

ASSESSING THE FIRST YEAR OF THE CHEMICAL WEAPONS CONVENTION

by Alexander Kelle

Dr. Alexander Kelle is a Research Associate at the Peace Research Institute in Frankfurt, Germany. He gathered much of the information for this article as a nongovernmental observer during the two sessions of the Conference of State Parties of the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague.¹

The entry-into-force of the Chemical Weapons Convention (CWC) on April 29, 1997, marked the beginning of the operation of the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague, the Netherlands. This organization consists of three major bodies: the Conference of State Parties (CSP), the primary policymaking forum comprising all member-states; the 41-country Executive Council, responsible for overseeing the day-to-day activities of the organization; and the Technical Secretariat, including the professional staff and inspectorate.

This article reviews the progress and problems of the CWC's first year across a number of areas. First, it analyzes developments during the first two sessions of the CSP. It also discusses the intersessional proce-

dures established to address a number of unresolved issues left over from the Preparatory Commission (PrepCom), which met for four years from the CWC's opening for signature in January 1993 until its entry-into-force in April 1997. The next two sections discuss the activities of the Technical Secretariat and the Executive Council. The article then assesses the overall progress made to date by the OPCW and its member states, as well as certain shortcomings. Finally, the concluding section reviews some lessons from the first year of CWC implementation for future multilateral nonproliferation regimes.

THE CONFERENCE OF STATES PARTIES

The CSP, in which every member-state has one seat and one vote, is

the principal policymaking organ of the OPCW on all matters of substance and organization. The first session of the CSP took place from May 5 to 23, 1997. Of the CWC's then 165 signatory states, 117 participated in the CSP. Among the participating states, 80 had deposited their instruments of ratification prior to entry-into-force of the CWC and were therefore entitled to participate in decisionmaking during the conference. Decisions had to be taken in three issue areas: 1) approving provisional decisions taken by the PrepCom; 2) finding solutions for outstanding issues; and 3) establishing the organizational structure of the OPCW.

The first of the three main tasks before the CSP, the approval of the draft decisions and recommendations prepared by the PrepCom and

the Provisional Technical Secretariat of the OPCW, did not cause much trouble. Nearly all speakers during the initial four-day general debate welcomed the progress these two bodies had made during the preceding four years of work. The vast majority of draft decisions were approved without modifications.²

The adoption of these decisions, however, was contingent on the ability of the CSP to agree on rules of procedure. The main bone of contention in this context was whether signatory states that had not ratified the CWC would be allowed to participate in decisionmaking during the first session of the CSP. Three non-parties—Russia, Pakistan, and Iran—sought unsuccessfully to gain the right to speak at all meetings of the CSP and thus exert some influence on the decisionmaking process. Instead of granting signatory-states these rights, the CSP decided to alternate several times between committee work and plenary sessions, so that signatory states could make their opinions heard and distribute position papers to other delegations.

The second task of the first CSP turned out to be much more difficult: solving those outstanding issues necessary to enable the newly established OPCW to take up its duties. Most prominent among these unresolved issues was the approved list of inspection equipment. Without such a list, inspected states parties would have been able to reject inspection equipment as they saw fit. Initially, the CSP made some progress on this issue when China and India withdrew their demand to have different equipment lists for each type of inspection. But approval of one consolidated list remained blocked because of an Indian de-

mand that all inspection equipment be commercially available to states parties. On the last day of the session, India finally accepted a compromise under which all member states have the right to familiarize themselves with inspection equipment before it is brought into the inspected state party. If an inspected state believes it has been deprived of this right, it can refuse to permit the utilization of the inspection equipment.

These controversies complicated the third task of the CSP, which was establishing the OPCW. It took a week before all 41 members of the Executive Council were nominated by the five regional groups and then elected by the CSP as a whole.³ Only then could the director-general of the OPCW, the Brazilian diplomat José Mauricio Bustani, be elected. India received the chairmanship of the Executive Council for the first year of its operation. Once this was accomplished, controversy focused on the OPCW's top management and the distribution of posts among the five regional groups, as well as the organization's first budget.

