

**STEPS TOWARDS UNIVERSALITY OF THE
CHEMICAL WEAPONS CONVENTION:
HOW CAN AFRICA CONTRIBUTE?**

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STEPS TOWARDS UNIVERSALITY OF THE CHEMICAL WEAPONS CONVENTION: HOW CAN AFRICA CONTRIBUTE?

1 INTRODUCTION

Universality is a fundamental principal of the Chemical Weapons Convention (CWC). It suffuses the fabric of the Convention, found not only in the very first ringing clauses of Article I, but also in the many technical details of its Annexes and Schedules. Consequently, universality is a topic on which commentary is appropriate from all quarters. I offer my personal views as a lawyer on this important matter in the hope that this distinguished audience may gain a perspective not available from practitioners of other professions. 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 UNIVERSALITY AND COMPLIANCE

Universality is a concept with more than one dimension. Of course, it suggests commitment by all nations to a single purpose. The CWC justifiably trumpets its universality as the first multilateral arms control agreement to eliminate a class of weapons of mass destruction and their means of production, without discrimination between possessor and non-possessor nations.

International agreements are achievements that must be credited to diplomats. Only they have the training, the patience, and the vision to find common ground among nations and peoples with different cultures and interests. The entry into force of the CWC after nearly a quarter-century of negotiation was a high-water mark for the diplomatic profession that future generations will be hard-pressed to exceed. The Organization for the Prohibition of Chemical Weapons (OPCW) is fortunate that so many of these extraordinary individuals have joined its ranks.

But universality is more than the common national articulation of international goals. If universal ideals are to affect the lives of people, then universality must be found also in measures nations take to fulfill universal goals. Thus, universality implies national conformity in addition to international consensus. This dimension of universality can be seen in the CWC, for example, in Article VII(1)(a), which obligates each State Party to

“[p]rohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity”.

Viewed in this fashion, it can be seen that universality has depth as well as breadth.

Just as universal agreements require the participation of diplomats from all nations, universality at the national level must be achieved through the efforts of all who are involved in the administration of national government. Government executives, judges, inspectors, police, and other officials must be involved. Equally important, non-government persons — natural and corporate — have to be included in the effort.

The South African national implementing measures provide an outstanding example of this aspect of universality. The Non-Proliferation of Weapons of Mass Destruction Act is a carefully considered policy that brings to the South African people the South African government's commitment to the CWC. For example, this statute and its regulations designated its Council for the Non-Proliferation of Weapons of Mass Destruction as the South African National Authority. The Council is composed of officers from a wide variety of government ministries, as well as representatives of the chemical, biological, space, and nuclear industries. Armed with the legal authority to carry out many of the Convention's national implementation obligations, the Council's very existence demonstrates that South Africa is taking necessary steps to ensure compliance by those over whom it has jurisdiction or control, as well as by the government itself.

In the long run, universal adoption of national CWC implementing measures will be essential to CWC success. For example, confidence-building demands implementation at the national level. No nation can feel secure if those outlaws who would acquire or use chemical weapons can do so with legal impunity on the territory of a neighbor. Similarly, the internationally consistent verification regime embodied in the CWC verification provisions can only succeed if it is universally integrated into national legal systems. Otherwise, a black market in chemical weapons can take root in regulatory crevices and eventually could crack the Convention's foundation.

Unfortunately, universality in national CWC implementation is lagging. The Report of the Fourth Session of the Conference of the States Parties (Section 10.6) observed that "as of 15 June 1999, only 34% of States Parties had met this obligation." The longer this situation persists, the greater the danger not only to the Convention, but also to the larger goal of effectively controlling all weapons of mass destruction. No one should doubt that prompt universal adoption of strong national CWC implementing measures would have sent a message about worldwide accountability for multilateral arms control to the United States Senate that might have helped deter that body from its reckless vote just last month against ratification of the Comprehensive Test Ban Treaty.

3 BENEFITS FROM UNIVERSAL NATIONAL CWC IMPLEMENTATION IN AFRICA

One can ascribe the stragglng pace of national CWC implementation to an absence of perceived immediate benefits for the people who will bear the implementation burdens. Yet this view may not take proper account of advantages that universal national CWC implementation can provide. Among these are the opportunity to compete better for chemical industry development, the value of using the CWC to spread the rule of law, and the positive pressure that this achievement would exert in favor of other arms control initiatives.

3.1 ATTRACTING DEVELOPMENT BY REDUCING REGULATORY RISK

One unusual aspect of the CWC negotiations was the wide support afforded to the treaty by international chemical manufacturers. Over and over again, the captains of this very competitive industry denied that the verification scheme would reduce its growth, arguing that their businesses would flourish as long as the regulatory playing field was level among nations. The prospect of more regulation was not perceived to be a threat as much as the prospect of uncertain regulation.

This view suggests a significant advantage to be gained by enacting national CWC implementing measures sooner rather than later. As development proceeds in the chemical industry, the legal and regulatory environment is one component of the locational decisions that will be made when planning new installations. A jurisdiction that has already adopted its national CWC implementing measures would seem to be a less risky regulatory environment in which to develop and grow than one where this task has yet to be completed.

3.2 SPREADING THE RULE OF LAW

CWC implementation in the developing world could be an opportunity to spread the rule of law, thereby inducing more civilized citizen behavior. Unlike legal initiatives that threaten established interest groups, national laws to implement the CWC in the many non-possessor States Parties of Africa would not be likely to induce citizen resistance. The benefits of developing even a small cadre of competent law enforcement officials could thus be gained without some of the difficulties of trying to enact reforms in the face of potential corruption.

3.3 POSITIVE PRESSURE FOR ARMS CONTROL

Finally, universal national CWC implementation may provide additional leverage for nations in Africa and other parts of the developing world to influence international control over weapons of all types. In a May 1999 speech commemorating the centennial of the First International Peace Conference in The Hague, the OPCW Director-General asserted that “especially in matters of peace and security, the voice of every nation, however small, counts.” Long study of the CWC implementation measures adopted to date has revealed a tendency for each State Party’s national legislation to gravitate toward consistency with the legislation adopted by those who have already acted. Indeed, we decided to add examples of CWC implementing legislation to the *Manual* because we expected this pattern to develop and hoped that highlighting the positive efforts of States Parties acting early would inspire emulation by those who joined later. The extraordinary influence of the South African Non-Proliferation of Weapons of Mass Destruction Act can be traced in part to the fact that it was one of the first national CWC implementation acts. This suggests that nations acting earlier on CWC implementing measures will attain more power in the long run with respect to international control over other types of weapons, in comparison to nations that defer action.

4 CONCLUSIONS

The commitment to universality inherent in the CWC is manifest not only in its near-unanimous international endorsement, but also in its promise of national implementation. Until this potential is realized, the Convention will remain unfulfilled and could even be threatened. The slow pace of national implementation is a growing concern. African States Parties have much to gain by moving rapidly to enact their national implementing measures.