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Improving CWC implementation: the OPCW Action Plan

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The global effort to prevent, pre-empt or prosecute terrorist activities has led to increased attention being placed on national implementation and enforcement of multilateral treaties aimed at the prohibition and/or nonproliferation of weapons of mass destruction (WMD).¹ The 1993 Chemical Weapons Convention (CWC)² is one such agreement and the initiatives of its implementing body, the Organisation for the Prohibition of Chemical Weapons (OPCW), are leading the way in the sphere of implementation support, serving to inspire similar initiatives in other treaty regimes.

In the seven years since the CWC entered into force, the OPCW's policymaking organs have moved from benign lack of interest in CWC national implementing legislation to being fully engaged with the issue. The Conference of the States Parties (CSP) and the Executive Council have adopted a series of decisions encouraging states parties to comply with their implementation obligations, motivating them to be more active in assisting each other with that task, assigning a more hands-on role to the OPCW Technical Secretariat and providing increased funding for this area of work.³

The First Review Conference of the CWC, held from 28 April–9 May 2003 in The Hague, Netherlands, recommended improvements in national implementation of the convention,⁴ resulting in a 'Plan of Action Regarding the Implementation of Article VII Obligations'. This Action Plan was adopted by the OPCW's principal policymaking organ, the Conference of the States Parties, in October 2003.⁵ In the short amount of time since its formulation, the Action Plan has led to greater dialogue, organizational change, more intensive reporting and some other concrete outcomes.

CWC requirements for, and significance of, national implementation measures

Article VII of the CWC is the basis for national implementing legislation, requiring states parties, in accordance with their respective constitutional processes, to adopt the 'necessary measures' to implement their treaty obligations. In particular, each state party is required to:

- 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 the CWC, including enacting penal legislation with respect to such activity;
- not permit in any place under its control any activity prohibited to a state party under the CWC (implying positive enforcement action); and
- extend such penal legislation to any activity prohibited to a state party under the CWC undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

Article VII, paragraph 2 requires states parties to co-operate with and afford the appropriate form of legal assistance to one another to facilitate the implementation of these obligations. Article VI, paragraph 2 requires each state party to adopt the 'necessary measures' to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under the CWC,⁶ again implying positive enforcement action.

The extent of the regulations is not totally unfettered. Article XI, paragraph 2 requires states parties, subject to the provisions of the treaty and without prejudice to the principles and applicable rules of international law, to:

- not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under the CWC, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; and

- review their existing national regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the CWC.

The measures taken by states parties are subject to at least some level of review. Article VII, paragraph 5 requires states parties to inform the OPCW of legislative and administrative measures taken to implement the CWC. The First Review Conference interpreted this to mean that the full text of those measures must be submitted, including updates, or, in the case of states parties with a monist legal system,⁷ information on the specific measures they have taken to implement the convention.⁸

Thus each state party must assess what steps are necessary to ensure that the treaty is implemented effectively and enforced in its jurisdiction. Although, initially, some monist states parties asserted that the CWC automatically constituted national law and no further positive measures were necessary after entry into force, it has become generally apparent that, regardless of the state party's legal system, national implementing legislation and/or regulations are required to compel the submission of the information needed for accurate national declarations to the OPCW and for the establishment of export/import controls to implement the trade measures under the CWC. Experience since 1997 has shown that comprehensive implementing legislation is the state party's key to: obtaining reliable, complete information from the private sector on activities declarable under the CWC; prosecuting violations of the norms of the CWC, including terrorist activity involving the use of toxic chemicals; promoting international co-operation and assistance in enforcing the norms of the CWC; and exerting the 'dual use' control required under Article VI, paragraph 2.

The question arises as to what extent the CWC is enforceable in the jurisdictions of states parties. Even without specific implementing legislation, all states parties would probably be able to invoke laws against manslaughter, attempted murder and/or murder to prosecute successfully those accused of using chemical weapons. It is the related offences of development, production, stockpiling and transferring directly or indirectly chemical weapons that might go unpunished if comprehensive penal legislation has not been enacted.⁹ In addition, charges against co-conspirators might have to be dropped.

