



NOTE BY THE SECRETARIAT

**DETAILED VERIFICATION MEASURES FOR THE
APPLICATION OF USABILITY CRITERIA FOR
CHEMICAL WEAPONS PRODUCED BETWEEN 1925 AND 1946**

1. Introduction

In his opening statement to the Eighteenth Session of the Executive Council, the Director-General introduced the Secretariat's proposed verification measures for old chemical weapons (OCW) produced between the years 1925 and 1946, as detailed in the Note by the Secretariat S/166/2000, dated 15 February 2000. That document outlined the approach that the Secretariat intended to pursue with regard to "usability" guidelines for chemical weapons produced between the years 1925 and 1946. The approach has now been in use since June 2000, and valuable experience has been gained. It is therefore appropriate at this stage to assess the results of this approach, and to address and resolve the issues that have arisen through its use.

2. Overview

- 2.1 Referring to chemical weapons produced between 1925 and 1946, paragraph 5 of Article II of the Convention specifies that only those which have "deteriorated to such an extent that they can no longer be used as chemical weapons" meet the definition of OCW. There has been much debate over whether this paragraph should apply solely to the chemical agent itself, i.e. the contents of a munition; to the munition body, as the delivery mechanism for the chemical agent; or to both.
- 2.2 In fact, the draft guidelines proposed by the facilitator for discussions on this issue address this problem by stating that "the determination of usability, when the toxic chemical or precursor has not been removed from the munitions or devices, shall be on the basis of the condition of the munitions or devices", and that "munitions and devices which are corroded, deformed, leaking, misfired or sustaining other physical damage to an extent sufficient to prevent use, are unusable as chemical weapons". Once removed from the munition, the chemical agent would be evaluated on the basis of its purity, for which a threshold of 5% is established under the current draft guidelines.

- 2.3 The usability criteria contained in Note S/166/2000 were developed in accordance with the draft guidelines, with the intent of providing a means for making a strictly technical assessment of the munitions in question. The criteria are used to evaluate whether or not the munitions may be delivered as designed, regardless of other factors such as whether or not the inspected State Party still possesses the means to utilise the munitions.
- 2.4 Since the entry into force of the Convention, nine States Parties (Belgium, Canada, France, Germany, Italy, Japan, Slovenia, the United States and the United Kingdom of Great Britain and Northern Ireland) have declared OCW on their territory. Only four of these States Parties (Germany, Italy, Japan and the United Kingdom of Great Britain and Northern Ireland) have declared OCW produced between 1925 and 1946. Two States Parties (China and Japan) have submitted declarations of abandoned chemical weapons (ACW) produced between 1925 and 1946, which have been verified.

3. Application of the criteria in 2000

- 3.1 Since the introduction of the usability criteria in February 2000, the Secretariat has carried out eight inspections of OCW sites in seven States Parties, and no inspections of ACW. The usability criteria were applied in four of these OCW inspections. During the remaining inspections no CW munitions manufactured between 1925 and 1946 were present, so use of the criteria in these cases was not appropriate.
- 3.2 During the four inspections in which the usability criteria were applied, the inspectors attempted to evaluate as many munitions as possible in the time available. Due to time constraints, however, they were normally able to evaluate only one or two items of each type of munition (bomb, projectile, mortar, etc.) per site. Particular attention is paid to munitions that appear to be in a potentially usable condition. If a weapon is found in such condition, it is documented in detail on the forms developed by the Secretariat specifically for this purpose, photographed and tagged for future viewing and identification. This tagging does not preclude destruction of the weapon, but such destruction will require prior notification to the Secretariat.
- 3.3 The data collected is recorded on the approved forms, and brought back to the Secretariat for evaluation by the Verification Division. Staff members of the Chemical Demilitarisation Branch (CDB) evaluate the data, compare the findings with the photographs taken, discuss the condition of the munitions with the inspectors involved, and reconfirm the declared date of manufacture with the available documentation. This evaluation forms the basis on which a final determination of usability is made.
- 3.4 In late October 2000 an inspection was conducted in a State Party to witness the destruction of a group of chemical weapons produced in the period 1925 to 1946. Several of these weapons were overpacked and had not been previously inspected due to safety concerns. During the inspection the team applied the usability criteria in accordance with Note S/166/2000, and shortly thereafter witnessed the destruction of the weapons. After completion of the inspection, the CDB evaluated the data

collected, and it was determined that two of the weapons destroyed met the standards set for usable weapons produced prior to 1946.

