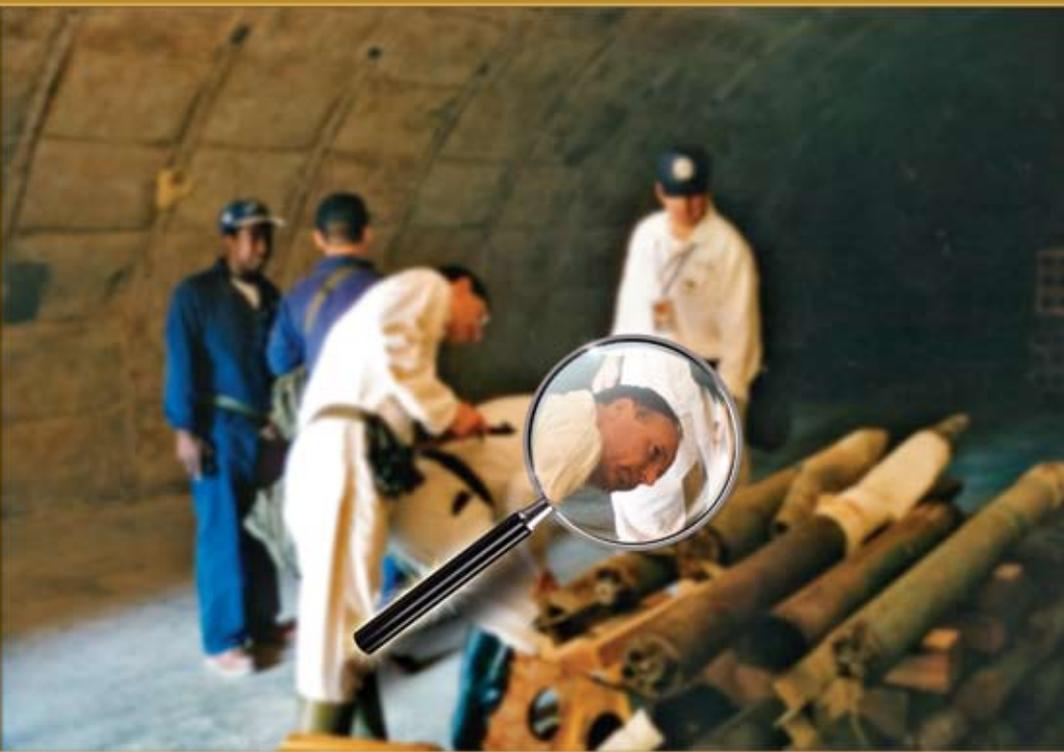


Rights & Obligations of the Inspection Team & the Inspected State Party under the Chemical Weapons Convention

Product No. 131P



This pamphlet was developed by the Defense Treaty Inspection Readiness Program (DTIRP) to increase **Readiness Through Awareness** throughout the Department of Defense (DoD) and defense contractor community. Additional copies of this pamphlet as well as other arms control treaty and security related materials are available on the DTIRP Website at <http://dtirp.dtra.mil> and may be obtained by contacting the DTIRP Outreach Program at 1-800-419-2899 or by sending an email to dtirpoutreach@dtra.mil.

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INTRODUCTION

The conduct of most inspection activities, including issues pertaining to access during a Chemical Weapons Convention (CWC) inspection, are determined by the Convention's provisions addressing the rights and obligations of the inspection team (IT) and the inspected State Party (ISP). While specific measures differ slightly among the various types of routine inspections—and differ significantly for challenge inspections—there are basic rights and obligations which apply to all CWC inspections. For example, the ISP is encouraged to provide the maximum appropriate access. The IT is directed to conduct its inspection activities in the least intrusive manner possible. In addition, the Convention explicitly provides the United States, as an ISP, with the right to protect its security concerns while, at the same time, obliging us to demonstrate that a protected item or object is unrelated to the purpose of the inspection. As a result, controlling access is a matter of balancing IT requirements for access against U.S. requirements for protecting national security, confidential business information (CBI), or other sensitive information.

As a State Party, the United States is obliged to comply with the Convention's verification provisions. However, this does not mean that U.S. personnel are passive observers during inspection activities. Facility personnel and U.S. government (USG) representatives must be proactive in determining precisely: how and when various inspection activities are to be conducted; the degree and timing of access to be granted; and, the kinds and amounts of information to be provided to ensure we demonstrate compliance. Demonstrating compliance is one of our twin goals during inspection activities—along with protecting national security, CBI, and other sensitive information. By understanding the rights and obligations of the IT, as well as our own rights and obligations under the Convention, we will be able to anticipate issues and provide the IT with the information it needs in order to conduct its inspection.