Offences are being reported much more frequently in the press. It is unclear whether this is because transgressions are on the rise, specific implementing legislation

has been enacted criminalizing a wider range of cw offences, enforcement authorities have become more vigilant due to heightened fears of terrorism, or because the subject is receiving greater media attention. In 2003 there were several media reports of cw offences being committed. The United Kingdom was reported to have charged six suspects under its Terrorism Act 2000 and Chemical Weapons Act 1996 in respect of ricin-related crimes.¹⁰ In the United States it was reported that a man had been sentenced to 14 years in prison for producing ricin,¹¹ that another had been sentenced to 13 years in prison for violating the federal Chemical Weapons Statute of 1998 by possessing sodium cyanide and potassium cyanide,¹² and that a third had been arrested under the same statute and had later been found to have had sodium cyanide and nitric acid in his home.¹³ There have been several reports so far in 2004 concerning alleged cw offences. For instance, six people were arrested in Lyon, France, in connection with an earlier arrest related to plans to produce ricin and botulinum toxin,¹⁴ several individuals were arrested in connection with a plot in Jordan to use a chemical bomb and deadly gases,¹⁵ and eight British nationals were arrested in the UK in connection with a plot to explode a bomb containing osmium tetroxide.¹⁶

Heightened fears of terrorist activity have made ever more urgent the issue of whether persons violating the norms of the cwc anywhere in the world might be detected, apprehended, prosecuted and punished. The Executive Council has identified the full implementation of the legislative measures required by Article VII as one of the main contributions that the OPCW can make to anti-terrorist efforts,¹⁷ a focus reaffirmed by the First Review Conference.¹⁸

Status of compliance

As of 1 October 2004, 96 of 164 states parties (59 per cent) had met the requirement of Article VII, paragraph 5 of the cwc to inform the OPCW of legislative or administrative measures they have taken to implement the convention. However, only 52 (32 per cent) had legislation that covers all areas key to the enforcement of the cwc. Table I provides an overview of the submissions trend under Article VII, paragraph 5 of the cwc between 29 April 1997 (entry into force) and 1 October 2004, as well as of the scope of the legislation (as reported to the CSP at its annual sessions).

Table 1 Submissions under Article VII(5), 29 April 1997–1 October 2004			
Status	Number of states parties	Article VII(5) submissions: number and percentage of states parties	Legislation that covers all areas key to the enforcement of the CWC¹⁹
C-I: May 1997	87	0 (0%)	Not available
C-II: December 1997	103	24 (23%)	Not available
C-III: November 1998	120	40 (33%)	Not available
C-IV: July 1999	125	43 (34%)	Not available
C-V: May 2000	133	48 (36%)	Not available
C-VI: May 2001	143	53 (37%)	Not available
C-7: October 2002	145	70 (48%)	39 (27%)
C-8: October 2003	154	94 (61%)	51 (33%)
1 October 2004	164	96 (59%)	52 (32%)

As reflected in the table, the increased attention given to this matter by the CSP and the Executive Council appears to have led, in recent years, to a rise in the number of submissions received by the OPCW. Nevertheless, in percentage terms, there has been a slight decline over the past year as a result of more states becoming members of the OPCW (from 154 in October 2003 to 164 in September 2004). Moreover, in terms of assessing global enforceability of the CWC's prohibitions, the most important factor is not the number of submissions, but the content of the national legislation and administrative measures enacted. The percentage of states parties with comprehensive implementing legislation remains comparatively low at 32 per cent.

Assessment of national legislation

As an initial step to assist drafters of national implementing legislation for the CWC and to draw attention to apparent disparities in the scope of national implementing legislation submitted to the OPCW, the Secretariat compiled and issued a Survey of National Implementing Legislation²⁰ a year after the treaty entered into

force. The survey consisted of a compilation of extracts of the legislation received, arranged topically to facilitate comparison. This document generally met with a lack of interest except for one initial instance of criticism from a member of the Executive Council. The question was raised whether the Secretariat had any mandate with respect to legislation beyond simply reporting to the policymaking organs on submissions received.

To avoid such sensitivities, the Secretariat created two tools: a Checklist of General Obligations under the CWC, and a Checklist for the Legislator—both in all six official OPCW languages.²¹ This was followed, in 1999, by a joint project with the Secretariat of the Organisation of Eastern Caribbean States (OECS) to develop a model act employing an integrated approach to implementing legislation.²² This was inspired by the initiatives of the United Nations Institute for Training and Research (UNITAR) to develop and strengthen national legislation and policies for the sound management of chemicals,²³ and was intended as an example of how the CWC regime could be implemented nationally with minimal impact on administrative and budgetary resources.

