THE FUTURE BTWC ORGANISATION :

SOME OBSERVATIONS FROM THE OPCW

by Daniel Feakes[*]

Introduction

1.   It is apparent that the Ad Hoc Group (AHG) meeting in Geneva is nearing the endgame in its negotiations to draft a legally binding instrument to strengthen the Biological and Toxin Weapons Convention (BTWC). Indeed, the US Acting Under Secretary of State for Arms Control and International Security Affairs, John Holum, told[1] the twelfth session of the Ad-Hoc Group in October 1998 that *"It is now time to renew your efforts and use that momentum to create real solutions. 1999 should be the year of the BTWC protocol. You simply must -- and you can -- find the time, the energy, and the flexibility to finish."*.   This Briefing Paper draws upon the experience of the Organization for the Prohibition of Chemical Weapons (OPCW) in implementing the Chemical Weapons Convention (CWC) in order to provide some observations relevant to that aspect of the AHG negotiations which is addressing *Article IX [The Organisation] [and Implementational Arrangements]* in the rolling text[2].

2.   At this stage in the AHG negotiations there is general agreement that the establishment of a BTWC organization (hereafter called the BTWCO) will be included in the package of measures which are incorporated into a protocol to strengthen the BTWC.   A particular concern of many delegations has been to ensure that such an organisation is cost-effective and that its verification activities are conducted as efficiently as possible. With these factors in mind, a number of studies[3] of a BTWC organisation have already been undertaken, focusing mainly on the issues of its cost and structure.   As it is widely recognised that the CWC is the arms control treaty that is of closest relevance to the BTWC, these studies have rightly been based upon primarily quantitative information drawn from the OPCW.   Because the CWC only entered into force on 29 April 1997, previous studies have concentrated more on the negotiation and preparatory phases of the CWC in drawing lessons for the BTWC protocol. This Briefing Paper examines the implementation phase of the CWC and the lessons which can be drawn from it for the future BTWCO.

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[1] John D Holum, *Statement to the Biological Weapons Convention Ad Hoc Group Session XII,* 6 October 1998, Geneva. Available at http://www.acda.gov/speeches/holum/adhoc.htm

[2] The current version of the rolling text can be found in United Nations, *Procedural Report of the Ad Hoc Group of the States Parties to the Convention on the prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, BWC/AD HOC GROUP/43, 15 October 1998, Geneva.

[3] For example: Federation of American Scientists Working Group on BW Verification, *The Structure and Cost of a BWC Organization,* September 1998; Graham Pearson, *"An Optimum Organization"*, University of Bradford, Briefing Paper No. 5, January 1998; Barbara Hatch Rosenberg, *"A Lean and Mean BWC Organization: Piggy-backing on What's Already There"*, Working Paper, 4th Workshop of the Pugwash Study Group on the Implementation of the CBW Conventions, Geneva, December 1995.

3. The experience of the OPCW over the past year and a half has demonstrated that qualitative factors can also exert a significant influence on the development of an international organisation. Experience has also shown that qualitative factors, such as the amount of legal work required to be carried out by a new international organisation or the administrative workload needed to keep teams of inspectors in the field, is fairly easy to underestimate and can be substantial. There are consequently significant benefits to be gained from the BTWCO drawing the maximum benefit from the experience of the OPCW.

4. This Briefing Paper begins by looking at the experience of the OPCW during its first year and a half of operations, focusing on the implementation of the CWC rather than its negotiation and preparation. The verification activities of the OPCW, including both quantitative and qualitative aspects, will be studied first as these provide the baseline upon which all budgetary and structural assumptions are made. Further qualitative aspects relating in particular to administrative and political issues will then be examined to elaborate the significant role which they have played in the development of the OPCW. Finally, possible lessons for a BTWCO will be addressed.

OPCW VERIFICATION ACTIVITIES

5. One of the principal objectives of the OPCW is to carry out the verification of compliance with the CWC. The Convention[4] states that:

> "The States Parties to this Convention hereby establish the Organization for the Prohibition of Chemical Weapons to achieve the object and purpose of this Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties."

Consequently, the scope and scale of verification activities should rightly be used as the baseline upon which the rest of the organization's activities are based. In the recently approved 1999 budget[5] which totals NLG 137.7 millions ($ 68.85 M), administrative costs totalled NLG 60.5 million ($30.25 M) or some 44 % of the total budget whilst verification costs amounted to NLG 77.1 million ($38.55 M) or some 56 % of the total budget, illustrating the core importance of verification activities to the OPCW as a whole.

6. Three central aspects of the OPCW's verification activities - declarations, inspections and internal transparency - are examined below from both a quantitative and qualitative point of view. The potential implications for a BTWCO are then considered. This will show that such activities are the foundations of any verification organisation and that the OPCW has already gained experience which could be useful to the BTWCO.