According to a proposal submitted by the OPCW director-general, the West European and Others Group (WEOG) was to receive three of the nine top positions, while the Latin American and the Eastern European Groups were allotted only one post each. Even so, the regional distribution of the top positions turned out to be not particularly controversial. Instead, it was overshadowed by a struggle over the rank of the director-general's post and the pay grades of his deputy and the directors of the Technical Secretariat.

The source of the controversy was the fact that the newly appointed di-

rector-general had negotiated and signed a contract in which he received the rank of undersecretary general in the U.N. hierarchy. This title was in and of itself not unusual; the director-general of the International Atomic Energy Agency holds a comparable position. But the contract had been formulated and signed without prior consultation with member states. This unusual procedure and the prior assumption of some influential states that the top post of the OPCW would be accorded the rank of assistant secretary general led to fierce resistance by a small group of states led by the United States. This resistance could be overcome only in the early morning hours of the last day of the CSP, when all delegations finally accepted the director-general's contract.

Together with the debate over the list of approved inspection equipment, the controversy over the director-general's rank delayed the drafting of the OPCW's first budget. The budget calculations were further complicated by U.S. insistence on externalizing a major portion of the verification costs associated with the destruction of its CW stockpile. The U.S. proposal envisaged that most of the verification costs would be covered initially by the OPCW, which would be reimbursed only after completion of the inspections. Since this approach would have increased the OPCW's overall budget and hence the contributions of all member states, the U.S. proposal met considerable resistance. According to the compromise eventually reached, the United States will be responsible for all expenditures directly related to verifying the destruction of its CW stockpile.

The Intersessional Procedure to Address Unresolved Issues

Since it could be foreseen that the first session of the CSP would resolve only a small fraction of the outstanding issues, a mechanism was negotiated for addressing unresolved issues during the first intersessional period. Here again, the extent of participation by signatory states was contentious. China favored greater participation of signatories, whereas the United States led the group of states parties insisting on a clear distinction between member states and non-members. The final compromise provided for an informal process in which “facilitators” were appointed by the chairman of the committee of the whole of the CSP to address specific outstanding issues. It was decided on the last day of the session that signatory states would be given “a reasonable opportunity to express their views during the facilitator’s consultation process.”⁴

Although this decision was taken in May, it was mid-September before the first facilitators were assigned to address the unresolved issues. As a result, the facilitators had only about 10 weeks to solve problems on which CWC member-states had been unable to agree during the previous four years of PrepCom work. A total of 14 facilitators were appointed, covering a wide range of issues. Only four of the facilitators were able to produce compromise proposals, three of which were submitted to the second session of the CSP.

The Second Session of the CSP

Eighty-two states parties participated in the second session of the CSP, held from December 1 to 5,

1997, in The Hague. The ratification of the CWC by two of the participating states (Iran and Russia) took effect during the session. In addition, 19 signatory states and two non-signatories attended the meeting, as well as four international organizations and eight nongovernmental organizations.⁵ The second session of the CSP followed rather closely after the first—and not one year later, as foreseen in the CWC⁶—to provide an incentive for Russian ratification. Moreover, one of the unstated tasks of the second session was the “accommodation” of Russian interests, notably their adequate representation in the structures of the OPCW.

A second important task before the CSP was the approval of the organization’s budget for 1998. The third major task before the CSP was the approval of draft decisions taken during the intersessional period. These decisions had either been taken by the Executive Council on a provisional basis and then transferred to the CSP for approval, or the draft decisions had been prepared by one of the facilitators during informal consultations.

A number of themes recurred throughout the general debate. They included the welcoming of recent accessions to the CWC, the need of all member states to comply with their obligations in a timely manner, the concern that still outstanding issues be resolved as soon as possible, and the urgency of approving an operating budget for 1998, including the need to agree on how verification costs related to CW facilities will be reimbursed by the states parties on whose territory the facilities are located.⁷

Negotiations on the 1998 budget were complicated by a debate on the

appropriate staffing level of the Technical Secretariat and the demands of some new states parties for adequate representation on the Secretariat staff. These demands were opposed by members of the WEOG, which pay the lion’s share of the OPCW’s operating costs and were unwilling to see the budget increase much beyond the provisionally agreed level of NLG 122 million for 1998. Already during earlier negotiations between the OPCW director-general and the Executive Council, the number of requested additional Secretariat posts had been cut roughly in half. Yet the remaining senior posts were only partially compatible with the desire of Russia and Iran to be represented in the higher echelons of the OPCW. According to the compromise eventually hammered out, only four of the posts requested by the director-general survived the behind-the-scenes bargaining. Russia received the post of director for Special Projects, while Iran was chosen to head the newly created branch on Emergency Assistance.

