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**DECLARATION REQUIREMENTS OF THE CHEMICAL WEAPONS CONVENTION**

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## TABLE OF CONTENTS

1	INTRODUCTION .....	1
2	CWC DECLARATION REQUIREMENTS .....	1
2.1	DECLARATION OF CHEMICAL WEAPONS AND CHEMICAL WEAPONS PRODUCTION FACILITIES .....	2
2.2	DECLARATIONS REGARDING SCHEDULED CHEMICALS AND FACILITIES USED FOR PURPOSES NOT PROHIBITED .....	2
2.2.1	Declarations for Schedule 1 Chemicals and Related Facilities .....	3
2.2.2	Declarations For Schedule 2 Chemicals And Related Facilities .....	3
2.2.3	Declarations For Schedule 3 Chemicals And Related Facilities .....	4
2.2.4	Declarations for Other Chemical Production Facilities .....	5
3	OPCW DECLARATION PROCEDURES .....	5
3.1	<i>DRAFT DECLARATION HANDBOOK</i> .....	5
3.2	DECLARATION-RELATED OPCW RESOURCES .....	6
4	USE OF DECLARED INFORMATION FOR VERIFYING CWC COMPLIANCE .....	6
5	CONCLUSIONS .....	7



# **DECLARATION REQUIREMENTS OF THE CHEMICAL WEAPONS CONVENTION**

## **1 INTRODUCTION**

The declaration requirements of the Chemical Weapons Convention (CWC)<sup>1</sup> are among its most important provisions. Because accurate and timely declarations are necessary for the Convention's verification system to function properly, they are a pre-requisite for achieving the goal stated in the first clause of the Convention's preamble of "achieving effective progress toward general and complete disarmament under strict and effective international control. . . ."<sup>2</sup> Thus, it is fitting for this seminar to include an overview of the CWC's declaration requirements.

This paper discusses these declaration requirements in five sections. Section 2 explains the requirements contained in the CWC for each State Party to make certain declarations to the OPCW. Section 3 outlines briefly the resources developed by the OPCW for complying with the Convention's declaration requirements. Section 4 shows how the declarations are used in other parts of the Convention to build confidence in universal compliance. Finally, section 5 presents the conclusions of this paper.

The author would like to express his gratitude to the Peoples Republic of China for hosting this seminar and to the staff of the Organisation for the Prohibition of Chemical Weapons (OPCW) for inviting him to speak here. The views expressed in this paper are those of the author alone, and do not represent the position of the government of the United States of America or of any other institution.

## **2 CWC DECLARATION REQUIREMENTS**

The CWC requires each State Party to make a series of "declarations" to the OPCW regarding items and activities relevant to chemical weapons. The declaration requirements are contained in two articles of the Convention. Article III obligates each State Party to make various declarations about chemical weapons, abandoned chemical weapons, old chemical weapons, chemical weapons production facilities, various other facilities, and riot control agents. Article VI requires declarations for activities involving scheduled chemicals that are not prohibited under the CWC. The Verification Annex contains additional obligations.

Declarations to the OPCW include initial declarations and annual declarations. Initial declarations must be made when the CWC enters into force for each State Party. For a State Party

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1. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, 32 I.L.M. 800 (entered into force April 29, 1997). As of mid-August 2000, the CWC has 135 States Parties and 171 States Signatory.

2. *Id.*, Preamble.

with neither chemical weapons nor chemical weapons production facilities and no chemical industry, initial declarations may be the only declarations it must ever make. Depending on the content of a State Party's initial declarations, it may have to make annual declarations about materials, activities, or facilities for which it is responsible. Some declarations may need revision to keep them up to date. For example, Article III, para. 1(e) requires any State Party that initially declares that it holds riot control agents to update its declaration within thirty days of any changes in the types of agents in its inventory.

Broadly viewed, declarations relate to two distinct types of activities: (1) possession and destruction of chemical weapons and their production facilities, and (2) production and possession of chemicals listed on the CWC's Schedule of Chemicals and used for purposes not prohibited by the CWC.

