

**2008 CHEMICAL WEAPONS CONVENTION OPEN FORUM**  
**The Chemical Weapons Convention – recent experiences and future prospects**

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*“National implementation” (as delivered)*

Thank you very much Mr Chairperson,

I appreciate this opportunity to address the Open Forum today on behalf of the Verification Research, Training and Information Centre.

For those of you who may not be familiar with our work, I will say a few words about my organization. VERTIC is an independent, non-profit research centre based in London. Our mission is to promote effective and efficient verification of international agreements in the fields of arms control and disarmament, and the environment. We are currently working on a project to support national implementation of nuclear, chemical and biological weapons treaties and UN Security Council Resolution 1540 (2004). We have a website compiling a lot of information and assistance tools on implementing legislation requirements, which I would encourage you all to visit ([www.vertic.org/NIM](http://www.vertic.org/NIM)). We also provide information concerning implementation, and legislative assistance, on request.

I have been invited to speak on national implementation of the Convention, which is quite a broad topic. I will focus my remarks on the issue of national implementation measures by addressing three themes:

- 1) Comprehensive implementation of the Convention, including the General Purpose Criterion;
- 2) National implementation as a process; and
- 3) The need to include all relevant stakeholders to ensure effective national implementation.

We have heard many states and regional groups deliver statements at this Review Conference in support of the goal of full and effective national implementation of the Convention, including through the adoption and enforcement of national laws and regulations. Such measures are essential in order to exclude completely the possibility of the use of chemical weapons, which is a key objective of the Convention specified in the preamble.

As you are all well aware, the enactment of national measures to give effect to the treaty is explicitly required under Articles VI and VII of the Convention. National measures are necessary not only to ensure States Parties are able to prohibit chemical weapons and to fulfil all of their other obligations under the Convention: the adoption of such measures is a compliance matter.

At the time of the First Review Conference in 2003, it was clear that very few States Parties had enacted the required legislation. States cannot simply rely on existing measures to give effect to the treaty, due to the specific requirements for penal law, transfer controls and measures to facilitate the verification regime, for example. Neither is the treaty a self-executing instrument. It could be said that six years after entry into force, the status of national implementation measures adopted by States Parties was poor.

By calling for an Action Plan on National Implementation at the First Review Conference, States Parties recognized that significant, focussed effort was needed to increase the number of states enacting implementing legislation, and establishing or designating a National Authority. By January of this year, the number of States Parties informing the Technical Secretariat that they have legislation in force covering all key areas of the Convention had risen to just over 40%.<sup>1</sup> This represents a modest increase in relative terms, as the number of States Parties had significantly increased, to 183. However, the number of States Parties with the required legislation still does not meet the standards that we have come to expect for this Convention.

Nevertheless, the operation of the treaty generally over the past five years can rightly be considered to be a success. Future challenges have been foreseen, including the means for rebalancing the operation of the Convention's verification regime to achieve the non-proliferation objectives of the Convention. States Parties' commitment to overcoming all such challenges appears to remain strong, and this is encouraging.

Particular problems that have arisen in relation to national implementation of the Convention could usefully be addressed by this Review Conference and through further work in support of the Action Plan on National Implementation. While a lot of work remains to be done in increasing the number of States enacting primary legislation and subsidiary regulations, it has been recognised that attention must also be paid to improving the comprehensiveness of such measures and enhancing the effective operation of National Authorities.

This brings me to the first theme I wanted to raise today: comprehensive implementation of the Convention, including the General Purpose Criterion.

Over ten years following entry into force, it remains unclear how well States Parties understand the comprehensive nature of the prohibitions and how comprehensively States Parties are actually implementing the Convention through national measures.

Specifically, an issue of concern is how States Parties are implementing the comprehensive prohibition on chemical weapons contained in Article II.1(a): the so-called General Purpose Criterion. This principle defines chemical weapons on the basis of purpose of their use: "Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes." The definition of chemical weapons also includes those munitions, devices and equipment specified in Article II.1(b) and (c). Chemical weapons, as defined by this General Purpose Criterion, are banned under Article I.

