

# **Strengthening the Biological Weapons Convention**

## **Review Conference Paper No 13**

### **Achieving Effective Action on Universality and National Implementation: The CWC Experience**

**April 2005**

**Series Editors**

**Graham S Pearson and Malcolm R Dando**

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# ACHIEVING EFFECTIVE ACTION ON UNIVERSALITY AND NATIONAL IMPLEMENTATION: THE CWC EXPERIENCE

by Scott Spence\*

## Introduction

1. The First Review Conference of the Chemical Weapons Convention (CWC), held in The Hague in May 2003, agreed in its report<sup>1</sup> that two action plans should be developed and implemented to achieve universal adherence to the CWC and the treaty's full and effective implementation at the national level. Its report stated in regard to universality of the CWC that:

*The First Review Conference **recommended** that the Council, with the cooperation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it [Emphasis added] (RC-1/5, para.7.18).*

In respect of national implementation, the report stated that:

*The First Review Conference **called upon** States Parties that have not already done so to inform the OPCW by the next regular session of the Conference of the status of their adoption of the legislative and administrative measures necessary for or taken by them to implement the Convention, of any problems they have encountered, and of any assistance they require. **Having considered** the importance of national implementation measures for the proper functioning of the Convention, and **having reviewed** the activities undertaken by the States Parties as well as the Secretariat, the First Review Conference...*

*(h) agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties. [Emphasis added] (RC-1/5, para.7.83).*

2. This Review Conference Paper examines how these action plans have been developed and implemented by the Organisation for the Prohibition of Chemical Weapons (OPCW) as it is recognized that the translation of the Review Conference requests into effective action requires commitment both by the OPCW Technical Secretariat and by its States Parties. This process is analysed as it could serve as a model for how the Sixth Review Conference of the Biological and Toxin Weapons Convention (BTWC) in 2006 might implement effective action on universality and on national implementation. It is concluded that the experience of

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<sup>1</sup> Organisation for the Prohibition of Chemical Weapons (OPCW), *Report of the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference) 28 April – 9 May 2003*, RC-1/5, 9 May 2003. Available at <http://www.opcw.org>.

the OPCW in implementing its action plans could inform similar plans to achieve universal adherence to the BTWC and the treaty's full and effective implementation at the national level should the Sixth Review Conference decide to take such action.

3. In its Final Document<sup>2</sup>, the Fifth Review Conference of the BTWC required its States Parties to meet *to discuss, and promote common understanding and effective action on* several topics, including the two below identified for the 2003 intersessional meetings:

*i. the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation; and*

*ii. national mechanisms to establish and maintain the security and oversight of pathogenic microorganisms and toxins.*

4. The Final Document also stated that:

*(e) The Sixth Review Conference will consider the work of these meetings and decide on any further action.*

5. Further to the request by the Fifth Review Conference, a Meeting of States Parties was held in 2003 to discuss the topics identified above. The Report<sup>3</sup> of that meeting (MSP/2003) concluded with the statement that:

*At the Meeting of States Parties, States Parties noted that notwithstanding the differing legal and constitutional arrangements among the 151 States Parties to the Convention, States have adopted similar basic approaches and share common principles. The States Parties stressed the need for undertaking activities at the national level in keeping with their obligations and responsibilities to strengthen and implement the Convention. The States Parties agreed, to that end, on the value of the following:*

*To review, and where necessary, enact or update national legal, including regulatory and penal, measures which ensure effective implementation of the prohibitions of the Convention, and which enhance effective security of pathogens and toxins.*

*The positive effect of cooperation between States Parties with differing legal and constitutional arrangements: States Parties in a position to do so may wish to provide legal and technical assistance to others who request it in framing and/or expanding their own legislation and controls in the areas of national implementation and biosecurity.*

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<sup>2</sup> United Nations, Fifth Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Geneva, 19 November - 7 December 2001 and 11 - 22 November 2002, *Final Document*, BWC/CONF.V/17, 2002. Available at <http://www.opbw.org>.

<sup>3</sup> United Nations, Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, First Meeting, Geneva, 10 – 14 November 2003, *Report of the Meeting of States Parties*, BWC/MSP/2003/4 (Vol.1), 24 November 2003. Available at <http://www.opbw.org>

*The need for comprehensive and concrete national measures to secure pathogen collections and the control of their use for peaceful purposes: There was a general recognition of the value of biosecurity measures and procedures, which will ensure that such dangerous materials are not accessible to persons who might or could misuse them for purposes contrary to the Convention.*

*States Parties considered that agreement on the value of these measures discussed at the Meeting constitutes an essential effort to facilitate more effective implementation and enforcement of the Convention, as well as providing a basis for review of progress at the 2006 Review Conference.*

6. In light of these conclusions and the OPCW's experience with the execution of its action plans on universality and full and effective national implementation of the CWC, it is timely to start consideration of how the Sixth Review Conference might achieve the same objectives for the BTWC as part of the preparations being made<sup>4</sup> for the Sixth BTWC Review Conference, especially in an international security environment that has evolved significantly since the last Review Conference.

#### **Action Plan for Universality of the CWC**

7. As already noted, the First Review Conference of the Chemical Weapons Convention recommended that the Executive Council and the Secretariat develop and implement an action plan to encourage States to adhere to the CWC, and to assist them in doing so. It was stressed in a background paper<sup>5</sup> prepared by the Technical Secretariat and submitted to the First Review Conference that universality:

*3. .... is of paramount importance to the creation, maintenance and enforcement of a lasting global ban on CWs.*

*4. ... Only universal adherence to, and the full implementation of, the Convention will ensure that any CW activity undertaken by any party anywhere will be regarded as a criminal act subject to prosecution. ... the promotion of universal adherence to the Convention [is] a priority contribution to global anti-terrorist efforts.*

and

*5. Universal adherence will contribute to the economic and technological development of the States Parties in relation to the global and regional trade in chemicals...*

8. The paper added that the Conference of the States Parties had repeatedly acknowledged the importance of universality by adopting related recommendations at each session including its Seventh on 7 to 11 October 2002, during which it recommended that *States Parties and the Director-General continue to make every effort to encourage all States, and in particular*

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<sup>4</sup> Graham S. Pearson & Nicholas A. Sims, *Preparing for the BTWC Sixth Review Conference in 2006*, University of Bradford, Department of Peace Studies, Review Conference Paper No. 10, February 2005. Available at <http://www.brad.ac.uk/acad/sbtwc>

<sup>5</sup> OPCW, *Background Paper on Universal Adherence to the Chemical Weapons Convention*, RC-1/S/5, 25 April 2003. Available at [www.opcw.org](http://www.opcw.org).

*those States believed to possess chemical weapons which have neither ratified nor acceded to the Convention, to do so as soon as possible.* The background paper described the efforts by States Parties, the African Union, European Union and other regional organisations, the Director-General, and the Secretariat, in particular the External Relations Division, to promote universality of the CWC, resulting in the success of 147 States Parties adhering to the agreement by the end of 2002, nearly the number that currently adhere to the BTWC. Nevertheless, it was noted that the unavailability of stable funding in the OPCW budget for 2001 and 2002 had reduced the level of outreach by the Secretariat during those years.

9. The background paper gave several reasons why States had still *not* joined the CWC, most of which were administrative or bureaucratic. For example, it was noted that many small States lacked the financial and human resources necessary for adhering to the CWC, or they found the associated parliamentary and other legislative actions too difficult. Still other States lacked awareness of the political importance of adhering to the CWC, particularly in Africa where AIDS, desertification and drought, poverty and debt were more pressing issues. The report added that in some regions, especially Africa, Asia and the Middle East, national or regional conflict and tension complicated efforts to join the CWC, and discussions of disarmament and non-proliferation were seen in a regional-security context.