The rights and obligations of the IT and ISP may be implied, as well as specified, in the Convention text. In the table that follows, specified rights and obligations are presented in *italics* followed by the location where the text is located in the Convention. The notation "VA" indicates the text is in the Convention's Annex on Implementation and Verification (Verification Annex), and "CA" indicates it is in the Annex on the Protection of Confidential Information (Confidentiality Annex). Commentary and proposed implicit rights are presented in plain text throughout the pamphlet.

RIGHTS AND OBLIGATIONS

Inspection Team

Inspected State Party

Access to Areas and Information

The inspection team shall, in accordance with the relevant Articles and Annexes of this Convention as well as with facility agreements and procedures set forth in the inspection manual, have the right to unimpeded access to the inspection site. The items to be inspected will be chosen by the inspectors.

Para 45, Part II, VA

States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfill their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex.

Para 13, CA

The right to protect ensures national security, CBI, or other sensitive information can be protected. Facility personnel should attempt to ensure protective measures do not inhibit access to the extent that it raises a compliance concern.

Inspection Equipment

... there shall be no restriction by the inspected State Party on the inspection team bringing onto the inspection site such [approved] equipment ... necessary to fulfill the inspection requirements.

Para 27, Part II, VA

The inspected State Party shall have the right ... to inspect the equipment ... at the point of entry ... to check the identity of the equipment brought in or removed from the territory of the inspected State Party ... The inspected State Party may exclude equipment not meeting that description ...

Para 29, Part II, VA

Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment ...

Para 3, Article VII



Inspection Team

In cases where the inspection team finds it necessary to use equipment available on site not belonging to the Technical Secretariat ... [the inspection team may request] the inspected State Party to enable the team to use such equipment ...
Para 30, Part II, VA

Inspected State Party

In addition to the right to inspect equipment, if a piece of equipment presents safety concerns for a facility, the United States can still exclude its use from the area of concern. In accordance with the Organization for the Prohibition of Chemical Weapons (OPCW) Conference of the States Parties decision C-I/DEC.71 of 23 May 1997: “the ISP may adopt procedures, including restricting the use of certain equipment, which should be stipulated in facility agreements, when applicable.”

... the inspected State Party shall comply with the request to the extent it can.

Para 30, Part II, VA

Extent and Timing of Inspection Activities

The inspection team shall strictly observe the inspection mandate issued by the Director-General. It shall refrain from activities going beyond this mandate.
Para 39, Part II, VA

In practice, the IT presents the inspection mandate to U.S. representatives at the point of entry. The inspection mandate is a tool that we may use to keep activities focused on the purpose of the inspection. It is also a good indicator of the access and activities the facility team should be prepared to support.

Inspection Team

The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting its safety.

Para 40, Part II, VA

The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party . . . and disturbance to the facility or area inspected.

Para 40, Part II, VA

If inspectors consider that, to fulfill their mandate, particular operations should be carried out in a facility, they shall request the designated representative of the inspected facility to have them performed.

Para 40, Part II, VA

Inspected State Party

Upon arrival at the inspection site the inspection team shall be briefed by facility representatives on the facility, the activities carried out there, safety measures and administrative and logistic arrangements necessary for the inspection.

Para 37, Part II, VA

During the pre-inspection briefing (PIB), facility personnel can advise the IT on operations and safety regulations that may affect the conduct of the inspection. If necessary, the U.S. representatives can negotiate procedures to address these concerns.

Facility staff best understand the level of inconvenience and disturbance their facility can tolerate during inspection activities. These limitations should be stated in the PIB and facility agreement. However, any requested limitations must be reasonable and should not indicate a lack of cooperation.

The representative [of the inspected State Party] shall carry out the request to the extent possible.

Para 40, Part II, VA

The facility can reduce the possibility of such IT requests by preparing well-



Inspection Team

Inspected State Party

crafted data declarations, providing supplemental information, and presenting a good PIB. Having records or other documentation to explain potential operational ambiguities can also reduce the likelihood of such requests. Designated USG representatives may also reference the IT obligations specified in paragraph 40.

