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THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION

Introduction

1. The fact that 151 States Parties have ratified, or acceded to, the Chemical Weapons Convention (hereinafter “the Convention”) is a significant achievement, which has helped to give the Convention very broad, if not yet universal, support. However, if a State Party is to fully satisfy the key aims and objectives of the Convention, simply ratifying it is not enough. It must take the necessary measures to implement its obligations under the Convention, in particular the enactment of penal legislation. This provides a legal and administrative framework to meet its implementation obligations in a transparent and consistent manner and thereby helps to promote confidence in compliance and underpin universality. Failure to adopt such measures robs States Parties of an important means to combat proliferation and chemical terrorism. It is therefore of particular concern to the United Kingdom, as we approach the sixth year since the Convention entered into force, that according to the Technical Secretariat, only 26% of States Parties have implemented the necessary legislation covering all the key areas for enforcement of the Convention. The United Kingdom considers that this profoundly troubling situation undermines the effectiveness of the Convention to the detriment of all States Parties and does little to deter terrorism.

Key priorities for national implementation measures

2. The Convention is not self-executing. It is the responsibility of each State Party to ensure that its obligations under the Convention have direct internal legal effect. A Technical Secretariat paper, the Report by the Director-General on national implementation measures (EC-32/DG.17, dated 13 March 2003), sets out the key priorities for national legislation:
 - Article I prohibitions and penalties;
 - Extraterritorial application of the legislation to nationals;
 - Scope of the definition of “chemical weapon”, ensuring this covers the misuse of any toxic chemical or its precursor and not just scheduled chemicals;
 - Penalties for violating Schedule 1 restrictions (Verification Annex to the Chemical Weapons Convention (hereinafter, VA), Part VI, paragraph 1);



- Penalties for violating Schedule 2 and 3 transfer obligations (VA Parts VII and VIII, paragraphs 31 and 26 respectively); and
 - Penalties for failure to report declarable activities.
3. There are also critically important administrative tasks which States Parties need to discharge:
- Establish a National Authority and notify the OPCW accordingly (Article VII, paragraph 4)
 - Ensure all relevant industrial activities are declared annually in accordance with Article VI;
 - Monitor transfers of toxic chemicals and their precursors to ensure that the non-proliferation obligations of the Convention are upheld (Article VI);
 - Notify the Technical Secretariat of the designated points of entry (VA Part II, paragraph 16);
 - Provide standing diplomatic clearance numbers for non-scheduled aircraft (VA Part II, paragraph 22);
 - Agree with the Technical Secretariat a list of inspectors (VA Part II, paragraph 2); and
 - Provide multiple entry visas for inspectors (VA Part II, paragraph 10).
4. In order to ensure greater clarity in, and understanding of, the status of national implementation obligations, there is much to commend the submission of nil returns by States Parties as appropriate. Should States Parties indicate that they have nothing to declare under Article VI, this would greatly facilitate Technical Secretariat planning.

The importance of Article VII

5. Article VII sets out a number of national implementation measures to ensure each State Party has in place the necessary legal and administrative framework to implement its obligations under the Convention, in particular the key priorities listed above. States Parties are required, under paragraph 1, to prohibit individuals from undertaking any activity not permitted under the CWC anywhere on their territory or any place under their jurisdiction and enact penal legislation relating to such activity. The latter is particularly important in providing the means to prosecute individuals who may undertake prohibited activities in a State Party. The United Kingdom is keen that all States Parties adopt such legislation to avoid giving chemical terrorists safe havens through the opportunity to exploit legal loopholes.
6. Most importantly, under paragraph 5 each State Party is required to inform the OPCW about the legal and administrative measures it has taken to implement the Convention. It is of great concern to the United Kingdom that, as noted in EC-32/DG.17, 45% of States Parties have not complied with this most basic of obligations. States Parties must comply with this obligation in order to uphold the transparency provisions of the Convention, support evenness in its global implementation and avoid raising questions about their compliance with and commitment to the Convention. While there has been some marginal improvement in submissions under Article VII over the

last year, it remains the case that, even though the Convention has been in force for almost six years, the OPCW does not formally know about the legislative situation in 68 States Parties. This situation is not acceptable.