Another budget-related debate concerned the costs of verifying the destruction of CW stockpiles and production facilities. The less CW possessor states such as Russia and the United States were willing to pay for these costs, the more they would have to be covered by all member states collectively. A key issue in this debate was the question of what exactly constitutes an inspector’s salary. A proposal submitted to the second CSP by the facilitator assigned to the issue did not find the required support. In order to overcome the impasse, the CSP negotiated some ambiguous language that left a wide margin for interpretation. Further clarification of this issue was

delegated to the Executive Council, which will have to resolve it by June 1998.

In addition to the proposal on verification costs, two other proposals developed during the intersessional period were submitted to the second CSP. The CSP rejected a proposal by an Argentinian facilitator for an incremental, progressive approach to addressing issues related to Article X (assistance and protection against chemical weapons) and Article XI (technical cooperation and assistance in the peaceful uses of chemicals).⁸ A number of developed states saw the initial proposal as the most they were willing to concede and not as a starting point for more far-reaching measures.

A second facilitator proposal dealing with industry declarations was approved, however, and led to the following decisions. First, the term "production" of a treaty-controlled chemical will henceforth include biochemical or biologically mediated methods of synthesis.⁹ Second, when member states declare low concentrations of Schedule 2 and Schedule 3 chemicals contained in mixtures, they must indicate clearly what concentration limits were applied.¹⁰ Third, with respect to reporting of aggregate national data for Schedule 2 and 3 chemicals, the Conference forwarded this issue to the Executive Council for further discussion, and asked it to report its findings to the next session of the CSP.¹¹

The remaining outstanding issues can be subdivided into three categories: 1) issues that were explicitly transferred by the second CSP to the Executive Council for resolution; 2) issues whose solution had been overtaken by events; and 3) all issues that

have again been transferred to intersessional consultations coordinated by facilitators. The new intersessional process closely resembles that of the past. Some new provisions were included to provide for greater regularity and transparency of consultative meetings, giving delegations more lead-time for preparation. But the CSP rejected an Iranian proposal to establish a formal negotiating mechanism with a clear agenda for resolving outstanding issues.

As the implementation of the CWC continues on a day-to-day basis, most of the outstanding issues crucial for the proper functioning of the organization will probably be resolved before the next session of the CSP in November 1998. Those issues that are still deadlocked will either be transferred to the appropriate organs of the OPCW for resolution or a compromise will be worked out through political bargaining. Consequently, the current intersessional procedure to address unresolved issues will most likely be the last one.

Other business of the second CSP included the election of 20 new members to the Executive Council, whose appointments will take effect in May 1998.¹² In addition, the scale of assessed contributions for 1998 was approved, according to which no state party will pay more than 25 percent or less than .01 percent. The CSP also approved U.S. and British requests to convert former CW production facilities to legitimate commercial activities. The vote came after a lengthy debate in which the Chinese delegation asked for detailed information on a previously converted former U.S. CW production facility in Van Nuys, California.

The CSP also agreed on the terms of reference for the Scientific Advisory Board, and provisionally approved the Operating Procedures of the Confidentiality Commission, subject to no objection being made by a state party until January 15, 1998. After this deadline passed without objection, the Operating Procedures went into effect. The date for the third session of the CSP was set for November 16-20, 1998.¹³

THE TECHNICAL SECRETARIAT

The most visible part of the Technical Secretariat's work since entry-into-force was the conduct of initial or baseline inspections, which took place mostly at declared facilities involving the production of Schedule 1 chemicals (i.e., CW agents and their immediate precursors). Between June 1997 and March 1998, the Secretariat carried out 168 inspections at 138 sites. Five of these inspections were conducted at abandoned CW sites, 16 at old CW facilities, 43 at CW production facilities, 26 at CW storage facilities, 33 at CW destruction facilities, 26 at Schedule 1 facilities, and 19 at Schedule 2 facilities.

