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Conference of the States Parties

First Special Session

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NOTE BY THE DIRECTOR-GENERAL

**INFORMATION RELEVANT TO ITEM 3 OF THE PROVISIONAL AGENDA
OF THE FIRST SPECIAL SESSION
OF THE CONFERENCE OF THE STATES PARTIES**

1. The annexed documentation is provided with regard to item 3 of the provisional agenda of the First Special Session of the Conference of the States Parties (C-SS-1/1, dated 3 April 2002).
2. The Director-General also commends for the attention of Member States his two statements on this matter, which have been issued as Executive Council documents (EC-28/DG.11, dated 19 March 2002, and EC-28/DG.12, dated 21 March 2002).

Annex 1: Letter dated 21 February 2002, to US Secretary of State Colin Powell

Annex 2: Letter dated 11 March 2002, to the Foreign Ministers of those Member States which are members of the Executive Council

Annex 3: Letter dated 2 April 2002, to the Foreign Ministers of those Member States which are not members of the Executive Council

Annex 4 (English only): Responses to the allegations against the Director-General of the OPCW

Annex 1

(Signed version available in hard copy and separate PDF file)

The Hague, 21 February 2002

L/ODG/56197/02

[Dear Mr Secretary,]

I am writing to you on a matter of grave importance to the Organisation for the Prohibition of Chemical Weapons, embracing issues far more serious than my personal well-being and reputation. It is also a matter that needs to be seen in a certain context, not least since it now seems that the record of my relationship with the US is being called into question in certain circles. Perhaps this letter will be seen as an extraordinary communication but, since this is an extraordinary situation, I believe I must take this step in order to find an appropriate solution.

Looking back over the last year, I must say that I very much appreciated your letter of February 2001, commenting favourably on the accomplishments of the Organisation which you yourself described as “very impressive”. Your recognition of the dedication and hard work of the staff under my leadership was very welcome indeed, as was your expression of support in regard to my own efforts in pursuit of a universal application of the Convention, with emphasis on bringing countries of proliferation concern into the fold.

Similarly, just last May your Representative to the annual Conference of the States Parties also seemed positively inclined when, on behalf of the US Government, he “thank[ed] the Director-General for his tireless work in promoting implementation of, and compliance

The Honorable Colin Powell
Secretary of State
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with, the Convention”. If something has happened in the past seven months to create the current situation, I must admit that I am unaware of it. In fact, as I examine the correspondence between my office and various officials of the US Government in the Department of State and the Department of Defense, I can see no suggestion that such a serious gulf seemed to be opening between us.

You will understand my surprise, then, when it was brought to my attention only in the last few days that certain ‘charges’ are now being made by officials of the US Government against me as Director-General, in various capitals and to various delegations of the Organisation. Accompanying these charges is the demand that I step down. On 18 February, at two separate meetings requested by the US Alternate Permanent Representative with two officers in my personal office, they were each informed that my departure needed to take place within 30 days if I wished to avoid damage to my reputation, or else the Executive Council session in March would likely be affected. Unfortunately, I must emphasise that I have only received news of this matter through third parties, including members of my own office, and through officials and Representatives of other Member States who have also been approached by US officials.

Please let me say in this regard that I have done no wrong and I have nothing to hide. I have always been open to dialogue with the United States Government, to which I believe your Permanent Representative, Ambassador Donald Mahley, can attest. Perhaps his distance from the OPCW, since he is based in Washington and not in The Hague, has made this more difficult than in the case of other important delegations, but my door has always been open to him. I have always endeavoured to solve any difficulties between the US and the Secretariat in a constructive way that is fully consistent with the requirements of the Convention, including a number that are on the table at this very moment waiting for the US side to accept my invitation to meet and discuss. I can state unequivocally that the Secretariat pursues the same approach with all Member States.

I take considerable pride in the fact that I have twice been elected by acclamation to the post of Director-General, both times not only with the support of the US, but also on the second occasion, one year in advance of the prescribed date, at the specific initiative of the US. I find it particularly surprising when I hear from others that I am said to be anti-American. Time that I have spent in the US has helped to shape my respect for the values of democratic process and fair play, reinforcing the training and education I had received earlier in the Foreign Service of Brazil. I derive much personal satisfaction from the fact that my diplomatic career has made it possible for my own children – one of whom is also an American citizen – to be exposed to these values not only in Brazil but also in the US. These values shall remain with me throughout my life, in my dealings with all Member States for the duration of my time in office and, not least, throughout the period that lies immediately ahead.

Consistent with my election by all Member States, I have made it a hallmark of my tenure to ensure that all are treated equally, reflecting the standards expected in a multilateral, non-discriminatory institution. In this I have repeatedly sought the assistance of the US,

to lead the way, to set the standards of behaviour for others to follow, whether it be in regard to industry inspections or in regard to inspections falling within the military realm.

It is my sincere desire that we find a way to strengthen our cooperation, to the advantage of the Organisation and all Member States, particularly in these troubled times as we continue the drive to destroy chemical weapons, to prevent their proliferation, and improve our abilities to respond to almost unimaginable situations. If there is a need for a more profound dialogue and a mutual re-dedication to the task at hand, I am prepared to do my part. Let me say that I am ready to come to Washington at any time to discuss the past, present and, most importantly, the future of the Organisation and how we, together, can improve upon communications and the way we do business. You will recall that, in my letters to you of 22 January and 25 September 2001, I emphasised that the Convention is in need of continuing strong US leadership and support, and that continues to be my position. I believe that we can find a way to work together, and with other Member States, in the continuing pursuit of the Convention's objectives.