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<sup>1</sup> OPCW, *Chemical Disarmament*, Volume 6, No. 1, March 2008, p. 20.

The General Purpose Criterion's elegant formulation serves to guard against the treaty becoming irrelevant in light of future scientific and technological developments. However its effectiveness in practice will depend on how well States Parties have encapsulated it in their national legal jurisdiction, in accordance with the Convention's requirements.

As with implementation of the General Purpose Criterion contained in the Biological Weapons Convention, this will require laws, regulations and governance frameworks which give effect to the "catch-all" nature of the prohibition. Simply regulating lists of toxic chemicals, in the case of the Chemical Weapons Convention, is inadequate in preventing the misuse of toxic chemicals. For the General Purpose Criterion to work, there needs to be widely held understanding of its scope and purpose. This requires significant outreach and awareness-raising efforts to encourage personal responsibility among all stakeholders. The presentation by Professor Alistair Hay later in this Open Forum will address this issue in more detail.

States Parties could usefully share information on their approaches to fully implementing the General Purpose Criterion with each other, with national and international stakeholders and with the Technical Secretariat. This would ideally improve the comprehensiveness of measures adopted, but also embed the norm against chemical weapons into the work and practice of all the relevant stakeholder communities, particularly scientists and industry.

Other obstacles to comprehensive implementation, such as resource constraints and legislative or other technical assistance needs, will continue to need to be met in the coming months and years, including through offers of assistance by those States Parties able to do so. The need to secure the necessary political support at the national level should not become an impediment to the enactment of appropriate legislation, however.

This brings me to the second theme in my presentation: that national implementation is a process.

The focus on increasing the number of States with the requisite legislation has tended to imply that national implementation is an end-point in itself, and that once legislation has been enacted, the requirements under Articles VI and VII have been met. But that is not the case. Instead, national implementation is a process which continues long after the required laws are adopted. They will need to be reviewed periodically, to assess their continued appropriateness and effectiveness, and amended where necessary. In addition, such laws must be routinely monitored and enforced. The activities of enacting legislation, and carrying out monitoring and enforcement, collectively comprise national implementation: these activities mutually reinforce each other.<sup>2</sup> I would urge States Parties to recognise this process aspect of national implementation, as it will better serve them in ensuring fulfilment of their CWC obligations over time, particularly the non-proliferation objectives of the Convention.

These national implementation processes of legislation, monitoring and enforcement require the involvement of a wide range of national constituencies. This leads me to the third and final issue that I wanted to raise today: the role that stakeholders play in ensuring effective national implementation. These constituencies, or stakeholders, are drawn from the public, private and civil sectors. Relevant

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<sup>2</sup> See Filippa Lentzos, "Representation from the Trenches: Ongoing Monitoring for Implementing the BWC", *Disarmament Diplomacy*, no. 85 (Summer 2007).

public sector stakeholders will include government ministries as well as agencies such as customs, law enforcement and the CWC National Authority, for example. Private sector stakeholders include industry and professional associations. Civil society stakeholders, such as NGOs and academia, also play a role in information dissemination, independent analysis and informal monitoring. This “tri-sectoral network” of stakeholders,<sup>3</sup> necessarily plays an important role in ensuring full and effective implementation of the Convention. I would urge States Parties to consider how to better integrate all of these sectors into their national implementation processes for the Chemical Weapons Convention.

I will end my presentation there. Thank you for your attention.

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<sup>3</sup> Emmanuelle Tuerlings and Julian Perry Robinson, “The Trisectoral Network Associated with the Chemical Weapons Convention”, as posted on the internet at [www.gppi.net/fileadmin/gppi/Tuerlings\\_Robinson\\_Chemical\\_Weapons.pdf](http://www.gppi.net/fileadmin/gppi/Tuerlings_Robinson_Chemical_Weapons.pdf).