The bases for inspections and visits were the initial declarations submitted by states parties. However, by the end of November 1997, only 70 of the then-102 member states had submitted their initial declarations. As of May 1998, 78 initial declarations had been received from a total of 107 member states. Moreover, of the 78 declarations received by the Technical Secretariat, many are still incomplete. As of January 9, 1998, 90 states had either not provided all of the notifications required in addition to the declarations, or the noti-

fications were incomplete. For example, only a mere 53 member states had notified the Technical Secretariat of the points of entry for inspection teams.

States parties are also under the obligation to notify the Technical Secretariat of any transfer of a Schedule 1 chemical at least 30 days before the transfer takes place. According to an internal document that circulated during the second CSP, by November 20, 1997, 62 such notifications were submitted by either the sending state party, the receiving state party, or from both. Only six transfers were reported by both supplier and recipient, which according to the wording of the CWC should be the rule. A mere two of these six transfers were reported at least 30 days in advance, and even in these two cases the amount of saxitoxin actually shipped was corrected after the transfer had taken place. Thus, there is still considerable room for improvement in implementing the notification obligation in the CWC.

Despite these deficiencies, the declarations submitted included some positive surprises. Four states have declared possession of CW stockpiles (the United States, Russia, India, and South Korea). These weapons are stored at 26 declared storage facilities in three of the four countries (excluding Russia, which has not yet made public the number of its CW storage facilities). An additional five states parties have declared current or past CW production facilities (the United Kingdom, China, France, Japan, and a fifth unnamed state). The number of production facilities declared by nine states parties amounts to 42. In addition, seven states parties have declared old and/or abandoned CW

(Belgium, China, France, Germany, Italy, Japan, and the United Kingdom).

In addition to initial inspections, permanent monitoring of CW destruction operations has been established at five U.S. destruction facilities: the Tooele Chemical Agent Disposal Facility, the Johnston Atoll Chemical Agent Disposal System, the Chemical Agent Disposal System at Deseret Army Depot, the chemical transfer facility at Aberdeen Proving Ground, and the Hawthorne Army Depot. The continuous presence of OPCW inspectors at these five CW destruction facilities accounted for more than 8,300 of the 12,700 total inspection days (roughly 65 percent) that the OPCW's inspectorate performed until the end of March 1998.

A document issued by the verification division of the OPCW in early 1998 outlined some of the problems encountered during the first eight months of inspection activities.¹⁴ Based on 85 final inspection reports, the cooperation of the inspected states parties was rated above average for over 90 percent of inspections. Notwithstanding this positive assessment, however, the following four problem areas arose during inspections:

- *Incidents at the point of entry/exit as well as in country logistics.* Fourteen inspection reports referred to problems encountered during passage through the points of entry of four member states. In some cases, inspection teams were unable to meet the 12-hour timeline between the point of entry and arrival at the inspected facility. Other reports noted delays in receiving clearance to enter restricted areas within facilities.

- *Restriction of inspection equipment.* During 37 inspections, approved inspection equipment was placed under restrictions by six states parties, none of which prevented the inspection team from successfully concluding its mission. In some cases, items of equipment were rejected on grounds of the CSP decision on the list of approved equipment. In other cases, national regulations in the inspected state party mandated the restriction, or the inspection equipment was rejected for health and safety reasons. In 17 inspections, the team was denied the use of a Global Positioning System terminal for identifying the precise geographical location of the facility.

- *Uncertainties and issues requiring further action.* Twenty-three final inspection reports listed uncertainties and 16 spelled out issues requiring further action. Altogether, these reports relate to eight member states. Problems included discrepancies between the state party's initial declaration and the on-site observations made during the inspection. Some inspection teams were confronted with the absence of supporting or historical documentation to back up the declaration made by the state party. In other cases, inspection teams interpreted specific provisions of the CWC in a different manner than the inspected state party.