Since your own officials have put forward the prospect of this matter affecting the Executive Council session of the Organisation from 19-22 March, I would be grateful if you might share your thoughts with me in the near future. The reason is simply that Council Members will need to be warned well in advance if this matter might come before the session, so that they might seek appropriate instructions. As you will understand, since I was elected by all, I cannot merely slip away at the request of one or even a few. This would do irreparable harm to the principles of independence and democracy embedded in international organisations. My office of Director-General owes it to all Member States to defend these principles.

Please accept, Mr Secretary, the assurances of my highest consideration.

[Signed]

José M. Bustani
Director-General

Annex 2

Printed on OPCW letterhead

The Hague, 11 March 2002

L/ODG/56881/02

I am writing to Your Excellency in view of certain allegations that have been directed at me and which, distressingly, call into question the independence of the position of Director-General within the Organisation for the Prohibition of Chemical Weapons, as well as the integrity and effectiveness of the CWC as a non-discriminatory multilateral verification instrument.

It is my desire to avoid an irreconcilable polarisation of views among Member States, and between any Member State and my office. I have already indicated to Secretary of State Colin Powell in a letter dated 21 February, pre-dating the official US Government communication conveyed directly to me on 28 February and revised on 1 March, that I am prepared to do my part in achieving this, with the assistance of others if that is considered warranted.

It is difficult to imagine a situation, short of malfeasance, which could be so serious as to warrant calling into question the well-established democratic principles associated with due process, or the principle of non-interference with international civil servants in the execution of their duties. I want to assure Your Excellency that my own behaviour is open to all to arrive at their own objective conclusions. In that regard, I am dismayed by certain allegations that are being made and circulated to Members of the Executive Council, allegations which do not stand up to scrutiny. I can only presume that the political authorities who have allowed such allegations to be circulated have been greatly misinformed of the facts.

As a result, I am communicating certain information to Permanent Representations of the Executive Council, the same delegations addressed by the US Government, so that they might be better placed, in this instance as well, to draw their own conclusions. However, I think you will agree that this is not really the ground upon which this matter can be properly addressed.

The issue is not about my management of the Secretariat. After all, four-and- a-half years after entry into force of the Convention, it is possible to put on display impressive statistics testifying to our achievements in terms of growth of membership, growth in the number of inspections conducted in an expanding number of countries, expansion in verification of destruction of chemical weapons, and modest but important growth of programmes in the area of international cooperation and assistance. These accomplishments speak for themselves, including during recent periods of severe budgetary constraint, when I have had to become increasingly and personally involved in many aspects of the work of the Secretariat which might otherwise have required less intense oversight by my own office. And I hasten to emphasize that the financial difficulties and gaps in programme delivery that are of general concern are the consequences of insufficient budgets, not inadequate management. I am convinced that the core issue is different.

The Convention foresaw the creation of a non-discriminatory regime functioning according to well-established principles applicable in international organisations. This is what is being called into question here.

The issue is really about the extent to which any Member State can decide for all on how the Top Management is to be comprised from one moment to the next. If one Member State, or even a few, can dictate the departure of the Director-General today, then who will do it tomorrow, and for what reason? It is about how a duly-elected Director-General is to behave in fulfilling the Convention, and how he is to be assessed in meeting any Member State's particular expectations to the exclusion of those of other Member States. It is about achieving a balance in the pursuit of a common vision of multilateral security, when different viewpoints and priorities exist. It is about preventing the budget being used by any Member State as a tool to achieve a particular objective.

Let me assure you, Excellency, that I have closed no doors on dialogue and cooperation, nor on the means to achieving both for the benefit of the Convention and all Member States.

Please accept, Excellency, the assurances of my highest consideration.

[Signed]

José M. Bustani
Director-General

Annex 3

Printed on OPCW letterhead

The Hague, 2 April 2002

L/ODG/57565/02

I am writing to Your Excellency in view of the request of the United States of America submitted on 22 March 2002 to convene a special session of the Conference of the States Parties – the first such request in the five-year history of the Chemical Weapons Convention. Not all Member States, other than those in the Executive Council, will necessarily be as aware of recent events as others, and so I thought this letter warranted.

By now all Member States will have received documentation from the Secretariat relevant to the US request. Regrettably, this documentation is sadly lacking in detail. The United States is yet to submit the explanatory memoranda, which should accompany each of the two items proposed by it for inclusion on the agenda – the “tenure of the current Director-General” and “any further action with regard to the Technical Secretariat”. Thus, this procedural and substantive irregularity results in Your Excellency’s Government being asked whether you concur with the US request for a special session of the Conference without having been informed of the reasons for that request. It is my duty, as the Director-General, in such circumstances to try to fill in some of these gaps to the extent I can.

Less than two years after my re-election as Director-General of the OPCW by acclamation for the second term of office, and less than ten months after the United States publicly thanked me for my “tireless work in promoting implementation of, and compliance with, the Convention”, it now seeks my “immediate departure”. My tenure, in fact, expires only in 2005. Without any mandate from the Member States, in January 2002 the United States’ representatives approached the Government of Brazil and requested that I be ‘recalled’, as though I were an employee of Brazil and not an international civil servant. Brazil, of course, responded that the request was inappropriate; that, as a Member State, it

was fully satisfied with my performance; and that it had no say in determining my future. This US demarche was in violation of a key provision of the CWC which requires each State Party to “respect the exclusively international character of the responsibilities of the Director-General”.

