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## WHERE TO FROM HERE?

### THE FIRST CWC REVIEW CONFERENCE AND THE NEXT FIVE YEARS

Just less than six years after entry into force of the Chemical Weapons Convention, the First CWC Review Conference has now concluded, having adopted a Political Declaration and a report which incorporated the substantive review of the operation of the CWC required under the Convention. Despite provocative statements by the United States on the first morning of the Review Conference, alleging non-compliance by Iran and concerns about the Sudan, the Review Conference did not collapse into disarray. The CWC has not met the fate of the BWC, and the OPCW has not been weakened as an institution as a result of this Review Conference. The question, then, is: what did come out of the Review Conference, and where is the Organization now headed?

It will surprise few that the Review Conference did not result in a radical change of direction for the OPCW, or substantive decisions on crucial, still outstanding issues. In part, this can be explained by the comparatively late engagement by states parties, and the Secretariat, in substantive preparations for the Review Conference. Discussion of the draft text for what became known as the 'Review Document' only kicked off in January this year, less than four months prior to the Review Conference, and then only by a comparatively small (though active) number of states parties.

A number of priorities have, however, been clearly recognised by the Review Conference. These priorities have been expressed in the statements made by states parties in General Debate, in their national papers, and, more tangibly, in the recommendations and requests for action by states parties, the Executive Council and the Secretariat emanating from the Review Conference. A tabulation of over 35 such requests and recommendations that require some specific action by the Council and Secretariat (excluding, for the most part, references to activities already being carried out by the Council and Secretariat), together with the time frame specified is set out in the boxes below.<sup>1</sup> These should form the 'road map', to use a current phrase, for the OPCW's next five years of work.

There are now 153 states parties to the Chemical Weapons Convention, 113 of which attended the Review Conference. Despite this considerable, and steadily growing, number of member states, the topic most frequently touched on by states parties during the Review Conference was universality. The Review Conference has

recommended that the Council develop and implement a plan of action to encourage, 'in a systematic and co-ordinated manner', adherence to the Convention. Nevertheless, although a number of countries were specifically targeted by some states during General Debate as being crucial to universality, namely those in the Middle East, including Egypt, Israel, Libya and Syria, and North Korea, the Review Conference has not named any countries when addressing this issue. Similarly, the Review Conference did not identify any states parties as being of concern regarding compliance or, indeed, express any concerns about non-compliance. Given the political nature of these documents, this was an outcome entirely to be expected. The Review Conference has been similarly cautious when discussing challenge inspections. While the right to request a challenge inspection was reaffirmed, the Review Conference also expressed its 'confidence' that the value of the challenge inspection mechanism would be upheld and that states parties would refrain from making 'unfounded' or 'abusive' requests. The Council is now tasked to continue its work to resolve still-outstanding challenge inspection issues.

A second priority clear from the Review Conference documents is the need for full and effective national implementation measures. With national implementation mentioned by over twenty states parties in General Debate and national statements, the Review Conference has agreed to develop, at the next regular session of the Conference of the States Parties in October this year, a plan of action regarding the implementation of Article VII obligations. The recognition of the need for action in this respect is to be applauded. However, at least in theory, this requires the Executive Council to agree upon a recommendation for a plan of action at its next session in late September. With the

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issue not on the agenda of the June Executive Council session, much work will be required if a recommendation is to be finalised by October.

The two priorities listed above are both fairly non-controversial, unlikely to provoke intense political disagreement during negotiations. A more contentious issue at the Review Conference was Article XI of the Convention and International Co-operation and Assistance (ICA). While making the expected reaffirmations of the importance of these provisions and the commitment to fully implement them, the disagreements and differences in approach amongst states parties to Article XI are still unresolved. The Review Conference was not able to agree guidelines for the development of OPCW international co-operation programmes – this task was left to the Executive Council, and no timeline was specified. Similarly, the Review Conference merely ‘urged’ the Council to continue efforts to reach early agreement on the full implementation of Article XI. The particularly sensitive issue of the Australia Group was not mentioned, though reference to it is implicit.