10. The background paper set out some actions that might be beneficial to States Parties and the Secretariat's efforts towards achieving universality of the CWC:

*32. (a) a (sub)regional focus, including cooperation with regional and subregional organisations in parts of the world where there continue to be States not Party;*

*(b) targeted bilateral efforts to encourage specific States not Party to accede to and implement the Convention, and to assist them as necessary;*

*(c) specific assistance to States not Party in preparing and implementing national legislation and other implementation measures;*

*(d) cooperation with other international organisations and agencies, in particular the UN, and the synchronisation of activities of common interest in order to create a synergy of purpose;*

*(e) regional initiatives, including the promotion of [chemical weapons]-free zones; and*

*(f) the full and effective implementation of the Convention's provisions, especially in relation to declarations and notifications, verification, and the enforcement of prohibitions and trade restrictions on the transfer of scheduled chemicals.*

11. With regard to the first three actions, the paper recommended that cooperation be pursued by the Secretariat with regional and subregional organisations, including the African Union, the Arab League, ASEAN, the Caribbean Community, the Inter-Governmental Authority on Development, the Common Market for Eastern and Southern Africa, the Economic Community of West African States, the Southern African Development Community, the Economic Community of Central African States, the Organisation of Eastern Caribbean States, and the Pacific Islands Forum.

12. The background paper emphasised the importance of universality of the Chemical Weapons Convention, but pointed out that some States faced impediments in adhering to it. It also emphasised that the Secretariat could not promote universality solely through its own efforts.

13. Following the recommendation of the Review Conference in April 2003, the Executive Council adopted a universality action plan<sup>6</sup> at its resumed twenty-third meeting, on 24 October 2003, as requested by the First Review Conference. The Eighth Session of the Conference of the States Parties, which took place from 20 to 24 October 2003, noted this document<sup>7</sup>.

13. The plan, reproduced as Annex II to this Review Conference Paper,:

*Urges the States Parties, in conjunction with the Council and the Technical Secretariat, to undertake further efforts to promote universality of the Convention, including initiatives to address specific regions, sub-regions, or States, and covering all States not Party, in particular those whose non-adherence is a cause of serious concern;*

*Strongly supports the designation of “points of contact” by States Parties, on a voluntary and informal basis, in all regions and sub-regions relevant for the effective promotion of universality, to assist regularly in the implementation of this Action Plan and for the purposes of effective coordination;*

*Recommends that the Director-General should designate an officer of the External Relations Division to act as the focal point within the Technical Secretariat for the implementation of this Action Plan and for the purposes of effective coordination;*

*Requests the Technical Secretariat, having consulted with States Parties, to prepare a comprehensive annual document on planned universality-related activities, and to provide information to the Council on proposed initiatives, including on potential synergies with States Parties willing and able to join in universality-related efforts. The document should contemplate and systematise activities in which the Technical Secretariat has traditionally engaged and, if deemed appropriate, formulate new universality-oriented projects. The document should set indicative targets for increased membership. In particular, the document could include:*

- (a) measures envisaged by the Technical Secretariat to assist States ready to join the Convention in their national preparations for implementing it;*
- (b) bilateral assistance visits;*
- (c) bilateral meetings with States not Party not represented in The Hague, as well as those represented in The Hague, and other activities of participation support and*

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<sup>6</sup> OPCW, Executive Council, Twenty-Third Meeting, 21 October 2003, *Decision Action Plan for the Universality of the Chemical Weapons Convention*, EC-M-23/DEC.3, 24 October 2003.

<sup>7</sup> OPCW, Conference of the States Parties, Eighth Session, 20—24 October 2003, *Report of the Eighth Session of the Conference of the States Parties 20 – 24 October 2003*, C-8/7, 24 October 2003. Available at <http://www.opcw.org>

outreach;  
(d) regional and sub-regional seminars and workshops;  
(e) international cooperation activities which might include States in the process of ratifying or acceding to the Convention;  
(f) measures to increase awareness of the Convention, and of the work of the OPCW, including publications in official languages, as well as measures to reach the appropriate audience in States not Party; and  
(g) attendance at meetings of, or joint activities with, relevant international and regional organisations;

**Requests** the Technical Secretariat, in support of the document of planned activities, to provide information containing up-to-date details regarding the status of States not Party vis-à-vis the Convention, their prospects for adherence, their participation in universality related activities, any significant chemical industry and any other issues relevant to the provisions of the Convention;

**Requests** the Technical Secretariat to implement the document of planned activities within the resources approved for the Organisation's Programme and Budget, together with any voluntary contributions received for universality-related purposes, and in a cost-effective manner;

**Strongly encourages** States Parties to strengthen their efforts in the promotion of universality of the Convention, to actively pursue this objective, as appropriate, in their contacts with States not Party, and to seek the cooperation of relevant international and regional organisations;

**Requests** the Director-General to submit to the Conference at its regular sessions an annual report on the implementation of the Action Plan, and to keep the Council regularly informed, so that the Conference and the Council may review progress and monitor its implementation effectively;

**Requests** that this Action Plan be brought to the attention of the Conference at its Eighth regular session; and

**Recommends** that the Conference decide to review, at its Tenth Session, the implementation of this Action Plan, and take any decisions deemed necessary.

14. There had been considerable activity by States Parties and the Secretariat in order to promote universality of the CWC in 2003 before adoption of the universality action plan.<sup>8</sup> Nevertheless, the plan was given a considerable boost when, on 6 January 2004, Libya acceded to the CWC making it the OPCW's 159th Member State with entry into force on 5 February 2004.

15. As requested in the universality action plan, the Secretariat submitted to the Executive Council at its thirty-sixth session (23-26 March 2004) a document<sup>9</sup> describing universality-related activities for the period 24 October 2003 to 20 February 2004. The report indicated that several steps had been taken to implement the action plan during that time including:

- (i) preparation of a comprehensive annual document;
- (ii) the designation of Mr Huang Yu, Director of the External Relations Division, as the focal point for implementation and coordination of the plan within the Secretariat;
- (iii) a note from the Director-General calling for the voluntary designation of points of contact, in all regions and sub-regions relevant for promoting universality, for the implementation of the plan and effective coordination; and
- (iv) bilateral assistance visits to Belize and Madagascar.

16. Initiatives by the Technical Secretariat and Member States during the first two quarters of 2004 were also noted including:

- (i) a meeting in January to discuss the possible role of points of contact on universality;
- (ii) a meeting with representatives of the African Union Commission in January to discuss implementation of a decision adopted by the Organisation of African Unity regarding the universality and implementation of the CWC; and
- (iii) a bilateral assistance visit to Rwanda, a meeting in Brussels with representatives of African States not Party regarding forthcoming OPCW activities in Africa, and attendance at the General Cooperation Meeting between the United Nations System and the League of Arab States and its specialized agencies, and meetings with officials from the League of Arab States.<sup>10</sup>

17. Assistance visits to Cambodia and the Solomon Islands were noted in this report as well as workshops in Ethiopia, Malta, and Senegal.<sup>11</sup> The workshops in Ethiopia and Malta, in particular, highlighted the Secretariat's focus on universality in particular regions such as

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<sup>8</sup> For a description of activities through 31 July 2003, see OPCW, *Report on the Implementation of the Recommendation of the Conference of the States Parties at its Seventh Session on Ensuring the Universality of the Chemical Weapons Convention*, C-8/DG.4, 1 August 2003 (available at [www.opcw.org](http://www.opcw.org)), and S. Spence, *Progress in The Hague in The CBW Conventions Bulletin*, no 62, December 2003.

