

Challenge Inspection Under A Chemical Weapons Treaty:

— the key to verification, or a license to snoop?

by COL James E. Covington

Background: A treaty to ban chemical weapons (CW) is now being negotiated at the 39-nation Conference on Disarmament (CD), which meets three times a year in Geneva, Switzerland (total duration: 24 weeks). The current text of the draft treaty has been developed from a U.S. proposal tabled at the CD in 1984 by then Vice-President George Bush.

Negotiations on a CW ban have been stagnant for several years, as member states of the CD have been deeply divided on issues such as the right of retaliation with CW, retention of deterrent CW stocks to ensure treaty compliance, and the right to challenge (and intrusively inspect) suspected violations of the treaty.

A CW treaty is certainly coming, and it probably will be here before you complete your present tour of duty. With it, however, could come international inspection teams, perhaps to your unit's ammunition holding area or your NBC room, demanding proof that you are not storing, making, or even disposing of CW in violation of the treaty. You realize that the charges are baseless, and you know that these strangers have no business poking around in your unit operations. Still, they seem pretty serious. Well, what do you do now...?

The CW treaty will probably be agreed on in Geneva within a year.

After we initial it there, of course, there must be ratification by the Senate. Then, enough other nations must sign on to make it worldwide in scope. About 60 nations will be needed for the treaty to enter into force; over 40 have already indicated their intention to be original signatories. If these procedures require, say, two years to complete, as the Biological Weapons Convention did in 1975, we could be operating under the requirements of a CW treaty before many of us have time for another reassignment.

The treaty will include provisions for any nation to challenge or to be challenged where there are concerns about compliance, and for an international inspection team to investigate the alleged noncompliance. Our negotiators in Geneva continue to wrestle, however, with the questions of how much must be shown to resolve compliance concerns and how can the challenged state be protected from having to show too much, at the risk of compromising its own national security.

On 13 May 1991, President Bush openly called upon all nations to resolve outstanding issues on CW disarmament by the end of this year and to complete a CW treaty by mid-1992. He also called for a continuous CD session, until a CW treaty is com-

pleted. As an initiative to stimulate the negotiations, the President foreswore two long-standing positions held by American negotiators.

First, upon entry into force of a worldwide CW ban, the U.S. side will give up the right to retaliate with CW if it is used first against our troops. This had been our primary reservation with the 1925 Geneva Protocol (which the U.S. Senate did not ratify until 1975). Second, with entry into force of a treaty, we will destroy our entire CW stockpile within ten years, thus relinquishing our right to retain a small deterrent capability (two percent of our current stocks) until all CW-capable states sign and abide by the treaty.

The two issues, right to retaliate with CW and retention of a deterrent CW stockpile, have been among the most contentious at the CD. With the President's decision to give in on the two U.S. positions, only the troublesome issue of challenge inspection remains as a major obstacle to completion of a treaty. Challenge inspection will be the focus of ongoing negotiations at the CD during the coming weeks and months.

It appears improbable that the sweeping changes in the Soviet Union in recent times will delay negotiations in Geneva significantly. The Soviets have been active participants at the

CD; they will likely seek to foster the perception that they are cooperating fully as we draw close to the completion of a CW treaty.

Under the draft treaty each nation will be required to admit possession of facilities which have been involved in CW production, CW storage, or CW destruction, or which have the potential for future CW production. Correspondingly, these declared facilities will be subject to periodic, systematic inspections on a routine basis to verify that no prohibited activity has occurred there. Challenge inspection, however, will extend to all facilities, military and civilian, declared and undeclared, the right to check for treaty compliance. Further, the regime will give any nation the right to call for an intrusive investigation, by an international inspection team, into any area within the territory of another nation to verify that the treaty is being complied with.