Status of national implementation of the Convention

7. The Technical Secretariat has produced a number of useful reports on the extent to which States Parties have taken the necessary national measures to implement the Convention. A study of the results from two questionnaires, one sent to States Parties in June 2000 and the other in June 2002, is outlined in EC-32/DG.17. The first questionnaire focused on regulation of scheduled chemicals and discrete organic chemicals. The Secretariat's analysis of the 73 responses showed that, while the measures reported by States Parties supported the Convention's non-proliferation objectives, there were still worrying gaps in the responses. This was particularly the case in relation to controls on transfers of scheduled chemicals. For example, in responding to a question about how Schedule 1 transfers were controlled, 22 replies either indicated that no control method was in place, or did not answer the question. A similar number of States Parties did not answer the same question in relation to Schedule 2 and 3 transfers. This suggests that these States Parties may not have the legislative and administrative measures to regulate transfers of scheduled chemicals. Moreover, a similar situation could apply in the 51% of States Parties who had not responded to the questionnaire as of 7 February 2003 (EC-32/DG.17).
8. In the Report by the Director-General on national implementation measures (EC-30/DG.3, dated 5 September 2002), the Technical Secretariat reported that 50 States Parties were involved in declared import/export activities for Schedule 2 chemicals and 105 States Parties were involved in similar activities in relation to Schedule 3 chemicals. Yet the Technical Secretariat noted that only one-third to one-half of all States Parties involved in declared import/export activities for scheduled chemicals responded to the questionnaire and reported having the relevant controls in place. The United Kingdom is extremely concerned that there could be many States Parties trading in scheduled chemicals without all the necessary controls in place to uphold the Convention's non-proliferation objectives.
9. Turning to the second questionnaire, it would seem that the majority of the 82 respondents have penal controls in place in relation to Article I violations. However, 10 States Parties reported having no legislation in place to enforce any of the obligations under Article I. Moreover this worrying situation could apply in some or all of the 45% of States Parties that did not reply to the questionnaire. At a time when there is an increasing risk that *any* State Party could be affected by terrorist use and transfer of chemical weapons, it is critical that all States Parties have in place the necessary measures to identify and prosecute individual violators of the Convention.
10. In the context of the fight against chemical terrorism it is worrying that, according to the Secretariat, only 35% of States Parties have extraterritorial application of their implementing legislation as required by Article VII, paragraph 1(c). In addition, the Technical Secretariat noted in EC-32/DG.17 that there were serious discrepancies in the sanctions imposed by States Parties in respect of violations of the Convention's prohibitions. While most of the States Parties reporting to the Technical Secretariat

applied criminal sanctions in such cases, others seemed to impose only administrative penalties for even the most serious offences involving chemical weapons. The fact that such different legal regimes appear to be in place among States Parties could create serious obstacles to their co-operation in the prosecution of an offence relating to the Convention. It is important that States Parties work together to create greater consistency in their respective legal regimes to avoid the risk of terrorists exploiting any discrepancies to escape prosecution and to ensure that penalties for offences are proportionate to the seriousness that the international community attaches to the prohibition of chemical weapons.

Priority areas for action

11. **The United Kingdom considers all States Parties must have in place effective legislation in respect of the prohibitions in Article 1 and the means to enforce such legislation.** As required under Article VII, this legislation should be applied extraterritorially to the nationals of the State Party and should cover the misuse of *any* toxic chemical for non-permitted purposes not just the scheduled chemicals. While most States Parties have neither chemical weapons nor a developed chemical industry, this does not mean that they need not bother with such legislation. The globalisation of the chemical industry (referred to in the United Kingdom's paper on the Changing face of the Chemical Industry (RC-1/NAT.9, dated 24 April 2003)) and of trade in chemicals means that a growing number of countries are undertaking activities that are relevant to the Convention. The interest that terrorists are now showing in chemical weapons means that no State Party can afford to believe that the prohibitions in the Convention do not need to be enforced on its territory. The suspected terrorist incident involving ricin, in London in January 2003, demonstrated the value of having implementing legislation in place, which could be used to apprehend and prosecute individuals suspected of involvement in activities that violate the Convention. Such activity, which took place in a residential property and involved rudimentary equipment, could have happened in any country.
12. **It is important that States Parties should implement the necessary legal and administrative measures to ensure that they can identify and report on declarable activities.** It is worrying that the Technical Secretariat has reported that many States Parties may not have the necessary controls in place to ensure that relevant core activities are effectively controlled at a national level and reported accurately to the OPCW. It is noteworthy that a Secretariat study in August 2001, using open sources of information on chemical industry operations, found that many of the 44 States Parties covered had not previously declared any activities under Article VI but were probably producing either Schedule 3 or DOC/PSF chemicals. Moreover it seems that only eight of the 44 States Parties contacted have satisfactorily responded, either by confirming that none of the facilities identified by the Secretariat are declarable or by providing new complete declarations. It would seem that most of the States Parties involved do not have the necessary national implementing legislation to make accurate declarations. The United Kingdom considers that the Technical Secretariat's work in this area must be pursued as a priority in order to safeguard the credibility and effectiveness of the verification regime and to ensure that all States Parties are meeting their obligations under Article VI.