At its fifth session in May 2000, at the initiative of Switzerland, the CSP adopted a decision calling on states parties, the Executive Council and the Secretariat to assist states parties in fulfilling their obligations under Article VII, paragraphs 1 and 5.²⁴ The establishment of the Network of Legal Experts of Latin America and the Caribbean (the Grulac Network) and the First Legislation Questionnaire were two results.²⁵ The Grulac Network was formed at the behest of states parties in the region. It was intended that the network experts provide those states with assistance and advice, on request, during the process of elaborating national legislation, taking advantage of similarities in the states parties' legal systems and governmental structures.

The First Legislation Questionnaire was developed by the OPCW Secretariat to assess the legal and administrative mechanisms that states parties had established to regulate scheduled chemicals (that is, to identify not only what legislation and regulations were required, but also how they were being enforced), and to spot the problems that some states parties were facing in this respect and the means of addressing them. The questionnaire was in response to requests for assistance from several states parties that were drafting legislation and seeking the most

effective method of regulating scheduled chemicals and their precursors, in order to facilitate the reporting required under the cwc and to improve their control of transfers. Analysis of the 57 responses to the questionnaire²⁶ provoked some positive discussion in subsequent CSP and Executive Council sessions and was regularly referred to in informal consultations on the possible need for other measures regarding transfers of Schedule 3 chemicals to states not party to the cwc under Part VIII, paragraph 27 of the convention's Verification Annex.

In February 2001, at the request of the CSP, the Secretariat organized the International Symposium on Cooperation and Legal Assistance for the Effective Implementation of International Agreements, to examine the scope and implications of the obligation to co-operate and provide legal assistance to other states parties in the enforcement of the cwc.²⁷ The wording of the relevant paragraph, Article VII, paragraph 2, 'shall cooperate', leaves no room for discretion on the part of the requested state party. Yet there is no multilateral instrument that would enable all cwc states parties, in the absence of formal bilateral arrangements or an ad hoc agreement, to respond positively in the event that assistance is sought by one of them to enforce the cwc. The symposium was thus structured to reinforce the point that enforcement of the convention must encompass national and global efforts to prevent and prosecute criminal activities. It considered three broad topics: jurisdictional issues; modalities; and challenges. Speakers addressed each of the factors in the equation: national implementing legislation; the means of international co-operation and assistance (such as extradition and other forms of judicial or police co-operation); and the problems that can arise politically or constitutionally in trying to put the modalities into practice. Participants also looked at actual situations faced in the field in trying to prosecute offenders in an international context. The meeting closed with a roundtable involving the legal advisers of several international organizations to discuss multilateral initiatives to prevent or prosecute crime.

One outcome of the symposium was the issuance by the Secretariat of the Second Legislation Questionnaire on penal enforcement of the cwc,²⁸ which concentrated not on mechanisms and methodology, but on the bottom line: whether violations of each key area of the cwc could be prosecuted and penalized in each state party's jurisdiction. Going beyond the First Legislation Questionnaire,

it also focussed on whether states parties could prosecute offences involving the use of chemicals not listed in the schedules to the CWC. This depends primarily on how states parties have defined 'chemical weapon' in their penal legislation. In practice, some of the cases mentioned earlier have involved unscheduled chemicals with no history of use as chemical weapons, highlighting the importance of the treaty's 'general purpose criterion'. The responses to the second questionnaire were presented in a simple matrix format,²⁹ enabling a quick overview of the scope of each state party's legislation and identification of any existing gaps. While this could have been seen as a 'name and shame' exercise, it has not met with any criticism, in part because scrutiny of implementing legislation was becoming politically acceptable and in part because the reported information was based on each state party's assessment of its own legislation. The hard data contained in the matrix contributed to the political momentum, which had already been mounting, for states parties to address the issue of implementation. Indeed, by May 2003, the First Review Conference was able to recommend improvements in states parties' implementation efforts and by October 2003 the CSP was able to reach agreement on the Action Plan. The Executive Council received the First Progress Report on implementation of the Action Plan in March 2004,³⁰ containing an updated matrix to assist states parties and the Secretariat in prioritizing and focussing implementation support efforts, and has actively followed the matter since then, as discussed further below.

