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## **Ensuring Article VII Implementation Options for CSP-10**

### Background

The First Chemical Weapons Convention (CWC) Review Conference, held in April 2003, called on the Eighth Session of the Conference of the States Parties (CSP-8) to develop an action plan regarding the implementation of Article VII obligations. The CSP-8, in October 2003, adopted the Article VII action plan, requiring all States Parties to fulfill their Article VII obligations by CSP-10 (scheduled for November 2005). The Director-General of the Organization for the Prohibition of Chemical Weapons (OPCW) will report prior to and at CSP-10 on the implementation of Article VII by each State Party. At that point, the CSP will review the status of implementation and consider and decide on any appropriate measures to be taken, if necessary. In preparation for CSP-10, the foundation for decision-making at and after CSP-10 must be developed.

### The Overall Objective

The overall objective of the Article VII action plan is to achieve full and effective implementation of Article VII by all CWC States Parties. The overall success of the action plan depends upon States Parties working hard towards implementation (including making requests for assistance when assistance is required), State Party accomplishments, and actions taken by the Conference to further the goal of full and effective implementation.

### Standards for Measuring Effective Implementation

To assess the success of the action plan and determine necessary follow-on actions at CSP-10, States Parties must come to the Conference with some common standards by which to assess States Parties' progress toward fulfillment of the three main national implementation requirements: promulgating national penal legislation, establishing a national authority, and the adoption of administrative measures to implement Article VI. These standards should be reasonable, objective, and measurable. The Conference must assess the level of achievement in each of these specific areas, as well as overall, to determine the extent to which a State Party has achieved full and effective implementation and, if not, what measures would be appropriate to ensure such implementation. The standards proposed in this paper take into account not only full achievement of the action plan's goals, but also tangible indications of a State Party's commitment to and progress in meeting Article VII obligations, as evidenced by domestic efforts to draft and enact implementing legislation, establish a National Authority, adopt Article VI implementation measures, and request assistance. The proposed standards for the three main national implementation requirements are:

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*Establishing or designating a National Authority.* Each State Party is responsible for establishing its National Authority and providing the point-of-contact information to the OPCW. This is essentially an administrative task.

- Proposed standard for the Conference: The Conference should not tolerate failure to meet this requirement by any State Party. The absence of a National Authority is a clear statement to the Conference that a States Party lacks the political will and intent to implement a key element of Article VII. Prompt action by the Conference to address the situation is warranted. For those States Parties whose establishment of a National Authority is linked to the enactment of implementing legislation, the Conference must assess the progress of the enactment of such legislation when considering the appropriate measures to take.

*Adopting national penal legislation.* By CSP-10, each State Party is required to bring its criminal legislation into conformity with the provisions of the CWC to ensure that those who conduct prohibited activities are subject to prosecution. All States Parties also must ensure by the tenth Conference that their existing and/or new laws are appropriately comprehensive.

- Proposed standard for the Conference: The Conference must assess whether each State Party has enacted comprehensive penal legislation with respect to prohibited activities. The Conference should evaluate the Director-General's Final Progress Report on Article VII implementation to determine the status of each State Party, which can be categorized as follows:

-Comprehensive legislation: In such cases where States Parties have enacted comprehensive penal legislation covering all key areas (e.g., Article 1 prohibitions and penalties; extraterritorial application; Article II (I) penalties; Schedules 1,2 and 3 penalties; Schedule 3 end user certificate requirements; penalties for failure to declare; and cooperation under Article VII (2)), no further action is required. Likewise, the Conference must assess the extent to which States Parties have included all key areas in their penal legislation and administrative measures.

-Draft or incomplete legislation: States Parties with draft (including supplemental legislation to make current statutes comprehensive) legislation in their Parliamentary process or, depending on the governmental structure, prepared for final approval by the Head of Government or other final authority. These States Parties should be given an additional grace period of six months to enact this legislation, subject to certain conditions (discussed below).

-No draft legislation pending in the parliamentary process: States Parties that lack even draft legislation by the conclusion of the two-year action plan, like those that have not established National Authorities, have failed to show even a minimal level of political commitment to the Chemical Weapons Convention. Prompt action by the Conference to address such situations is warranted.

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*Adopting Article VI implementation measures.* Each State Party is required to establish measures that enable Article VI requirements to be met (e.g., Article I general obligations, declarations, inspections).

- Proposed standard for the Conference: On the basis of the Director-General's progress reports, the Conference must assess the extent to which each State Party has adopted administrative measures that are consistent with the requirements of Article VI of the Convention. States Parties may logically be grouped into three categories:

-Existing and sufficient administrative measures: No further action is required with respect to such States Parties.

-Draft or incomplete administrative measures: States Parties with draft administrative measures in their Parliamentary process or, depending on the governmental structure, prepared for signature by the Head of Government or other final authority, or States Parties with incomplete administrative measures. Given the positive intent demonstrated by these efforts, such States Parties should be given an additional grace period of six months to adopt these measures, subject to certain conditions (discussed below).