## **2.1 DECLARATION OF CHEMICAL WEAPONS AND CHEMICAL WEAPONS PRODUCTION FACILITIES**

Regardless of whether a State Party possesses chemical weapons, Article III requires it to make a series of initial declarations with respect to its chemical weapons inventory and infrastructure. These initial declarations include information regarding chemical weapons, old and abandoned chemical weapons, chemical weapons production facilities, various other facilities, and riot control agents. As to some of these items, the declarations must trace the State Party's activities back to 1 January 1946. If a State Party declares that it owns or possesses either chemical weapons or any chemical weapons production facility, its declaration must also provide its general plan for their destruction. All of these declarations must be made to the OPCW within thirty days after the Convention enters into force for each State Party.

## **2.2 DECLARATIONS REGARDING SCHEDULED CHEMICALS AND FACILITIES USED FOR PURPOSES NOT PROHIBITED**

Article VI requires declarations of relevant chemicals and facilities used for purposes not prohibited in accordance with the Verification Annex. These declarations will probably make up the bulk of what States Parties declare to the OPCW. Not later than thirty days after the CWC enters into force for it, each State Party shall make an initial declaration to be followed by annual declarations.

Compliance with the Convention's declaration obligations requires understanding the three "Schedules" in the Annex on Chemicals. Developed in accordance with the "Guidelines for Schedules of Chemicals" in Section A of the Annex on Chemicals, each schedule includes chemicals that are subjected to CWC requirements, including declarations.

The information to be declared varies with the schedule triggering the declaration as specified in Parts VI-IX of the Verification Annex. More detailed information must be provided about Schedule 1 chemicals and related facilities than about Schedule 2 chemicals, and even less about

Schedule 3 chemicals. For example, declarations regarding Schedule 1 chemicals and related facilities include considerable detailed information about the chemicals and related facilities, while declarations regarding Schedule 2 and Schedule 3 chemicals and related facilities focus on aggregate national data, on plant sites, and on past production of these chemicals that were used for chemical weapons purposes. Similarly, declarations of Schedule 2 chemicals and related facilities must include the quantities of Schedule 2 chemicals produced or consumed at each plant site, whereas Schedule 3 declarations only require declarations of plant sites where these chemicals are produced. In addition, declarations must be made regarding facilities that manufacture organic chemicals beyond certain threshold quantities.

### **2.2.1 Declarations for Schedule 1 Chemicals and Related Facilities**

The Verification Annex, Part VI, Section D sets out the requirements for declarations applicable to the production, acquisition, consumption, use or storage of Schedule 1 chemicals and the operation of allowed production facilities. In general, initial declarations must contain information that identifies facilities allowed to produce Schedule 1 chemicals and that provides the precise location and a detailed technical description of each facility. Moreover, initial declarations on new facilities must be provided 180 days before operations begin. Each State Party must notify the OPCW of planned changes related to its initial declaration not less than 180 days before changes are to take place.

Annual declarations must include detailed information regarding the past year's activities and must be submitted not later than 90 days after the end of that year. Furthermore, annual declarations regarding the projected activities and the anticipated production for the coming year must be made not less than 90 days before the beginning of that year. Finally, the Verification Annex, Part VI, Section B, para. 6 requires both a transferring and receiving State Party to notify the Technical Secretariat of any transfer of Schedule 1 chemicals between them not less than 30 days before the transfer, and requires annual declarations regarding these transfers not later than 90 days after year's end.

### **2.2.2 Declarations For Schedule 2 Chemicals And Related Facilities**

The Verification Annex, Part VII, Section A sets out the requirements for declarations that apply to the production, processing, consumption, import and export of each Schedule 2 chemical. These declarations are of three types:

- Declarations of Aggregate National Data for the quantities of each Schedule 2 chemical produced, processed, consumed, imported, and exported. Information must (1) identify the chemical, (2) specify quantities, and (3) indicate the purposes for the chemical including a specification of the final product types. In regard to imports and exports, these declarations must list the countries to and from which Schedule 2 chemicals were traded. These declarations must be submitted initially within 30 days after entry into force for the State Party; annual declarations for the previous calendar year must be submitted within 90 days after the end of the previous calendar year.