In a move that highlights the importance of national implementation of treaties prohibiting or regulating WMD, the United Nations (UN) Security Council, in resolution 1540 of 28 April 2004, called on all states to 'promote the universal adoption and full implementation, and, where necessary, strengthening of multi-lateral treaties to which they are parties, whose aim is to prevent the proliferation of ... chemical weapons' and to 'renew and fulfil their commitment to multi-lateral cooperation, in particular within the framework of ... the Organization for the Prohibition of Chemical Weapons ... as [an] important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes'. The resolution reinforces the call of the First Review Conference, as well as subsequent actions by the CSP and the Executive Council, for efforts to be stepped up in respect of

national implementing legislation. It also underlines the identification by the CSP and the Executive Council of implementation of legislative measures as one component of the OPCW's anti-terrorist efforts. Significantly, since the resolution was adopted under Chapter VII of the UN Charter, all UN member states, not just CWC states parties, are now obliged to put measures in place to prevent the proliferation of chemical weapons to non-state actors.

The Action Plan

The Action Plan on implementation of Article VII obligations, only four pages long, is divided into four parts (with respective tasks for states parties and the Secretariat): identification and analysis of problems and needs; resources for implementation support; the overall timeframe, intermediate steps and target dates for implementation; and oversight by the CSP and the Executive Council.

Identification and analysis of problems and needs

Under the first rubric, the Secretariat was requested to further identify, analyze and address the difficulties some states parties are having in adopting the required Article VII measures and to submit a progress report to the Executive Council at its thirty-sixth session in March 2004 on implementation of the Action Plan. In this report the Secretariat flagged a number of problems states parties were having, including: inadequate awareness of the CWC's requirements and thus a lack of support for its implementation; failure to accord the requirements priority; a shortage of resources; delays in establishing or designating National Authorities; and insufficient experience in respect of implementation.³¹ The Secretariat also highlighted the following areas in which states parties were in need of help: preparing legislation and regulations and reviewing drafts; identifying declarable facilities and preparing and submitting declarations; strengthening administrative means; and building awareness of, and generating support for, the CWC, including through outreach to stakeholders in government and other interested communities.³² States parties, meanwhile, were requested to inform the Secretariat of assistance they required if they had not already done so.³³ However, as the Secretariat noted in the progress report, very few states parties formally responded to this call.³⁴

Resources for implementation support

Under the second rubric, the Secretariat is requested to offer, within its budgetary parameters (together with any voluntary contributions), technical support to states parties for the establishment and effective functioning of National Authorities,³⁵ the enactment of national implementing legislation and the adoption of administrative measures. States parties, for their part, are encouraged to provide assistance to other states parties, such as advice on drafting and adopting national measures. So far, 22 states parties have formally offered assistance.³⁶ The Secretariat is also tasked under the second rubric with developing and improving further its implementation support programme and identifying and engaging with regional, sub-regional and other relevant groups of state parties able to provide implementation support, and with forging partnerships with relevant regional organizations and agencies.

Overall timeframe, intermediate steps and target dates for implementation

Under the third rubric, and perhaps most importantly, the Action Plan requires states parties to take steps to enact necessary legislation, including penal legislation and any essential administrative measures, by the tenth session of the CSP (7–11 November 2005). States parties are also encouraged to set themselves ‘target dates’ and to maintain regular contact with the Secretariat regarding implementation of these steps and target dates. Specific steps that must be taken by states parties include designating or establishing a National Authority and notifying the Secretariat once this has been done, enacting legislation and administrative measures, and providing the full text of their implementing legislation to the Secretariat, or, in the case of monist states parties, supplying information about actual measures introduced. Finally, states parties are encouraged to review their existing chemical trade regulations to ensure their consistency with the object and purpose of the cwc, if they have not done so.

Oversight by the CSP and the Executive Council

Under the fourth rubric, the Secretariat is requested to report to the CSP at its ninth session (from 29 November–3 December 2004) and every other session of the Executive Council on progress in implementing the Action Plan, while the Executive Council is requested to give guidance to, and to coordinate with, the

Secretariat and monitor implementation of the Action Plan. States parties that provide advice to other states parties are requested to keep the OPCW informed. Finally, the Action Plan specifies that progress with regard to its implementation will be reviewed at the ninth session of the CSP, while the status of implementation of Article VII obligations generally is to be reviewed at the tenth session, when a decision will be taken on further action, if necessary.

Some elements of the Action Plan emerged because the CSP and the Executive Council recognized that the extent of implementation of Article VII obligations to date was unacceptable. It was clear, though, that the Secretariat, including the Implementation Support Branch and the Office of the Legal Adviser, could not cope by itself with the enormity of the task. This explains the assignment of primary responsibility for implementing the Action Plan to states parties, for example, by encouraging those that need assistance to request it and those that can offer assistance to provide it. In other words, the Secretariat is no longer the sole resource for implementation support, but rather a facilitator, coordinator, clearing house and source of background information for initiatives by states parties. At the same time, however, the CSP recognized that national implementation of the CWC is a daunting exercise requiring more resources, in some cases far more, than many states parties have. Accordingly, the Action Plan refrains from being confrontational and accusatory, but instead encourages states parties to identify 'steps' and 'target dates' for themselves with the ultimate goal of having their legislation and regulations in place by November 2005.