And despite the additional EUR 450,000 of funding agreed for ICA at last year’s session of the Conference of the States Parties, the continuing split on whether increased funding is required for ICA also remains unresolved, with the Review Conference simply recognising the need for ‘adequate resources’. This will, no doubt, be the source of continuing strong debate in regard to the 2004 Programme and Budget for the Organization.

The Review Conference necessarily involved a review of the overall verification regime for the chemical industry. The selection process for Other Chemical Production Facilities (OCPFs) was fairly briefly addressed, with the Scientific Advisory Board (SAB) and Director-General’s reports on this matter noted, and the issue returned to the Council for further work. In a non-committal statement, it was agreed that the number of OCPF inspections should be increased ‘to the extent found appropriate as the budget process unfolds in ensuing years’. Overall, the Review Conference seems to have resolved little in respect of the Article VI inspection allocation debate, merely affirming the

<b>Outline of Actions Requested or Recommended by the First Review Conference</b>		
<b>Para</b>	<b>Recommendation/Request</b>	<b>Timeframe specified</b>
18	[Re universality]...recommended that the Council, with the co-operation of the Secretariat, develop and implement a plan of action to further encourage, in a systematic and co-ordinated manner, adherence to the Convention and to assist States ready to join the Convention in their national preparations to implement it.	None
23	...requested the Council to consider the developments in relation to additional chemicals that may be relevant to the Convention, and assess, <i>inter alia</i> , whether these compounds should be considered in the context of the Schedules of Chemicals.	None
25	...called upon the Council to reach agreement on the declaration criteria for former chemical weapons development facilities... with a view towards promoting confidence among States Parties.	None
27	[Re the OPCW’s verification system] ...also noted that a number of procedures and guidelines that the Convention requires remain to be finalised and adopted. The Council has already included these in its work programme, and should resolve them as soon as possible.	‘as soon as possible’
30	[Re the Scientific Advisory Board report in relation to developments in science and technology]... requested the Council, assisted by the Secretariat and members of the SAB, as appropriate, to study these recommendations and observations with a view to preparing recommendations to the Conference on them.	None
34	[Re the submission of declarations in electronic form]...requested the Director-General to further explore this possibility and to report to the Council, and recommended that an expert meeting open to all States Parties be convened to study all aspects of the proposed submission of declarations in electronic form.	None
37	...requested the Council, assisted by the Secretariat, to intensify its study of how to further optimise the OPCW verification system, aiming at recommendations that should, if possible, take effect beginning in 2004. Such a study should take into account the findings of the SAB. The study should identify essential inspection tasks; assess how the different aspects of the inspection cycle, from planning to reporting, can be made more efficient; identify means that would further increase verification efficiency; and consider how best to meet the Convention’s requirement in relation to sampling and analysis for verification purposes.	Recommendations should ‘if possible’ take effect beginning in 2004
39(d)	[Re implementation of the Conference’s previous decisions on the declaration of aggregate national data]...called upon the Council to review the progress of implementation, supported by reports by the Secretariat.	None
39(g)	...encouraged the Council and the Secretariat to work together to further improve the submission of information on verification results to the States Parties, <i>inter alia</i> by further improving the form and content of the Verification Implementation Report, consistent with the provisions of the Confidentiality Annex.	None

validity of the ‘overall balance found in the Convention’ and the need to ‘ensure the adequate frequency and intensity of inspections for each category’ of Article VI facilities.

A number of other issues were addressed by the Review Conference within the Article VI sphere. These included the need for guidelines in respect of inspections at Schedule 1 facilities, a proposed *de minimis* rule for the notification of transfers of Schedule 1 chemicals, and the submission of declaration data in electronic form. While the Review Conference requested a recommendation on whether there is a need for measures in relation to transfers of Schedule 3 chemicals to be submitted to the next session of the Conference of the States Parties, this seems overly optimistic.