I was approached for the first time by the US directly on 28 February with the message that I should resign, a violation of the provision of the Convention which specifies that “... the Director-General ... shall not seek or receive instructions from any Government ...” I refused to resign under pressure from this Member State, and I offered to reconcile apparent US grievances through dialogue and cooperation. The United States rejected this offer of a dialogue and, instead, launched a public attack against me threatening that, unless I go, it would not pay its financial contribution to the OPCW. On 19 March 2002 in the Executive Council, the United States tabled a “no-confidence motion” in my leadership. This motion failed. It did not receive even a simple majority, and clearly much less than the required 2/3 majority of votes. Twenty-four members of the Council either voted “no” or abstained, with “abstentions” in the Council having the same effect as “no” votes in accordance with the Council’s Rules of Procedure. There was also no consensus in the Council for the US call for a special session of the Conference.

The United States is now seeking an alternative way to convene the special session of the Conference without the Executive Council’s involvement. For this it needs the support of at least 48 other Member States – one third of the membership.

I was not provided with any reasons for the US dissatisfaction with my performance, except that it did not like my “management style”. Apparently I have also been charged with “mismanagement”. Let me state very clearly: there is no mismanagement in the OPCW. It is regularly audited by internal and external auditors and their reports are adopted by the Conference of the States Parties. All reports are on the OPCW’s website. Auditors have not found any evidence of mismanagement. Every cent was spent on activities which were properly budgeted and accounted for. There is, instead, a financial crisis that results from underbudgeting and from non-payment by some Member States of their dues, including the United States which is responsible for 22% of the budget. It has, consequently, caused a reduced level of activity in 2001 and so far this year, neither of which is of my making. And, finally, I am apparently responsible for the following “ill-conceived initiatives”, among others:

- attempts to bring Iraq into the CWC – attempts, I might add, which are in full accordance with the UN Security Council’s resolution 687 and the mandate given to me by the CWC’s Conference of the States Parties;
- offer to put the expertise of the OPCW at the disposal of the international community in the global struggle against terrorism (which I am required by the Convention to do, in any event, in response to a request for assistance from any Member State of the CWC, should there be a threat or use of chemical weapons);
- call to enhance the capacity of the OPCW to assist its States Parties if attacked with chemical weapons; and

- efforts to promote an increase in funding for international cooperation programmes, for the benefit of developing countries, which now accounts for only 6% of the OPCW's budget.

I leave it to Your Excellency's Government to judge whether, based on the above, I have committed any "malfeasance" which warrants my immediate departure. I have also offered to the Executive Council that my professional life be investigated by any independent body, including through the good offices of the UN Secretary-General. This offer stands even though the United States, regrettably, announced to the Executive Council that it is unwilling to take it up.

The OPCW is functioning well. It has increased its membership from 87 to 145 States Parties in only four and a half years. Our inspectors verified destruction of two million chemical weapons; two thirds of chemical weapons production facilities have either been destroyed or converted to legitimate purposes, while the remainder await a similar fate; and more than 1,100 inspections have been carried out in some 50 countries. The OPCW has earned credibility in the international community because of its even-handed and non-discriminatory approach to every Member State. I have never taken any instructions from any Member State, and my truly independent and multilateral "management style" is, probably, my most serious malfeasance in the eyes of some.

There is, however, a more far-reaching issue at stake. By 'dismissing' me under the circumstances I have described, an international precedent will have been established whereby any duly elected head of any international organisation would at any point during his or her tenure remain vulnerable to the whims of one or a few 'major contributors'. They would be in a position to remove any Director-General, or Secretary-General, from office at any point in time without any malfeasance, simply because they don't like his or her "management style". I refused to resign precisely because such action on my part would establish this precedent. I believe that, in my work as the Director-General of the OPCW, I am responsible to each and every Member State irrespective of the amount of its budgetary contribution. I believe that each of the 145 Member States should be in a position to judge my performance. I believe that each of the 145 Member States should have the opportunity to determine its course of action, in the knowledge that my forced departure from the OPCW would reverberate throughout all other international organisations.

For many countries, international organisations represent a valuable instrument to contribute to international policy-making and to safeguard their national interests through consensus. All must be wary of any precedent that could destroy such independence and impartiality. In the particular case of the CWC, one must also be aware of how these actions might have an impact on the goal of universal membership of the CWC.

Excellency, this issue strikes right to the heart of the independence of the Secretariat and its chief executive officer, in terms of not receiving instructions from any Member State or group of Member States. When I decided to resist the pressures being levelled at me

personally, it was in the knowledge that I would pay a severe personal price for what some see as a mere act of defiance. I must tell Your Excellency that I do not see this as defiance; I see it as an obligation to all Member States to ensure that they have an opportunity to exercise their democratic rights and responsibilities in the Conference. Had I just walked away at the insistence of one or a few Member States, Your Excellency's Government would have been denied those rights.

I have said all along that I have done no wrong and that I have nothing to hide. I am always ready to find solutions through dialogue and cooperation, and I was pleased to hear at the March session of the Council that many delegations also thought that dialogue and cooperation offered a better way forward than confrontation.

In the final analysis, I have also said unreservedly that I would comply with the wishes of all Member States as expressed through a proper, transparent process ensuring that the principles embedded in democratic institutions, including the independence of the office of the Director-General, would be preserved. The rest, including whether to hold or attend a special session of the Conference, is in the hands of Member States.

Permit me, Excellency, one final observation on what may seem merely a mundane matter of procedure but which, in fact, is quite important. In the special session of the Conference -- if it is, indeed, held on 21 April -- a difference in Conference versus Council Rules of Procedure will see abstentions count as a vote against me and in favour of the motion seeking my dismissal. This is because decisions at the Conference need to be taken by a 2/3 majority of "members present and voting". Thus, since abstentions will not count as votes at all, an abstention favours the motion against me in reducing the absolute number of votes required to achieve that result. If Your Excellency's Government believes that I should not be 'dismissed', given the considerations I have outlined, then it will be necessary to vote against the motion.

Please accept, Excellency, the assurances of my highest consideration.