- Declarations for Plant Sites for each plant site that comprises one or more plant(s) that produced, processed or consumed during any of the previous three years or is anticipated to do so in the next calendar year more than the threshold amounts of Schedule 2 chemicals.<sup>3</sup> These declarations must report each plant's production capacity as well as processing and consumption quantities for each Schedule 2 chemical; the activities of the plant in relation to Schedule 2 chemicals; and whether the plant's purpose is for CW purposes, exclusively for Schedule 2 purposes, or is multi-purpose. Design information is not required, but information must be provided that identifies the owner and location of the plant site. Information concerning each plant's sale or transfer of Schedule 2 chemicals, including its destination and final product type (if known), must be reported. The deadlines for these declarations are the same as for aggregate national data except that annual declarations on anticipated activities must be submitted not later than 60 days before the beginning of the following calendar year.
- Declarations on Past Production for CW Purposes for each plant site comprising plants that produced at any time since 1 January 1946 a Schedule 2 chemical for chemical weapons purposes. These declarations must report each plant's production quantities and the delivery destinations for the Schedule 2 chemicals. These declarations must be submitted not later than 30 days after the CWC enters into force for the State Party.

### **2.2.3 Declarations For Schedule 3 Chemicals And Related Facilities**

The Verification Annex, Part VIII, Section A sets out the requirements for declarations that apply to each Schedule 3 chemical. The requirements for these declarations, including the deadlines for submission are virtually identical to the requirements for declarations of Schedule 2 chemicals. Again, initial and annual declarations of Schedule 3 chemicals and related facilities must be made including aggregate national data for the previous calendar year's activities, and within 30 days after the CWC enters into force for it, declarations must be submitted of all plant sites comprising plants that produced at any time since 1 January 1946 a Schedule 2 chemical for chemical weapons purposes.

Initial and annual declarations of plant sites are also required for all plant sites that comprise one or more plants that produced during the previous calendar year or are anticipated to produce in the next calendar year more than 30 tonnes of a Schedule 3 chemical. While the deadlines for submitting these declarations regarding Schedule 3 chemicals and related facilities are identical to those regarding Schedule 2 chemicals, the information to be reported includes only the plant name, location, and its main activities. Information about the plant's production capacity, its activities with respect to Scheduled chemicals, and its sale or transfer of Scheduled chemicals need not be reported.

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3. Declarations are required for any plant which produced, processed or consumed during any of the previous three calendar years or is anticipated to do so in the next calendar year more than:

- (1) 1 kg of a chemical designated "\*" in Schedule 2, part A;
- (2) 100 kg of any other chemical listed in Schedule 2, part A; or
- (3) 1 tonne of a chemical listed in Schedule 2, part B.

#### **2.2.4 Declarations for Other Chemical Production Facilities**

The Verification Annex, Part IX, Section A sets out the declaration requirements that apply to the other specified chemical production facilities. Each State Party must submit, within 30 days after the CWC enters into force for it, as part of its initial declarations, a list of its "other" chemical production facilities.<sup>4</sup> The reported information must include the plant name, location, and main activities; the aggregate amount of production must also be expressed in stipulated ranges. Thereafter, annual declarations must provide the information necessary to update the list, including data on the approximate aggregate amount of production of the unscheduled discrete organic chemicals in the previous calendar year also expressed in ranges. As with annual declarations for Schedule 2 and 3 chemicals, these declarations must be submitted within 90 days after the beginning of each following calendar year.

### **3 OPCW DECLARATION PROCEDURES**

In accordance with its responsibility under the Convention "to ensure the implementation of its provisions, including those for international verification of compliance with it,"<sup>5</sup> the OPCW has devoted considerable effort to devising procedures and providing information to enable each State Party to make its required declarations. The *Draft Declaration Handbook* is designed to provide all of the forms and associated details for States Parties to prepare and provide their initial and annual declarations. Various declaration-related OPCW information resources have been developed to assist States Parties in educating their personnel and citizens regarding the declaration requirements.

#### **3.1 DRAFT DECLARATION HANDBOOK**

The *Draft Declaration Handbook* is the single most important OPCW resource regarding CWC declarations. Available on the internet at <http://www.opcw.nl/natadv/decladv/content.htm>, the *Draft Declaration Handbook* is a comprehensive collection of the forms on which declarations are to be made to the OPCW, as well as guidance regarding declarable quantities of various chemicals, definitions of terms, declaration submission procedures, and tables illustrating declaration deadlines. Careful use of the *Draft Declaration Handbook* can make the declaration process as simple and efficient as possible.

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4. This list includes all plant sites that:

1. produced by synthesis during the previous calendar year more than 200 tonnes of unscheduled discrete organic chemicals; and
2. comprise one or more plants which produced by synthesis during the previous calendar year more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorus, sulfur, or fluorine.

*Verification Annex*, pt. IX, (A)(1). This list does not include plant sites that exclusively produced explosives or hydrocarbons. *Id.* (A)(2).

