

# Verification of the Prohibitions on CBW

*Relevancy of processes for the IAEA*

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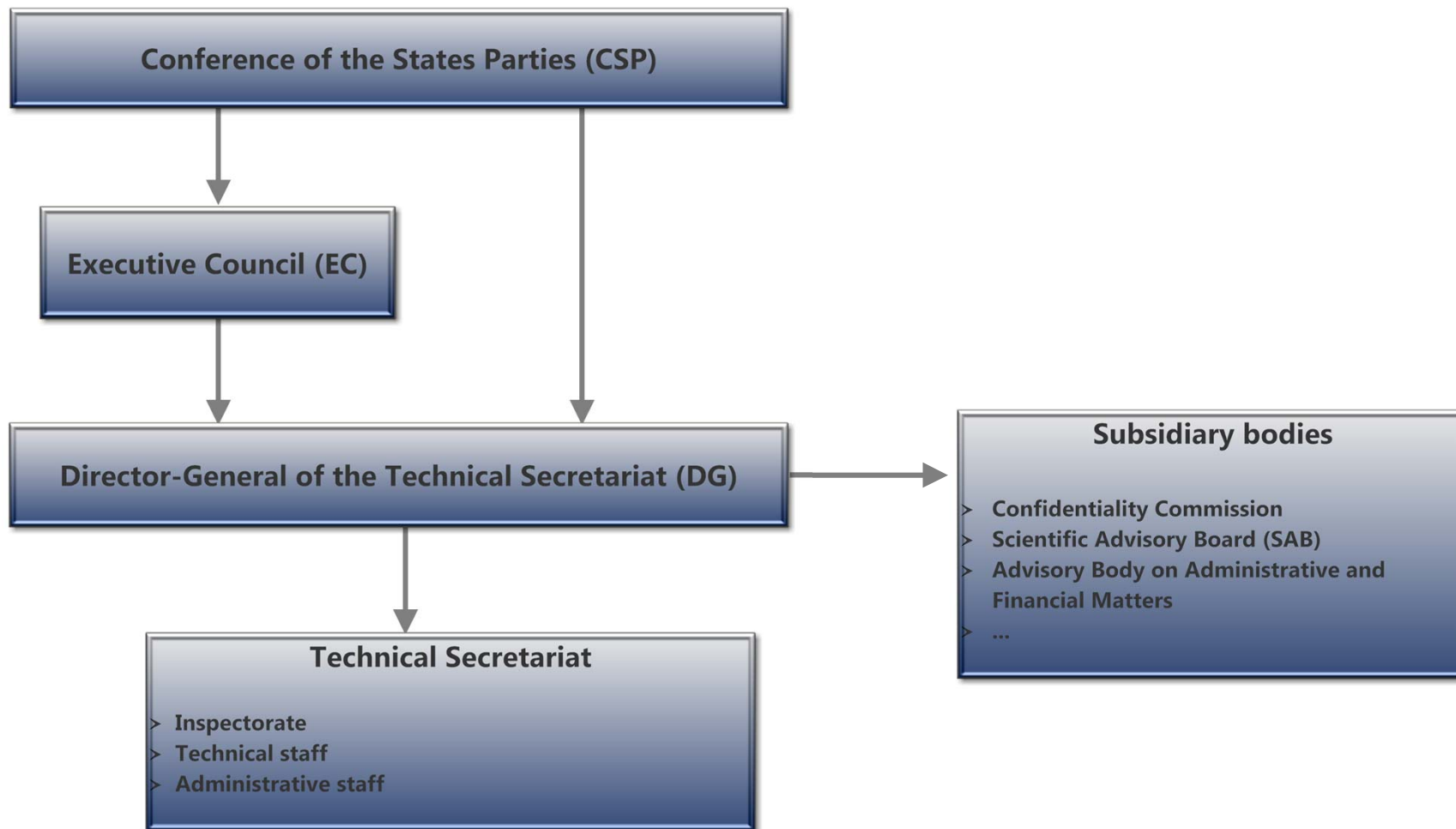
# BTWC and CWC

- Quasi-universal disarmament treaties
  - BTWC: 167 States Parties; 29 non-States Parties
  - CWC: 188 States Parties; 8 non-States Parties
    - Second and third only to the NPT (⇒189 States Parties)
- Characteristics
  - Disarmament (Backward & Forward)
    - Finite goals: No CBW for anybody
  - Integrated regimes
    - 1 treaty for disarmament, non-proliferation, cooperation & technology transfers, assistance, verification, complaints & compliance, ...
  - Equal, non-discriminatory rights; equal obligations for all
  - Major differences, however, in verification and compliance enforcement tools
    - ⇒Focus on CWC