Declarations

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[4]Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC), Article VIII.1.
[5]*"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998. The OPCW budget uses an exchange rate of approximately two guilders to the dollar.

7.   The CWC requires States Parties to submit various categories of information to the Technical Secretariat and for some of that information to be disseminated to all other States Parties.   Not later than 30 days after the entry into force of the CWC, States Parties are required to submit their initial declarations to the Technical Secretariat.   However, over one and a half years after entry into force, the Technical Secretariat has only received[6] 84 initial declarations, some of which are incomplete, although, as of December 1998, there are 121 States Parties. The Technical Secretariat has undertaken a number of programmes such as 'declaration workshops' and regional seminars to rectify this situation.[7]

8.   States Parties are also required to annually submit declarations of both projected activities such as anticipated production of Schedule 1, 2 and 3 chemicals and of past activities such as production of Schedule 1, 2 and 3 chemicals and DOCs(Discrete Organic Chemicals)/PSFs(phosphorus, sulphur or fluorine chemicals).   Taken together these declarations make up a huge amount of data, most of which is currently submitted in hard-copy only.   Studies undertaken by the Technical Secretariat have shown[8] that between April 1997 and October 1998, the Technical Secretariat received 24,357 pages of declaration-related material, and that the annual submission rate is between 12,000 and 13,000 pages. Dealing with this amount of information is a massive task on its own, but the Technical Secretariat's ability to process this much information has been negatively affected by two additional factors.

9.   As provided for in the CWC, States Parties can assign classification levels to information which they submit to the OPCW. The OPCW Policy on Confidentiality[9] creates a classification system based on three categories of confidential information -- Highly Protected, Protected and Restricted -- and outlines the criteria for each category.   Of the 24,357 pages of declaration-related information received by the Technical Secretariat by October 1998, 93% of the pages of declarations were marked by the submitting State Party as being classified, mostly in the two highest categories, Highly Protected and Protected. Because of this high level of classification by States Parties, many documents which are produced from the information in the initial and annual declarations and notifications have had to be given the same classification by the Technical Secretariat. For example, 78% of all 292 final inspection reports were classified as either Highly Protected or Protected. Similarly, 95% of the reports disseminated to States Parties by the Technical Secretariat under subparagraph 2(b)(i) of the Confidentiality Annex, which provides for States parties to receive*"The initial and annual reports and declarations provided by States Parties under Articles III, IV, V, and VI...",* have been classified. The OPCW Policy on Confidentiality and the Manual of Confidentiality Procedure lay down complex procedures for the handling of classified material. The amount of information which must be handled in accordance with these procedures has placed a significant strain on the human and financial resources of the OPCW's Verification Division, which could not have been anticipated until initial

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[6]*"Note by the Director-General: Status of Initial Declarations and Notifications"*, Document C-III/DG.11, 13 November 1998.

[7]These programmes include the creation of a network of declaration experts and the organisation of a series of "declaration workshops", regional seminars on national implementation and bilateral meetings.

[8]*"Report by the Director-General: Implementation of the Regime Governing the Handling of Confidential Information by the Technical Secretariat (29 April 1997 - 23 October 1998)"*, document C-III/DG.8, 4 November 1998, paragraph 3.36.

[9]*"OPCW Policy on Confidentiality",* document C-I/DEC.13, 16 May 1997, part V.

declarations had been submitted and the extent to which these had been classified became apparent.

10. Prior to the entry into force of the CWC, it was assumed that declarations would be processed electronically, using the Electronic Document Management System (EDMS). However, the EDMS was not fully functional at entry into force, and is even now awaiting final certification. In October 1998, declaration data from 11 States Parties, some 10,000 pages of information, has been loaded on to the system in preparation for a full audit by a team of designated experts.[10] As a result, the Technical Secretariat has had to process all declaration-related information received since entry into force in hard copy only, which has meant an inevitable increase in workload for staff members. The lack of the EDMS has also made the planning of inspections and the analysis of declaration data much more time-consuming for the relevant units of the Technical Secretariat. The EDMS has been acknowledged[11] as "the most secure means of information protection available to OPCW" as not only will it make declaration processing easier, it will also enable the Technical Secretariat to keep a precise audit trail of who accessed which document and when. Further advances in electronic processing are planned with the introduction of the Relational Data Base Management System (RDBMS) which incorporates modules for archive management, declaration processing, inspection planning and query and reporting, among others. However, the RDBMS is still in the development phase and is not likely to be operational until after 2000.

