efforts to guarantee compliance with its regulations.

Second, the body charged with adopting a given recommendation is the CPS. Given that the CPS is scheduled to meet only once a year, it may be worth considering whether it would be more useful to give the EC the competence for making such recommendations, as it is scheduled to meet more often.

It should also be pointed out, however, that the adoption of sanctions constitutes the final step in a series of measures undertaken to urge a non-compliant State to fulfill its international obligations. It follows that under normal circumstances, annual meetings of the body charged with the adoption of sanctions should not present major difficulties with respect to the issue examined here.

Finally, it must be mentioned that in paragraph 3 of art. XII it is explicitly stated that the adoption of collective measures must be made "in conformity with international law."

This expression is problematic for several reasons: In general terms, collective measures (at least the more effective ones) will inevitably constitute actions which in the abstract would involve a violation of international law. It would seem quite evident that the provision examined here is not meant to exclude national measures of this type (which, as indicated, are generally the most effective).

In order to interpret the expression in question correctly, it is necessary to analyze the issue within the more general context of so-called sanctions in international law. As is well known, there has recently been considerable evolution in the doctrine this point. In brief, in light of recent practice "sanctions" may be considered "in conformity with international law" if they are adopted by an international organization against a State party in conformity with the Statute of said organization, or, alternatively, if prior attempts are made to resolve the issue using peaceful means provided that:

- a) the principle of proportionality is respected;
- b) the measures are not contrary to cogent or erga omnes rules;
- c) the measures are revoked once the objective is reached of prevailing upon a State to fulfill its international obligations.

In conclusion, the set of measures that can be adopted in the framework of the Organization against non-compliant States seems sufficiently effective and the division of competences between the Executive Council and the Conference seems rational and offers the Organization for the Prohibition of Chemical Weapons an acceptable level of effectiveness. The question of the possible reaction of individual States against the non-compliant State continues to be an open question.

7. The Nature and the Characteristics of the Acts Adopted by the Organization

Although no specific classification of the acts which can be adopted by the Organization exists, a systematic reading of the rules in the Rolling Text reveals that they can be a) decisions, b) recommendations or c) guidelines.

a) Decisions

The decisions are binding acts that the Conference of the State Parties adopts by means of the procedure outlined above.

According to para. 14 of Article VIII, the Conference may take decisions on any questions, matters or issues related to the Convention raised by a State Party or brought to its attention by the Executive Council.

This means that in matters or issues related to the Convention the Conference is not constrained in any way in its decision making. Decisions may pertain to the internal functioning of the Organization as well as to its external relations and relations between the Organization and the member States.

b) Recommendations

The Conference of the State Parties is empowered to make recommendations whenever it can take decisions on any questions, matters, issues related to the Convention.

The voting procedure for recommendations -- which are by definition not binding -- raises some doubts from a strictly formal point of view. As mentioned elsewhere, the rules pertain exclusively to the procedure for adoption of decisions; no mention is made of recommendations.

How can this situation be remedied?

As there are no specific provisions for the kind of majority required for the adoption of recommendations, the voting procedure for the adoption of decisions must inevitably apply: recommendations shall be adopted with the same majority required for decisions.

There seems to be some formal support for this: the title of the section of Art. VII pertaining to the Conference of the States Parties is "Composition , procedure and decision-making". This would suggest that the rules for the decision-making process are valid for all types of actions taken by the Conference of the States Parties.

In any case, different regulations for this specific aspect could be introduced into the Rules of Procedure which the Conference of the State Parties is supposed to adopt: in order to facilitate the decision-making process within the Organization and since recommendations do not have a binding effect, the voting majorities required for their adoption could be lower than those required for decisions.

c) Guidelines

According to Art.8, para. 15 of the Rolling Text, in carrying out its duty to oversee the activities of the Executive Council and the Technical Secretariat, the Conference of the State Parties "may issue guidelines in accordance with the Convention to either of them in the exercise of their functions.

According to para.19 of Art. VIII, in carrying out the duties assigned to it by the Convention, the Executive Council "shall act in conformity with ... the guidelines of the Conference of the State Parties and assure the continuous and proper implementation".

It is clear that guidelines are deliberations that are directed at and effective within the Organization; they are aimed at defining the limits, principles and criteria underlying the activity in a certain sector of the Executive Council and the Technical Secretariat. Normally, but not always, those guidelines shall be worked out by the Conference of the State Parties contemporaneously with the decision to delegate tasks or functions to the Executive Council.

