

UNCLASSIFIED

Condition (10) (C) Report

COMPLIANCE WITH THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION



August 2011
Prepared by the U.S. Department of State

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This Report is submitted consistent with Condition (10) (C) of the Resolution of Advice and Consent to Ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC). The Convention was ratified by the United States on April 25, 1997, and entered into force on April 29, 1997.

Condition (10) (C) provides as follows:

Annual reports on compliance: The President shall submit on January 1 of each year to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a full and complete classified and unclassified report setting forth --

(i) a certification of those countries included in the Intelligence Community's (IC) Monitoring Strategy, as set forth by the Director of Central Intelligence's Arms Control Staff and the National Intelligence Council (or any successor document setting forth intelligence priorities in the field of the proliferation of weapons of mass destruction) that are determined to be in compliance with the Convention, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Convention;

(iii) the steps the United States has taken, either unilaterally or in conjunction with another State Party--

- to initiate challenge inspections of the noncompliant party with the objective of demonstrating to the international community the act of noncompliance;
- to call attention publicly to the activity in question; and
- to seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant party with the objective of bringing the noncompliant party into compliance;

(iv) a determination of the military significance and broader security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant party in question to action undertaken by the United States described in clause (iii).

The CWC imposes a number of basic obligations upon States Parties. Under the "general obligations" provisions of Article I, States Parties undertake never to develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or to transfer them to anyone, directly or indirectly. Article I also obliges Parties "never under any circumstances" to use chemical

weapons, engage in “military preparations” for their use, or “to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.” Additionally, each State Party must destroy all chemical weapons (CW) in its possession, under its jurisdiction or control, or that it abandoned in another country, and it must destroy or convert all its chemical weapons production facilities (CWPFs) that it owns or possesses or are under its jurisdiction or control. Parties are also obliged not to use riot control agents (RCAs) as a method of warfare.

Article III imposes additional obligations, specifically by requiring the submission of detailed declarations of CW stockpiles, production facilities, other related facilities (e.g., laboratories and test and evaluation sites), and types of RCAs possessed. A State Party is required to declare, *inter alia*, whether it:

- owns or possesses any CW, or whether there are any CW located in any place under its jurisdiction or control;
- has on its territory old (OCW) or abandoned chemical weapons (ACW), or has abandoned CW on the territory of another State;
- has or has had any CWPF under its ownership or possession, or that is or has been located in any place under its jurisdiction or control at any time since January 1, 1946;
- has transferred or received directly or indirectly any equipment for the production of CW since January 1, 1946;
- has any facility or establishment under its ownership or possession, or located in any place under its jurisdiction or control, that has been designed, constructed, or used since January 1, 1946, primarily for the development of CW; and
- holds chemicals for riot control purposes.

Countries that were original States Parties to the CWC were required to submit their initial data declaration not later than 30 days after entry into force. Countries that ratified after the CWC entered into force, or acceded, became States Parties 30 days after the deposit of their instrument of ratification or accession and are required to submit their initial data declaration 30 days after becoming a State Party. Articles IV and V, and the corresponding parts of the Verification Annex, provide detailed requirements governing the implementation of the obligations on the destruction of CW and CWPFs.

Article VI of the CWC makes clear that each State Party has “the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under this Convention.” It thus makes clear that, even if the formal declaration and verification provisions of the CWC are followed, States Parties have no right to have or to deal in toxic chemicals or their precursors if their purpose in so doing is one that is prohibited under this Convention (e.g., to acquire chemical weapons or in any way to assist, encourage, or induce another to do so). Article VI

also imposes specific obligations with respect to controlling specific chemicals listed in Schedules 1, 2, and 3 of the Annex on Chemicals – as well as facilities related to such scheduled chemicals – and subjects these chemicals to verification measures provided in the Convention’s Verification Annex.