States parties, including those in need and those that can offer help, must become more involved than they have been if the Action Plan is to be a success.³⁷ It implicitly recognizes that lack of, or gaps in, national implementing legislation carry their own risks, particularly since non-state actors, terrorists and others, have proven themselves capable of producing and using chemical weapons, including ones not listed in the CWC's schedules in the Annex on Chemicals.

Implementation support under the Action Plan

So what have states parties and the Secretariat done so far in light of the Action Plan and where should efforts now be concentrated?

Technical assistance

As an initial matter, the Secretariat is tasked under Article VIII, paragraph 38(e) of the CWC with 'providing technical assistance and technical evaluation to states parties in the implementation of the provisions of [the] Convention'. Such technical assistance requires a budget and personnel. In October 2003 the CSP authorized the Director-General to draw on €250,000 of the OPCW's 2001 cash surplus to finance additional international co-operation and assistance activities in 2004.³⁸ Separately, the Secretariat has hired an additional legal officer, one of whose responsibilities will be to provide implementation support.

The Secretariat indicated in its first progress report to the Executive Council that, for 2004, it was considering or had planned: 13 regional seminars, thematic workshops and training courses; 11 National Authority training courses for individual states parties (with 16 other requests being considered); and nine bilateral implementation support missions. These events are coordinated by the Implementation Support Branch, in the International Cooperation and Assistance Division, and entail co-operation with the Verification Division and/or the Office of the Legal Adviser. The Verification Division helps states parties to identify declarable facilities and activities by working with the chemical industry and government representatives. The Office of the Legal Adviser, meanwhile, provides legislation support upon request, including: giving presentations on the elements of comprehensive national implementing legislation; participating in on-site drafting assistance; and commenting on successive drafts of legislation.

The Office of the Legal Adviser has commented on over 30 sets of draft legislation since 2003, either in communications from headquarters or during technical assistance visits and regional meetings. Although the Secretariat has received requests from states parties in all of the OPCW's regional groups, most have come from the African and Asian Groups. In some cases, states parties did not have legislation in place for the enforcement of any of the key areas of the CWC, thus the process had to start from scratch, while in other cases states parties had gaps in their existing legislation that could be remedied by amendments.³⁹

With regard to offers of implementation support from states parties, so far, 22 have offered bilateral or regional assistance. One of the recommendations in the progress report is that states parties coordinate their efforts with the Secretariat

and share information on the activities they have engaged in, their results, lessons learned, follow-up action and future activities. Bilateral meetings with the Secretariat have commenced in this respect.

The OPCW Network of Legal Experts

Recognizing the value of the Grulac Network, which remains active, the Secretariat created a new, expanded network in 2003, encompassing the OPCW's four other regions (Africa, Asia, Eastern Europe, and Western European and Other States). The objective of the OPCW Network of Legal Experts is to increase the Secretariat's capacity to assist states parties with their implementing legislation by creating a framework for the provision of bilateral legal assistance as a cost-effective complement to the Secretariat's existing technical assistance projects. In order to establish the network, the Secretariat invited states parties to nominate individuals with in-depth knowledge of CWC implementing legislation or who were currently drafting such legislation.⁴⁰ The nominees were invited to the first meeting of the OPCW network, which took place at OPCW headquarters in The Hague in November 2003.⁴¹ The Secretariat gave presentations on such topics as the CWC's legislative requirements, enforcement issues, the Action Plan, the updated and expanded legal module on the OPCW website, the National Legislation Implementation Kit⁴² and privileges and immunities agreements. The legal experts were encouraged to give reports on the status of implementation in their home country, including problems encountered and assistance required. Perhaps the most useful segment of the meeting, however, was a two-day drafting workshop devoted to bilateral or broader consultations on drafting implementing legislation, during which participants met in smaller working groups organized according to language.⁴³

Since the November meeting, the Secretariat has taken some steps to nurture the OPCW network and network members have begun joining the Secretariat in some technical assistance visits. However, much more remains to be done, and it is hoped that the additional legal officer will help in this respect. In the meantime, the roster of legal experts has been posted on the OPCW website and kept up to date to enable the legal experts and states parties needing assistance to contact each other directly.⁴⁴ Another step has been to encourage as many states parties as possible to nominate experts to the network. In April and May 2004, the

Secretariat took the opportunity to solicit nominations when sending some 75 formal requests to states parties for information on the status of their implementation efforts. In addition the Secretariat has asked the legal experts to prepare reviews of draft legislation or to take part in on-site implementation support missions and regional workshops and seminars. The Secretariat has also invited regional and other relevant organizations to designate experts; the Advisory Service on International Humanitarian Law of the International Committee of the Red Cross (ICRC) and the OECS have done so. The OPCW network now has 105 members, comprising 69 states parties and two international organizations.