- 3.5 This was the first and, to date, the only occurrence of any CW produced between 1925 and 1946 that, in accordance with the draft criteria, were assessed as usable.

4. Resulting issues

- 4.1 In their current form, the usability criteria are technically sound, necessary and appropriate. They provide means for making a clear and objective technical judgement as to the usefulness of a weapon, in accordance with the Convention and the draft guidelines on usability. As more States ratify or accede to the Convention, the Secretariat faces the possibility of numerous new declarations of pre-1946 chemical weapons. Without such criteria, there is no reliable method for evaluating and determining whether such weapons could actually be delivered as designed.
- 4.2 In accordance with the Convention, a State Party that possesses chemical weapons faces much more stringent requirements than one that possesses only weapons meeting the definition of OCW. These requirements are specified in Article IV and Part IV(A) of the Verification Annex.
- 4.3 It is clear that the drafters of the Convention did not intend that a State Party recovering old or abandoned chemical weapons should have to face the full consequences of becoming a CW possessor State Party simply because one or two weapons manufactured more than 50 years ago might still be judged as usable. Such an approach would do nothing to advance the object and purpose of the Convention, and in fact might inhibit the expeditious destruction of such weapons due to the cost and to the verification requirements. There is no doubt that weapons declared as either OCW or ACW that are assessed as usable must face a more strict regime of verification, but this regime should be based upon a careful evaluation of the risk that the weapons actually pose to the Convention.

5. Actions to be taken by the Secretariat

- 5.1 The definitions of chemical weapons, old chemical weapons and abandoned chemical weapons are clear, and a usable chemical weapon produced between 1925 and 1946 is just that – a chemical weapon. The serious implications of this fact cannot be taken lightly, however, and the Secretariat will therefore take the following actions.
- 5.2 Upon the determination that a declared chemical weapon not meeting the criteria has been identified (subparagraph 3.3 above), the Secretariat will notify the inspected State Party by means of a letter, which will be attached to the State Party's copy of the final inspection report.
- 5.3 This letter will notify the inspected State Party of the specifics of the issue, including the munition type(s) and quantities. At this point the munitions in question will be referred to as declared OCW or ACW not meeting the criteria.

- 5.4 The inspected State Party will be informed that, in order to confirm the identification of such munitions and application of the criteria, a second inspection will be launched for the express purpose of verifying the application of the criteria to the munitions in question, as per paragraph 5, Part IV(B) of the Verification Annex. This inspection will be launched not later than 120 days after the notification, and the inspection team will include staff members with detailed specialised knowledge of the criteria and the associated procedures.
- 5.5 Upon receipt of this notification the inspected State Party will not be prohibited from completing the destruction of the munitions in question as OCW, pending confirmation to the contrary by the second inspection. Such destruction will of course be in accordance with submitted destruction plans for the munitions. It will be the State Party's responsibility to notify the Secretariat in advance regarding the planned destruction, to make the necessary arrangements to facilitate the verification of destruction if the Secretariat so chooses, and to prevent the unnecessary launch of the confirmation inspection. In cases when the Secretariat takes the decision not to witness the destruction of the items in question, the destruction will be documented in detail by the State Party (together with photographs or video recordings) for future reference.
- 5.6 If the second inspection is launched, its aim should be limited to the confirmation of the results of the application of the criteria to the munition(s) concerned. Verification will be completed by the application of the usability criteria, and the results will be recorded on the relevant forms. No formal notification of the results will be made until the inspection team has returned to OPCW HQ and has briefed the Director-General accordingly. At that time the inspected State Party will be formally notified of the results of the inspection, and of the necessary changes required (if any) to their declaration. If the initial assessment of usability is verified, the State Party will at that time be required to comply with the requirements of Article IV of the Convention and Part IV(A) of the Verification Annex.