- *Timelines for the completion of final inspection reports together with comments of inspected states parties.* Only six of the 85 final inspection reports were processed in the time-span foreseen in the CWC for the Technical Secretariat (10 days after completion of

the inspection), and for the inspected state party (20 days after the report has been transmitted to it from the Secretariat). The Secretariat was on time with 19 of the inspection reports, and the inspected states provided timely comments on 30 of the reports. In 35 cases, member states did not respond at all.

In order to implement Articles X and XI of the CWC on international cooperation and assistance, the Technical Secretariat has initiated a number of specific programs for international cooperation among states parties. These programs include efforts to facilitate cooperation in the chemical field and bilateral cooperation agreements, a chemical technology-transfer website on the Internet, a database of laboratory equipment being sought or offered, and a database providing information on fellowships, and a program for interns.¹⁵

THE EXECUTIVE COUNCIL

The Executive Council held six sessions during the first intersessional period, between June and November 1997. During each of the meetings, the Council reviewed a status report on CWC implementation submitted by the director-general. The Executive Council repeatedly urged non-members to sign and/or ratify the CWC and urged states parties to submit their declarations and notifications in full and on deadline. (In fact, some members of the Executive Council itself either have not submitted initial declarations or their declarations are still incomplete. For example, the initial U.S. declarations did contain any information on industrial facilities—a “technical violation” of the CWC attributable to the failure of the U.S.

Congress to pass implementing legislation.)

To allow for the continuous monitoring of CW destruction facilities, the Executive Council considered and approved five transitional verification arrangements pertaining to such facilities in the United States. In addition, the Council approved two facility agreements for Schedule 1 facilities in Sweden and Australia. While the approval of these arrangements falls within the purview of the Executive Council, the final decision on requests for converting former CW production facilities to legitimate activities rests with the CSP. Consequently, two such requests, submitted by the United States and the United Kingdom, were first considered by the Executive Council and then recommended to the second session of the CSP for approval.

Other business of the Executive Council included the consideration and submission of the draft OPCW Program and Budget for 1998 to the CSP, consultations on interim OPCW staff rules and draft financial rules, discussions on the draft agreement concerning the relationship between the United Nations and the OPCW, the consideration of a request for delay in the start of destruction of a former CW production facility, and procedures for the provision by non-member states of end-user certificates for imported Schedule 2 and 3 chemicals.¹⁶

Since the beginning of 1998, the meeting schedule of the Executive Council has been somewhat relaxed, allowing for more informal consultations. The Council's first meeting of the year was overshadowed by the debate over the director-general's terms of appointment.¹⁷ Although a

compromise acceptable by a consensus of the Council appeared within reach, one member state requested a vote, in which the director-general's rank passed by 33 to three, with two abstentions. It should be noted, however, that states not supporting the rank of the director-general pay nearly half of the OPCW's budget.

Given the prominence of the debate on the director-general's terms of appointment, the Council deferred most other issues to its next regular meeting at the end of April 1998. One exception was the provision of end-user certificates for transfers of Schedule 2 or 3 chemicals to states not party to the CWC. Here, agreement was reached that the required certificates can only be accepted when they are issued by competent government authorities of the recipient states, and not by the industrial facilities themselves.¹⁸

ANALYSIS OF PROGRESS MADE

At first glance, the large number of decisions formally approved during the first, three-week session of the CSP (more than 75) suggests that a cooperative attitude prevailed during that meeting. Yet, most of these decisions had been prepared during four years of intense negotiations in the PrepCom, and thus only needed to be approved by the CSP. In fact, the willingness to compromise was quite limited during the first session, and delegations addressed only those issues absolutely essential to establish a functioning organization. Without diminishing the achievements made in creating the organizational structure of the Executive Council and the Technical Secretariat, the unresolved issues were nu-

merous and significant. The final report of the first session of the CSP listed 24 outstanding issues, including procedures for inspecting CW production and storage facilities and old and abandoned CW sites, for challenge inspections, and for investigations of alleged use of CW. Also unresolved were model facility agreements for a variety of CW-related facilities. In addition, the CSP was unable to agree on outstanding issues related to international cooperation for peaceful purposes in the field of chemistry. With respect to all these issues, the long-held positions of one or more delegations blocked a compromise solution.