5. Art. VIII, ¶ 1.

### **3.2 DECLARATION-RELATED OPCW RESOURCES**

The OPCW has also developed an array of informational and educational resources for use by States Parties and others. For example, the web-based *Declarations Advisor*, which can be found at <http://www.opcw.nl/natadv/decladv/decladv.htm>, can be used to answer many declaration-related questions. In addition, the OPCW offers frequent short courses, taught by its professional staff or other experts, that often include training on the CWC declaration requirements. A current list of upcoming and past OPCW classes can be found on the OPCW internet home page at <http://www.opcw.nl/courses/allcourses.htm>. Of course, the OPCW Home Page itself, which contains links to all of the resources discussed in this section, is an essential base for finding CWC-related information of all kinds. The web address for the OPCW Home Page is <http://www.opcw.nl/ptshome.htm>.

## **4 USE OF DECLARED INFORMATION FOR VERIFYING CWC COMPLIANCE**

The importance of timely and accurate declarations cannot be over-emphasized. Many components of the Convention's verification scheme depend on this information in order to provide confidence that all States Parties are in compliance with the General Obligations set forth in Article I. This section provides several hypothetical examples of how States Parties can benefit from having filed their declarations as required.

First, timely and accurate declarations can minimize the intrusiveness of on-site verification inspections. For example, verification inspections are to be carried out by OPCW personnel, in accordance with the requirements of the Verification Annex, of certain declared plant sites related to Schedule 3 chemicals.<sup>6</sup> The Verification Annex gives the inspectors "the right to request clarifications in connection with ambiguities that arise during an inspection."<sup>7</sup> If a declaration has been prepared incompletely or inaccurately, then it is possible that the inspectors will notice inconsistencies and will invoke their clarification rights to make sure that no Schedule I chemicals are present at the plant site.<sup>8</sup> This might necessitate providing inspector access to other parts of the plant site.<sup>9</sup>

Second, universally timely and accurate declarations can greatly facilitate identification of those who might attempt to circumvent the Convention. For example, the Verification Annex requires "a quantitative specification of the import and export for each country involved" in each

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6. See *Verification Annex*, pt. VIII, (B)(12)-(27).

7. *Id.*, pt. II, (E)(51).

8. *Id.*, pt. VIII (B)(17).

9. *Id.*, pt. VIII (B)(20).

State Party's international trade of Schedule 3 chemicals.<sup>10</sup> If these declarations are all punctual and complete, then it will be cost-effective for the OPCW to follow up on ambiguities that may appear involving such declarations in order to identify potential violations of Article I. However, if such declarations are frequently late or inaccurate on the part of multiple States Parties, then this important tool will be of limited value because evidence of significant violations could be "lost in the noise" of widespread technical non-compliance.

Third, a documented history of compliance with the Convention's declaration requirements could enable a State Party to avert a challenge inspection that might otherwise be requested. If a State Party were to become aware of a matter that caused doubt about the compliance of another State Party, then either State Party might choose to invoke its rights under Article IX, para. 1-7, to resolve the issue. The existence of a verified body of declarations by the State Party whose conduct is in doubt could provide a documentary basis for a mutually satisfactory conclusion.<sup>11</sup> However, the absence or inconsistency of such materials might prompt a request for an on-site challenge inspection under Article IX, para. 8-25, which would impose on the inspected State Party the "obligation to make every reasonable effort to demonstrate its compliance with this Convention."<sup>12</sup>

## 5 CONCLUSIONS

The CWC's declaration provisions are a backbone of its verification scheme. Together, the various initial and annual declarations create a documentary web to both build confidence in compliance and to provide a basis for identifying non-compliance. If all States Parties submit their declarations in a timely and accurate manner, then the promise of cost-effective protection against those who would violate the Article I proscriptions of chemical weapons development, production, acquisition, transfer, or use can become a reality.

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10. *Id.*, pt. VIII, (A)(1).

11. *See, e.g.*, Art. IX, ¶ 3, which requires the Executive Council to "provide appropriate information in its possession relevant to such a concern" in response to a State Party's request for assistance. The State Party that is the subject of the concern about non-compliance has an analogous right in Art. IX, ¶ 5, which could be invoked to show the concerned State Party its history of meticulous regard for the Convention's requirements.

12. Art. IX, ¶ (11)(a).