Optimization of verification measures has been a topic of considerable interest within the OPCW for some time, and continued to attract a good deal of attention at the Review Conference. While considering that the OPCW had

established a verification system that meets the Convention’s requirements, the Review Conference called upon the Council to intensify its study on verification resource optimization. Given the work that is already underway at the OPCW on optimization of verification resources, the Review Conference’s request for recommendations to be phased in, if possible, beginning next year may well be achievable.

Several issues seem not to have engaged the Review Conference. No mention of so-called ‘non-lethal’ agents or ‘law enforcement’ ended up in the final version of the Review Document. States parties’ reluctance to address this issue was evident prior to the Review Conference, and the timing was perhaps not right to tackle this controversial issue, but it should not be simply ignored now for another five years. Indeed, it is hard to think of any other issue having as much potential for jeopardizing the long-term

Para	Recommendation/Request	Timeframe specified
39(i)	...requested the Council to intensify its study of the issue of verification resource optimisation, aiming at recommendations that should, if possible, be phased in beginning in 2004.	Recommendations to be phased in beginning in 2004 if possible
39(j)	...requested the Council to resolve urgently the development of recommendations on the still-unresolved issues pertaining to the Convention’s verification regime that the Convention requires it to adopt, and to submit draft decisions to the Conference as early as possible.	‘[R]esolve urgently’ development of recommendations, with draft decisions to be submitted ‘as early as possible’
44	...called upon the Secretariat to continue rendering technical assistance to the States Parties on the preparation of chemical weapons declarations, by mutual consent, and to submit proposals to the Council on any measures that may be necessary to maintain the technical competence of the Secretariat in this respect.	None
46	...recommended that the Secretariat continue working with the Council, with the appropriate involvement of the [possessor] States Parties... towards mutually agreeable solutions for optimising chemical weapons verification, whilst maintaining the effectiveness of verification activities. The Review Conference requested the Council to oversee this work, and to submit to the Conference proposals for recommendations and decisions, with a view toward their implementation starting in 2004.	Proposals are to be submitted to the Conference ‘with a view to’ implementation starting in 2004
52	... noted the intention of the Secretariat to inspect, soon after 29 April 2003, all [CWPFs] that are subject to conversion for purposes not prohibited by the Convention, but that have not yet been certified as completely converted, and to report to the Council about the conversion status of each of these facilities.	None. Inspections to take place soon after 29 April 2003
53	[Re the verification of converted CWPFs] ...requested the Secretariat to submit a concept for these verification measures to the Council for consideration and to enable the Council to submit proposals for recommendations or decisions that may be needed to the Conference.	None
54	...recalled the need to adopt decisions on a number of unresolved issues related to chemical weapons, [OCW], [ACW] and [CWPFs]. It noted that the Council has included several urgent and long-standing issues in its work programme, and requested the Council to continue working towards an early resolution of these issues.	The Council is to work towards ‘early resolution of these issues’
63	[Re changes to annual declarations – refer C-I/DEC.38, dated 16 May 1997]... urged States Parties to... on a voluntary basis, inform the Secretariat of cases when plants or plant sites that have been declared to undertake activities in relation to Schedule 2 or Schedule 3 chemicals cease to do so, and requested the Council to consider whether to require such submissions from States Parties.	None
66	[Re the number, intensity, duration, timing and mode of inspections at Schedule 1 facilities]... Guidelines on this... however, have yet to be considered and approved by the Conference... these guidelines would assist in the future optimisation of the use of resources set aside for verification, and requested the Council, assisted by the Secretariat, to prepare these guidelines for consideration and adoption as early as possible.	‘as early as possible’

future of the CWC regime. The issue of nil declarations in respect of OCPFs also did not make it into the Review Conference report. Nor did the phrase ‘General Purpose Criterion’ appear, replaced instead by the formulation ‘comprehensive nature of the Convention’ — anodyne words that surely risk facilitating disregard for the Criterion during national implementation. Less controversially, and as recommended by the SAB, no changes to the Schedules of Chemicals were made – instead the Council is to consider developments in respect of additional, possibly relevant, chemicals, as well as the SAB Report’s recommendations in general.