<sup>9</sup> This document has not been made available to the public. See S. Spence, *Progress in The Hague in The CBW Conventions Bulletin*, no 64, June 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

<sup>10</sup> S. Spence, *Progress in The Hague in The CBW Conventions Bulletin*, no 64, June 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

<sup>11</sup> S. Spence, *Progress in The Hague in The CBW Conventions Bulletin*, no 64, June 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

Africa and the Middle East. The workshop in Addis Ababa took place during 20-22 April 2004 and was jointly organised by the Commission of the African Union and the OPCW. It had the objective of helping to increase awareness of the CWC in Africa as well as to promote further its universality and to contribute to the CWC's full and uniform implementation in that region. The workshop included sessions to review the status of implementation of the CWC in Africa and any problems encountered; a discussion of practical measures to achieve full, uniform implementation; and information sessions tailored to signatory and non-signatory States' needs. The workshop also included sessions on the OPCW's international cooperation, protection and assistance programmes as well as time for bilateral consultations.<sup>12</sup> Similarly, the Malta workshop, held from 5 to 7 May 2004, included a review of the status of implementation of the CWC in the Mediterranean Basin, Middle East and neighbouring regions; a discussion of practical measures to help reach this goal; and information sessions on the CWC tailored for signatory and non-signatory States. The workshop emphasized the benefits of adhering to the CWC and included discussions on international cooperation, protection, and assistance programmes. Bilateral consultations were also held.<sup>13</sup> Notably present at the meeting were Israel (a signatory State) and representatives from the League of Arab States and the Egyptian Council for Foreign Relations.

18. A report by the Director-General was issued in late June, providing additional information on the implementation of the universality action plan during the first half of 2004.<sup>14</sup> In addition to providing an update on the new States Parties noted below, the report described a subregional workshop in Fiji during 14 to 15 June hosted by the Pacific Islands Forum and the OPCW, and a visit by the United Kingdom to Cambodia on 10 and 11 June with the assistance of the embassy of Japan. Again emphasising the Secretariat's focus on efforts in respect of the Middle East and Africa, the report discussed visits by the Director-General to the League of Arab States as well as contact in The Hague with representatives of Egypt, Israel, Lebanon and Syria. A meeting with representatives of African Member States and States not Party based in Brussels was also noted, during which follow-up to the Addis Ababa workshop and universality in Africa were discussed. By mid-June, the following States had ratified or acceded to the CWC in 2004, in addition to Libya: Chad, Marshall Islands, Rwanda, Saint Kitts and Nevis, and Tuvalu.

#### *Progress July to December 2004*

19. Though not directly related to the action plan but of considerable benefit to universality efforts nonetheless, the Executive Council at its thirty-eighth session (12-15 October 2004) recommended to all States Parties the adoption of a change to Part V of the Verification Annex to the CWC. This change, requested by Libya and since adopted, removed a technical/administrative obstacle contained in the CWC<sup>15</sup> in order to permit States Parties joining the treaty after 29 April 2003 to convert their former chemical weapons production facilities for purposes not prohibited under the agreement. Many States Parties asserted in

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<sup>12</sup> S. Spence, *Progress in The Hague* in *The CBW Conventions Bulletin*, no 63, March 2004 and no 64, June 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

<sup>13</sup> S. Spence, "Progress in The Hague" in *The CBW Conventions Bulletin*, no 64, June 2004.

<sup>14</sup> OPCW, *Information on the Implementation of the Action Plan for the Universality of the Chemical Weapons Convention*, S/431/2004, 24 June 2004. Available at [www.opcw.org](http://www.opcw.org).

<sup>15</sup> Namely that all conversions of chemical weapons production facilities for purposes not prohibited under the CWC need to be completed no later than six years after its entry into force.

General Debate at the Council session that this change would facilitate universality by removing a disincentive for possessor States to joining.<sup>16</sup>

20. As requested by the action plan, the Director-General submitted a final report for the year on the implementation of the plan to the same Executive Council session. The Council and, ultimately, the Conference of the States Parties at its Ninth Session (29 November-2 December 2004), noted the document.<sup>17</sup>

21. This report stated that, as at 30 September 2004, there were 164 States Parties to the CWC with only 30 States not Party remaining. The report described support and assistance from States Parties for regional events and bilateral visits and other universality-related activities, as well as their designation of points of contact for the promotion of universality, and voluntary contributions. The Director-General's promotion of universality during visits to States Parties and meetings of regional and international organisations was noted.

22. Universality-related events were described in areas where attention continues to be focused, including Africa and the Middle East, and the participation of States not Party was emphasized. Cooperation with the African Union Commission, the Pacific Islands Forum Secretariat and the Secretariat of the Organisation of Eastern Caribbean States was noted. It was observed that subsequent bilateral assistance to States not Party had been possible with the involvement of States Parties and regional centres of the UN Department of Disarmament Affairs.

23. Specific bilateral visits to States not Party were mentioned including ones to Belize, Cambodia, Democratic Republic of the Congo, Madagascar, Rwanda, Solomon Islands and Vanuatu, some of which have since joined the CWC (Belize, Madagascar, Rwanda and Solomon Islands). Support for Libya's accession and implementation of the CWC as well as a workshop in Myanmar, which took place together with the UN Regional Centre for Peace and Disarmament in Asia and the Pacific and the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty, were also discussed.

24. The report turned to universality efforts in Africa, Asia and the Middle East, respectively. Several non-signatory States in Africa were reported to be considering joining the CWC despite not having participated in universality-related activities. It was observed, however, that there had been no contact with Somalia in the absence of an operational government. In the Asia-Pacific region, it was reported that more States not Party had joined the CWC. It was noted, however, that the Democratic People's Republic of Korea had been invited to regional events but had not responded positively nor welcomed overtures regarding accession. In the Middle East, Libya's accession to the CWC was noted as a positive development. Attendance by Israel, Comoros, the League of Arab States and an Egyptian NGO at a workshop in Malta as well as Iraq, Lebanon and Syria at a regional meeting of National Authorities in Beijing were noted. Attention was also drawn to Iraq's statement in July that it would adhere to all applicable non-proliferation treaties and regimes once an elected Iraqi government was in office. In respect of Latin America and the Caribbean, a

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<sup>16</sup> S. Spence, "Progress in The Hague" in The CBW Conventions Bulletin, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

<sup>17</sup> This document has not been made available to the public. See S. Spence, "Progress in The Hague" in The CBW Conventions Bulletin, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

resolution by the Organisation of American States on the Americas as a CBW-free zone was highlighted.

25. Other recent activities were discussed including updates and consultations with States Parties as well as meetings and briefings for Brussels-based representatives of States not Party including those from Africa. It was stressed that attention would turn largely to Africa and the Middle East with regional activities and bilateral assistance, but that there would be some smaller, targeted efforts towards remaining States not Party in Asia and the Pacific Islands and Latin America and the Caribbean. Work with the United Nations, European Union and African Union was discussed along with cooperation with other regional and subregional organisations. The report concluded by stressing that the focus over the long term would be on signatory States and on those States not Party that had not made any commitment to joining the CWC.

26. Universality efforts in 2004 were capped at the Ninth Session of the Conference of the States Parties from 29 November to 2 December 2004 by the Conference noting the report described above and emphasising that States Parties and the Secretariat must continue to promote universal adherence to the CWC. The Director-General also weighed in on the matter in his opening statement, stressing that work on universality is not complete, and that efforts must continue in the Middle East and the Korean Peninsula despite the difficulties or tension in those areas.

#### *Analysis*

27. By February 2005, the OPCW's membership stood at 167 Member States, with Madagascar, Sierra Leone, and Solomon Islands joining during the final quarter of 2004. Table 1 shows the status of participation in the CWC as at 1 February 2005.