[Signed]

Jose M. Bustani
Director-General

Annex 4

RESPONSES TO THE ALLEGATIONS AGAINST THE DIRECTOR-GENERAL OF THE OPCW

1. Having reviewed in detail the allegations brought against him by a Member State, the Director-General wishes to correct some of the information that is being circulated.
2. Unsubstantiated allegations against the Director-General compound the present shortage of funds and further weaken the Organisation at a time when it must be strengthened and put to full use to safeguard global chemical weapons disarmament and non-proliferation, and also to protect against new challenges to international security, including chemical terrorism.
3. The Director-General sees no reason to comment on those allegations which date back to before May 2000 – the date of his re-election by acclamation for a second term. He will also not comment on selective quotations from his statements. His statements are on record in their entirety and attest to his balanced and even-handed approach, as well as to his deep commitment to the preservation and strengthening of the Chemical Weapons Convention, which is at the core of his mandate. He will, however, as requested, provide substantive comments as regards all allegations brought against him.
4. In making these comments the Director-General again wishes to emphasise that it was never his preference to bring the issue, even informally, to the members of the Executive Council. His efforts to address the US concerns, brought to his attention by the US for the first time on 28 February, are on record. He reluctantly decided to inform the Chairman and Vice-Chairmen of the Council about his position on this matter, **only after** he was officially told by the US Alternate Representative on March 1st, speaking on instructions, that the US was launching demarches in the capitals of all the members of the Executive Council calling for his resignation. His actions are nothing more than a balanced and proportionate response to the campaign launched against him. Indeed, faced with various compilations of allegations circulated to certain Member States, these delegations themselves have turned to the Director-General for clarification.
5. In May 2000, one year before the expiration of his first term, **Ambassador Bustani was re-elected by consensus for a second term of office**. Such a re-election has no precedents in the history of international organisations, and testifies to member States' evaluation of the Director-General's performance in office. Just eight months ago, in May 2001 the US Permanent Representative, on behalf of the US Government, publicly thanked "the Director-General for his tireless work in promoting implementation of, and compliance with, the Convention". It is, therefore, highly surprising to refer to any "further deterioration" of the Director-General's performance either before or during the past year.

6. In fact, **the Director-General considered his relationship with all Member States, in particular the major contributors, to be excellent and had no reason to think otherwise.** It came as a surprise to him that the US was harbouring grievances. The Director-General had not been informed by any of the principal financial contributors, now with the exception of the United States, of any concerns with regard to the nature of his relationship with them. In fact, all major contributors, again with the exception of the US, realise the extent to which the OPCW is underbudgeted. This understanding has been reflected in their clear support for additional funding both in 2002 and 2003.
7. The United States says that it strongly supports the Chemical Weapons Convention and the worldwide ban that it embodies. The OPCW, indeed, can and must benefit from the involvement of the USA in a key leadership role. However, statements of support must be backed up by real actions. In 2001 the United States imposed on the OPCW a budget which was insufficient to fully implement the programme of work. The US also currently has arrears of EUR 1.6 million and opposes any measures needed to rectify the 2002 budget deficit against the wishes of the great majority, if not all other members of the Executive Council.
8. In spite of **the Director-General's efforts to focus the work of the Council on resolving issues of substance,** its work was consistently hampered by disagreements among some States Parties. Discussions on financial issues are the clearest example of this. Much of the work of the Council over the last two years has, indeed, focused on financial and budgetary issues. This was not the Director-General's choice. In fact, all these discussions could have been avoided if just a few Member States had joined the vast majority of members of the Executive Council which supported concrete action to provide adequate funding for the OPCW. Members of the Council will recall that only the US single-handedly blocked attempts in the spring of 2001 to provide the Secretariat with at least some assurances that funding would be forthcoming which would have allowed the Director-General to restore the programme of work. Yes, these actions did draw criticism from the Director-General, who firmly believes that the OPCW must be provided with the means to implement its verification mandate. And inspections cost money.
9. While the Council was deadlocked on budgetary matters, other issues of substance could not be adequately addressed and resolved. It is a fact that the number of decisions taken by the Executive Council has dropped in the past two years compared to 1999. At the Twenty-Seventh Session of the Council only 5 decisions were taken while 27 decisions were deferred, some of which had been pending for more than a year. Attempts by many delegations to reinvigorate the work of the Council have been, and continue to be, blocked, not by the Director-General, but by a few of its own members. As a matter of fact, **no Director-General could block the Council from taking any decisions it wishes to take.**
10. The Director-General has visited many capitals in the last four years. He hopes to visit other capitals, including Washington. He would gladly have accepted any other invitations had they been addressed to him. Nevertheless, on all occasions of his visits abroad the Director-General benefited from meeting with those officials, with whom

he would not have had an opportunity to meet in The Hague during sessions of the Conference and the Council.