# CWC: organisation of compliance

- OPCW
  - International organisation overseeing implementation of and compliance with *all* treaty articles
  - Has *autonomous responsibility* for detecting non-compliance and restoring compliance
- Mechanisms to :
  - Generate transparency ⇒ declarations
    - States parties must declare all past and present CW-related activities within treaty-specified parameters
    - Any unreported or erroneously reported activity is violation of CWC (but not necessarily deliberate)
  - Address anomalies
    - Consultations
    - Clarification requests
    - Challenge inspections
    - (Investigation of alleged use of CW)

# OPCW Structure



# Consultations

- **Director-General**
  - Attempts to resolve anomalies with State Party
  - Outcomes
    - Positive: correction of reports; verification of corrective action; no further steps
    - Negative: reporting to Executive Council
- **Between States Parties:**
  - Bilateral diplomatic engagement
  - Engaging State Party decides on further action
  - OPCW organs not involved
- **Advantages**
  - No megaphone diplomacy
  - Engaged State Party can take corrective action without loss of face

# Clarification request

- Formal procedure
  - Initial request goes directly to another State Party (bilateral)
  - Engaged State Party
    - must reply within **10 days**
    - is expected to offer supplementary information than what is available via, e.g., declarations or routine inspections
- Escalation of matter through Executive Council
  - If unsatisfied, requesting State Party may turn to EC
  - EC forwards request within **24 hours**; engaged State Party again receives **10 days** to reply
  - If dissatisfaction persists, requesting State Party may request EC to obtain further information
    - Possibility (no obligation) to set up an expert group
      - Delivers a factual report
      - Cannot launch its own inspection process
- Further escalation
  - If dissatisfaction persists, requesting State Party may call for a special EC session
  - EC in this situation obtains special decision-making authority and may recommend any measure deemed appropriate to resolve the matter
  - If still unresolved, requesting State Party may call for special session of the Conference of the States Parties **60 days after submission of clarification request to EC**
- Requesting State Party retains the right to call for a challenge inspection at any time during the clarification process
- Has never been used since EIF

# Challenge inspection

- Short-notice inspection at any site (even undeclared)
- No right of refusal by challenged State Party
  - Refusal would be major breach of CWC obligations
- Challenge inspection process starts automatically as soon as EC and Director-General receive request
  - It can only be blocked if the EC votes within 12 hours after receipt of request with a 2/3 majority to block the inspection
  - The process, up to the submission of the factual report, then continuous without further involvement of OPCW decision-making bodies
- Challenged State Party may use managed access procedure
- May be called at any time, independent of other processes or on-going procedures to restore compliance
- CWC recommends this as tool of last resort
  - Has never been invoked

# Confidentiality

- Very strict oversight of confidentiality at all stages of all verification procedures
- Many actions of the Director-General confidential
  - allows certain anomalies to be addressed without consequences for the State Party
- Shields the inspection process from political interference during its execution
- Confidentiality in the challenge inspection
  - Right of the challenged state party
    - No release of information unrelated to challenge inspection (e.g., via managed access procedure)
    - Allows giving of additional (business propriety) information to satisfy the inspectors
  - Need for the OPCW in order to avoid that challenged State Party submits too many areas to managed access



# Special features of CWC procedures

- Reporting non-compliance to UNGA and UNSC
  - Can (*not: must*) be done by either EC or CSP
  - Conscious & autonomous decision rather than automatic requirement
    - P5 will be on board
    - Most likely outcome: endorsement of decisions by OPCW bodies, resulting in their enhanced authority as regards State Party with compliance concerns
- Measures to be taken by EC and CSP
  - Unspecified; the CWC only offers some recommendations without imposing limitations
  - May include sanctions (to be determined)
  - Throughout the process, the engaged or challenged State Party retains rights that preserve the integrity of the CWC process
  - A state cannot be denied membership of the OPCW

# Concluding thoughts

- CWC has the most complete integrated compliance verification system
- Preference is clearly for resolving anomalies at the lowest level of confrontation
  - Through its implementation, the CWC has become a cooperative regime
  - Intrusive tools were designed in great detail (Cold War), but have never been used
  - Inclusion of those intrusive tools have arguably been instrumental, even crucial to achieve the cooperative atmosphere
- Challenges remain
  - Changes in the nature of the verification requirements after CW destruction has been completed
    - Mostly affects the future organisation of routine verification of industry and trade
  - In verification, ultimate decisions always remain political even if the inspection process is to a large extent shielded from political interference
    - e.g., what if a challenge inspection confirms only *marginal* non-compliance?

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