**Table 1 The Status of Participation in the CWC from the First Review Conference up to 1 February 2005**

	May 2003 <sup>18</sup>	Oct 2003 <sup>19</sup>	Jun 2004 <sup>20</sup>	1 Feb 2005
Number of States Parties	151	154	164	167
Number of States which have deposited an instrument of ratification or accession and for which the CWC has not entered into force	2	3	0	0
Signatory States	25	22	18	16
Non-signatory States	16	15	12	11

28. The Action Plan on universality recommended by the First Review Conference of the CWC in April/May 2003 and adopted by the Executive Committee on 24 October 2003 has been pursued by the Secretariat with not only the States not yet Party to the CWC but also with States Parties and several regional and subregional organisations, including the African Union, the European Union, the Organisation of Eastern Caribbean States, and the Pacific Islands Forum. Progress had been encouraging thus far with particular progress within Africa through the African Union and in Asia and the Pacific although the Ninth Session of the Conference of States Parties meeting in November/December 2004 emphasised, however, that States Parties and the Secretariat must continue to promote universal adherence to the CWC. It is to be noted that at the Tenth Session of the Conference of States Parties to be held in November 2005 the States Parties are committed under the action plan to review the plan and take further decisions if necessary.

29. It is evident that for progress towards universality to continue, action needs to be taken by the States not yet Party to the CWC. The continuing efforts by the Technical Secretariat together with political pressure exerted by the States Parties to the CWC and the various regional and subregional organisations are a key element in achieving success.

### **Action Plan for National Implementation of the CWC**

30. In addition to requesting the Secretariat and the Executive Council of the OPCW to develop and implement a universality action plan, the First Review Conference of the CWC *agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties.* On 24 October 2003, the twenty-third meeting of the Executive Council forwarded a recommendation to the Eighth Session of the Conference of the States Parties (20-24 October) for such an action plan, which was subsequently approved.<sup>21</sup>

<sup>18</sup> OPCW, *Status of Participation in the Chemical Weapons Convention as at 30 May 2003*, S/365/2003, 5 June 2003. Available at [www.opcw.org](http://www.opcw.org).

<sup>19</sup> OPCW, *Status of Participation in the Chemical Weapons Convention as at 9 October 2003*, S/384/2003, 31 October 2003. Available at [www.opcw.org](http://www.opcw.org).

<sup>20</sup> OPCW, *Status of Participation in the Chemical Weapons Convention as at 21 June 2004*, S/432/2004, 25 June 2004. Available at [www.opcw.org](http://www.opcw.org).

<sup>21</sup> OPCW, *Plan of Action Regarding the Implementation of Article VII Obligations*, C-8/DEC.16, 24 October 2003. Available at [www.opcw.org](http://www.opcw.org).

31. Article VII of the CWC has the following requirements, reproduced also as Annex I to this Review Conference Paper,:

General undertakings

*1. Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention. In particular, it shall:*

*(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;*

*(b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and*

*(c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.*

*2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.*

*3. Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.*

Relations between the State Party and the Organization

*4. In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.*

*5. Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Convention.*

*6. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention.*

*It shall treat such information and data exclusively in connection with its rights and obligations under this Convention and in accordance with the provisions set forth in the Confidentiality Annex.*

7. *Each State Party undertakes to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.*

32. The action plan<sup>22</sup> for national implementation of the Article VII obligations is divided into four sections:

- identification and analysis of problems and needs;
- resources for implementation support;
- the overall time-frame, intermediate steps, and target date; and
- oversight by the Executive Council and the Conference of States Parties.

There are respective action items for States Parties and the Secretariat. Under the first rubric, the Secretariat is requested to further identify, analyse and address the difficulties some States Parties are having in adopting required Article VII measures, and is also requested to submit a report to the Executive Council at its thirty-sixth session in March 2004 covering problems that have been identified, requirements of States Parties for support, resources available to provide implementation support, etc. The report to the Executive Council is discussed in more detail below. Under the plan's second rubric, the Secretariat is requested to provide sustained technical support to States Parties that request it concerning the establishment and effective functioning of National Authorities, the enactment of national implementing legislation, and the adoption of any required administrative measures. States Parties are encouraged to lend advice upon request. There are also other requirements for the Secretariat and States Parties under this rubric concerning implementation support and developing partnerships with relevant regional organisations and agencies. Under the third rubric, the plan sets the objective for all States Parties to complete by the Tenth Session of the Conference of the States Parties (November 2005) the enactment of necessary legislation, including penal legislation, and/or the adoption of administrative measures necessary to implement the CWC. The plan also contemplates 'target dates' set by the States Parties themselves for the necessary steps leading to the accomplishment of this goal, which are identified in the plan. Under the fourth and final rubric, the Secretariat is requested to report to the Ninth Session of the Conference in November/December 2004 and every other session of the Council, starting with the thirty-sixth, on the progress of implementation of the plan, while the Council is requested to give guidance to and coordinate with the Secretariat on the plan's implementation. States Parties are requested to keep the OPCW informed of their actions and results achieved concerning advice given to other States Parties. The status of implementation of the plan is to be reviewed at the Tenth Session of the Conference in November 2005, with a view to taking further action if necessary. The reports under the fourth rubric are discussed below as they provide insight into how the plan has been implemented and how it has been successful so far, or not.

33. Further to a request in the Article VII action plan, the thirty-sixth session of the Executive Council (23-26 March 2004) received the first progress report<sup>23</sup> from the Director-General (DG Report) on the status of implementation of the plan. The DG Report contained

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<sup>22</sup>OPCW, *Plan Of Action Regarding The Implementation Of Article VII Obligations*, C-8/DEC.16, 24 October 2003. Available at [www.opcw.org](http://www.opcw.org). The background to the development of the plan is described in L. Tabassi and S. Spence, *Improving CWC implementation: the OPCW Action Plan*, in *Verification Yearbook 2004*, London: VERTIC, 2004. Available at <http://www.vertic.org>

<sup>23</sup> This document has not been made available to the public. See S. Spence, *Progress in The Hague in The CBW Conventions Bulletin*, no 64, June 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

four annexes including a progress report from the Technical Secretariat, the status of implementation of Article VII as at 17 February 2004, a survey of the contents of Article VII submissions, and a table of implementation-support measures taken by the Secretariat between 29 April 1997 and 31 December 2003.

34. The DG Report indicated that progress in following the requirements in the action plan had been slow, with only a small number of States Parties formally responding to them. The DG Report added that little progress had been achieved in respect of improving implementation since the last report on the issue, which was submitted to the Eighth Conference of the States Parties.<sup>24</sup> The underlying causes for failure to properly implement Article VII obligations were reported to include a lack of adequate awareness of the CWC's requirements and thus a lack of support for it, a failure to accord the requirements priority, a lack of resources, delays in establishing or designating National Authorities, and insufficient experience in respect of implementation. It was added that the Secretariat needed the assistance of States Parties for implementation support but that offers of such support had been few in number. The DG Report concluded with several recommendations including:

- (i) relevant States Parties should identify what kind of implementation support they require;
- (ii) those States Parties which are already implementing their own outreach and assistance programs should coordinate with the Secretariat;
- (iii) States Parties willing and able to offer implementation support should nominate experts whom the Secretariat could make available for implementation-support projects;
- (iv) States Parties should suggest how the OPCW's implementation-support programme could be improved;
- (v) States Parties could help develop closer cooperation between the OPCW and other regional and international organisations with respect, for example, to implementation of the action plan; and
- (vi) States Parties may wish to revisit the Secretariat's staffing requirements in connection with action plan activities and implementation support generally.

35. The Technical Secretariat Report (TS Report), attached as Annex 1 to the DG Report, covered the period from 24 October 2003 to 1 February 2004. In brief, the TS Report indicated that out of the 160 States Party to the CWC at the time the report was prepared, only 95, or 59 per cent, had made submissions regarding their Article VII legislative and administrative measures taken. Of these 95 States Parties, only 52, or 33 per cent, had legislation comprehensive enough to cover areas key to enforcement of the CWC. Some of the reasons for failure to implement Article VII obligations are noted above. The TS Report added that difficulties with implementation were particularly prevalent in some States Parties in Africa, Asia, Latin America and the Caribbean, and Eastern Europe. Requirements for implementation support were identified in the following areas:

- (i) drafting legislation and regulations and reviewing drafts;

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<sup>24</sup> OPCW, *Report on National Implementation Measures*, C-8/DG.5, 18 September 2003. Available at [www.opcw.org](http://www.opcw.org).