Article VII of the CWC requires that each State Party, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under the Convention. These measures shall prohibit natural and legal persons anywhere on a State Party’s territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party. A State Party is also required to enact penal legislation with respect to such activity. The United States continues to play a key role in pursuing compliance in this area through the Organization for the Prohibition of Chemical Weapons’ (OPCW) Article VII Action Plan, agreed by States Parties at the Eighth Session of the Conference of the States Parties (CSP-8) in 2003. The United States has worked hard in providing assistance to other countries in an effort to reach the goal of the Action Plan, which is to have all States Parties establish a National Authority, enact implementing legislation, including penal measures, and establish administrative measures (e.g., submit declarations and related documentation required by the CWC). Follow-up plans were agreed to by CSPs-10 through 13, setting specific actions to ensure the fulfillment of Article VII obligations by all States Parties to the Convention.

The OPCW was established pursuant to the CWC in order, among other things, to “ensure the implementation of its provisions, including those for international verification of compliance with it.” Under Article VIII, the CSP is authorized to “review compliance” with the CWC, and is to “[t]ake the necessary measures to ensure compliance with this Convention and to redress and remedy any situation which contravenes the provisions of this Convention, in accordance with Article XII.” Article XII, in turn, provides that the CSP may, *inter alia*, “restrict or suspend” a violator State’s “rights and privileges” under the CWC until compliance resumes. In “cases of particular gravity,” the CSP can bring the issue to the attention of the United Nations Security Council and General Assembly.

For its part, both as a matter of national policy and as a guide to national policy, the United States undertakes its own independent review – based upon the best available information, including intelligence information – of the compliance of CWC States Parties with their obligations under the Convention. The United States believes that States Parties should be held to their obligations under the CWC, and places a high premium upon their compliance both with specific detailed declaration and implementation provisions (e.g., Articles III, IV, V, and VII) and with the “general obligations” of Article I.

U.S. compliance assessments under the CWC focus upon the degree to which States Parties fulfill not only their detailed declaration and destruction/conversion obligations under Articles III through V, but also their “general obligations” under Article I. Information tending to show that CW have actually been used, or that a State Party has helped or encouraged anyone to engage in any activity prohibited to a State Party under this Convention (e.g., by helping another country, or a non-state actor such as an international terrorist entity, acquire CW), would thus be highly relevant to an Article I compliance finding.

The United States also believes that, because of their obligation under subparagraph 1 (d) of Article I which requires States Parties not in any way to assist, encourage, or induce others to acquire CW, States Parties are under an obligation to exercise due diligence in their trade in precursor chemicals and dual-use equipment that could be employed in the development of CW. In particular, States Parties should exercise restraint in their dealings with recipient entities, and should not undertake any potential CW-related transfers of technology or chemicals to any entity about which there is a reasonable suspicion that it is engaged, or seeks to be engaged, in the development, production, stockpiling, or use of CW in any way that would be prohibited to a State Party to the CWC.

Moreover, under paragraph 5 of Article V of the CWC, a State Party may not “construct any new CWPFs or modify any existing facilities for the purpose of CW production or for any other activity” prohibited by the CWC. This focus upon the *purpose* for which construction or modification occurs indicates that whether or not prohibited quantities of banned or controlled chemicals are actually present, the development and maintenance of a CW mobilization capability would amount to noncompliance with the Convention if it were undertaken with such CW applications in mind. In judging such CW mobilization intent, where more direct evidence is unavailable, a number of factors may be relevant, including the country’s record of CWC compliance in other respects; the accuracy and completeness of its declarations; its history of CW-related activity; the legitimate economic or commercial need for chemicals, the production of which requires the development of processes easily adaptable for CW production; and the degree to which production methods it adopts diverge in otherwise inexplicable ways from industry practice, or are uneconomical or implausibly inefficient in peaceful applications.