Inspections

11. Since the entry into force of the CWC the OPCW has conducted over 349 inspections in 27 States Parties.[12] In 1998, out of the total budget of NLG 140.7 million ($ 70.35 M), some NLG 64.4 million ($32.2 M) (or 77 % of the verification activities budget) was devoted to inspection costs out of the NLG 83.3 million ($41.65 M) (or 59 % of the total budget) allocated to verification activities in the OPCW budget, the single largest programme in the entire budget.[13] During 1998 the number of inspectors employed by the OPCW increased to 209, approaching half of the total staff members. It can be argued that the Inspectorate represents the core of the OPCW. This is reflected in the fact that the size of the OPCW and its budget is largely dependent upon the size and budget of its Inspectorate.[14]

12. One of the major findings of the past eighteen months has been that inspections can be conducted much more efficiently than was initially assumed. Attention initially focused on Article IV and V inspections as under the "possessor pays" principle States Parties must reimburse the OPCW[15]. The main bulk of these costs relates to the verification of

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[10]*"Statement by the Director-General: Opening Statement to the Twelfth Session of the Executive Council"*, document EC-XII/DG.5, 6 October 1998, paragraph 22.

[11]*"Report by the Director-General: Implementation of the Regime Governing the Handling of Confidential Information by the Technical Secretariat (29 April 1997 - 23 October 1998)"*, document C-III/DG.8, 4 November 1998, page 14.

[12]*OPCW Synthesis,* No. 5/1998, November 1998, p.7.

[13]*"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1998"*, document C-II/6, 5 December 1997.

[14]The Inspectorate is also the only unit of the Technical Secretariat to be specifically mentioned in the text of the CWC, Article VIII.42.

[15]CWC, Article IV.16 and Article V.19.

destruction of chemical weapons and, in particular, to the salaries of inspectors permanently based at destruction facilities[16]. The issue of the costs of verification for inspections under Articles IV and V was also one of the major "unresolved issues" which had not been resolved by the Preparatory Commission and was one upon which States Parties and the Technical Secretariat were keen to reach final consensus. The issue was resolved through a complex formula for the calculation of reimbursements to the OPCW agreed by the 11th Session of the Executive Council.[17] The Technical Secretariat reported to the eleventh session of the Executive Council in September that substantial savings had been made on inspections under Articles IV and V. These savings were achieved mainly by the following factors:

- smaller teams spending fewer days on-site
- the use of sequential inspections when possible
- savings on international travel for inspectors and their equipment

13. Now that the costs of verification issue has finally been resolved, attention is being focused on reducing overall inspection costs, which are taken from the regular budget of the OPCW, and thus borne by all Member States. For example, the savings made in Article IV and V inspections on inspector travel costs and equipment transportation can also be applied to industrial inspections of Scheduled chemical facilities. Whereas the 1998 budget allowed for NLG 7 million for inspector travel and NLG 5 million for transport and other costs of using inspection equipment, the same figures in the 1999 budget have been reduced to only NLG 4.5 million and NLG 309,000 respectively.[18] Whether the technique of sequential inspection, on a national or regional basis, can also be used for industrial inspections is a political issue on which States Parties will have to make the final decision. In addition, it has been found that subsequent inspections are likely to be less expensive as the inspection team on a subsequent visits knows what to expect, and it only needs to take the amount of equipment and number of inspectors needed for the inspection. The time-consuming negotiations on the facility agreement would have been conducted during the initial inspection. The savings achieved have resulted in overall inspection costs falling from NLG 64.4 million in the 1998 budget to NLG 60.1 million in the 1999 budget.[19]

14. Although substantial savings have been achieved, the past 18 months have demonstrated that there are many additional costs associated with the ability to conduct inspections which also need to be taken into account. One of the largest and most obvious costs is the training of inspectors. During 1998 a group of 81 inspector trainees, Training Group B, underwent a 20 week course involving on-site training at facilities in China, Italy, Romania and Spain. The average cost of training a single OPCW inspector is estimated to be

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[16]*"United States of America: Costs of Verification Under Articles IV and V"*, document EC-XI/NAT.2, 7 August 1998.

[17] This issue had been under discussion for many years and the OPCW initially had to use interim criteria to calculate reimbursements due from States Parties. At its eleventh session the Executive Council reached consensus on a complex formula for calculating reimbursements, which is contained in *"Decision: Costs of Verification Under Articles IV and V",* document C-III/DEC.8, 17 November 1998.

[18]*"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998. Footnote to page 97.

[19]*"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998, p.100.

approximately NLG 97,560. The total cost of the Training Group B programme was estimated at NLG 8.4 million in the 1998 budget.[20]

15. Once they have been trained, inspectors then need to be supported when on missions and between missions. In order to participate in inspections, inspectors need to have the correct travel documents, including visas. For the OPCW's Inspectorate of currently 209 from around 60 States Parties this means that the OPCW's Protocol Branch must procure 20,000 visas from 87 States Parties and maintain 1,100 UN laissez-passer for inspectors and staff members on official travel. Planning the movements and logistics for inspection missions is the responsibility of the Operations and Planning Centre, which is made up of 21 staff members operating in shifts to provide 7 day, 24 hour coverage of global inspection operations. Each time inspectors go on a mission they need the advance payment of their daily subsistence allowance and when they return settlement claims need to be prepared. The addition of 80 inspectors during 1998 has increased the need for support staff at the OPCW Headquarters, and the 1999 budget therefore includes provision for an additional post in the Inspectorate Management Branch.[21]

16. Another integral part of inspection missions is health and safety support. The OPCW Health and Safety Branch consists of 11 staff members, while the Inspectorate employs an additional 18 paramedics who participate in inspection missions. These additional tasks are all essential to ensuring that inspections are carried out efficiently and safely.