The same problem exists for the voting procedure of guidelines as for that of recommendations. In the absence of specific rules and unless such are introduced into the Rules of Procedure, the voting majority required for adoption of guidelines will be the same as the one

required for the adoption of decisions.

8. The Review System

The continuous scientific and technical up-dating of the provisions of a Convention on Chemical Weapons is of fundamental importance in ensuring the efficacy and the operativity of the Convention and in avoiding the risk of obsolescence by technological innovation.

To this end, Art. VIII, para. 16 c) of the Rolling Text establishes that the following are among the powers and functions of the Conference of the State Parties:

To review scientific and technological developments which could affect the operation of the Convention and, in this context, direct the Director-General to establish a Scientific Advisory Board to enable him, in the performance of their functions, to render the Conference of the State Parties, the Executive Council or State Parties independent and specialized advice in areas of science and technology relevant to the Convention.

The importance of this Scientific Advisory Board in the broader context of chemical disarmament is self evident and need not be discussed further here.

According to Art. VIII, para. 17,

The Conference of the State Parties shall, after expiry of five and ten years from entry into force of this Convention and at such other times within that time period as may be agreed on, meet in special sessions to undertake reviews of the operation of this Convention. Such reviews shall take into account any relevant scientific and technological development. At intervals of five years thereafter, unless otherwise agreed upon by a majority of the State Parties, further sessions of the Conference of the State Parties shall be convened with the same objective.

The purpose of these rules seems evident i.e. to guarantee continued re-examination of the Convention, particularly its technical annexes, to ensure that it is always current. Such re-examination, intended also as a means of verification of the efficacy of the Convention as a whole (which is required at least every five years) should allow for a better identification of those sections of the Convention that most urgently must be revised or amended.

The special sessions of the Conference of the States parties designated to undertake reviews of the operation of the Convention must, therefore, also contribute to the general overseeing of the efficacy of the Convention, identifying weaknesses and proposing amendments.

9. The amendment of the Convention: general remarks

The amendment procedure is governed by art. XIV of the Convention. This section regulates two distinct processes: the amendment procedure and the simplified amendment procedure.

The ratio underlying this distinction is certainly valid, i.e. the provision of a preferential

(and therefore less time-consuming) procedure for effecting changes in rules of a strictly technical nature. This would ensure that regulations keep pace as much as possible with scientific and technological developments. It is evident that the field of chemical research is continually evolving; therefore it is absolutely essential to provide specific instruments for the constant updating up regulations so as to prevent lacunae legis which would make it difficult if not impossible to attain the objectives set out in the Convention on Chemical Weapons.

9.1. The simplified amendment procedure

In order to ensure that Convention regulations are constantly in line with developments in chemical research, a simplified amendment procedure has been introduced regarding

- a) schedules (as specified in the Annex on Chemicals);
- b) guidelines (as specified in the Annex on Chemicals).

At this point, it is useful to examine the procedure for this type of amendment.

A proposed amendment may certainly be put forth by the Executive Council (cf. Art. XIV, para 5e); in light of the current provisions of the Rolling Text, however, there is some doubt about the possibility that any State Party may do the same.

The uncertainty surrounding the subjective competence of States regarding the proposal of such amendments stems from what is perhaps not yet the definitive formulation of Art XIV, para. 1 of which in fact seems to exclude the possibility of individual States initiating the simplified amendment procedure. In our view, however, States should not be prevented from having competence in this area. While we would agree that States should not have sole competence, it would not seem realistic or useful to prevent them from initiating the simplified amendment procedure (it is ultimately in their immediate interest to ensure that regulations are in line with scientific developments).

That the text of art. XIV, para. 1 should not be considered definitive is supported by the fact that the EC (as will be seen in the following sections) has the task of recommending that the States accept or reject a proposed amendment: if it really were the case that only the EC could propose amendments, it is difficult to understand how it could recommend that the States reject one of its own proposals.

In this context it would seem useful and desirable to extend the possibility of initiating the amendment procedure to other institutions of the Convention on Chemical Weapons (e.g. to the TS or to the Director General of the TS). This would ensure optimal conditions for achieving the objectives of the simplified amendment procedure.

Aside from the subjective competence for initiating amendments, it is worth pointing out that they "shall be transmitted together with the necessary information to the Director General of the TS".

Each State Party and the DG of the TS may present any additional information that they deem necessary for the complete evaluation of the proposal under consideration.

The DG of the TS shall promptly communicate any such proposals and, as well, any additional information collected, to all States Parties and to the Executive Council.