11. **He has never refused to meet with any Permanent Representative of any State Party who did not have ambassadorial rank**, and those representatives can attest to that. In particular, he has never closed his door to the US Alternate Representative. The Director-General had excellent relationships with the Chairmen of the Executive Council from India, Republic of Korea, Mexico, and the Sudan. Moreover, they have become personal friends of the Director-General.
12. **The Director-General could never have directed his staff to refuse requests for technical support from delegates.** He did once object to the distribution of a document which would have withdrawn from the Secretariat its function as regards inspection planning. The objection was understood by all, the document was changed and distributed on time. The Director-General did not hide this fact, and referred to it in his statement to the Twenty-Seventh Session of the Council when he said: "Risk assessment and the methodologies for the selection of facilities for inspection are, in accordance with the Convention, the clear responsibility of the Secretariat. Attempts to regulate these issues beyond a certain degree of detail may undermine the fundamentals of the verification regime by allowing States parties to influence, and even predict, the periods when inspections might occur". No objections to this statement were made.
13. It is difficult to understand the allegation by the United States of financial mismanagement, since the chief financial and administrative officers, from the days of the Preparatory Commission in 1993 through to today, have been successive American Directors nominated by the United States Government. In successive years, OPCW accounts have been audited by auditors appointed by the States Parties. At no time have auditors reported financial mismanagement or impropriety. **The latest External Auditor's Report, as approved by the Conference of the States Parties, can be found on the OPCW Web Site.**
14. The Director-General is not responsible for the so-called **deficit in 2000**. To start with, the OPCW budget is different from the budgets of other international organisations. It includes as income funds which may or may not arrive -projections of costs for inspections which chemical weapons possessor states are obliged to reimburse to the OPCW. The 2000 deficit occurred because one Member State could not carry out chemical weapons destruction activities as planned and listed in the budget. Because destruction activities did not take place, the OPCW therefore could not be reimbursed by the State Party for the costs of inspections that consequently also did not take place. This resulted in less actual receipt of income than was projected in the approved budget. The reasons for this were explained to the satisfaction of the Conference of the States Parties in May 2001. The Conference did not hold either the Director-General, or the Secretariat, responsible for the deficit and decided to apply the surplus of 1999 against the deficit of 2000. The matter was thus closed. In addition, the preliminary closure of 2001 accounts shows that the remaining deficit of the year 2000 has been essentially covered by the payments pertaining to prior years but received during 2001. This confirms the fact that the deficit was caused by the late payments and structural problem of Article IV and V, not by

actions of the Director-General. As long as the inherent problem in the Financial Regulations is not addressed, every budget will be underbudgeted as far as income is concerned; and every year programme delivery will be negatively affected. This will continue unless the inherently deficient and unworkable regulations are corrected. This problem is not of the Director-General's making.

15. The allegation that “**dramatic cutback**” in inspections in 2001 was the result of the 2000 deficit cannot be substantiated. To start with, the deficit of one year has nothing to do with the budget and programme of work for the next year. The reduction of inspections in 2001 occurred because not all States Parties had paid their dues to the OPCW on time and in full.
16. The Director General cautioned on many occasions that the delayed payments of assessed contributions, and of reimbursements of costs of inspections as well as the strict application of Regulation 4.7, would adversely affect the programme delivery. The Director-General specifically mentioned in this regard that the late payments received after December 2001 could not, according to the rules, be used for the activities of 2001; they would simply go back to the Member States as surplus. The initial closure of the accounts of 2001 confirmed this grim prediction – last year the OPCW was able to spend only EUR 56 million out of accrued EUR 59.6 million and thus will return (!) 3.6 million, when received, as surplus to the Member States. These funds, if received on time, could have rescued the entire programme of work.
17. All actions of the Director-General in 2001 with regard to the budget were fully transparent, based in their entirety on decisions of the policy-making organs and fully consistent with Financial Regulations and, in particular, with Regulation 4.7 which requires expenditure to be limited by the availability of cash. **The Director-General reported exhaustively to Member States every month on the status of delivery of programmes** and on the insufficiency of approved resources due to non-payment by some Member States, and acted strictly in accordance with the guidance from policy-making bodies given during numerous meetings and consultations. Many Member States praised the Director-General for his complete transparency on financial matters. In addition, in its statement at the September 2001 session of the Council, the European Union stated that it “commends the Director-General on the austerity measures he has taken ... that may result in real cuts of about 5.4 million euros, which exceeds the 4.6 million euros of cuts as announced to the Conference of the States Parties”.
18. The Director-General was under no formal obligation to keep **30 posts vacant** in 2001. In spite of this the Director-General instituted stringent restrictions on recruitment as a result of which the number of fixed term vacant posts in the Secretariat in December 2001 reached a total of 44. However, this obligation to keep 30 posts vacant is, unfortunately, included in the 2002 budget and will have a serious impact on programme delivery.
19. Anticipated **reductions in inspection activities in 2002** are the direct result of underbudgeting of the OPCW and of anticipated non-payments by some Member States. They are not the responsibility of the Director-General. In his closing remarks at the Conference in May 2001, the Director-General openly stated: “I am concerned

... because the adopted budget is again – for the third year in a row – inadequate to complete the programme of work”. The ceiling for the funding authorised in the 2002 budget was arbitrarily determined by one Member State. No clarification was given to justify the amount proposed. Other members of the Council were simply advised to “take it as a cold fact”. 2002 funding was, accordingly not based on cost projections for the programme of work for that year. It was determined on the basis of the “acceptable level of increase” for one Member State. The great majority of Member States were at that time calling for a larger increase in the budget. **2002 salary costs** were accurately estimated by the Secretariat, but assumptions used to calculate these costs were subsequently altered at the insistence of a few States Parties bent on reducing the budget at all costs.