Internal Transparency

17. Since the OPCW began operations in mid 1997 certain members of the Executive Council have made increasingly strident calls for increased transparency about the work of the OPCW. Such calls are based on the argument that the information presented to the Council has not been detailed enough to allow States Parties to make accurate assessments of compliance with the CWC, in particular in regard to the results of verification activities, and, in particular, inspections reports.[22] However, other States Parties have argued that the legitimate national security concerns of some Member States also need to be taken into account.[23] The lengthy debate on this subject at the third session of the Conference of the States Parties resulted in the Conference tasking the Council to further discuss the issue of transparency and to prepare a format for reporting information to the Council on the verification activities, including inspection results, conducted by the Technical Secretariat.[24]

18. The growing interest taken by members of the Council in the results of verification activities has led to an increase in the detail of the reports prepared for each Council session. The principal tool through which the Technical Secretariat provides verification-related information to the Council is the "Status of Implementation Report" or SIR which is usually

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[20]*"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1998"*, document C-II/6, 5 December 1997, p.74.

[21] *"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998.

[22]For example: statements to the third session of the Conference of the States Parties by the delegations of Austria (on behalf of the EU), the USA and Switzerland.

[23]For example: statements to the third session of the Conference of the States Parties by the delegations of India and South Korea.

[24]*"Report of the Third Session of the Conference of the States Parties,"* document C-III/4, 20 November 1998.

issued for each Council session. From the eleventh session of the Council onwards the SIR has been issued in two parts; one part dealing with verification-related matters and the other part dealing with the implementation of Articles X and XI. Attached to each SIR are a large number of very detailed annexes, some of which are classified. It is likely that future versions of the SIR itself will be issued as classified documents in order to include even more detailed information on verification activities. The preparation of the information required for the SIR and its annexes has become such a time-consuming job that it can only be achieved by staff members in the relevant units working overtime. In addition, the same units of the Technical Secretariat also have to prepare an annual "Verification Implementation Report" or VIR, which is another major undertaking.

19. Another aspect of internal transparency relates to the internal language policy of the Technical Secretariat. Internal working documents, in particular draft facility agreements, are currently distributed only in English in order to save money on translation costs. However, there have been calls for the translation of facility agreements into the other official languages. In practice, this would have the effect of making the Technical Secretariat work in all six official languages (Arabic, Chinese, French, English, Russian and Spanish), a feat which few other international organisations attempt. At the time of writing some inspection-related documents, such as inspection notifications and mandates, are translated from English into another of the official languages of the OPCW. However, the third session of the Conference of the States Parties added facility agreements to this list. A single facility agreement can run to around 50 pages and hundreds are likely to be required over the coming years. Obviously, the translation of this volume of material into each of the six official OPCW languages will put an additional burden upon the Technical Secretariat as well as being a task for which no financial provision is made in the 1999 budget.

Analysis

20. It is clear that the verification regime in the BTWC Protocol will not exactly mirror that of the CWC. It has been calculated[25] that fewer facilities will need to be declared and as there is no provision for routine inspections of industrial facilities as in the CWC, fewer inspections will also need to be carried out. It is also assumed that under the BTWC Protocol there will be no declarations of current possession of biological weapons.[26] Furthermore, the rolling text does not envisage that the BTWC protocol will require States Parties to make annual aggregate national declarations of production and consumption of certain products. For these reasons the BTWCO is unlikely to encounter problems of the same magnitude as the OPCW.

21. By the time the BTWC Protocol enters into force, the OPCW will have had several years of verification experience from which a BTWCO can benefit. One such area will be in regard to procedures. As has been experienced with the CWC, many States Parties are likely to have difficulties preparing their declarations to the BTWCO and it would be helpful if

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[25]Federation of American Scientists Working Group on BW Verification, *"Estimate of the number of declared facilities,"* September 1997. This paper estimates the expected number of declared facilities worldwide at 2,500. Graham S. Pearson, *"An Optimum Organization"*, University of Bradford, Briefing Paper No. 5, January 1998. This paper estimates the number as 10s per State Party and thus some 1600 to 3200 worldwide for 160 States Parties.