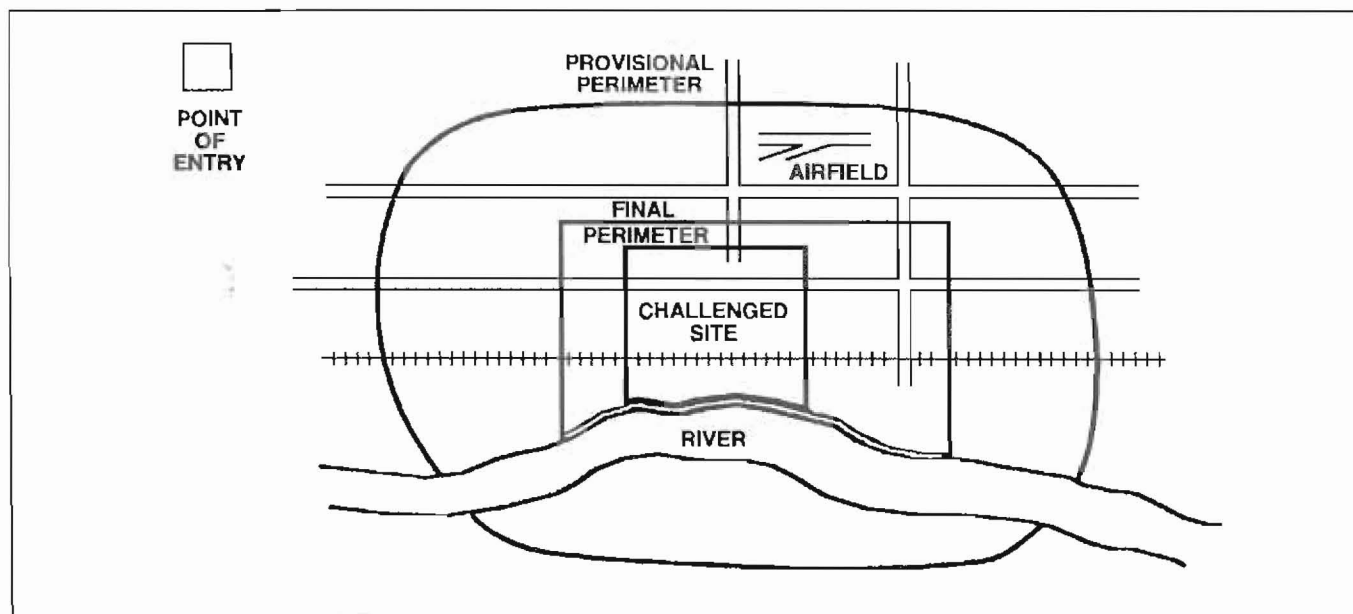
The portion of the current draft treaty which addresses challenge inspection at undeclared facilities evolved from the U.S. draft treaty proposal of 1984, which referred to unimpeded access to any location or

facility within a state which is controlled by the government of that state. The ominous phrase "anywhere, any time, with no right of refusal" has come to be associated with the position, even though this level of intrusiveness goes well beyond the original U.S. intent. In fact, the U.S. has consistently opposed an overly intrusive regime that could be insensitive to national security, proprietary, and legal concerns, or to the existing provisions of other treaties.

Recently, the U.S. has developed a modified position on challenge inspection which, with joint sponsorship by the United Kingdom, Japan, and Australia, has now been presented for open discussion in Geneva. The new position on "managed access" of inspection activity provides for lengthy negotiations (up to 6 1/2 days if needed) to determine access within the external boundary or perimeter of the challenged site (by definition, a site could contain any number of facilities). The challenge should be very specific, both in terms of a suspected treaty violation and the location of its occurrence. The challenge should also include a detailed

description of the location and a proposed perimeter bounding the suspect site from which a provisional perimeter may be agreed (see map). This provisional perimeter will provide the basis for negotiations to determine a final perimeter, which will enclose the challenged site, and will provide a boundary for the management of inspector access and activity. Further, the limits of inspector access within the final perimeter will be strictly defined by an inspection plan to be developed for each challenged site. The plan will be finalized during the perimeter negotiations. The challenge could be directed anywhere at any time. This current allied position, however, does preserve some right of refusal for the challenged state.