The National Legislation Implementation Kit

The National Legislation Implementation Kit was devised following consultations within the Secretariat in 2003 on the need to provide states parties with a concise and clear guide for national implementation of the CWC. Previous model statutes had been prepared for the Preparatory Commission in 1993 and 1996, including a Model Act to Implement the Convention⁴⁵ and Australia's Illustrative Model Legislation for the Incorporation of the Chemical Weapons Convention into Domestic Law.⁴⁶ However, the former was not comprehensive and did not appear to be widely employed, while the latter was aimed at states following the common law tradition and in some respects was less useful for states with a civil law legal system. Accordingly, it was decided that an implementation kit should be put together, using the Checklist for the Legislator as the skeleton framework, from which states parties could choose appropriate provisions and synthesize their own implementing legislation.

The kit's structure is straightforward. It is arranged according to measures to be implemented under the CWC, with each measure accompanied by: the corresponding CWC reference(s); model statutory language; and commentary. For instance, a brief outline of the general prohibitions vis-à-vis chemical weapons (Measure I.1) is followed by the corresponding CWC provisions that require this measure to be implemented through national legislation, model statutory language and an explanation of why this measure must be implemented.

The response to the kit has been positive and the Secretariat has been informed that it is being used by states parties. To ensure that it reaches the widest possible audience, it has been translated into all six official OPCW languages and distributed

and employed at workshops and regional seminars and in training courses. It was disseminated to delegates at the March 2004 session of the Executive Council and sent to some 75 states parties in April and May. The kit is available in hard copy and on the legal module of the OPCW's website, which itself was updated in late 2003 to include a legislation database, information and documents pertaining to national implementing legislation, legal technical assistance, co-operation and legal assistance, privileges and immunities agreements, facility agreements, administrative law aspects of the OPCW, and the 2000 Agreement Concerning the Relationship Between the UN and the OPCW. The links to OPCW-related legal publications has also been expanded.

Co-operation with other international organizations

The Action Plan encourages the Secretariat to identify and engage with regional, sub-regional and other relevant groups of states parties to advance implementation efforts. The Secretariat concluded in its progress report that it would be useful to approach the following organizations.

- With regard to implementing the CWC:
 - o the Association of Southeast Asian Nations (ASEAN);
 - o the African Union (AU);
 - o the European Union (EU); and
 - o the Pacific Islands Forum.
- With regard to helping states parties to develop and improve their systems for regulating and monitoring transfers of scheduled chemicals:
 - o the World Customs Organization (WCO); and
 - o the United Nations Office on Drugs and Crime (UNODC).
- UNITAR, in view of its programme to assist countries in developing and strengthening national action plans for the sound management of chemicals.

The Secretariat has already signed a Memorandum of Understanding with the Secretariat of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The two bodies agreed to establish working-level co-operation on matters of common interest relating to national implementation of their respective conventions, including sharing expertise,

exploring synergies between international co-operation projects and capacity-building activities. And, as noted above, the ICRC and the OECs have nominated experts to the OPCW Network of Legal Experts to offer legislation assistance through their respective regional offices.

Coordination

The Executive Council has appointed a facilitator on the Action Plan (from the UK) and he is conducting informal consultations on a regular basis to discuss progress, review issues related to the implementation of the plan, including the coordination of assistance, and prepare proposals on action that the Executive Council may wish to consider. Additionally, a Task Force has been established within the Technical Secretariat to ensure internal coordination of its activities under the Action Plan, as well as to facilitate coordination with states parties (through the facilitator), international and regional organizations, and groups of states that are partners in implementing the Action Plan.

Conclusion

The lessons that have been learned thus far are many, yet there is still a long way to go to ensure that all states parties implement effectively the provisions of the CWC in their national legislation in accordance with the November 2005 timeframe. Perhaps most important, the Action Plan approved by the CSP in 2003 recognized that, while the level of implementation was unacceptable, engaging in a 'name and shame' exercise was not the appropriate solution. Rather, it was decided that a proactive and co-operative approach would lead to more effective outcomes for all stakeholders.

