

VERIFICATION RESEARCH, TRAINING AND INFORMATION CENTRE

Development House, 56–64 Leonard Street
London EC2A 4LT, United Kingdom

Tel +44 (0)20 7065 0880

Fax +44 (0)20 7065 0890

Website www.vertic.org

Promotion of National Implementation of the CWC

Yasemin Balci

CWC Third Review Conference Side Event: Reinforcing the Global Norm Against Chemical Weapons

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During the First Review Conference in 2003, the agreement on a ‘Plan of Action Regarding the Implementation of Article VII Obligations’ marked the importance of national implementation of the CWC. In ten years, the percentage of States Parties that have implementing legislation covering key areas has increased from 33 to 47 percent. This means that the majority of States Parties do not have the full measures in place to prevent the misuse of scheduled chemicals, for example by setting up authorization procedures for their import and export and for deciding who can produce, acquire, retain or use them, which constitute important steps to preventing chemical weapons. In the report titled ‘Review of the Operation of the CWC since the Second Review Conference’, the Working Group for the Preparation of the Third Review Conference conceded that progress in adopting implementing legislation ‘has been slow’.

Experiences from the past ten years have demonstrated the need for long-term cooperation with multiple national and international actors in order to achieve comprehensive implementation of the Convention in States Parties’ domestic legal orders. Drafting and adopting legislation is a lengthy process. Delays can easily occur due to the complexity of the issues. States may also wonder which approach to take, for example whether a new law should be created or whether existing laws should be amended. Broader cooperation among international actors can benefit States Parties. For example, given the partial overlap and increasing scientific convergence, legislative efforts concerning the CWC and the Biological and Toxin Weapons Convention (or BWC) could be addressed jointly. When reaching out to States Parties for its assistance activities, the OPCW could also bring in UN Security Council Resolution 1540 Experts, officials from the BWC Implementation Support Unit and relevant regional organizations. States Parties should also reach out through their National Authorities to their civil society, academia and industry so that they understand, influence and support the proposed legislation.

This Review Conference will need to take decisions that will remain relevant for the next five years, during which the OPCW’s activities relating to the destruction of chemical weapons will decrease. The shift from destroying chemical weapons to preventing their re-emergence will not directly affect States Parties’ obligation to adopt national implementation measures. This is because the measures required under Article VII of the Convention are already focused on the prevention of chemical weapons. For example, States Parties are required under Article VII to prohibit activities such as developing, producing or using chemical weapons. Criminal legislation allows States Parties to investigate, prosecute and punish offenders, but it also has a deterrent effect. It deters the offender from recommitting crimes, and it also signals to the wider public that engaging in this kind of behavior will result in punishment, thus discouraging and preventing the misuse of toxic chemicals.



Criminal legislation forms only one part of the necessary national legislation. For those who are undeterred by prohibitions, it should be made as difficult as possible to acquire dangerous toxic chemicals, especially scheduled chemicals. National implementation measures therefore also entail subjecting certain activities involving scheduled chemicals and unscheduled discrete organic chemicals to a national authorization system. Moreover, by setting up national inspection regimes states can verify whether individuals or companies are complying with the applicable rules. These national measures allow States Parties to control toxic chemicals in their territories and prevent their misuse.

The need for comprehensive implementing legislation for the CWC is clear. Consider the case of Mr Frans van Anraat. It has been almost ten years since Mr Van Anraat, a supplier of the chemicals needed to produce mustard gas used in attacks against Iranian and Iraqi villages by Saddam Hussein's regime, was arrested by the Dutch authorities. His case was lengthy and complicated. Prosecutors had to prove that his chemicals (thiodiglycol or TDG, now listed in the CWC as a 'Schedule 2' chemical) were those used by the Iraqi regime to produce the chemical weapons that were employed by Iraqi forces. Prosecutors also had to prove that selling these chemicals amounted to a violation of international humanitarian law for which Mr Van Anraat incurred individual criminal responsibility.

In the 1980s, the CWC did not yet exist and legislation prohibiting the misuse of toxic chemicals was limited to the use of poison or poisonous gases. Prosecuting acts similar to those of Mr Van Anraat would be much more straightforward under legislation implementing the CWC as specific activities such as transferring chemical weapons, or chemicals appearing on one of the CWC's Schedules without authorization, are criminalized. Consider also, for example, a recent incident here in the Netherlands that seems to involve the attempt to trade in Sarin, a Schedule 1 chemical, by four individuals. These individuals are currently being held in custody and are suspected of attempting to sell, possess and use Sarin.

Today, export control legislation implementing the CWC can prevent the development or production of chemical weapons by ensuring that chemical agents reach and remain with their identified user and that the type and quantity of the agent match with the purpose. It is important that all States Parties have comprehensive legislation, and that non-States Parties join the Convention and adopt the necessary legislation. Otherwise there will continue to be weak points in the global system. For his part, Mr Van Anraat chose trading companies in countries with weak export control legislation to forward shipments to the Iraqi regime. That kind of exploitive behavior can easily occur in States Parties without comprehensive CWC legislation.

Since national implementation measures are typically focused on the prevention of chemical weapons, they will only rise in importance in the post-destruction phase of the CWC and should therefore be given increased attention. The Working Group for the Preparation of the Third Review Conference states that 'in order to ensure the proper functioning of all of the Convention's mechanisms (specifically in the context of preventing the re-emergence of chemical weapons), it is essential that all States Parties establish and enforce the administrative and legislative measures required by the Convention.' This Review Conference should similarly acknowledge the role that national implementation of the Convention plays at present and in the future, and take a decision to ensure that the OPCW maintains and augments its expertise and allocates more resources for providing legislative support to States Parties.