What, then, can be learned from this first CWC Review Conference? Perhaps that more time, and more dedicated effort at an early stage by states parties, will be required for preparations for the next Review Conference. NGOs have frequently expressed their frustration at their limited ability to contribute to this Review Conference — increased participation by NGOs, academics and industry representatives active in the CBW community, at an earlier stage, would be a welcome initiative. The interest by delegations in the Open Forum convened by the OPCW during the Review Conference seems to indicate that their involvement is a valuable addition to the review process, not

Para	Recommendation/Request	Timeframe specified
67	[Re a proposed <i>de minimis</i> rule for the notification of transfers of Schedule 1 chemicals]... requested the Council to study this issue, and, if agreed, to prepare a proposal for consideration by the Conference [of the States Parties] at one of its forthcoming annual sessions.	‘for consideration by the Conference at one of its forthcoming annual sessions’
69	[re Other Chemical Production Facilities]... agreed that there was a need to: (a) fully implement all parts of the selection mechanism provided for in paragraph 11 of Part IX of the Verification Annex; (b) reach early agreement on what basis (e.g., regional) proposals by States Parties for inspection should be presented to be taken into account as a weighting factor in the selection process...; (c) take account of the [OCPFs] declared by the States Parties, of their technical characteristics and activities, and of trends in science and technology that impact on these parameters, to increase the number of [OCPF] inspections to the extent found appropriate as the budget process unfolds in ensuing years; and (d) review the conduct of [OCPF] inspections to ensure that they are conducted in a way that efficiently fulfils the inspection aims set out by the Convention. The First Review Conference requested the Council to continue working on these issues, together with the Secretariat, and to prepare recommendations for the Conference’s consideration at an early date.	Recommendations to be prepared ‘at an early date’
71	[Re optimization of the verification regime for the chemical industry] ...encouraged the Council, assisted by the Secretariat, to work toward: (a) resolving outstanding chemical industry cluster issues and submitting recommendations to the Conference at an early date; (b) improving the submission and handling of industry declarations (including, <i>inter alia</i> , common criteria and standards, simplified declaration forms, and the submission of declaration data in electronic form); (c) refining inspection conduct to improve consistency, efficiency and effectiveness (including, <i>inter alia</i> , a common approach to verifying the absence of Schedule 1 chemicals at inspected plant sites, the simplification of the format used to record preliminary findings, and sampling and analysis procedures); (d) providing guidance to the Secretariat in respect to reporting on verification results in the chemical industry in order to increase the utility of the information provided to the States Parties; and (e) studying the need for a recommendation about the future treatment of salts of Schedule 1 chemicals that are not explicitly mentioned in Schedule 1.	(a) ‘at an early date’ (b)-(e) None
73	[re whether there is a need for other measures in relation to transfers of Schedule 3 chemicals and the need for States Parties to implement end-use certification]...requested the Council to continue working towards an early resolution of these issues, and to submit a recommendation on this matter to the next regular session of the Conference.	‘Early resolution’ - Recommendation to be submitted to next regular session of the Conference
83(h)	... agreed to develop, at its next regular session, a plan of action based on a recommendation from the Council regarding the implementation of Article VII obligations, with the objective of fostering the full and effective implementation of the Convention by all States Parties.	Next regular session of the Conference
83(i)	...called upon the Council, in co-operation with the Secretariat, to closely monitor progress toward achieving effective implementation of Article VII obligations by all States Parties, and, at an appropriate time, to make suitable recommendations to the Conference regarding measures to ensure compliance with Article VII.	‘at an appropriate time’
90	...noted that a number of issues related to challenge inspections are yet to be resolved....requested the Council to continue its deliberations in order to expeditiously resolve them.	‘expeditiously’

least for the ability to highlight sensitive topics that are politically untouchable by delegations.