- (ii) identifying declarable facilities and preparing and submitting declarations;
- (iii) strengthening administrative means; and
- (iv) building awareness of and support for the CWC, including through outreach to stakeholders in government.

36. The TS Report described the implementation support that had been provided by the Secretariat including basic and advanced training courses for National Authority personnel, regional workshops for National Authorities, an annual National Authority day, thematic workshops and seminars, and bilateral technical assistance and technical evaluations upon request. Activities during 2003 were also outlined including National Authority meetings, workshops, training courses, the establishment of the Network of Legal Experts,<sup>25</sup> and publication of the *National Legislation Implementation Kit*.<sup>26</sup> Implementation support projects for 2004 were also noted, including targeted implementation support, implementation-support missions, legislative support through use of the Network of Legal Experts, bilateral implementation support activities by States Parties, and development of partnerships with regional and international organisations. The TS Report's recommendations to States Parties reflected those in the DG Report discussed above.

37. In response to the DG Report, the Executive Council reaffirmed the provisions in the action plan for the implementation of Article VII obligations, urged States Parties to continue coming forward with offers of and requests for assistance and to keep the Secretariat abreast of their activities in respect of the plan, and encouraged the Secretariat to enhance the coordination of its implementation support activities with States Parties offering or requesting assistance.

38. A supplementary report<sup>27</sup> on the status of implementation of Article VII obligations was issued by the Director-General in late June 2004. It was noted that, as at 22 June, 128 out of 164 States Parties, or 78 per cent, had notified the Secretariat of the designation or establishment of a National Authority; 97 States Parties, or 59 per cent, had submitted information regarding their legislative and administrative measures taken while 64 Member States had submitted the actual text; and only 53 States Parties, or 32 per cent, had comprehensive implementing legislation. The report added that over the past three years there had been an 18 per cent increase in the number of National Authorities established or designated by Member States, a 21 per cent increase in the number of States Parties that submitted information regarding their legislative and administrative measures taken, a six per cent increase in the number of States Parties with comprehensive implementing legislation, and a 37 per cent increase in the number of Article VI declarations<sup>28</sup> made by States Parties.

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<sup>25</sup> For more information about the Network of Legal Experts, see OPCW, *Legal Technical Assistance: Network of Legal Experts*, S/363/2003, 28 May 2003, and OPCW, *Legal Technical Assistance: Report of the First Meeting of the OPCW Network Of Legal Experts, The Hague, 4-7 November 2003*, S/398/2004, 28 January 2004. Available at [www.opcw.org](http://www.opcw.org).

<sup>26</sup> Prepared by the author for the Technical Secretariat. Available at [www.opcw.org](http://www.opcw.org) in the OPCW's six official languages.

<sup>27</sup> OPCW, *Information on the Implementation of the Plan of Action for the Implementation of Article VII Obligations*, S/433/2004, 25 June 2004. Available at [www.opcw.org](http://www.opcw.org).

<sup>28</sup> Under Article VI, paragraphs 7 and 8, States Parties must submit initial and annual declarations on relevant chemicals and facilities in accordance with the Verification Annex of the CWC.

39. The United Nations Security Council on 28 April 2004 adopted resolution 1540 which gave a boost to the OPCW's efforts concerning national implementation of the CWC. Resolution 1540 requires UN Member States to, *inter alia*: adopt laws criminalising the proliferation of weapons of mass destruction (nuclear, chemical and biological); adopt laws preventing non-State actors from manufacturing, acquiring or trafficking in nuclear, biological or chemical weapons, the materials to make them, and the delivery systems; take measures to secure all banned weapons; develop border controls and law enforcement to detect, deter, prevent and combat the illicit trafficking and brokering in such items; and report to the UN within 6 months on compliance. The DG report in late June 2004, in addition to noting the impact that UN Security Council resolution 1540 would have on the implementation of States Parties' Article VII obligations, discussed recent national training courses, subregional and regional meetings, and workshops held by the Secretariat on implementation. It also noted that there were sufficient budgetary resources for additional implementation support activities in 2004 for all States Parties that formally requested them. The report added that several informal requests would only be met in 2005 once formal requests were received, however, it was noted that States Parties that had made offers of assistance would be asked if they could assist beforehand.

40. The report indicated that States Parties had been providing voluntary financial contributions, providing resource personnel and experts, and offering and providing assistance on a bilateral basis. However, it emphasised the Secretariat's limited resources, financial and human, for sustained and targeted follow-up once implementation support had been provided. Accordingly, the report called on States Parties able to do so to consider assisting with follow-up efforts, in addition to their initial implementation support activities.

41. One of the requirements in the Article VII action plan was for States Parties to undertake a review of their existing regulations in the field of trade in chemicals in order to render them consistent with the CWC. Further to this, the Office of the Legal Adviser issued a questionnaire<sup>29</sup> in late August 2004, with the objective of gaining further insight into the factors that are impeding the ability of States Parties to submit accurate Article VI declarations. Responses to the questionnaire will be analysed to identify where further action is required.

42. A second progress report<sup>30</sup> was submitted to the thirty-eighth session of the Executive Council (12-15 October 2004) by the Director-General, further to a request in the action plan. In light of the slow progress in implementing the plan, the Director-General made several recommendations for the Council to consider forwarding to the Ninth Session of the Conference in November/December 2004 in the introduction to the progress report. These included, *inter alia*:

- (i) urging all States Parties that had yet to fully implement their Article VII obligations to take the necessary steps and set realistic target dates for doing so,
- (ii) encouraging States Parties that had taken initial steps and set target dates to continue working on timely implementation of these measures,

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<sup>29</sup> OPCW, *Note by the Technical Secretariat: Questionnaire on the Implementation of Trade Measures Under the Chemical Weapons Convention*, S/440/2004, 23 August 2004.

<sup>30</sup> This document has not been made available to the public. See S. Spence, "Progress in The Hague" in *The CBW Conventions Bulletin*, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

- (iii) expressing appreciation to those States Parties that had offered assistance or made voluntary contributions, and
- (iv) requesting the Secretariat to continue with its various implementation support efforts.

43. The Director-General added that the Council may wish to encourage States Parties to make experts available to regional organisations for advice and support at the regional level.

44. The progress report highlighted the difficulties that the OPCW and its Member States were facing in respect of implementation of the action plan. For example, as at 31 August 2004, though 135 States Parties (82 per cent) had established or designated a National Authority, only 96 States Parties (59 per cent) had submitted adopted legislation or administrative measures to implement the CWC and, of these, only 52 (32 per cent) had comprehensive legislation. Moreover, twenty State Parties had yet to take any necessary steps or set target dates as required by the action plan. With regard to other aspects of implementation, only 12 submissions of information on national protective programmes under Article X, paragraph 4 had been received for 2004, with more expected to arrive later that year, while only 39 States Parties (24 per cent) had submitted information on their review of existing regulations in the field of trade in chemicals. Submissions of initial Article VI declarations were reported to be low but it was unclear how many States Parties had nothing to declare. Nor do some States Parties update their annual declarations.