The second session of the CSP faced the triple task of achieving progress in the substantive work of the organization, reaching agreement on the 1998 budget, and accommodating the late-comers—Russia, Iran, and, to a lesser extent, Pakistan. These challenges were aggravated by the fact that the OPCW Technical Secretariat is a new and still inexperienced organization.

Given the one-week duration of the second CSP, and given the need to agree on the 1998 budget, not much progress on substantive matters could be expected during the Conference itself. But even taking the compromise solutions proposed and introduced by three of the facilitators as a yardstick, the results do not look promising. Only one of the proposals, the one on industry declarations, was approved by the Conference. If one looks closer at the substance of this agreement, one finds that one of the issues (on aggregate national data) was referred to the Executive Council, and a second (on low concentrations of scheduled chemicals in mixtures) was

papered over with ambiguous wording. The goal of harmonizing national declarations on low concentrations, which had been pursued for four years during the PrepCom, was ultimately abandoned. Although states parties have now agreed to notify the Technical Secretariat about the concentration limits applied in their national declarations, it remains to be seen to what extent the declarations will be comparable.

Accommodating the interests of new states parties proved difficult because their demands were directed at: 1) reducing the costs resulting from their accession to the CWC; 2) achieving a maximum representation in the organizational structure in terms of post assignments; or 3) delaying the implementation of compromise solutions agreed before their accession, as in the case of the rules of procedure of the Confidentiality Commission.

The costs of verifying the destruction of CW stockpiles and CW production facilities will almost certainly be among the key issues debated in The Hague in the summer of 1998. Russia seeks to reduce its own share of the cost burden, even more so than the United States. While the compromise achieved during the first session of the CSP treated inspectors' salaries as a reimbursable item to be covered by the inspected state party, there is considerable concern that the vague wording agreed to in the second session of the CSP could be interpreted by Russian authorities to mean that only "operational" verification costs will be covered and that inspector salaries do not have to be reimbursed. This Russian approach to verification costs would be consistent with a distinction made by the then-Soviet representative to the

Conference on Disarmament during the negotiation of the CWC. The Soviet ambassador divided the budget of the future OPCW into two categories. The first category, administrative expenses, would cover personnel, administrative activities, meetings, and the like, while the second, operational expenses, would cover "expenses required for systematic international verification *on the territory of that State party*."¹⁹ Many countries that do not possess CW stockpiles believe that if this proposal were adopted, it would amount to nothing less than amending the CWC through the back door of treaty implementation. Since it is doubtful that non-CW possessors would allow this to happen, the issue could well lead to a major crisis over implementation of the treaty unless a compromise formula can be found.

With regard to the conversion of former CW production facilities, the scrutiny applied during the second session of the CSP to the U.S. request to use a converted facility as a sound stage may foreshadow debates to come. China, Pakistan, and others wish to keep the complete destruction of such facilities as the norm, while restricting conversion to exceptional cases. The Russian Federation, in contrast, has demanded that consideration of future conversion requests take account of its economic concerns.

National Implementation

The unequal national implementation of the CWC, if perpetuated, may either lead those states parties who are fully living up to their obligations to criticize the laggards or to move toward a lowest common denominator, resulting in reduced stringency with which they imple-

ment the provisions of the CWC. This concern applies particularly to declarations of relevant industry facilities and the associated on-site inspections. Chemical companies in states parties that are in full compliance will not long tolerate being put at an economic disadvantage with respect to industrial competitors from other, non-compliant countries.

LESSONS FOR FUTURE NONPROLIFERATION EFFORTS

While it may seem premature to suggest lessons learned from the first year of CWC implementation for future multilateral nonproliferation efforts, a few proposals can be made.²⁰

First, states parties should be cautious about imposing too many obligations during the initial phase of treaty implementation. The CWC imposes an unrealistically tight schedule after entry-into-force (EIF), including receipt of the first declarations only 30 days after EIF, followed by conduct of initial inspections, submission of inspection reports, and negotiation of facility agreements for follow-on inspections.