20. Simple fairness dictates an unequivocal conclusion: verification cutbacks are no fault of the Director-General. They are the result of the chronic underfunding of the OPCW in the past three years.
21. It is surprising that the Director-General is being accused of **double-digit budget requests**. By now every Member State has realised that these requests are the inevitable result of successive underfunded budgets of the Organisation at a time when its fixed costs and its workload are increasing. These increases are beyond the control of the Director-General and of Member States. All members of the Council are aware of the reasons for such double-digit requests and are working to solve this problem. Every activity has a pricetag and there is nothing the Director-General can do to get a discount.
22. All budgetary **transfers** in the OPCW are carried out in accordance with the Financial Regulations and are reported. The auditors have not made any complaints regarding the way in which transfers were managed. In times of financial strain and insufficient budgets transfers became inevitable but were always done strictly according to the rules. Transfers were the only instrument for the Director-General to maximise programme delivery and achieved their objective. He used this instrument on the advice of the Deputy Director-General and of the Director of Administration.
23. The absence of **administrative directives** in place upon entry into force and delays in developing them after 1997 have always been a major concern of the Director-General and he has himself expended considerable effort in having them drafted and enforced. He was pleased to note that the Office of Internal Oversight reported to the Director-General in February 2002 that, as of 31 December 2001, 91% of all its recommendations issued between 1998 – 2000 were fully implemented. It said that “the total rate of implementation of the OIO’s recommendations substantially increased during the year 2001”.
24. The Director-General of the OPCW has **one Chief of cabinet and three assistants**. There is nothing unusual about this. Respectful of the principle of equitable geographical distribution, the Director-General, himself from GRULAC, has appointed staff in his office from each of the other four regional groups – Asia (Pakistan), Africa (Zimbabwe), Eastern Europe (Russian Federation), and WEOG (Canada). None of these “assistants” has any power to overrule the Deputy Director-General or Directors.

25. **The allegation that the Director-General has marginalised his senior staff and his Deputy is not sustainable.** The Director-General's trust in his Directors, including the former Director of Verification Mr Ron Manley, is known to all. Those who visited the OPCW's Ron Manley Library can attest to that. If he could not rely on the expertise and advice of his Directors, he would not have extended their contracts. All policy decisions have always been and are taken in the presence of Directors and with their consent at the Management Board meetings and at regular meetings of individual Directors with the Director-General. The Deputy Director-General is present at all such meetings and participates actively in all decision-making. This has been the procedure since 1997, and it has never changed.
26. Furthermore, the previous organisational chart of the Secretariat erroneously showed four of the nine Divisions reporting to the Director-General without the involvement of the Deputy Director-General. The chart created the wrong impression that the Deputy was not involved in the work of these four divisions at all. The new chart corrects this incorrect perception. It also reflects the actual practice which has been in use since 1997, whereby the Deputy Director-General has always been involved in monitoring the work of all nine divisions.
27. The Deputy Director-General is directly in charge of a considerable number of key functional areas of the Secretariat. He is chairman of the Committee on Contracts and of the Investment Committee, which supervise all financial operations of the Secretariat. He chairs the Information Systems Committee that charts IS strategy and monitors its implementation. He is the chairman of the Contracts Renewal Board which has key responsibility over the management of human resources, and of the Provident Fund Management Board. His signature and approval are mandatory on key verification documents – including the inspection plans. Finally, at the personal request of the Director-General, the Deputy Director-General (in addition to his normal duties) agreed to oversee the entire process of preparations for the First CWC Review Conference – the most politically significant event in the history of the OPCW since the entry into force of the Convention in 1997.
28. All staff matters have been and are handled in accordance with the Staff Regulations. Reports of the Office of Internal Oversight attest to that. The Director-General supports the interests of the Organisation's staff. He withstood considerable external pressure in 2001 to get rid of staff in an arbitrary manner, which would have been damaging to the operational needs of the OPCW and would have been in violation of the Staff Regulations.
29. **Nothing in the Convention regulates reassignment of staff.** When authorised posts cannot be filled, and when the Secretariat is consequently understaffed, reassignments become inevitable to ensure the functioning of the Secretariat. All staff who were reassigned were consulted and their permission was obtained. And most reassignments were needed to make it possible for inspections to be adequately prepared.
30. **The Director-General has, in accordance with the recommendations of the Office of Internal Oversight, duly allocated the budget function to the Budget and Finance Branch.** This measure was, in fact, long overdue because the budget

- preparation was, since the Preparatory Commission, left with a staff member with absolutely no qualification or professional expertise in the field. The budget was being wrongly prepared outside the control of the Administration Division, let alone the Budget and Finance Branch. The staff member in question was offered to take up the functions of the Secretary to the Review Conference Working Group but declined.
31. The Director-General also allocated the Health and Safety Branch and the Office of Confidentiality and Security to the Division of Special Projects which until then existed only on paper. This allowed both him and the Deputy Director-General to focus more on managing the Secretariat, not its individual units. No personnel resources were reshuffled in the process.
 32. The **first classification exercise** was commissioned and funded by Member States, not by the Director-General. All funding authorised was used for the purposes of the study. The study was conducted by an independent consultant in accordance with the ISCS classification standards. The Director-General was not informed about the recommendations of the consultant until the study was completed. As expected, the study recommended upgrading of a number of posts. This was the natural consequence of an arbitrary decision taken during the Preparatory Commission to downgrade posts by one grade compared with organisations in the UN system. When the Conference decided to prevent the Director-General from implementing the study, it was clear that the ILO lawsuit by staff would succeed. The Director-General warned Member States of this possibility, but he was left with no choice pursuant to the Conference decision.
 33. **Contract renewals are the responsibility of the Contract Renewal Board.** The Director-General follows the recommendations of the board, and so far has disagreed only in very exceptional cases, when he believed that performance of staff members was underrated, not overrated. The Contract Renewal Board is chaired by the Deputy Director-General. The Chairman of the Staff Council is a member. The Director of the Division is always present when contract extensions for staff in his Division are being discussed. Any one-year renewal of contract is recommended by the Board on the basis of performance of a staff member, not by the Director-General.
 34. Responsibility for GS contracts has always rested with the Director of Administration and with the Deputy Director-General. The Director-General is responsible for contracts of staff in professional and higher categories.
 35. Proportionate to the size of the Organisation, it is a wonder that in 4.5 years of the Organisation's existence only 14 cases have been taken to the **ILO Tribunal**. Four of these cases are yet to be heard by the ILO Tribunal. By comparison, over the same period, the WHO had 68 cases heard by the Tribunal. 16 judgements were passed on cases brought by UNIDO in the last 3 years.
 36. Out of the ten cases decided by the ILO Tribunal, the Organisation won 4 and lost 6. Four cases were brought by staff members against policy decisions taken by the Conference of the States Parties, and had nothing to do with any actions of the Director-General. Three were challenges by staff members to the decision of the Conference of States Parties which took away the authority of the Director-General to classify posts. The Conference gave itself this power and stopped the

Director-General from implementing the results of the classification already completed. One case was brought by a staff member because a State Party refused to reimburse him taxes it levied against his OPCW income, contrary to the international civil service principles and the privileges and immunities granted to the international staff of the OPCW.