The proposed challenge inspection regime will give a challenged state the right to delay entry of an inspection team to the challenged site (as the final perimeter is being negotiated), to manage access within the site, to negotiate the degree of that management, and to ensure that national security is not violated by the presence of an inspection team in any area or



Key points in challenge inspection.

place. The challenged state will have final say in the determination of what is actually going to be inspected. Access to certain areas or buildings within the site may be restricted or denied although the challenged state will be under a treaty obligation to provide alternative means to satisfy inspector concerns, should any access be denied.

There has been broad criticism of the U.S. position on challenge inspection (actually, it is the U.S., U.K., Japanese, and Australian position—referred as the "plan of the Gang of Four" in Geneva) within the news media. At the CD, the most vocal critics have been our western allies (that is, France and Germany) who favor a more intrusive regime; the plan has found surprising support from China and the non-aligned nations. The position is seen by many as being protectionist, obstructionist, and counter-productive at a time when our President has called for a CW treaty within a year. It has been further condemned as denying all possibility for verification of the treaty, thus leaving open the likelihood that we will end up with an instrument similar to the Biological Weapons Convention of 1975, which includes no provision for verification at all.

Some observers believe that, without a credible means of verification, such a treaty would become a meaningless document.

The allied position is purposely weighted toward protection of national security within a challenged state and there has been considerable political pressure at the CD for the U.S., as the world's premier (and only remaining) superpower, to accept a greater level of intrusiveness than the current allied proposal provides. It is possible that some compromise on the degree of intrusiveness may have to be accepted as negotiations in Geneva progress in order to ensure that the verifiability of the treaty is credible. It

is understood that a balance must ultimately be struck which recognizes the need to implement a verifiable CW treaty as well as the requirement to protect national security. Quite possibly, the provisions for a challenge inspection regime, when finally agreed, could result in the most intrusive arms control treaty ever negotiated.

The formal mechanism for evaluating challenges and avoiding frivolous charges of treaty violations has not yet been agreed in Geneva. Nor have organization, composition, and authority of the inspection team yet been determined. Further, many elements of the allied position must still be resolved (that is, quotas for inspections within a given time frame, duration of inspection activity inside the final perimeter, and permitted inspector activities both at the provisional perimeter during the negotiations and at the final perimeter during the inspection) as we move to closure on the troublesome issue of challenge inspection. Much work remains to be done, but the impetus is there and there are many in Geneva who feel that when this issue is resolved, completion of a CW treaty will be imminent. Certainly, none are willing to say now that it cannot be done by mid-1992, as the President has directed.

For military facilities, which are likely to be among the first challenged (and they will not necessarily be limited to chemical facilities), it is anticipated that the commander or senior officer at the site or unit challenged will have direct input into the perimeter negotiations process. Likely the commander will also be represented on the escort team after determination is reached on a final perimeter for inspection activity and the actual inspection begins. Based largely upon the recommendations of the commander, sensitive but non-CW-related items and information

may be hidden, or perhaps even removed from the site to ensure their protection.

The obligation for the local commander, where a military site is challenged under the CW treaty, will be to weigh alternatives and to strike a balance at his/her own level between the dictates of treaty compliance (the CW treaty will have the force of law) and the possible compromise of classified aspects of the unit mission. The commander will be required by the CW treaty to demonstrate that prohibited activity is not taking place. Yet, he/she is duty bound to protect mission security concerns in denying sensitive aspects of the unit's operation from the prying eyes of an international inspection party. The party will likely include observers from the state that issued the challenge, and perhaps from whatever remains of the Soviet Union as well. The commander must know the limits of what can be shown without jeopardizing the unit's role in national security, and he/she must be willing to hold the line to prevent revealing information which goes beyond those limits.

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