



THE NEXUS BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS

Lisa Tabassi*

Abstract. Both headquartered in The Hague, the International Criminal Court (ICC) and the Organisation for the Prohibition of Chemical Weapons (OPCW) could coincide if the ICC is seized with a case involving the use of chemical weapons and an OPCW inspection team has investigated the event. Would the OPCW produce its inspection report as evidence and would it allow its inspectors to give testimony as witnesses, if called by the ICC, or could such evidence be compelled? In some key respects, the OPCW has certain similarities with the International Committee of the Red Cross (ICRC) which refused to produce evidence and allow the testimony of a former staff member in proceedings before the International Criminal Tribunal for the Former Yugoslavia. It argued, and the Court accepted, that the admission of such evidence for purposes other than those strictly foreseen in the ICRC mandate could jeopardise the ICRC's ability to perform its mandate and affect the safety of its personnel in the field. In such a scenario, the decision by the OPCW policy-making organs would be taken on the basis of practical and political considerations.

I. INTRODUCTION

For three of its sessions now the Assembly of the States Parties of the International Criminal Court¹ (“ICC” or “Court”) has met in The Hague, the seat of the ICC. A number of the delegations of the Members of the Organisation for the Prohibition of Chemical Weapons (OPCW),² wearing their ICC hats, joined their national delegations to the ICC to participate in the decisions concerning the administration and management of the Court for the coming year.

The ICC is the newest international organisation to be seated in The Hague and one which, along with the OPCW, also has a specific treaty-based mandate concerning chemical weapons. One might wonder where these two institutions and their constituent treaties (the Rome Statute and the Chemical Weapons Convention) intersect, as international organisations, and in terms of national implementation by their respective States Parties. Since well over half of CWC States Parties have become party to the Rome Statute,³ that question bears scrutiny. The present comment examines the matter in brief.

* Legal Officer, Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). For 14 years previously, the author respectively served in Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons and its predecessor Preparatory Commission. The views expressed are the author's own and cannot otherwise be attributed. A previous version of this article appeared in *Harvard Sussex Program on Chemical and Biological Weapons, CBW CONVENTIONS BULLETIN*, issue no. 75 (March 2007), 1, 7-12.

¹ Established on 1 July 2002 upon entry into force of the Rome Statute of the International Criminal Court (“Rome Statute”). As of 1 January 2007, there are 104 parties to the Rome Statute. The text, as corrected, is available at www.icc-cpi.int.

² The OPCW was established on 29 April 1997 upon entry into force of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC). As of 1 July 2007, there are 182 parties to the CWC. The text, as corrected and amended, is available at www.opcw.org.

³ Of the 104 States Parties to the Rome Statute, 102 are States Parties to the CWC. The following 80 CWC States Parties have *not* become party to the Rome Statute: Algeria, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Bhutan, Brunei Darussalam, Cameroon, Cape Verde, Chile, China, Cook Islands, Côte d'Ivoire, Cuba, Czech Republic, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Grenada, Guatemala, Haiti, Holy See, India, Indonesia, Iran (Islamic Republic of), Jamaica, Japan, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Libyan Arab Jamahiriya,