Second, although the concept of regional groups has proven to be a sound one, one should not expect universal adherence from within each regional group nor a strong representation of all regional groups in the major bodies of the Organization. The demand by CWC member states to achieve an equitable geographical distribution from the outset led to the allocation of Executive Council seats among the regional groups, regardless of the actual number of member states within each group. This led to a situation in which not enough states parties were available

to represent a region or to place representatives in the Council.

This situation could have been avoided by filling the Council seats in parallel with the number of ratifications from a region. Only when universality was approached by the entire region would all Council seats for that region be filled. A mechanism of this kind could also prevent an imbalance in representation among the different regional groups, which may create a relative disadvantage for those regions in which practically all states are parties to the CWC.

Third, the problems caused by the last-minute ratification by the United States and the delayed Russian ratification of the CWC have demonstrated the importance of having the big players on board. The late U.S. ratification prevented the PrepCom from reaching an end-game phase, in which at least some of the outstanding contentious issues would have been put to rest. The delayed Russian ratification created a number of problems for the first CSP, and led the OPCW to consider the second session of the CSP to be the first "real one." The objection that requiring ratification by the big powers prior to EIF of a nonproliferation treaty could hold it hostage is weak. Indeed, such a provision already exists in the Treaty on the Nonproliferation of Nuclear Weapons and the Comprehensive Test Ban Treaty.

Fourth, it would be advisable to make a country's participation in a multilateral treaty contingent on the passage of domestic implementing legislation, if required. In the case of the United States, the absence of national implementing legislation and the resulting lack of industrial declarations pose a major obstacle

to the equitable implementation of the CWC.

Fifth, any new nonproliferation framework would benefit from a set of diversified sanctions and positive incentives to promote compliance with its provisions.²¹ The history of CWC implementation makes clear that it is not sufficient to demand the enactment of implementing legislation. Rather, the obligations of a member state require continuous attention and effort. Initial and annual declarations must be filed, notifications made, and financial contributions transferred in full and on time. (Currently more than a third of OPCW members have not yet paid their assessments for 1997.) When these declarations, notifications, and financial contributions are lacking, states should not be eligible for membership in the Executive Council; in areas where member states do not provide information, they should not be entitled to receive corresponding information from other states through the treaty organization. Last but not least, candidates from a country in "technical violation" might be excluded from vacant posts in the Technical Secretariat.

CONCLUSION

In summary, the first year of CWC implementation has been uneven among the 107 states parties. Some of them, such as the United States, still have to submit initial declarations or complete their national implementing legislation. Part of the problem results from the diminishing high-level political attention, now that the euphoria over EIF of the CWC has passed and the OPCW has been left to perform its "business as usual." For the proper functioning of the OPCW, however, it is

absolutely essential that states fulfill their treaty obligations.

Another reason underlying the uneven implementation and financing of the CWC can be found in a tendency of many states parties to regard the operation of the CWC as someone else's business. This attitude may endanger the stability of the whole regime, particularly if CW disarmament does not occur on schedule because of the inability of member states to agree on who pays for what, or if the inequitable treaty implementation in the chemical industry field results in large-scale circumvention of the CWC's trade restrictions. Thus, the difficulties of the first year of CWC implementation provide cautionary lessons for the implementation of future nonproliferation treaties.

¹ Additional information was collected in 50 interviews with OPCW personnel and delegates.

² *Report of the First Session of the Conference*, OPCW Document C-I/9, May 23, 1997; see also OPCW decision document C-I/DEC.1 through C-I/DEC.72.

³ From Africa: Algeria, Kenya, Morocco, and South Africa were elected for one-year terms, Cameroon, Côte d'Ivoire, Ethiopia, Tunisia and Zimbabwe for two-year terms. Bangladesh, Oman, Philippines, and Sri Lanka were elected to represent the Asian group for a one-year term, China, India, Japan, and Saudi Arabia for two years. Eastern Europe was represented for one year by Belarus, Bulgaria, and Romania. Hungary and Poland were elected for two-year terms. Ecuador, Peru, Suriname, and Uruguay were elected to represent the Latin American and Caribbean group for one year, Argentina, Brazil, Chile, and Mexico were elected to the Executive Council for two years. WEOG, finally, was to be represented by Australia, Malta, the Netherlands, Norway, and Spain for one year, and France, Germany, Italy, the United Kingdom, and United States of America for two years.