-No draft administrative measures: Those States Parties who lack even draft administrative measures have not demonstrated their commitment to the aims of the CWC. Prompt action by the Conference to address this situation is clearly warranted.

*Requested technical assistance.* States Parties may request assistance from the OPCW or other States Parties willing to provide technical assistance. States Parties that require assistance in order to meet their obligations must have requested it through the OPCW or bilaterally with another State Party well in advance of the CSP-10 deadline to show a good faith attempt was made to meet the obligations of the action plan. Specifically, if a State Party has not requested assistance within a reasonable amount of time to allow assistance to be provided prior to the CSP (e.g., by June 1<sup>st</sup>), the continued need for assistance at the time of CSP-10 cannot be considered a mitigating circumstance.

#### Options for CSP-10

The fundamental premise for adopting the concept of "appropriate measures to be taken, if necessary" within the Article VII action plan was to prompt the Conference to achieve full and effective implementation. Such remedies include:

Measures to ensure compliance: In the case of States Parties that have not acted upon their required obligations under Article VII, thus raising concern about their willingness to fully implement the Convention, immediate action by the Conference is necessary to redress the situation and motivate these States Parties to fulfill their obligations. Each

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State Party is obligated to implement the Convention fully and effectively and must be held accountable.

States Parties requiring immediate application of measures to ensure compliance are those States Parties who have failed to attempt to implement one or more of the three main requirements of Article VII, (i.e., designating/establishing a National Authority, enacting comprehensive legislation, and administrative measures in all key areas.) The Conference should decide that:

- The State Party would be required to submit a written explanation for its failure to meet the Article VII obligations to the next Executive Council session (EC-43) following CSP-10.
- The State Party would be required, within 30 days, to establish a national action plan for complying with Article VII within a practicable timetable and submit it to the Executive Council for monitoring.
- The State Party would not be eligible for election to the Executive Council, to Vice-Chair or other regional leadership positions, and to any office of the CSP, until all obligations are met.
- Cooperation and assistance provided to such States Parties by the OPCW would be limited solely to aid in meeting the Article VII requirements. Until the State Party meets its Article VII obligations, it would not be eligible for other international cooperation and assistance programs or participation in programs such as the Associate Program or training activities.
- Quarterly updates from the National Authority would be required to be provided to the Executive Council.

Six-Month Grace Period: For those States Parties that tried to meet the CSP-10 deadline by taking concrete steps to achieve full implementation, submitted timely requests for assistance and expressed a commitment to achieving such results within six months of CSP-10, a six-month grace period would be established, contingent upon submission of an action plan within 30 days (i.e., before EC-43), outlining how the State Party intends to fulfill its obligations within the grace period. This approach offers the Conference an option to give States Parties a six-month window in which to complete their legislation and administrative measures, prior to triggering the implementation of immediate measures. Such States Parties would be required to submit progress reports to the Executive Council after 90 and 180 days. If all of the Article VII measures are met within six months, no measures will be taken. Absent the submission of a written statement of commitment; submission of an action plan; and enactment of comprehensive legislation / administrative measures within six months of the Conference, the measures to ensure compliance proposed above would apply.

Measures for New Member States: States Parties that acceded/ratified the Convention after CSP-9, but were unable to fully implement Article VII by CSP-10, would be given sufficient time and assistance to meet these obligations. This is an effort to be fair to new member States and to avoid harm to future universality efforts. Such measures would allow these States Parties to establish a realistic agenda for meeting their obligations. The

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Conference should adopt the following:

- The new State Party, in coordination with the OPCW Technical Secretariat, would be required to develop a timetable for meeting the Article VII obligations and present it to the next Executive Council session following CSP-10. This timetable would not go beyond CSP-11 (November 2006).
- The new State Party would be required to immediately (i.e., by January 1, 2006) establish a National Authority, if required.
- Quarterly updates from the National Authority would be provided to the Executive Council.
- New States Parties would be encouraged to request assistance, if necessary.
- If new States Parties do not fulfill these requirements, or do not complete adoption of comprehensive penal legislation and necessary administrative measures by CSP-11, the measures to ensure compliance proposed above would apply

Measures Requiring Regional Coordination: Regional coordination is essential for the effective implementation of Article VII. One option at the disposal of the Conference would be to promote a regional commitment toward full implementation, requiring or requesting regional leaders and States Parties within the region to establish regional agreements and/or programs between National Authorities. This would provide appropriate and timely assistance to those States Parties having difficulty meeting their obligations. The exchange of information between States Parties should include the development of model legislation or regulations to promote the adoption of national controls. Measures should be taken to enable greater information sharing, cooperation, and assistance between States Parties in each regional group.

#### Review at CSP-11

One year after the CSP-10 deadline, the annual meeting of State Parties (CSP-11) would review the status of implementation of Article VII and take any necessary measures under Article XII to ensure compliance with the Convention and to redress and remedy any situation that contravenes the provisions of this Convention. In this connection, the Conference may decide to task the OPCW Director-General to provide the UN Security Council in the context of UN Resolution 1540 with a list of the States Parties that have not met their Article VII obligations.