The latter, in particular, not later than 90 days after its receipt, shall notify its recommendations to all States Parties for consideration.

The EC, in this context, may alternatively recommend that the States adopt or reject the proposed amendment.

In the former case, the proposed amendment is to be considered approved if a specified number of States (as yet to be determined) do not object to it within 90 days. Thus, no response by a State is taken as a tacit approval of the amendment in question. If the EC proposal is not accepted, it will be the task of the subsequent Conference of the States Parties to take a decision on the proposal. This will inevitably require the application of the procedural rules for decisions on matters of substance: that is, the amendment will be approved by consensus, or alternatively, by a two-thirds majority of the present and voting members. Evidently, this procedure makes adoption of amendments more laborious.

If, on the other hand, the EC recommends that the proposal be rejected, it shall be considered rejected if no more than (...) States Parties object to the rejection not later than 90 days after receipt of the recommendation.

In this case, then, unlike that discussed above, a lack of response by the States Parties implies tacit rejection of the proposal.

To conclude, it must be recalled that an approved amendment (following either the simplified procedure or a qualified majority vote in the Conference of the States Parties) will come into force for all States Parties 60 days after the date of its notification by the DG unless otherwise recommended by the Executive Council or decided by the Conference of the States Parties.

This rule is provided for in other agreements (see articles 108 and 109 of the UN Charter) and in the past has been at issue as it constitutes a departure from the traditional principle pacta tertiis nec nocent nec prosunt and, in more general terms, from the classical principle of international law according to which the modification of a treaty may be effected only with the consensus of all States Parties (Conforti, Le NU, p.17).

The extent of this derogation may, at least in the case in question here, be partially mitigated by the fact that if a State deems that the content of an amendment is acceptable, but at the same time deems that it has "jeopardized the supreme interests of its country", it has the right to withdraw from the Convention. This possibility is explicitly provided for in art. XV of the Rolling Text.

In sum, the essentially positive assessment that has been made of this simplified procedure seems acceptable. While it constitutes an unusual precedent in certain respects, the rules that have been set forth do in fact allow for the fulfillment of the underlying objectives, i.e. to ensure the rapid conformity of the rules under the Convention to chemical and technological developments.

9.2. The normal amendment procedure

The "normal" amendment procedure differs from the simplified procedure in several ways: first, in the institution that may initiate the internal procedure; second, in the procedural rules that it involves; finally, in the object of the procedure.

This amendment procedure may be initiated by the submission of a proposed amendment to the DG of the TS for circulation. Only and exclusively the States Parties to the Convention are allowed to submit such proposals..

The other institutions of the organization have no role or competence in the proposal of amendments.

As regards procedure, the text of the proposed amendment must be considered by an

Amendment Conference to be convened only in the case that one third or more of the States Parties notify the Director General by a given deadline that they support further consideration of the proposal.

In this case, the Amendment Conference shall be held immediately following a regular session of the Conference of the States Parties unless the requesting State asks for an earlier meeting.

Attributing an ad hoc body with the competence to discuss and approve amendments is not without precedent (e.g. art.109 of the UN Charter, art.29 of the Tlatelolco Treaty).

But the real innovation lies in the rules for the adoption and the entry into force of the amendments.

According to article XIV, para. 3,

Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all the States Parties referred to under b) below:

- a) When adopted by the amendment conference by a positive vote of a majority of States Parties with no State Party casting a negative vote;
- b) And ratified or accepted by all those States Parties casting a positive vote at the Amendment Conference.

This rule is problematic in many respects, including the fact that it virtually makes it impossible to amend the text of the Convention as individual States have veto power.

If the rule set forth in the Rolling Text is compared to similar provisions in other Conventions on disarmament, it can be seen that amendments are usually considered adopted when it has been voted for by at least two-thirds of the present and voting members (cf. Art.29 of the Tlatelolco Treaty, art. XIII of the IAEA Statute) (with the exception of RAROTONGA).

An amendment approved without opposing votes by the Amendment Conference, shall enter into force for all States Parties 30 days after having been ratified or accepted by all those States Parties casting a positive vote at the Amendment Conference.

This rule, unlike the preceding one, generally corresponds to similar provisions in other agreements on disarmament.

Finally, as regards compliance of States that have not ratified a given amendment, the same holds as in the simplified amendment procedure discussed in the preceding section, with the exception that in the case of the ordinary procedure a State which strongly disagrees with a given amendment may vote against it in the Amendment Conference, thus blocking further advancement of the procedure.