45. The report drew attention to the regional differences in adoption of comprehensive implementing legislation. Submissions were received by the Secretariat as follows: from 11 States Parties in the African group (27 per cent), 18 in the Asian group (43 per cent), 22 in the Eastern European group (88 per cent), 15 in the Latin American and the Caribbean group (58 per cent) and 30 in the Western European and Others group (100 per cent). Of these submissions, 4 States Parties in the African group (10 per cent), 9 in the Asian group (21 per cent), 13 in the Eastern European group (52 per cent), 3 in the Latin American and the Caribbean group (12 per cent), and 23 in the Western European and Others group (83 per cent) had comprehensive legislation. The report also drew attention to the regional differences in the establishment of National Authorities: 29 States Parties (71 per cent) in the African group, 29 in the Asian Group (69 per cent), 23 in the Eastern European group (92 per cent), 24 in the Latin American and the Caribbean group (92 per cent) and 30 in the Western European and Others group (100 per cent) had established or designated a National Authority. Particular attention was drawn to deficiencies in legislation for transfers of scheduled chemicals and penalising failures to report declarable activities: only 72 States Parties (44 per cent) had measures in place for transfers but not all of these measures were comprehensive, and only 58 States Parties had declarations-related penalties (35 per cent).

46. It was indicated in the report that only 40 States Parties had informed the Secretariat of the steps they were taking under the action plan and the related target dates. It was added, however, that most of the information lacked the necessary specificity for the Secretariat to plan and prioritize implementation-support measures. With regard to requests for and offers of assistance, the report noted that 23 formal requests for assistance had been received and that the ones unrelated to financial assistance would be honoured by the end of 2004. Another 14 informal requests will be addressed this year, once formal requests are received, short of assistance from a willing State Party.

47. The report described the implementation support that continues to be provided by the Secretariat including National Authority meetings, training courses, and workshops as well as technical assistance visits and consultations. Other efforts were described including comments on draft legislation, and the Network of Legal Experts and preparation of the *National Legislation Implementation Kit*. It was noted, however, that the Secretariat is unable to provide regular follow-up to these support efforts and will increasingly rely on assistance from States Parties, experts on loan to regional organisations, and exchanges of National Authority personnel. Offers of assistance from 22 States Parties were described.

48. The report concluded with an emphasis on the need for follow-up to initial implementation support activities, the inability of the Secretariat to meet any further requests for implementation support in 2004, and the urgency of States Parties to continue providing assistance.

49. The most recent report<sup>31</sup> thus far on the status of implementation of the Article VII obligations action plan was submitted by the Director-General to the Ninth Session of the Conference of the States Parties, which took place from 29 November to 2 December 2004. Table 2 below demonstrates progress in implementation from the Seventh Session of the Conference of the States Parties through the Ninth Session.

**Table 2: Progress in Implementation of Article VII from the Seventh Session of the Conference of the States Parties through the Ninth Session**

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<sup>31</sup> This document has not been made available to the public. See S. Spence, "Progress in The Hague" in The CBW Conventions Bulletin, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

	C-7: Seventh Session October 2002	C-8: Eighth Session October 2003	C-9: Ninth Session December 2004
Number of States Parties	145	154	166
Number and percentage of States Parties which have made an Article VII(5) submission	70 (48%)	94 (61%)	96 (58%)
States Parties which have legislation that covers all areas key to the enforcement of the CWC <sup>32</sup>	39 (27%)	51 (33%)	52 (31%)
States Parties which have designated a National Authority	Not available	126 (82%)	136 (82%)
States Parties which have reviewed their regulations on trade in chemicals	Not available	39 (25%)	41 (25%)

50. As a general matter, the report observed that progress in implementing the plan had been *slow*. Concern was raised in particular about those States Parties which had yet to implement any element of the action plan half-way to the 2005 deadline. Regional variations in implementing the action plan were noted and it was stressed that additional efforts would be needed in Africa, Asia, and Latin America and the Caribbean. The introduction noted that the Secretariat could only provide limited assistance and would continue to rely on offers of assistance from States Parties to complement its efforts.

51. The report itself contained four annexes: a status report, a matrix detailing the level of compliance with Article VII obligations by each State Party, a survey of the contents of the legislation submitted by States Parties, and a table of offers of and requests for assistance. The key data, which are analysed in greater detail in the status report, give pause: as at 31 October 2004, 136 States Parties, or 82 per cent, had designated or established a National Authority; 96 States Parties, or 58 per cent, had reported adopted legislative and/or administrative measures to the Secretariat; only 52 *States Parties*, or 31 per cent, had comprehensive implementing legislation; 72 States Parties, or 43 per cent, had submitted an annual declaration on past activities in 2004 while 22 States Parties had submitted an annual declaration on anticipated activities for 2005; 64 States Parties, or 39 per cent, appeared to have measures in place to control transfers of scheduled chemicals while 15, or 9 per cent, had some or no required controls in place; 13 States Parties, or 8 per cent, submitted information regarding their national protective programmes under Article X in 2004 while 51 States Parties, or 31 per cent, had made such submissions since entry into force of the CWC;

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<sup>32</sup> The information included in this column is either drawn from the responses of States Parties to the Second Legislation Questionnaire on penal enforcement of the CWC (OPCW, *Legislation Questionnaire: Penal Enforcement of the Chemical Weapons Convention*, S/308/2002 and S/317/2002, 6 June 2002 and 18 September 2002, respectively), or derived from a reading of the text of national implementing legislation submitted by States Parties under Article VII, paragraph 5 of the CWC.

and 41 States Parties, or 25 per cent, had reviewed their regulations on trade in chemicals and confirmed that they were consistent with the CWC's object and purpose.

52. On other issues related to implementation of the action plan, the report noted that only 46 States Parties had indicated what steps or target dates they had set for themselves. It was added that this low number and the lack of specificity in most of the information had complicated the Secretariat's efforts to plan and prioritise implementation-support efforts. The report added that 23 formal requests for assistance had been received by the Secretariat as a result of the plan or before its approval in 2003. Including these requests, up to 60 States Parties had received assistance from the Technical Secretariat through 31 October 2004. The report added that the formal requests had been or would be met by early 2005 and that other informal ones would be met in 2005 by the Secretariat or through bilateral support from another State Party. The assistance offered or provided by 26 States Parties was also described in the report.

53. The report concluded by noting that the largest problem the Secretariat faced was the lack of capacity for systematic and sustained follow-up. Accordingly, States Parties were called upon to continue efforts in this direction in addition to the initial assistance that they had offered.

54. In response to the slow progress in implementation of the Article VII action plan, the twenty-fourth meeting of the Executive Council on 24 November 2004 considered and approved a set of recommendations<sup>33</sup> to the Ninth Session of the Conference in November/December 2004 regarding further action. The Council recommended, *inter alia*, that the Conference:

- (i) reaffirm the importance and urgency of States Parties to implement their Article VII obligations;
- (ii) urge States Parties to inform the Secretariat of the status of their efforts to implement the action plan if they have yet to do so, with follow-up by the Secretariat;
- (iii) encourage States Parties to continue taking appropriate and timely steps (in respect of implementation of the action plan);
- (iv) encourage the Secretariat to continue promoting cooperation between States Parties that have offered and requested assistance;
- (v) request the Secretariat to provide a list to the Council before each of its sessions of offers of and requests for assistance, including details about follow-up assistance;
- (vi) request the Secretariat to provide feedback to States Parties on progress in implementing the plan of action and to get feedback from States Parties that have received assistance;
- (vii) encourage States Parties to continue offering assistance through the provision of expertise, developing partnerships with regional organisations, and voluntary contributions;
- (viii) encourage the Secretariat and States Parties to continue making use of the Network of Legal Experts; and

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<sup>33</sup> This document has not been made available to the public. See S. Spence, "Progress in The Hague" in The CBW Conventions Bulletin, no 66, December 2004. Available at <http://www.sussex.ac.uk/Units/spru/hsp/pdfbulletin.html>

- (ix) urge States Parties to review their existing regulations in the field of trade in chemicals and to inform the Secretariat accordingly.

55. The Conference in turn adopted a decision<sup>34</sup> reflecting the Council's recommendations, reproduced as Annex III to this Review Conference Paper.