[26]Graham S. Pearson, *"An Optimum Organization"*, University of Bradford, Briefing Paper No. 5, January 1998, paragraph 37.

more assistance were provided to States Parties before the submission deadlines. The BTWCO could also benefit from internal OPCW procedures such as those used for processing declarations, handling confidential information and from the inspection manual and standard operating procedures used by the Inspectorate.   In order to avoid the problems which the OPCW has experienced with the EDMS, the BTWCO might consider obtaining the same system "off the shelf" which by then should be regarded as proven and accepted by States Parties rather than trying to reinvent the wheel.

22.   In addition, the BTWCO might also benefit from the OPCW's experience when drafting its confidentiality policy and consider devising a less complex system, such as one having a single level of classified information, so that classification by States Parties has less of an impact.[27]   With a much smaller Inspectorate conducting fewer inspections, the BTWCO will not need as many support staff as the OPCW. However, while the actual volume of work might be less, the BTWCO Inspectorate will still need some support staff to get visas and arrange flights, for example.   The BTWCO should, as the OPCW has done, be able to take advantage of discount air fares and should also be able to spend less time at inspected facilities as there will be no need to negotiate facility agreements.   However, judging by the experience of the OPCW, the BTWCO should also expect its Member States to demand detailed information on verification activities and might also be faced by calls for the translation of working documents into all official languages.

OPCW -- POLITICAL AND ADMINISTRATIVE FACTORS

23.   Following the examination of the experience of the OPCW in the core area of verification activities, it is important to consider the further factors which have shaped the cost and structure of the Organisation. As will already be apparent, administrative and support facilities are essential to the smooth running of the OPCW and accordingly take up a large part of the budget.   However, there are additional influences and tasks which, although far removed from the core verification mission of the OPCW, have a significant effect on its effective functioning. The following section examines the political influences upon the OPCW with regard to the post structure of the Technical Secretariat and the relationships between the organs of the OPCW.   A range of administrative factors will then be examined.

Political influences

24. The size and structure of the OPCW Technical Secretariat is not solely dependant on quantitative factors such as the number of declared facilities and the size of its Inspectorate. A number of what can be loosely termed "political" factors also come into play. The guiding principles upon which the Technical Secretariat is structured is set out in Article VIII of the CWC[28] as:

> *"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Only citizens of States Parties shall serve as the Director-General, as inspectors or as other members of*

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[27]The Technical Secretariat has recently established a Confidentiality Review Group to evaluate the confidentiality regime and to examine ways of revising the classification system.
[28]CWC, Article VIII.44.

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 discharge of the responsibilities of the Technical Secretariat."

25.   In reality a number of these principles are difficult to reconcile with each other, while other, much more implicit, factors also have a role to play.   Each of the five regional groups naturally seeks their share of the senior management jobs, and appointments at this level are always the result of political negotiations.   The post of first OPCW Director-General went to a developing country (Brazil) as the Executive Secretary of the Provisional Technical Secretariat was from a developed country (UK).[29]   The OPCW has nine posts at the D-1 level which are shared two apiece between Africa, Asia, Eastern Europe and WEOG, with Latin America and the Caribbean having one each.   Although an organisation could be managed with fewer D-1 posts, geographical balance would then be harder to achieve.   The principle of recruitment based on a wide geographical distribution means that the lower ranks of an international organisation also have to reflect geography to some extent and there must be enough posts to be able to reflect a geographical balance.[30]   However, in a technical organisation such as the OPCW it can be difficult to find enough suitably qualified candidates from the developing world.   Developing countries are therefore still somewhat under-represented within the Technical Secretariat.   As of 14 August 1998 the regional breakdown of staff in the professional and higher categories[31] was as follows:

Region	%
Africa	8 %
Asia	24 %
Eastern Europe	22 %
Latin America and the Caribbean	12 %
WEOG	34 %

26.   In addition, as more countries ratify or accede to the CWC, they will also expect a share of jobs, senior or otherwise.   In November 1998, around 65 different nationalities were represented within the professional and higher categories of the Technical Secretariat and 476 of the 491 fixed-term posts were occupied.[32]   Consequently, further positions may have to be created in order to accommodate personnel from new Member States, such as Ukraine and Indonesia, which ratified the CWC recently.[33]   However, creating new posts in this manner would appear to conflict with another principle of the CWC (Article VIII.44) on keeping the staff to the minimum necessary.   This principle of cost-effectiveness is designed to maintain the OPCW as a "lean and mean" international organisation avoiding the fate of other organisations which have become bloated bureaucracies guaranteeing staff members a "job

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[29]*"Report of the Preparatory Commission"*, document PREPCOM/I/4, 12 February 1993, p.4.

[30]Even vacancies at a P-3 level sometimes result in intensive lobbying by national delegations eager to increase their representation within the Technical Secretariat.

[31]*"Note by the Director-General: OPCW Post Structure and Placements: Regional Distribution as of 14 August 1998"*, document S/72/98, 31 August 1998.

[32]*OPCW Synthesis,* No. 5/1998, November 1998, p.7.