⁴ OPCW Document C-I/DEC.70 of May 22, 1997.

⁵ OPCW, Secretariat Brief, No. 001, December 10, 1997.

⁶ This stipulation is contained in Article VIII, paragraph 9 of the CWC; see Ralf Trapp and Walter Krutzsch, *A Commentary on the Chemical Weapons Convention* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1994) pp. 133, 136.

⁷ For a brief overview of the general debate see "Progress in The Hague, Quarterly Review No. 20, Developments in the Organization for the Prohibition of Chemical Weapons," *The CBW Conventions Bulletin*, No. 38 (December 1997), p. 10.

⁸ *Facilitator on Issues Related to Articles X and XI. Report to the Committee on the Whole*, 2 December 1997, mimeo.

⁹ *Decision: Meaning of "Production" as Defined in Article II, Subparagraph 12(A)*, OPCW Conference of the States Parties document C-II/DEC.6, December 5, 1997.

¹⁰ *Decision: Low Concentrations in Relation to Plant Site Declarations*, OPCW Conference of the States Parties document C-II/DEC.7, December 5, 1997.

¹¹ *Decision: Reporting of National Aggregate Data for Schedule 2 and 3 Chemicals*, OPCW Conference of the States Parties document C-II/DEC.8, December 5, 1997.

¹² Algeria, Kenya, Morocco, and South Africa were elected to represent the African group for a two-year term; Iran, Pakistan, the Philippines, and Sri Lanka are representing the Asian Group on the Executive Council; the Czech Republic, the Russian Federation, and Slovakia were elected to represent the Eastern European group; Cuba, Ecuador, Peru, and Venezuela for the Latin American and Caribbean states; Australia, Belgium, Finland, Spain and Switzerland were elected on behalf of WEOG.

¹³ *Report of the Second Session of the Conference of the States Parties*, OPCW Document C-II/8, December 5, 1997.

¹⁴ For a brief summary of the document see, *The CBW Conventions Bulletin*, No. 39 (March 1998), pp. 18-19.

¹⁵ *Ibid.*, p. 14.

¹⁶ *The CBW Conventions Bulletin*, No. 38 (December 1997), pp. 8-10.

¹⁷ It may strike the reader as odd that such a debate took place eight months after the appointment was made by the first session of the CSP. However, the decision taken then, contained in Document C-I/DEC.2, did not specify the terms of the appointment. The second CSP was unable to agree and delegated a decision to the next regular meeting of the Council (C-II/DEC.4). One viewpoint that emerged during this belated debate was that the importance of the Organization should not be measured by the director-general's grade, and that the terms of appointment should be based on the Organization's size, budget, and staff. The opposite viewpoint demanded that the functions and character of the OPCW, not its size, should be the yardstick for measuring the director-general's terms of appointment.

¹⁸ *Eighth Regular Session of the Executive*

Council Concludes in The Hague, OPCW secretariat brief No. 3, February 2, 1998.

¹⁹ The plenary statement of Soviet Representative Nazarkin, reprinted in U.N. Conference on Disarmament document CD/PV.473, August 11, 1988, pp. 8-12; emphasis added.

²⁰ Practically all these lessons emerged or were confirmed in the author's interviews with CWC practitioners in The Hague during the last week of March 1998.

²¹ On the issue of sanctions in the BWC context, see Milton Leitenberg, "The Desirability of International Sanctions Against the Use of Biological Weapons and Against Violations of the Biological Weapons Convention," *The Monitor* 3 (Summer 1997), pp. 23-27; and Leitenberg, "The Desirability of International Sanctions Against False Allegations of Use of Biological Weapons," *The Monitor* 3/4 (Fall 1997/Winter 1998), pp. 39-46. For a thorough analysis of the effort to enhance the Biological Weapons Convention by adding a compliance protocol to the convention text, see Jonathan B. Tucker, "Strengthening the Biological Weapons Convention: Moving Toward a Compliance Protocol," *Arms Control Today* 28 (January/February 1998), pp. 20-27.