

CWC Review Conference Report

The opening day of the Conference of States Parties: divergences of views

The twenty-third session of the Conference of States Parties (CSP) of the Chemical Weapons Convention (CWC) was opened on Monday morning, as is traditional, by the Chair of the previous session, Ambassador Abdelouahab Bellouki (Morocco). One of the initial decisions of the CSP was to elect Ambassador Yun-young Lee (Republic of Korea) as the Chair of the twenty-third session (CSP-23). After a number of administrative decisions, the Director-General gave an introductory statement that covered a wide range of activities that the CWC's implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW), is involved with. Owing to space constraints, this will be covered in a future daily report. Previous practice is that the opening statement is published as an official document. CSP-23 documents are posted at <<<https://www.opcw.org/resources/documents/conference-states-parties/twenty-third-session-conference-states-parties>>>. The plenary proceedings webcast can be accessed via <<<https://www.opcw.org/media-centre/featured-topics/webcast-csp23-rc4>>>.

During the opening day, numerous decisions were adopted by consensus on a range of recurring management activities of the OPCW – such as agreement to transmit the financial statements to the external auditor, approval of the Office of Internal Oversight report and the election of members of the Executive Council on the regular two-year cycle. Such decisions took only a minor proportion of the working time of the Conference. The vast majority of time was occupied with issues relating to budgetary matters and a China-Russia draft decision proposal – all of which derived from divergences of views relating to the June decision of the CSP Special Session on attribution issues. It became clear during the proceedings on Monday that there was no chance for consensus on the budget or the China-Russia proposal and so a number of roll-call votes are set to be held on Tuesday.

As might be expected, those countries that had been vocal in favour of adoption of the June decision spoke out in favour of effective implementation of that decision during CSP-23; while those who were most vocally opposed to the decision in June were raising questions in the current conference about legitimacy of the decision and how it related to other operations within the OPCW. Indeed, it is possible to divide most interventions on Monday into two groups that could be described as 'June decision supporters' and 'June decision opponents'. In brief, the June decision supporters consider claims that chemical weapons have been used on numerous occasions in Syria to be credible and cite a number of published sources in support of this, including reports from the OPCW Fact-Finding Mission and the UN-OPCW Joint Investigative Mission. From the other perspective, the June decision opponents broadly claim that the allegations of use of chemical weapons in Syria are based on fabrications and politicized statements which have led to politicization of the OPCW itself. Examples of vocal June decision supporters [in alphabetical order] include countries such as Canada, France, the UK and the USA; and of vocal June decision opponents include countries such as China, Iran, Russia and Syria.

The key decision of the Fourth Special Session of the CSP – the 'June decision'

In order to understand the divergence of opinions represented in the current regular session of the CSP there is a need to understand the June decision. It is titled 'Addressing the Threat from Chemical Weapons Use' and carries the document number C-SS-4/DEC.3. The

decision text was based on a proposal by the UK (the country that had called for the Special Session) and was adopted by a vote on 27 June: 82 in favour, 24 against with 26 abstentions. June decision supporters describe this vote as being taken by a significant majority (77 per cent) of those present and voting and so has a clear legitimacy. June decision opponents argue that its legitimacy is open to doubt as 82 is fewer than half of the number of CWC states parties.

The term ‘attribution’ appears only once in the decision text, in paragraph 19 which reads: ‘Affirms that, whenever a chemical weapons use occurs on the territory of a State Party, those who were the perpetrators, organisers, sponsors or otherwise involved should be identified, and underscores the added value of the Secretariat conducting an independent investigation of an alleged use of chemical weapons with a view to facilitating universal attribution of all chemical weapons attacks’. There is a clear distinction between ‘attribution’ and ‘accountability’ and the decision relates only to the first of these.

June decision opponents argue that this decision is outside of the scope of the CWC, that attribution by the OPCW impinges upon the prerogatives of the UN Security Council, and that as attribution has political as well as technical aspects the decision is an unwarranted politicization of OPCW activities. June decision supporters argue that OPCW attribution efforts are needed owing to the political stalemate in the UN Security Council on issues relating to alleged use of chemical weapons and that the CWC’s mandate for a world free of chemical weapons includes a fundamental underpinning of a need for attribution of the gravest possible violation of the Convention – the use of chemical weapons.

The budgetary decisions to be taken

The decisions on the budget consist of a number of elements. There are four key decisions that have been proposed by the OPCW Director-General – how to deal with a cash surplus from the 2016 financial year; creation of a special fund for ‘cybersecurity, business continuity, and physical infrastructure security’; creation of a special fund for ‘IT infrastructure to support the implementation of C-SS-4/DEC.3’ [i.e., the June decision]; and the overall ‘Programme and Budget of the OPCW for 2019’ which includes contested elements relating to implementation of the June decision. The budgetary votes will be procedurally complex as the draft decisions contain cross references; for example, the one on the 2016 cash surplus refers to the cybersecurity fund and the IT fund in support of attribution, neither of which have a legal basis until their draft decisions are adopted. It could be argued, therefore, that the cash surplus decision could not be taken until those on the special funds are taken. It could also be argued that the cash surplus decision should be voted on first as this provides the source of funds for other decisions. Additional complexity arises from budget amendments tabled by Iran and Russia, that include removing attribution-related expenditures, which might be voted on as separate amendments or as a group. Thus, at least five roll-call votes will be needed on budgetary items.

The China-Russia draft decision

The China-Russia proposal on ‘Preserving the Integrity of the Organisation for the Prohibition of Chemical Weapons’ suggests that the June decision ‘may directly affect the fundamental principles and provisions of the Convention in the context of empowering the Technical Secretariat with functions not stipulated in the Convention’ and calls for the convening of ‘an open-ended working group’ by the Executive Council to review proposals to implement the decision. Opponents of this proposal suggested it was an attempt to impede implementation of the June decision. China suggested that this was not an attempt to interrupt the attribution process but to clarify any doubts about whether the decision can be implemented in a way that is consistent with the provisions of the Convention.

This is the second report from the Fourth Review Conference of the Chemical Weapons Convention being held in The Hague 21-30 November 2018, preceded by the 23rd Session of the Conference of States Parties. These reports are prepared for the CWC Coalition, a global network of non-governmental groups with CWC interests, and are available at <<<http://www.cbw-events.org.uk/cwc-rep.html>>>. The author, Richard Guthrie of CBW Events, can be contacted via <<richard@cbw-events.org.uk>>.