#### *Analysis*

56. The information summarised in Table 2 shows that, at the Ninth Session of the Conference of States Parties, less than two-thirds of the States Parties had made submissions as they are required to in accordance with paragraph 5 of Article VII:

*5. Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Convention.*

Or, to put this another way, 70 of the 166 States Parties had yet to comply with this obligation.

57. It is also evident that less than a third of all States Parties have legislation that covers all areas key to the enforcement of the CWC. This is somewhat misleading, however, as several States Parties have draft legislation that has been submitted for approval by their parliaments, draft legislation has been submitted to the OPCW's Office of the Legal Adviser for review, or drafting is underway. It is to be noted that the action plan on Article VII implementation requires the Conference of States Parties at its Tenth Session in November 2005 to review further the status of implementation of Article VII *and to consider and decide on any appropriate measures to be taken, if necessary, in order to ensure compliance by all States Parties with Article VII*

58. Given that national legislation is key to the effective implementation and enforcement of the prohibitions enshrined in the CWC, there is a real need for the States Parties to take national action in this regard. Although the Technical Secretariat can assist States Parties in drafting appropriate national implementation legislations, and can provide useful encouragement through regular reports on the quality of the current status in regard to national implementation, States Parties and regional and sub-regional organisations need to also assist those States Parties that have yet to submit information under paragraph 5 of Article VII to do so and to encourage States Parties to enact legislation that covers all areas key to the enforcement of the CWC. At the end of the day, however, the primary onus rests on the individual States Parties to do so.

#### **Conclusion**

59. The action plans for universal adherence and for national implementation of the Article VII obligations, recommended by the First Review Conference of the CWC in April/May 2003, have been developed and taken forward by the Executive Council and the annual sessions of the Conference of States Parties. It is evident that the success achieved through these action plans has depended largely on the efforts of the Technical Secretariat in

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<sup>34</sup> OPCW, *Further Action Under the Plan of Action Regarding the Implementation of Article VII Obligations*, C-9/DEC.4, 30 November 2004. Available at [www.opcw.org](http://www.opcw.org).

promoting initiatives in cooperation with States Parties and sub-regional, regional and international organisations.

60. In considering how analogous action plans might be adopted by the Sixth Review Conference of the BTWC, it is apparent that an exhortation by the Review Conference alone may not be effective either in promoting universality or in the national adoption by the States Parties to the BTWC of the national legislation necessary to implement their obligations under the Convention. The OPCW's experience shows that for action plans to be effective, the States Parties to the BTWC will need at the Sixth Review Conference to address how best to provide for a mechanism, such as an interim secretariat, that could carry out the work necessary to facilitate the implementation of such action plans.

## **ANNEX I Article VII of the Chemical Weapons Convention**

### **ARTICLE VII**

#### **NATIONAL IMPLEMENTATION MEASURES**

##### General undertakings

1. *Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention. In particular, it shall:*

*(a) Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;*

*(b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and*

*(c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.*

2. *Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.*

3. *Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.*

##### Relations between the State Party and the Organization

4. *In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.*

5. *Each State Party shall inform the Organization of the legislative and administrative measures taken to implement this Convention.*

6. *Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention.*

*It shall treat such information and data exclusively in connection with its rights and obligations under this Convention and in accordance with the provisions set forth in the Confidentiality Annex.*

*7. Each State Party undertakes to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.*

**ANNEX II ACTION PLAN FOR THE UNIVERSALITY OF THE CHEMICAL WEAPONS CONVENTION: OPCW Executive Council, EC-M-23/DEC.3, dated 24 October 2003**

**DECISION**

**ACTION PLAN FOR THE UNIVERSALITY OF THE CHEMICAL WEAPONS CONVENTION**

**The Executive Council,**

**Recalling** that the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (hereinafter “the First Review Conference”) attached great importance to the attainment of universal adherence by States to the Chemical Weapons Convention (hereinafter “the Convention”) and **acting upon** the recommendation of the First Review Conference that the Executive Council (hereinafter “the Council”), with the cooperation of the Technical Secretariat, develop and implement a plan of action to further encourage, in a systematic and coordinated manner, adherence to the Convention, and to assist States ready to join the Convention in their national preparations for its implementation;

**Recalling also** resolutions of the United Nations General Assembly which stress the importance of achieving the universality of the Convention;

**Recalling** that the Conference of the States Parties has reviewed annually the progress, and has repeatedly adopted decisions entitled “Recommendation on ensuring the universality of the Chemical Weapons Convention” which, *inter alia*, have urged all States that have neither ratified nor acceded to the Convention to do so without delay;

**Firmly believing** that universality of the Convention is fundamental to the full achievement of its object and purpose;

**Welcoming** the substantial progress made towards universality of the Convention since its entry into force;

**Noting however** that among the States not Party are some whose non-ratification or non-accession is a cause for serious concern;

**Recognising** the positive effects that every new accession or ratification has for international peace and security and for global stability;

**Recalling** the decision of the Council that the OPCW’s contribution to global anti-terrorist efforts in the context of the Convention should focus, *inter alia*, on the promotion of universal adherence to the Convention;

**Underlining** the important political, economic, and security benefits of becoming a State Party to the Convention, **recognising** the positive effect of international cooperation (e.g. on Article XI) among the States Parties on universality, **and convinced** that the desire for increased security and the determination to participate fully in the global community are incentives for States not Party to adhere to the Convention;

**Recalling** that States that remain outside the Convention would not be able to take advantage of the benefits that the Convention offers the States Parties;

**Encouraging** States Parties to promote the achievement of the common objectives of the Convention in order to encourage other countries to join the Convention;

**Conscious** of the fact that States Parties can encourage States not Party to adhere to the Convention, **and determined to** take all appropriate steps to intensify bilateral and multilateral efforts towards universality of the Convention; and

**Inspired by** the objective of achieving universal adherence to the Convention ten years after its entry into force;

**Hereby:**

**Urges** the States Parties, in conjunction with the Council and the Technical Secretariat, to undertake further efforts to promote universality of the Convention, including initiatives to address specific regions, sub-regions, or States, and covering all States not Party, in particular those whose non-adherence is a cause of serious concern;

**Strongly supports** the designation of “points of contact” by States Parties, on a voluntary and informal basis, in all regions and sub-regions relevant for the effective promotion of universality, to assist regularly in the implementation of this Action Plan and for the purposes of effective coordination;

**Recommends** that the Director-General should designate an officer of the External Relations Division to act as the focal point within the Technical Secretariat for the implementation of this Action Plan and for the purposes of effective coordination;

**Requests** the Technical Secretariat, having consulted with States Parties, to prepare a comprehensive annual document on planned universality-related activities, and to provide information to the Council on proposed initiatives, including on potential synergies with States Parties willing and able to join in universality-related efforts. The document should contemplate and systematise activities in which the Technical Secretariat has traditionally engaged and, if deemed appropriate, formulate new universality-oriented projects. The document should set indicative targets for increased membership. In particular, the document could include:

- (a) measures envisaged by the Technical Secretariat to assist States ready to join the Convention in their national preparations for implementing it;
- (b) bilateral assistance visits;
- (c) bilateral meetings with States not Party not represented in The Hague, as well as those represented in The Hague, and other activities of participation support and outreach;
- (d) regional and sub-regional seminars and workshops;

(e) international cooperation activities which might include States in the process of ratifying or acceding to the Convention;

(f) measures to increase awareness of the Convention, and of the work of the OPCW, including publications in official languages, as well as measures to reach the appropriate audience in States not Party; and

(g) attendance at meetings of, or joint activities with, relevant international and regional organisations;

**Requests** the Technical Secretariat, in support of the document of planned activities, to provide information containing up-to-date details regarding the status of States not Party *vis-à-vis* the Convention, their prospects for adherence, their participation in universality related activities, any significant chemical industry and any other issues relevant to the provisions of the Convention;

**Requests** the Technical Secretariat to implement the document of planned activities within the resources approved for the Organisation's Programme and Budget, together with any voluntary contributions received for universality-related purposes, and in a cost-effective manner;

**Strongly encourages** States Parties to strengthen their efforts in the promotion of universality of the Convention, to actively pursue this objective, as appropriate, in their contacts with States not Party, and to seek the cooperation of relevant international and regional organisations;

**Requests** the Director-General to submit to the Conference at its regular sessions an annual report on the implementation of the Action Plan, and to keep the Council regularly informed, so that the Conference and the Council may review progress and monitor its implementation effectively;

**Requests** that this Action Plan be brought to the attention of the Conference at its Eighth regular session; and

**Recommends** that the Conference decide to review, at its Tenth Session, the implementation of this Action Plan, and take any decisions deemed necessary.

