

Order Number 133B

The Role of the Requesting State Party Observer in CWC Challenge Inspections

Under the Chemical Weapons Convention (CWC), to which the United States is a State Party, any State Party may submit a request to the Director-General (DG) of the Organization for the Prohibition of Chemical Weapons (OPCW) for a challenge inspection. A challenge inspection may be conducted at any facility or location in the territory or any other place under the jurisdiction or control of any other State Party to resolve issues of possible non-compliance.

The CWC challenge inspection provisions allow the requesting State Party (RSP) to send an observer to the inspection. The requesting State Party observer (RSO) may be a national of the RSP or of a third State Party, and will be designated in the RSP's challenge inspection request. The inspected State Party (ISP) may refuse to accept an RSO, although as a rule the ISP is obligated to accept a proposed RSO. If the ISP exercises a refusal, it shall be noted in the final report. For the United States, the decision on the acceptability of an RSO will be made at a level above the host team. However, the host team is responsible for coordinating the RSO's activities while observing the inspection.

The CWC text provides a good starting point for U.S. host teams and site personnel involved in inspection planning. To develop an inspection plan that accounts for the role of an RSO, an overview of the rights and obligations of an RSO, as well as the rights and obligations of the RSP and ISP regarding RSOs, is necessary. These are outlined in Article IX and the Verification Annex of the Convention:

- the RSO shall be accorded the same privileges and immunities as the inspection team (IT) (except the RSO would not be in possession of samples or equipment requiring immunity);
- the RSO shall have the right to arrive at the alternative or final site perimeter, wherever the IT arrives first, and to have access to the inspection site as granted by the ISP;
- throughout the period of inspection, the RSO shall have the right to communicate with the embassy of the RSP, or with the RSP directly if no embassy exists in the ISP;
- the IT shall keep the RSO informed about the conduct of the inspection and its findings;
- the RSO shall have the right to make recommendations to the IT, which the team shall (as appropriate) take into account; and
- upon departure from the inspection site, the RSO shall leave the territory of the ISP in the minimum time possible.

Specifically, rights and obligations of the ISP and RSP relative to the RSO are:

- the RSP shall coordinate with the OPCW to ensure that the RSO arrives at the point of entry within a reasonable time of the arrival of the IT;
- the ISP shall provide or arrange for all amenities necessary for the RSO, including means of communication, interpretation services, working space, lodging, meals, medical care, and transportation; and
- the RSP shall bear all costs connected with the presence of the RSO in the ISP or Host State.



An OPCW Inspector.

For inspection planning and preparation, there is an additional point to consider. As noted above, the challenge inspection provisions of the CWC specifically require the ISP to make all necessary logistical arrangements for the RSO. Therefore, the U.S. host team and concerned site representatives are afforded a great opportunity to monitor the RSO's activities as part of a prudent arms control security posture.

As for the need to monitor an RSO's activities, it is very important to note that the provisions of the CWC Confidentiality Annex do not bind an RSO—unlike the members of the IT and other employees of the OPCW. This fact is a crucial element to consider, particularly when deciding precisely how much, if any, access to actual inspection activities to grant an RSO.

In conclusion, when preparing to host a challenge inspection the primary focus of the host team and site representatives should be on the IT rather than the RSO. Remember: it is the IT that is charged with official OPCW responsibility for gathering the facts needed to resolve issues of possible non-compliance, not the RSO! However, understanding the RSO's unique third party status, as described in this bulletin, will aid in effective preparation for challenge inspections.

To obtain additional information about the CWC, or other arms control treaties potentially affecting your facility, and the application of security countermeasures, contact the DTIRP Outreach Program coordinator at 1-800-419-2899, your local Defense Security Service (DSS) Industrial Security representative, or your government sponsor.