[33]During the negotiations on the 1998 budget a number of posts were created or upgraded in order to accommodate personnel from States which had recently ratified. During the general debate at the third session of the Conference of the States Parties the Indonesian representative expressed the hope that their expert would soon be able to join the Technical Secretariat.

for life". This principle is also supported by a number of influential Member States who between them pay a large slice of the annual contributions to the budget.

27. One feature of the OPCW's first 18 months of operations has been the amount of time which the policy-making organs, and in particular the Executive Council, have spent discussing organisational and administrative issues. As stated[34] in the CWC, the Council's functions are as follows:

> *The Executive Council shall promote the effective implementation of, and compliance with, this Convention. It shall supervise the activities of the Technical Secretariat, cooperate with the National Authority of each State Party and facilitate consultations and cooperation among States Parties at their reques*t.

28. The Convention makes it clear that one of the main tasks of the Council is decision-making on matters of substance related to the implementation of the CWC. As the executive organ of the OPCW, the Council is also expected to provide political and strategic guidance to the Technical Secretariat. However, during the past 18 months the Council seems to have become bogged down in a myriad of administrative and organisational issues relating to the day-to-day operations of the Technical Secretariat. To some observers, it appears that members of the Council are determined to interpret their right to "supervise" the Technical Secretariat as broadly as possible. This has led to the assertion that the Council is engaged in the "micro-management" of the Technical Secretariat. Examples of this could include the hours of informal consultations and an additional unscheduled meeting of the Council required to agree even a heavily bracketed draft 1999 budget. Another is the detailed consideration which the Council gives to each facility agreement submitted for its approval.[35] The months spent discussing the draft relationship agreement with the UN also provides another example, which has direct operational consequences upon the Technical Secretariat. Reflecting the frustrations caused by this situation, the Director-General stated in his closing statement[36] to the third session of the Conference:

> *I have heard numerous pledges from delegations on the importance of avoiding micromanagement of the Secretariat. Given last night's decision on the budget, I have to wonder what is left to me as Director-General, and to those who will succeed me, in terms of competence and managerial discretion. [...] It is regrettable that much of your energy and money was wasted on issues of a minor and purely administrative nature. The province of a Conference of the States Parties is quite properly defined in the Convention, i.e. as decision-making on important policy and implementation issues.*

29. Such "micro-management" would appear to distract the attention of the policy-making organs and sometimes the resources of the Technical Secretariat from other tasks. While

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[34]CWC, Article VIII.31.

[35]CWC Article VIII.34(c) states that the Council shall *"approve agreements or arrangements relating to implementation of verification activities, negotiated by the Technical Secretariat with States Parties"*. Debate currently centres on whether this gives the Council the right to consider each agreement in detail, or whether it should approve agreements which have after all already gone through intense bilateral negotiations.

[36]*"Closing statement by the Director-General to the third session of the Conference of the States Parties"*, 21 November 1998.

deferring the approval of many important issues, the third session of the Conference of the States Parties devoted a large amount of its time to discussions on the draft 1999 budget and the draft staff regulations. While this situation has many causes, some of which stretch back to the days of the Preparatory Commission, a particular cause which was addressed by speakers[37] at the third session of the Conference was the working relationship between the organs of the OPCW, and in particular between the Council and the Technical Secretariat. Proposed improvements included more informal consultations between sessions of the Council and better preparation of the agenda for each session. A reduction in the number of Council sessions was also suggested, as it is possible that the large number of sessions and meetings held since entry into force has actually encouraged the detailed examination of organisational issues.

Administrative aspects

30. The implementation of any treaty always requires a large amount of legal expertise and the CWC is no exception. The Office of the Legal Adviser has been involved in the conclusion of agreements with States Parties relating to verification and to the privileges and immunities of staff members, the negotiation of agreements with other international organisations and in a number of internal procurement and staff matters. The negotiation of a single facility agreement can be an extremely time-consuming task, requiring bilateral meetings with the State Party concerned, either in The Hague or in the relevant country.[38] Added to this is the fact that there are hundreds of inspectable facilities which will probably require the negotiation of agreements. While the job of negotiating facility agreements has been made somewhat easier by the approval of model agreements for Schedule 1 facilities and Schedule 2 plant sites by the Conference[39], this task remains one of the biggest burdens facing the Technical Secretariat.

31. Article VIII.50 of the CWC requires the OPCW to conclude a privileges and immunities agreement with each State Party. To date only two such agreements have been approved by the Conference[40]. The conclusion of further agreements will require additional legal resources over the coming years and intensive bilateral negotiations between the Technical Secretariat and States Parties.