Right to Escort the IT

... the members of the inspection team shall, if the inspected State Party so requests, be accompanied by representatives of the inspected State Party, but the inspection team must not thereby be delayed or otherwise hindered in the exercise of its functions.

Para 41, Part II, VA

The representatives of the inspected State Party shall have the right to observe all verification activities carried out by the inspection team.

Para 49, Part II, VA

National and site escorts are effective assets supporting the facility's inspection preparation plan and its safety and security procedures. The escorts support the verification activities conducted by the IT and ensure only authorized activities are conducted. Working together, national escorts provide treaty expertise and site escorts provide in-depth facility knowledge.

Adherence to Safety Measures

... inspectors ... shall observe safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

Para 43, Part II, VA

Upon arrival at the inspection site ... the inspection team shall be briefed by facility representatives ... on the facility, the activities carried out there, safety measures and administrative and logistic arrangements necessary for the inspection.

Para 37, Part II, VA

IT Communications

Inspectors shall have the right throughout the in-country period to communicate with the Headquarters of the Technical Secretariat. ... they may use their own, duly certified, approved equipment and may request that the inspected State Party ... provide them with access to other telecommunications.

Para 44, Part II, VA

The inspected State Party shall provide or arrange for the amenities necessary for the inspection team such as communication means, interpretation services to the extent necessary for the performance of interviewing and other tasks, transportation, working space, lodging, meals and medical care.

Para 26, Part II, VA

Personnel Interviews

Inspectors shall have the right to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts. Inspectors shall only request information and data which are necessary for the conduct of the inspection ...

Para 46, Part II, VA

... the inspected State Party shall furnish such information upon request. The inspected State Party shall have the right to object to questions posed to the facility personnel if those questions are deemed not relevant to the inspection ...

Para 46, Part II, VA



Inspection Team

The inspection team may note any refusal to permit interviews or to allow questions to be answered and any explanations given, in that part of the inspection report that deals with the cooperation of the inspected State Party.

Para 46, Part II, VA

Inspected State Party

Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

Para 1, Article VII

Individuals, in accordance with U.S. Constitutional provisions, have the right to refuse to participate in the interview.

Interviews are important since they allow the ISP to provide information to demonstrate compliance. Facility inspection staff should attempt to provide well-prepared personnel who can effectively and accurately answer IT questions.

When appropriate, USG representatives will seek to have a panel interview format and/or to offer informational briefings with questions and answers.

The inspected State Party shall have the right to object to questions posed...if those questions are deemed not relevant to the inspection. If the head of the inspection team objects...the questions shall be provided in writing to the inspected State Party for reply...

Para 46, Part II, VA

Inspection Team

Inspected State Party

If the IT insists the line of questioning is relevant, USG representatives can request the questions in writing. Responding to written questions permits facility staff to provide well-considered responses. These responses then become attachments to the inspection report.

Documentation and Records

Inspectors shall have the right to inspect documentation and records they deem relevant to the conduct of their mission.

Para 47, Part II, VA

States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfill their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex.

Para 13, CA

The records and documents used to prepare data declarations are the ones most likely to be requested by the IT. Preparation time can best be used to consider what redactions will be necessary to utilize these records and documents effectively and in a way that protects sensitive information.



Inspection Team

Inspected State Party

Photography

Inspectors shall have the right to have photographs taken at their request by representatives of the inspected State Party or of the inspected facility . . . The inspection team shall determine whether photographs conform to those requested . . .

Para 48, Part II, VA

States Parties may take such measures as they deem necessary to protect confidentiality, provided that they fulfill their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex.

Para 13, CA

Photographs should not be needed except to document an ambiguity or to provide a visual record. Data declarations, readily deemed consistent with site activities, should minimize any requests for photographs. If photographs are taken at DoD sites, they will be framed and taken by national escorts. This process accommodates the need to protect sensitive information.

Privileges & Immunities and Inspector Notes

The papers and correspondence, including records, of the inspection team shall enjoy the inviolability . . . of diplomatic agents . . .

Para 11 (c), Part II, VA

The inspected State Party shall receive copies, at its request, of the information and data gathered about its facility(ies) by the Technical Secretariat.

Para 50, Part II, VA

The Technical Secretariat has agreed that States Parties may request copies of inspectors' notes.

Clarifying Ambiguities

Inspectors shall have the right to request clarifications in connection with ambiguities that arise during an inspection . . . If questions relating to an object or a building located within the inspection site are not resolved, the object or building shall, if requested, be photographed for the purpose of clarifying its nature and function.