13. **All States Parties must report to the Technical Secretariat on the legislative and administrative measures taken to implement the Convention as required under Article VII, paragraph 5.** The Director-General reported (EC-32/DG.17) that, as of 7 February 2003, only 55% of the States Parties had complied with the above obligation. , There is considerable inconsistency in the way States Parties have reported on their implementation measures: only 55 of the 82 submissions received by the Technical Secretariat included copies of the legislative texts or translations, some State Parties provided only a brief summary of their legislation and some did not provide any detail about their measures. This impairs the ability of the Technical Secretariat to report on what measures States Parties have taken. This is regrettable, because only through such reports will it be possible to determine the extent to which States Parties have put in place the necessary implementation measures to detect any gaps or inconsistencies, thereby enabling the identification of remedial measures. The United Kingdom supports the work, which the Technical Secretariat has done through their questionnaires and discussions, to clarify to what extent States Parties are meeting their obligations to implement the Convention. The results of these questionnaires have highlighted disturbing discrepancies in the global implementation of the Convention, for example, in relation to the regulation of transfers of scheduled chemicals, which need to be addressed as a matter of urgency.

Assistance Programmes

14. The United Kingdom recognises that many States Parties may wish for assistance to put in place the necessary measures to implement the Convention. Some may not have the required resources and expertise to undertake what can be a complex task. We have therefore provided such assistance in support of national implementation both on a bilateral basis and as part of the regional assistance activities organised by the Technical Secretariat. The United Kingdom strongly supports the work of the Technical Secretariat in this area. This has led to some modest improvement in national implementation. However, it is clear that an increase in the efforts of both States Parties and the Technical Secretariat is required in order to achieve significant improvement in national implementation. The United Kingdom is prepared to see more resources directed into this area, and would welcome proposals from the Technical Secretariat for an enhanced and targeted work programme to help States Parties who need assistance with their implementation tasks. In return, the United Kingdom will look to States Parties to give increased political impetus to put in place the necessary legislative and administrative measures to implement the Convention effectively within a reasonable timescale.

Conclusion

15. The Executive Council and the Conference of the States Parties have adopted a large number of decisions calling on States Parties to meet their obligations under Article VII and asking those in need of assistance in fulfilling these obligations to present requests to the Technical Secretariat. However, the response from States Parties has been highly unsatisfactory, as shown by the fact that, according to the Technical Secretariat, 110 States Parties either have no legislation in place, have gaps in their legislation, or have not provided information on their legislative position.

16. In the light of the foregoing, the United Kingdom believes that the Review Conference should:
- (i) Urge all States Parties to give political impetus and priority to complying with Article VII by adopting the necessary measures to implement quickly and effectively their obligations under the Convention;
 - (ii) Support the efforts of the Secretariat and States Parties in providing assistance to other States Parties to enhance their national implementation of the Convention;
 - (iii) Call upon the Technical Secretariat to identify the most important tasks in relation to national implementation and draw up proposals to deliver assistance in an effective and targeted manner and focused on the specific needs of States Parties;
 - (iv) Recommend that the Executive Council and the Conference of the States Parties address the issue of Article VII compliance as a matter of priority, monitor the extent to which States Parties are meeting their obligations to implement the Convention, and take specific action to increase the rate of compliance.

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