32. Another long-term task is the analysis of the legislative and administrative measures taken by States Parties to implement the CWC. Recently, the Technical Secretariat

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[37]See for example: Statements by the delegations of Norway and Switzerland to the third session of the Conference of the States Parties; *"Statement by the Director-General to the Conference of the States Parties at its third session"*, document C-III/DG.12, 16 November 1998; *"Statement by the Chairman of the Executive Council, Mr Krzysztof Paturej of Poland, to the third session of the Conference of the States Parties"*, document C-III/INF.5, 17 November 1998; *"Statement of the Chairman of the third session of the Conference of the States Parties on the issue of improvement of informal communication between States Parties and the Technical Secretariat"*, document C-III/INF.6, 20 November 1998.

[38]For example: ITAR-TASS, *"World experts arrive in Moscow for talks on inspections"*, 28 September 1998; ITAR-TASS, *"Russian mission goes for talks with chemical weapons experts"*, 12 October 1998.

[39] *"Decision: Model Facility Agreement for Schedule 1 Facilities"*, document C-III/DEC.14, 20 November 1998; and *"Decision: Model Facility Agreement for Scehdule 2 Plant Sites"*, document C-III/DEC15, 20 November 1998.

[40]*"Decision: Agreements with States Parties on the Privileges and Immunities of the OPCW (Denmark and Ghana)"*, document C-III/DEC.4, 17 November 1998.

distributed a 225 page survey[41] of national implementing legislation which had so far been submitted under Article VII.5. As submissions of information have been received from only 40 States Parties to date, this is another resource-intensive legal task which can only grow.[42] Even before they can be analysed, submissions often have to be translated from their original language into English, imposing yet another burden upon the OPCW's translators. Acknowledging these factors and the fact that the OPCW's legal requirements had been underestimated in previous years, the 1999 budget[43] makes provision for three new legal posts on one-year temporary assistance contracts.

33.   The establishment of an international organisation staffed by international civil servants brings with it a whole host of issues related to staff administration, which are easily overlooked when attention is being focused on verification activities. For example, the recruitment, settlement, training and eventual repatriation of staff members takes a large number of personnel and financial resources. The most relevant branches of the Technical Secretariat (Human Resources, Training and Staff Development and Budget and Finance) between them employ 38 staff members. The recruitment and bringing on board of a new member of staff can cost around NLG 65,000. The OPCW now employs at least one person to ensure that new staff members and their families settle into The Hague with as few problems as possible, from renting accommodation to choosing schools for their children and much in between. The Protocol Branch has the task of registering employee's cars through customs and acquiring ID cards from the Dutch Ministry of Foreign Affairs for the 520 staff members and their 1,200 dependents.[44]

34.   The Training and Staff Development Branch has an annual budget of over NLG 2 million and is responsible for the training of all OPCW staff, including senior management, inspectors and General Service staff. The past year and a half has shown that not all staff members have a working knowledge of computers, for example, and rectifying this problem is a major undertaking. The Technical Secretariat is currently drafting a training and staff development policy.[45] The composition of the staff of the Technical Secretariat also affects the allocation of resources. The benefit applications of staff members in the Professional category involve more complex decision-making and administration than is the case with General Service staff. One and a half years after the entry into force of the CWC, the OPCW is still employing its staff on the basis of interim staff regulations which were approved by the first session of the Conference of the States Parties in May 1997.[46] The draft staff regulations, including a tenure policy which will determine whether the OPCW is a career or non-career organisation, could not be agreed upon at the third session of the Conference and have now been referred back to the Executive Council for action.[47] While all of these issues

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[41] *"Survey of National Implementing Legislation",* document S/85/98, 17 November 1998.

[42] *"Note by the Director-General: Compliance with Article VII: Legislation, Cooperation and Legal Assistance",* document C-III/DG.1/Rev.1, 17 November 1998, paragraph 1.3.

[43] *"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998, p. 25.

[44] *"Organisation for the Prohibition of Chemical Weapons: Programme and Budget 1999"*, document C-III/DEC.16, 23 November 1998, p. 60, footnote 051.

[45] *"Note by the Director-General: Draft OPCW Training and Staff Development Policy"*, document ABAF-IV/1, 21 September 1998.

[46] *"Decision: Staff Rules for Recruitment and Service Conditions"*, document C-I/DEC.68, 22 May 1997.

[47] *"Report of the Third Session of the Conference of the States Parties,"* document C-III/4, 20 November 1998.

might seems a world away from the OPCW's verification activities, they are all part of the evolution of an international organisation employing professional people.

Analysis

35.   The "birth pains" of the OPCW have illustrated the problems which can arise when an international organisation is expected to grow and to operate at the same time.   In the space of a few months the OPCW grew from a relatively small organisation of around 200 people housed in interim accommodation, to an organisation of 500 staff members conducting inspections around the world and based in a purpose-built headquarters.   Adjusting to the changes within the OPCW has been difficult while at the same time implementing the provisions of the CWC.   After hitting the ground running it sometimes appears that the OPCW is still trying to catch up with itself.