37. The total cost of the six cases lost so far by the Organisation is USD 408,936, not “millions of dollars”. The cost of the cases relating to the classification of posts rests with Member States, not with the Director-General.
38. The first and most expensive case – two months into the Director-General’s first mandate - had to do with a violation of confidentiality procedures. While the Director-General’s decision to terminate the staff member’s contract was correct in substance, the case was, regrettably, lost on procedural grounds.
39. Unfortunately, several tax reimbursement cases may soon come forward unless one State Party reverses its refusal to reimburse certain aspects of the taxes levied.
40. **Statistics show that few staff are leaving the OPCW.** In 2001 only 6 percent of fixed-term staff left the OPCW. The overall turnover for fixed-term staff in 2001 was 8%, which was below the target of 15% reflected in the budget.
41. Overall **staff morale** is, indeed, sometimes low but not because of action of the Director-General. Staff do not feel that some countries have lent their full weight to the work of the Organisation and believe that their unique expertise is not valued and is underutilised. Staff worry about the continuing financial instability of the OPCW caused by chronic underbudgeting, and about pressure from some Member States to cut staff (contrary to operational requirements). Staff also do not enjoy many of the benefits enjoyed by staff in organisations of the UN system (the OPCW has no pension fund and has a limited tenure policy). As a consequence of the tenure policy there is no system of promotions or other incentives for the best possible performance. This is widely experienced as a source of intense frustration.
42. Some US nationals are leaving the OPCW because of the inability of the United States to resolve problems with the taxation of the Provident Fund. This reduces considerably the financial incentives for US nationals to work at the OPCW.
43. The Director-General early on suggested that Member States give some thought to the relationship between the **Australia Group and the OPCW**. He has suggested that further thought be given as to how export controls and related matters could be addressed through the Convention. Although still of the view that such an approach deserves to be explored, the Director-General has left it to Member States to come to grips with this issue. During the past year, the Director-General has not raised the issue of informal export control regimes at all.
44. **The Director-General’s principle, which he has stringently adhered to since 1997, is to apply the Convention in an even-handed way.** In fact, the Permanent Representative of the United States only eight months ago at the Conference of the States Parties congratulated the Director-General on his “compliance with the Convention”. For any allegation of bias, facts from the past eight months must be put

on the table. Until now this allegation has never been expressed to the Director-General by any representative of any Member State.

45. The Secretariat's structure itself, its policy-making mechanism, and staff culture of non-discrimination and even-handedness which the Director-General worked hard to establish, prevents anyone, including the Director-General himself, from inflicting a biased application of the Convention's provisions on any State Party.
46. The allegation of bias presumes that bias is targeted against those who make this allegation. It is simply untenable to argue that the implementation of the Convention is biased against the United States, for example. The Deputy Director-General and the Director of Verification have always been WEOG nationals and both have always played a key role in high-level decision-making on the implementation of the verification regime. Until three months ago, three of the four branch heads in the Verification Division were from WEOG (including the Head of Industry verification Branch who is the US national). In fact all these staff have been applying the Convention in an even-handed way which is a tribute to their integrity.
47. Policy decisions in the Secretariat are taken by consensus. **Inspection plans require signatures of the Director-General, the Deputy Director-General, and the Directors of Verification and the Inspectorate and are not valid if any of these signatures are missing. All conclusions with regard to inspections, prior to being submitted to the Director-General, require the approval of both the Director of Verification and of the Deputy Director-General.** All verification-related documents submitted to the States Parties or to the Executive Council are cleared by the Director of Verification before being sent to the Secretariat for the Policy-Making Organs and to the Director-General.
48. In recent past the Director-General expressed the Secretariat's views on the following outstanding verification issues – boundaries of production, transfers of Schedule 3 chemicals to States not Party, and on low concentrations of Schedule 2A and 2A* chemicals. The Director-General's views are aimed at preserving the credibility of the verification regime and were based on advice given by the then Director of the Verification Division, and the Deputy Director-General. According to the Verification Division, the **Secretariat's positions expressed by the Director-General reflect the views of the majority**, not minority of Member States.
49. The Director-General does not have the power to “punitively target[ed] industry inspections”. Inspection plans, as has already been made clear, require four signatures. Selection of sites for inspections in 2001 was done by the Verification Division focusing, in light of the budgetary shortfall, on initial inspections of riskier facilities. The Director-General does not, and cannot, choose inspection sites himself. When the Director-General decided in March 2001 – long after the inspection plan for the year was finalised - to conduct all 25 industry inspections planned for 2001 in two months remaining before the conference, his sole desire was to enhance programme delivery. The Deputy Director-General and the Director of Verification both agreed with his approach. Its implementation was delegated to the Head of Industry Verification Branch. Only one change to the already existing plan was made – the number of inspections planned in the United States was **reduced** to ensure that

inspection activity in that country could be supported by the National Authority. It should also be borne in mind that in 2001 the US indeed was subject to a considerable number of industrial inspections – a logical consequence of the three-year delay in its submission of the chemical industry declaration.