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**ANNEX III PLAN OF ACTION REGARDING THE IMPLEMENTATION OF  
ARTICLE VII OBLIGATIONS: OPCW Conference of the States Parties, C-8/DEC.16,  
dated 24 October 2003**

**DECISION**

**PLAN OF ACTION REGARDING THE IMPLEMENTATION OF  
ARTICLE VII OBLIGATIONS**

**The Conference of the States Parties,**

**Recalling** the recommendations that the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference) made on national implementation measures (as covered under agenda item 7(c)(v) of its report, subparagraphs 7.74 to 7.83 of RC-1/5, dated 9 May 2003), in particular the agreement in subparagraph 7.83(h) of that report to develop, at its next regular session, a plan of action based on a recommendation from the Executive Council (hereinafter “the Council”) regarding the implementation of obligations under Article VII of the Chemical Weapons Convention (hereinafter “the Convention”), with the objective of fostering the full, effective, and non-discriminatory implementation of the Convention by all States Parties;

**Stressing** the need to fully implement the recommendations of the First Review Conference on national implementation measures;

**Recognising** how important and how urgent it is that States Parties complete their obligations under Article VII to adopt, in accordance with their constitutional processes, the necessary measures to implement the Convention;

**Convinced** that the full and effective implementation of Article VII by all States Parties also contributes to universal adherence to the Convention;

**Concerned** that a large number of States Parties have not yet fulfilled the range of obligations under Article VII, and **recognising** that many of them may have difficulties in doing so; and

**Taking note of** the report by the Director-General to the Eighth Session of the Conference on national implementation measures (C-8/DG.5, dated 18 September 2003, and Add.1, dated 22 October 2003);

**Having received** the recommendation by the Council on the Plan of Action on national implementation measures (EC-M-23/DEC.2, dated 21 October 2003), C-8/DEC.16

**Hereby:**

Identification and analysis of problems and needs (action items for the Technical Secretariat and States Parties)

1. **Requests** the Technical Secretariat (hereinafter “the Secretariat”) to intensify its work with those States Parties that have difficulties in adopting the measures required under Article VII, by further identifying, analysing, and addressing those difficulties;

2. **Further requests** the Secretariat to submit to the Thirty-Sixth Session of the Council a report covering, *inter alia*, problems that have been identified, requirements of States Parties for support, the capabilities of the OPCW (that is, both of the Secretariat and of the States Parties) to provide implementation support, and any recommendations relevant to the implementation of the plan of action;

3. **Requests** States Parties seeking assistance of any kind in meeting their national implementation obligations and that have not yet informed the Secretariat of what assistance they require, to do so preferably before 1 March 2004;

Resources for implementation support (action items for the Technical Secretariat and States Parties)

4. **Requests** the Secretariat, within the parameters set by the OPCW Programme and Budget, to offer sustained technical support to States Parties that request it for the establishment and effective functioning of National Authorities, the enactment of national implementing legislation, and the adoption of any administrative measures required in accordance with Article VII;

5. **Welcomes** voluntary contributions from States Parties towards the implementation of this plan of action, and **requests** the Secretariat to implement the plan of action within the resources approved for the OPCW Programme and Budget, together with any voluntary contributions received for national implementation, and in a cost-effective manner;

6. **Encourages** States Parties to lend advice, upon request, to other States Parties in drafting and adopting national measures necessary to implement the Convention, *inter alia* to ensure that the laws reflect the comprehensive nature of the Convention by covering all activities that are to be prohibited or required in accordance with the Convention, and that involve the use of any toxic chemicals and their precursors; to cover the provision of annual declarations on past and anticipated activities; to ensure the implementation of the provisions related to transfers of scheduled chemicals; and to cover the annual submission of information on national protective programmes in accordance with paragraph 4 of Article X;

7. **Requests** States Parties able to provide assistance of any kind towards national implementation in other States Parties to inform the Secretariat, preferably before 1 March 2004, of what they can offer;

8. **Requests** the Secretariat to further develop and improve its implementation support programme, including by mobilising States Parties’ efforts so as to provide, upon request and within the limits on available resources, technical assistance and technical evaluations to States Parties in the implementation of the provisions of the Convention, in the areas identified in the section of the report of the First Review Conference on national implementation measures (subparagraph 7.74 to 7.83 of RC-1/5);

9. **Encourages** the Secretariat to identify and, by mutual consent, engage with regional, subregional and other relevant groups of States Parties that can render support to the States Parties concerned in their implementation efforts;

10. **Encourages** the Secretariat and the States Parties to develop partnerships with relevant regional organisations and agencies that could render support to States Parties in their implementation work;

Overall time-frame, intermediate steps, and target date (action items for States Parties)

11. Without prejudice to the timelines set by the Convention, recalling States Parties' obligations under Article VII, and reminding them that it has been more than six years since the entry into force of the Convention, **agrees** that it is imperative that those States Parties that still need to do so take the necessary steps and set realistic target dates for these steps leading to the enactment of the necessary legislation, including penal legislation, and/or the adoption of administrative measures to implement the Convention no later than the Tenth Session of the Conference of the States Parties, scheduled for November 2005;

12. **Calls upon** those States Parties that still need to do so to make every effort to adhere to the overall time-frame established in paragraph 11 above, as well as to the steps and target dates they have established for themselves, and to maintain regular contact with the Secretariat about the implementation of these steps and target dates;

13. **Encourages** States Parties and the Secretariat to take measures to raise awareness of the prohibitions and requirements of the Convention, *inter alia* in their armed forces, in industry, and in their scientific and technological communities;

14. **Underlines** that the steps mentioned in paragraph 11 above should include:

(a) designating or establishing a National Authority and notifying the Secretariat thereof in accordance with Article VII of the Convention, as soon as possible;

(b) taking the steps necessary to enact the legislation, including penal legislation, and/or to adopt the administrative measures States Parties need in order to implement the Convention in accordance with their constitutional processes; and

(c) providing the Secretariat with the full text of their national implementing legislation, including updates, or, in the case of States Parties with a monist legal system, with information on the specific measures they have taken to implement the Convention;

15. **Urges** States Parties that have not yet done so to review their existing regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the Convention;

Oversight by the Executive Council and the Conference of the States Parties (action items for States Parties and the Technical Secretariat)

16. **Requests** the Secretariat to report to the Ninth Session of the Conference and to every second session of the Council starting with the Thirty-Sixth, in March 2004, on the progress made in implementing this plan of action;

17. **Further requests** the Council to provide guidance to, and to coordinate with, the Secretariat as necessary and to monitor the implementation of this plan of action;

18. **Also requests** States Parties that lend advice, upon request, to other States Parties on the drafting and adopting of national measures to implement the Convention, to keep the OPCW informed of their actions and the results they have achieved; and

19. **Undertakes to review**, at its Ninth Session, the progress made in implementing this plan of action, and to **decide** on any further action needed; and **undertakes to review further**, at its Tenth Session, the status of implementation of Article VII and to **consider** and **decide on** any appropriate measures to be taken, if necessary, in order to ensure compliance by all States Parties with Article VII.

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