36.   Political issues will undoubtedly play a large part in the evolution of the BTWCO. The BTWCO Technical Secretariat will have to be large enough to accommodate calls for geographical balance in both its upper and lower echelons and will also have to tackle the problem of finding enough qualified candidates from the developing world to fill technical positions.   Essential to the smooth implementation of the BTWC Protocol will be the establishment of a smooth working relationship between the organs of the BTWCO. Hopefully, by the time that the BTWC Protocol enters into force, both the BTWC Technical Secretariat and the Member States will be aware enough of the OPCW experience that some problems can be avoided.

37.   The amount of work which will face the BTWCO's legal service should not be underestimated.   However, ways could be found around some of the more time-consuming problems.   The host country agreement and privileges and immunities agreements could be modelled on those used by the OPCW.   However, the strain placed on OPCW legal resources by the requirement to conclude a privileges and immunities agreement with each State Party suggests that a different approach might be considered for the BTWC protocol. For example, rather than negotiating a separate agreement with each of its Member States, the IAEA drafted an "Agreement on the Privileges and Immunities of the International Atomic Agency" to which its Member States could add their signatures.[48]   The wider task of "institution-building" should also not be ignored, or left until the protocol enters into force. For example, the lack of a tenure policy could very soon begin to impact on the work of the Technical Secretariat. Qualitative factors such as these do play a very significant role in the evolution of a new international organisation.

CONCLUSIONS FOR A BTWC ORGANISATION

38.   Because of the close relevance of the CWC and the BTWC, there would clearly be benefits from the OPCW and the BTWCO having some kind of cooperative arrangement not least so that each organization could benefit from the experience gained by the other.   There are numerous reasons why there would be benefits from such a cooperative arrangement. Both the CWC and the BTWC cover toxins and the CWC is applicable to a great deal of the

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[48]*"Agreement on the Privileges and Immunities of the International Atomic Energy Agency",* document INFCIRC/9/Rev.2, 26 July 1967, and INFCIRC/9/Rev.2/Add.10, October 1995, listing Member States which have accepted the agreement.

biotechnological and pharmaceutical industry.[49]   Both organisations will also have to carry out similar functions – receiving and analysing national declarations, conducting inspections to military and commercial facilities, protecting confidential business information and so on. As mentioned earlier, the BTWCO might wish to consider whether to adopt and adapt OPCW procedures such as those for declaration processing and inspections.

39. If a challenge inspection/investigation or an allegation of use occurred, the request for an investigation might be made to both the OPCW and BTWCO as the nature what had been used might not initially be clear, while some of the equipment used for assistance and protection purposes would be the same under both conventions.[50]   In addition, in some States Parties the laboratories designated and accredited to the OPCW and to the future BTWCO for the analysis of authentic samples might be located within the same facility.[51]

40.   Within individual States Parties, national authorities will play an extremely important role in the BTWC verification regime just as they do under the CWC.[52]   In some BTWCO and OPCW Member States the functions of national authorities might be combined in a single agency or, more likely, interagency arrangement.

41.   It is too early to be able to develop a detailed structure for the BTWCO as the negotiations of the BTWC Protocol are continuing.   There would be advantages to both the OPCW and the BTWCO from a cooperative arrangement between them because of the close relationship between the two Conventions and their objectives. A cooperative arrangement would also contribute to strengthening the coherence of the international norm against both chemical and biological weapons. Organizationally and procedurally there will much benefit that the future BTWC will be able to gain from the OPCW. Even simply imitating OPCW procedures and working methods could save the BTWCO an immense amount of time and money. Other possible areas of cooperation might be in respect of Article X of the CWC and Article VI of the BTWC Protocol which both relate to assistance and protection measures.

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[49]Julian Perry Robinson, *"The CWC Verification Regime: Implications for the Biotechnological and Pharmaceutical Industry"*, University of Bradford, Briefing Paper No. 11, July 1998.

[50]Under Article X of the CWC some States Parties have already offered specialised equipment for a variety of purposes (protection, detection, decontamination, training etc). Others have pledged military NBC units to the OPCW, and these might also be tasked to the BTWCO: *"Review of Proceedings of Second Meeting to Coordinate Assistance Under Article X of the Convention"* document S/60/98, 16 July 1998.   Article VI of the BTWC Protocol rolling text includes language on the provision of assistance by States Parties similar to that in Article X of the CWC.

[51] The OPCW has designated seven laboratories so far: *"Note by the Director-General: Designation of First Set of Laboratories for the Analysis of Authentic Samples,"* document S/84/98, 17 November 1998.

[52]Graham S. Pearson & Nicholas A. Sims, *"National Implementation Measures"*, University of Bradford, Briefing Paper No. 4, January 1998; Graham Pearson & Nicholas Sims, *"National Implementation Measures: An Update",* University of Bradford Briefing Paper No. 14, October 1998.