The Chemical Weapons Convention is intended to be a verifiable comprehensive ban on chemical weapons as an entire category of weapon of mass destruction. As of March 2001, there are 143 parties to the Convention. A further 31 States which have signed it are, in accordance with Article 18 of the 1969 Vienna Convention on the Law of Treaties, under an interim obligation to refrain from any acts which would defeat the object and purpose of the treaty. A comprehensive ban on chemical weapons under any circumstances has thus nearly become a universal norm.

The key question remains, however. Is the ban enforceable? Could or would persons violating the ban anywhere at any time be apprehended and punished? The ability to enforce a ban gives it its true meaning. In the absence of effective enforcement, universality remains a hollow accomplishment.

States Parties to the Chemical Weapons Convention are under an obligation to extend their penal legislation to prohibited activities undertaken by their nationals abroad. This increases the probability that some States Parties may be faced with the need for legal assistance from another State Party, for example for a prosecution, in accordance with Article VII, paragraph 2, of the Convention. In the context of the latter paragraph the word ‘shall’ indicates that States Parties are under an obligation to provide such legal cooperation. States Parties to the Chemical Weapons Convention would accordingly need to check whether their domestic legislation and their various treaties concerning different forms of mutual legal assistance concluded with other States will allow for such cooperation, since Article VII, paragraph 2, does not of itself provide an adequate mechanism. There is no single multilateral instrument in place that would enable the 143 States Parties to the Convention, in the absence of the necessary formal undertakings, to afford the necessary legal assistance in each and every such case.

At the request of the Conference of the States Parties, a workshop was organised on this subject. Over the course of three days in February of this year the OPCW hosted the International Symposium on Cooperation and Legal Implementation for the Effective Implementation of International Agreements. In implementing the Convention, with its complex and detailed provisions, there is a tendency to focus inward. In the day-to-day work of implementation, the Chemical Weapons Convention, the OPCW, its mandate and its activities, easily become a world in itself. This symposium was structured so that, where crime was concerned, its focus would be directed outward to the position which the enforcement of the Convention must take in national and global efforts to prevent and prosecute crime.

For this reason the Secretariat sought co-organisers for the symposium, not merely among all relevant branches of governments, but also involving the broader national and international communities. Practitioners in the field presented lessons learned from actual investigations, arrests, transfers of prisoners, evidence gathering, and extraditions. Finally in this context, one unique aspect of the Convention—its stringent confidentiality regime and the special legal issues that this raises—merited attention, as at least some of its implications in this regard still require clarification and resolution.

In implementing the Convention, with its complex and detailed provisions, there is a tendency to focus inward.

The symposium commenced with a series of briefing papers, followed by parallel panels covering the following three subject areas: jurisdictional issues, modalities, and challenges. Practitioners in the field presented lessons learned from actual investigations, arrests, transfers of prisoners, evidence gathering, and extraditions. Finally in this context, one unique aspect of the Convention—its stringent confidentiality regime and the special legal issues that this raises—merited attention, as at least some of its implications in this regard still require clarification and resolution.

In the final analysis, the credibility of international agreements depends upon their effective implementation. Cooperation and legal assistance are essential and often complex, elements in the implementation equation. The value of this symposium will be felt, not only by the OPCW and its 143 Member States, in implementing the provisions of the Chemical Weapons Convention, but also by the plethora of other international regimes which are searching out paths to enhancing cooperation and developing a more detailed approach to avenues of legal assistance. The programme for the symposium went to the heart of the necessary implementation measures, with respect to both the preventive and prosecutorial aspects of legal enforcement, and raised issues which entail cooperation between many different agencies of national governments.

One point must be emphasised the mechanisms for the enforcement of international criminal law cannot be advanced on a subject-matter basis. International crime is international crime: the mechanisms to prevent it and to prosecute violators are the same, irrespective of whether chemical weapons, drugs, terrorism, or, for that matter, anything else, are involved. The issues are common to all as will be the solutions. The fact that prosecutors, lawyers, police, customs, academics, and representatives of universal, regional and non-governmental organisations gathered together, perhaps for the first time ever, to discuss international criminal law in the only building in the world devoted to disarmament, is an event which will remain in our memories, and which will lend new impetus to our work.

The Reader and a summary of the main points from each of the panel discussions are available from the Office of the OPCW’s Legal Adviser. The proceedings of the symposium will be published later this year.

The Hague, the Netherlands 7-9 February 2001

By Lisa Tabassi, Legal Officer, OPCW

INTERNATIONAL SYMPOSIUM: COOPERATION AND LEGAL ASSISTANCE FOR THE EFFECTIVE IMPLEMENTATION OF INTERNATIONAL AGREEMENTS

APOLOGY BY THE SECRETARIAT

The Secretariat deeply regrets the fact that the November 2000 issue of Synthesis did not meet the standards of professional editorial conduct to which it aspires. As a result, the Editorial Board did not review all articles as thoroughly as it should have prior to publication. In one particular, concerning Israeli policy on the CWC, caused great offence to a State Party, the Islamic Republic of Iran. The article contained unsubstantiated allegations against the Islamic Republic of Iran and its commitment to the Chemical Weapons Convention, as well as allegations of the ineffectiveness of the Convention’s regime in general.

The Secretariat wishes to reiterate that it has no reason to question Iran’s full compliance with the Convention, and that the application of verification measures in Iran is strictly in accordance with the Convention. There are no grounds for any concern or ambiguity in this regard. Furthermore, all verification activities in the Islamic Republic of Iran have been conducted in an atmosphere of openness and transparency, and with the full cooperation of the Islamic Republic of Iran.

I would like to reiterate our sincere apologies to the Islamic Republic of Iran.

John Gee
Deputy Director-General, OPCW