Second, the Secretariat does not have the human and financial resources to manage the task ahead alone in the set timeframe and in some cases lacks the means to motivate states politically to assign the necessary priority to the task at hand. States parties are ultimately responsible for implementing their obligations under the CWC. Therefore, the CSP called on those states parties that need help to ask for it and those that are able to provide it to come forward with offers. Collaboration between the assisting states parties and the Secretariat is helping

to ensure the effectiveness of implementation support activities. Furthermore, the Secretariat is stepping up its coordination efforts with regional and international organizations. This is a welcome move, as long as there are tangible results and no duplication of efforts.

Finally, concrete steps are necessary. Hard data is needed on progress being made by states parties and the problems they are facing need to be analyzed. Technical assistance must be targeted so that limited human and financial resources are expended prudently. The Grulac Network and the OPCW Network of Legal Experts are useful tools for bilateral consultation and the exchange of information and experiences. The Checklist for the Legislator, the Checklist of General Obligations and the National Legislation Implementation Kit are also proving helpful. And the Secretariat's reports to the Executive Council on progress in implementing the Action Plan are valuable in providing all stakeholders with a snapshot of where things stand and in illuminating what remains to be done.

Without effective national implementation, the CWC has little practical meaning at the national level vis-à-vis non-state actors. The Action Plan was designed to hasten improvements in implementation. The Secretariat and assisting states parties are receiving requests for implementation support and this alone could generate guarded optimism that at least significant progress will be seen by November 2005. However, actual adoption of legislation by national parliaments can be a complex process, which the Secretariat can do little to influence. Assisted or not, it is the political commitment of each state party to implement and enforce its legal obligations under the treaty that, ultimately, will be the determining factor in whether the goals of the Action Plan are met.

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Endnotes

- 1 The views expressed in this article are those of the authors and do not necessarily reflect those of their respective affiliated institutions. The authors would like to express their gratitude to Julian Perry Robinson and Ralf Trapp for their advice and comments on the final draft of this chapter.
- 2 The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction was opened for signature on 13 January 1993 and entered into force on 29 April 1997.
- 3 An increasing number of states parties has generously provided voluntary funds for universality and implementation support programmes. Since 2003 the number of voluntary contributions by states parties has increased significantly, prompted by the Action Plans on 'universality' and 'national implementation' adopted that year.
- 4 Subparagraphs 7.74 to 7.83 of the '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', OPCW document RC-1/5, 9 May 2003, www.opcw.org.
- 5 OPCW Conference of the States Parties decision C-8/DEC.16, 24 October 2003, www.opcw.org.
- 6 The concept established by the cwc definition of chemical weapons—that all toxic chemicals and their precursors are chemical weapons except where intended for purposes not prohibited under the convention as long as the types and quantities are consistent with such purposes—is referred to by some commentators as the 'general purpose criterion'.
- 7 Principally, the position of a state on the relationship between domestic and international law. The two main theories are monism (in the event of a conflict between international law and domestic legislation, the former will prevail) and dualism (international law is applied within a state only if it has been incorporated into domestic legislation).
- 8 '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', subparagraph 7.83(c).
- 9 For further information see Lisa Tabassi and Robert Silvers, 'Enforcing the cwc: Actual Investigations and Prosecutions of Offenders', *Chemical Disarmament*, vol. 2, issue 4, winter 2004 (forthcoming).
- 10 See *The CBW Conventions Bulletin*, no. 59, March 2003, p. 25.
- 11 See *The CBW Conventions Bulletin*, no. 62, December 2003, p. 54.
- 12 See *The CBW Conventions Bulletin*, no. 60, June 2003, p. 37.
- 13 See *The CBW Conventions Bulletin*, no. 62, p. 34.
- 14 See *The CBW Conventions Bulletin*, no. 63, March 2004, p. 40.
- 15 See *The CBW Conventions Bulletin*, no. 64, June 2004, p. 47.
- 16 See *The CBW Conventions Bulletin*, no. 64, p. 45.
- 17 Subparagraph 2(b) of OPCW Executive Council decision EC-XXVII/DEC.5, 7 December 2001.
- 18 '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', subparagraph 7.10.
- 19 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 (document S/317/2002, www.opcw.org) or is derived from a reading of the text of national implementing legislation submitted by states parties under Article VII, paragraph 5 of the cwc.
- 20 OPCW document S/85/98, 17 November 1998. Updated version available at www.opcw.org (legal section).
- 21 Revised and updated versions available at www.opcw.org (legal section). The six official languages of the OPCW are Arabic, Chinese, English, French, Russian and Spanish.