Most importantly, in the next five years, the OPCW, meaning its member states, its Executive Council, its Conference of the States Parties and its Secretariat, should be held to account for the products, such as they are, of this First Review Conference. The Review Conference's report addresses the functioning of the OPCW, amongst other things expressing concerns about delays in implementing Conference decisions on the resolution of unresolved issues, and noting the need for focused agendas. Five years from now, the international CBW community should be in a

position to evaluate how many of the recommendations and requests for action have been acted upon. The list of items still unresolved from PrepCom days is disturbingly long – these items should not be still outstanding, and added to by uncompleted First Review Conference tasks, by the time of the Second CWC Review Conference.

**Note**

1. The text of the Review Document used in the tabulation for this article is that available on the OPCW website ([www.opcw.org](http://www.opcw.org)) during June. This text later appears under agenda item 7 of the report of the Review Conference.

Para	Recommendation/Request	Timeframe specified
94	[Re annual submission of information on national programmes related to protective purposes] ...requested the Council to expeditiously develop and submit for adoption the procedures called for by the Convention.	'expeditiously'
95	...requested the Secretariat to continue working on the OPCW data bank on protection... The First Review Conference expressed concern about the hitherto-slow progress in establishing this data bank.	None
100	[Re investigations of alleged use or threat of use and delivery of assistance]...requested the Council to take up the possible function of the OPCW in facilitating the efficient delivery of assistance.	None
101	...encouraged the Secretariat to identify and engage relevant international organisations that are likely partners in situations where the OPCW needs to respond to an assistance request by a Member State, and to submit proposals to the policy-making organs.	None
107	[Re Article XI] ...urged the Council to continue its facilitation efforts to reach early agreement on the issue of the full implementation of Article XI, taking into account earlier and recent proposals submitted.	'early agreement'
109	[Re the need to develop guiding principles for international co-operation programmes] The Council should elaborate such guidelines on international co-operation programmes, and apply them when evaluating both reports by the Secretariat on existing programmes, and proposals it makes for new ones.	None
117	...noted the security audit team recommendation to adopt the ISO-17799 information-security management standard, and requested the Secretariat to evaluate what resources would be required to do this, and to inform the Council of its findings.	None
118	...encouraged the OPCW to take steps to reach agreement on developing and implementing guidelines regarding the long-term handling of confidential information.	None
123	...expressed concern about delays in the Council's implementation of Conference decisions on the resolution of unresolved issues. The First Review Conference noted that the Council had included important, long-standing, unresolved issues in its work programme, and urged it to increase momentum and strive to conclude all unresolved issues.	None
124	[Re the Scientific Advisory Board]...recommended that the interaction between the SAB and delegations should continue and be further enhanced, in the context of the Council's facilitation process.	None
127	[Re budgetary and financial mechanisms] ...encouraged the Director-General to move ahead with the stepwise introduction of results-based budgeting. Furthermore, the First Review Conference noted the need for the Council to accelerate its deliberations on the outstanding issues in relation to the OPCW's Financial Rules.	None
128	[Re staffing] ...noted that the issue of the OPCW's Staff Rules and amendments to Staff Regulation 3.3, and the issue of the classification of posts, remain within the purview of the Council and should be resolved without delay.	'without delay'
<p><i>Please note:</i> this table contains only those recommendations or requests that require some specific action by the Council or Secretariat. For the most part, it does not include reference to activities already being carried out by the Council or Secretariat. It also does not include general requests or encouragement to states parties to fulfil their obligations under the Convention. Except where in square brackets, the language used is that of the Review Document. In all cases listed above, it is the First Review Conference recommending, requesting or calling for action.</p>		