50. Following the September 11th tragedy and in the light of concerns about chemical terrorism, it should be noted that the statement made by the Chairman of the Executive Council, and which was negotiated by all members of the Council, was front page news at the UN. **The Director-General's appeal was compassionate, timely, and a responsible action on his part in regard to the concerns being expressed.** The Director-General is proud of having taken this initiative, as was indeed done by the majority of other international organisations.
51. The Executive Council and the Conference debated the definition of “core activities” for a long time. The Director-General follows the guidance provided by the policy-making bodies. This guidance has been that any cuts in programme delivery must focus on areas other than verification and international cooperation, and that these two areas should be cut as a last resort and should receive equal cuts percentagewise. The funding for verification has always been more than 50% of the budget. Funds for ICA are only 6 % of the budget. The Director-General also believes, as do many other Member States, that the OPCW's unique capabilities should not be discarded by the international community in responding to new challenges, such as chemical terrorism. Allegations that the Director-General downplayed the need for ridding the world of chemical weapons simply do not reflect reality.
52. The timely destruction of chemical weapons is paramount. Measures to accelerate the destruction of chemical weapons in Russia are critical to the implementation of the CWC. The Director-General has always said that any efforts to coordinate assistance to Russia **cannot** be legally integrated with the OPCW. However, he offered the premises of the OPCW and the Secretariat's logistical support for meetings of donors with Russia. If such meetings were to be open to the Secretariat and to other Member States, it would have increased transparency of the Russian destruction programme and would have been beneficial for the optimal planning of verification activities in Russia. Incidentally, this idea was first proposed by Western participants at the conference on CW destruction in Russia in 1999, but did not – at that time - receive a positive response from the Russian side. The positions of the sides were apparently reversed after Russia accepted the idea.
53. The Director-General provided OPCW assistance to the UN Secretary-General **at the request of the UN Security Council** to eliminate the health and safety risks resulting from toxic chemicals stored at the UNSCOM laboratory at the UN compound in Baghdad when UNSCOM inspectors were not allowed back by the Iraqi Government. The Director-General suggested that the members of the Security Council could consider, **through accession by Iraq to the CWC**, OPCW involvement as a means to unblock the impasse over inspections in Iraq. He did this keeping in mind the specific provision of Resolution 687 calling on Iraq to accede to the CWC and his mandate to promote the Convention's universality. He cannot impose anything on either the Security Council or Iraq, for that matter. But he can and should offer his advice on matters where the OPCW capabilities are relevant and were recognised as such by the

Security Council itself. After all, the best expertise available in the chemical weapons area is undeniably with the OPCW. The Security Council is free to either accept or reject such advice.

54. **Assistance to States Parties which may suffer chemical weapons attacks is an integral part of Article X of the Convention.** This obligation existed prior to the September 11th attacks. The Secretariat's concept of assistance is in full accordance with the provisions of the Convention, and its timely adoption by the Council is particularly urgent in current circumstances. The fact that such assistance should be available in case chemical weapons are used by terrorists is unquestionable when two thirds of Member States of the OPCW may not have a national capacity to protect against such threats. The Convention does not differentiate between victims of attacks by governments versus by terrorists. Effective and timely assistance, in full accordance with the CWC, will, indeed, come at a cost.
55. Indeed, the Director-General does believe that once all chemical weapons have been destroyed, the OPCW will have to focus on its non-proliferation mandate and on those clear-cut provisions of the Convention which deal with international cooperation and the promotion of peaceful chemistry as contained in Article XI. He believes that this course of action – inclusive not exclusive – is the best possible way of promoting the non-proliferation objectives of the Convention. And he is convinced that the **Associate Programme**, which only cost EUR 242,000 in 2001, is key to ensure further progress toward universality. There is nothing criminal in this forward-looking vision of the OPCW, which can only materialise, if all Member States agree with it, long after the expiration of the Director-General's term of office.
56. **The Chemical Weapons Convention is a non-discriminatory Convention par excellence**, and has been applied and respected as such. It is because of this aspect and character, and because of its implementation along these lines by the Director-General, that it shows such a fast-growing membership (from 87 to 145 States Parties) unlike any other international organisation of its type. It includes all five permanent members of the Security Council, all countries with developed chemical industries, and countries which, in some instances, are not parties to other comparable multilateral agreements. These unique achievements are much too precious to be put into jeopardy.
57. Allegations against the Director-General have materialised suddenly and at the last minute. Allegations are presented as though they are facts.
58. No other State Party saw any reason to argue in favour of removing the Director-General of the OPCW from office until – in January 2002 – this campaign was launched by one Member State.
59. In the context of international organisations, as far as the Director-General is aware, there has never been any comparable attempt to unseat an elected head in the absence of a crime or malfeasance, and in the absence of a clearly defined process to ensure that all participants, including the elected individual in question, have an opportunity to air and discuss any concerns in an atmosphere of openness and fairness.

60. Attempts to oust the Director-General of the OPCW seek to establish a dangerous international precedent where any Director-General of any international organisation from now on will always be conscious of the fact that his future in that job depends in its entirety on the attitude, whims, and perceptions of one, or a few, major contributors to the budget, irrespective of the rest of the Organisation's membership. This is hardly an approach which would guarantee the independence or impartiality of any Director-General.
61. More than 50% of the OPCW budget is provided by a few Member States. They represent just a small percentage of the OPCW membership. Each member of the OPCW has one vote in the Organisation, irrespective of the amount of its budgetary contribution. And the weight of each of these votes is equal. The Director-General does his job in the interest of each and every member of the Organisation. He cannot and will not provide special treatment to those Member States which together contribute more than 50% of the budget. Withholding funding to impose the will of a small percentage of the membership on the entire Organisation would be in fundamental contradiction with the democratic principles of work of international organisations.

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