- 22 'An Integrated Approach to National Implementing Legislation: Model Act Developed by the Secretariat of the Organisation of Eastern Caribbean States', OPCW document *S/190/2000*, 23 May 2000, www.opcw.org (legal section).
- 23 'Proceedings of the Thematic Workshop on Developing and Strengthening National Legislation and Policies for the Sound Management of Chemicals, 22–25 June 1999, Geneva', OPCW document *S/127/99*, 1 July 1999, www.opcw.org (legal section).
- 24 'Decision on National Implementation Measures', OPCW document *C-V/DEC.20*, 19 May 2000, www.opcw.org (legal section).
- 25 'Legislation Questionnaire: Survey of National Measures to Regulate Scheduled Chemicals under the Chemical Weapons Convention', OPCW document *S/194/2000*, 8 June 2000, www.opcw.org (legal section).
- 26 OPCW document *S/269/2001*, 16 August 2001, www.opcw.org (legal section).
- 27 The proceedings, updated to take into account reflections following the attacks of 11 September 2001, were published as Rodrigo Yepes-Enríquez and Lisa Tabassi, *Treaty Enforcement and International Cooperation in Criminal Matters, with Special Reference to the Chemical Weapons Convention*, TMC Asser Press, The Hague, 2002.
- 28 'Legislation Questionnaire: Penal Enforcement of the Chemical Weapons Convention', OPCW documents *S/308/2002* and *S/317/2002*, dated 6 June 2002 and 18 September 2002 respectively, www.opcw.org (legal section).
- 29 Reports by the Director-General of the OPCW on national implementation measures (documents *C-8/DG.5* and Addendum 1 (available at www.opcw.org), *EC-32/DG.17*, *EC-30/DG.3* and *EC-28/DG.4*).
- 30 'Note by the Director-General: First Progress Report on the Plan of Action Regarding the Implementation of Article VII Obligations', OPCW document *EC-36/DG.16*, 4 March 2004 (distribution restricted to states parties). The Executive Council received additional information at its thirty-seventh session in June. 'Note by the Director-General: Information on the Implementation of the Plan of Action for the Implementation of Article VII Obligations', OPCW document *S/433/2004*, 25 June 2004, www.opcw.org (documents section).
- 31 See *The CBW Conventions Bulletin*, no. 64, p. 4.
- 32 See *The CBW Conventions Bulletin*, no. 64, p. 4.
- 33 See *The CBW Conventions Bulletin*, no. 64, p. 4.
- 34 See *The CBW Conventions Bulletin*, no. 64, p. 4.
- 35 Each state party is required under Article VII, paragraph 4 to establish a National Authority in its jurisdiction to serve as the national focal point for effective liaison with the OPCW and other states parties.
- 36 'Note by the Director-General: Information on the Implementation of the Plan of Action for the Implementation of Article VII Obligations', document *S/433/2004*, 25 June 2004, p. 3, footnote 1, www.opcw.org (documents section).
- 37 See 'Note by the Director-General: Information on the Implementation of the Plan of Action for the Implementation of Article VII Obligations'.
- 38 OPCW document *C-8/DEC.19*, 24 October 2003, www.opcw.org (documents section).
- 39 The key areas of enforcement of the CWC include Article 1 prohibitions, Article 1 penalties, extraterritorial application of the CWC's prohibitions, Article 11(1) penalties ('general purpose criterion'), penalties in respect of violations of the Schedules 1, 2, and 3 chemicals prohibitions, the requirement of an end-user certificate for Schedule 3 chemicals, and penalties for failure to declare scheduled chemical facilities and activities.
- 40 See OPCW document *S/363/2003*, 28 May 2003, www.opcw.org (legal section).
- 41 See OPCW document *S/381/2003*, 14 October 2003, www.opcw.org (legal section).
- 42 Available at www.opcw.org (legal section).

43 See OPCW document S/398/2003, 28 January 2004, www.opcw.org (legal section).

44 See www.opcw.org (legal section).

45 OPCW document PC-XI/7/Rev.1, 31 May 1996, www.opcw.org (documents section).

46 OPCW document PC-IV/A/WP.10, 28 September 1993, www.opcw.org (legal section).