Para 51, Part II, VA

The representative of the inspected State Party shall provide the inspection team, during the inspection, with such clarification as may be necessary to remove the ambiguity.

Para 51, Part II, VA

During the facility preparation process, it is important to consider the potential for ambiguities, their impact, and how to dispel them. This may be accomplished by offering an explanation during the PIB or by providing a separate briefing or interview. Potential ambiguities should always be considered when planning to provide access to buildings or records.

Sampling and Analysis

Representatives of the inspected State Party or of the inspected facility shall take samples at the request of the inspection team in the presence of inspectors. If so agreed in advance . . . the inspection team may take samples itself.

Para 52, Part II, VA

Sampling and analysis [at declared Schedule 2, Schedule 3, and discrete organic chemical facilities] shall be undertaken to check for the absence of undeclared scheduled chemicals.

Para 27, Part VII, VA

Sampling and on-site analysis may be undertaken to check for the absence of undeclared scheduled chemicals.

**Para 22, Part VIII, VA and
Para 19, Part IX, VA**



Inspection Team

The inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it.

Para 53, Part II, VA

Inspected State Party

The availability of records supporting data declarations, and consistency between activities observed and declarations, can minimize sampling requests. Site history, capacity, capabilities, and the toxicity of declared scheduled chemicals have an impact on potential requests. While sampling presents administrative, resource, and possible CBI issues, facilities need to be prepared to support sampling.

The inspected State Party has the right to retain portions of all samples taken or take duplicate samples and be present when samples are analyzed on-site.

Para 54, Part II, VA

At the request of the inspection team, the inspected State Party shall . . . provide assistance for the analysis of samples on-site.

Para 53, Part II, VA

The United States utilizes the Army Mobile Analytical Laboratory, a deployable extension of the U.S. Army Edgewood Chemical and Biological Center's Chemical and Biological Forensic Analytical Center to conduct sampling, confirmatory analysis or, if agreed, analysis in lieu of IT analysis.

Inspection Team

Inspected State Party

OPCW inspection equipment will have blinding software installed to ensure analysis will provide only a “yes” or “no” answer for the presence of a scheduled chemical.



CONCLUSION

This pamphlet has provided a quick reference guide to the rights and obligations of the inspection team and the inspected State Party when conducting on-site inspection activities under the CWC. During inspections, IT discussions with USG representatives, quite properly, often reference the CWC VA, Part II, as well as other Articles and Parts of the Convention addressing specific types of scheduled chemical and unscheduled discrete organic chemical facility inspections.

The USG is represented by personnel knowledgeable in these rights and obligations, which is essential when negotiating and supporting inspection activities. Successful facility preparation can also be greatly enhanced by having a basic knowledge of the rights and obligations encompassed in the Convention's verification provisions.

For more information about the CWC and other arms control treaties and agreements potentially impacting your facility, see the list of Related Materials provided on page 16. DTIRP provides a wide range of education and outreach materials, most of which may be accessed on the DTIRP Website at <http://dtirp.dtra.mil> or may be requested by contacting the DTIRP Outreach Program at 1-800-419-2899 or by sending an email to dtirpoutreach@dtra.mil.

LIST OF ABBREVIATIONS

CA	Confidentiality Annex
CBI	Confidential business information
CWC	Chemical Weapons Convention
DTIRP	Defense Treaty Inspection Readiness Program
ISP	Inspected State Party
IT	Inspection Team
OPCW	Organization for the Prohibition of Chemical Weapons
PIB	Pre-Inspection Briefing
USG	United States government
VA	Verification Annex



RELATED MATERIALS

To order copies of the products listed below, contact the DTIRP Outreach Program Coordinator by phone at 1-800-419-2899 or by email at dtirpoutreach@dtra.mil. Visit the DTIRP Website at <http://dtirp.dtra.mil> to view, print, or order DTIRP products.

Pamphlets

Chemical Weapons Convention—The Impact (102P)
Features of Chemical Facilities (114P)
CWC Inspectors' Privileges and Immunities (152P)
Operators' Guide to the CWC (153P)
The Arms Control Inspector (406P)
Quick Reference Guide to Arms Control Inspection Timelines (410P)
Arms Control Agreements Synopses (408P)
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Your Facility's Public Materials and Security Countermeasures Plan (938P)
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The TEI Process (950W)

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