The United States notes that subparagraph 9(b) of Article II expressly permits possession of chemical agents for “[p]rotective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons.” By contrast, subparagraph 1(c) of Article I prohibits engaging in “any military preparations to use chemical weapons.” Part VI, Section A of the Verification Annex spells out in more detail which activities are permitted under the CWC, making clear that a State Party may not “produce, acquire, retain, transfer or use” Schedule 1 chemicals unless they are applied to legitimate “research, medical, pharmaceutical or protective purposes,” and possessed only in small quantities “strictly limited to those which can be justified for such purposes,” but in no circumstances more than one metric ton. Part VI, Section C of the Verification Annex specifies allowable production quantities at declared and undeclared facilities, but it does not alter the basic rule that *purpose* is the touchstone of compliance with regard to research quantities of chemical agents. Appropriately scaled research undertaken for legitimate protective purposes *against* chemical weaponry is thus permitted, but research aimed at developing or improving *weapons* applications would constitute noncompliance. It should be noted, moreover, that under subparagraph 1(c) of Article I there is no requirement that “military preparations to use chemical weapons” actually involve chemical agents. Accordingly, research undertaken for the purpose of facilitating weapons uses rather than for protective purposes would constitute a violation of the CWC, regardless of whether or not chemical agents were involved. (Research using CW agent simulants or CW munitions development, for example, would thus present noncompliance problems if undertaken for weapons, rather than protective, purposes.)

As of December 31, 2010, there were 188 States Parties to the CWC, the latest being Bahamas, which became a State Party on May 25, 2009. This Report addresses additional U.S. compliance issues with six countries: China, Denmark, Iran, Iraq, Libya, and the Russian Federation.

COUNTRY ASSESSMENTS

CHINA

FINDING

The United States assesses that China has made an accurate declaration in relation to its historical CW program, including CW agent production and disposition. The United States will continue to engage China on whether it should have declared a Schedule 1 chemical produced as an intermediate in the manufacture of a pharmaceutical. (U)

BACKGROUND

The Convention entered into force for China on April 29, 1997. In its initial declaration, China declared former CW-related facilities and activities and current activities not prohibited under the Convention. The United States has since resolved its concerns about historical CW production and disposition.

Additionally there has come to light new information on a spill of the undeclared Schedule 1 chemical nitrogen mustard 2 (HN2) at a pharmaceutical factory. This factory has not been declared.

Compliance Discussions

The United States has since 1998 maintained a dialogue with Beijing that has included discussing the Chinese declaration and the issue of possible undeclared Schedule 1 activities.

COMPLIANCE ANALYSIS

Available information allowed the United States to confirm that China has fully declared its historical CW activities, including CW production, and disposition of produced CW agents. It has not provided information on possible transfer of CW agents to another country, and is unlikely to do so. China also may have obligations to declare a Schedule 1 facility (and perhaps others) that may use captively¹ produced Schedule 1 chemical HN2.

¹ According to the decision by the OPCW CSP (C-10/DEC.12, dated 10 November 2005), the production of a Schedule 1 chemical “is understood for declaration purposes to include intermediates, by-products, or waste products that are produced and consumed within a defined chemical manufacturing sequence, where such products are chemically stable and therefore exist for a sufficient time to make isolation from the manufacturing stream

The OPCW Technical Secretariat (TS) has reported that China has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. Text of the adopted measures has been provided to the OPCW. China also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Beijing made its first declaration under this article in 2002 and has continued to do so annually.

DENMARK

FINDING

Based on new information provided by Denmark, the United States is aware that a commercial pharmaceutical facility in Denmark produced a Schedule 1 chemical in captive use that was above the CWC threshold for meeting the definition of a CWPF. The United States notes that Denmark has ordered the facility to halt future production of the pharmaceutical product and is seeking resolution through the OPCW Executive Council (EC). To date, the United States judges that Denmark is acting in a transparent and responsible manner in its efforts to implement measures to redress the situation.

BACKGROUND

The Convention entered into force (EIF) for Denmark on April 29, 1997. Since EIF Denmark had no compliance issues until it notified the TS in May 2010 that in the course of preparing its Annual Declaration on Past Activities (ADPA) for 2009, that it had discovered that a private pharmaceutical firm had produced captively a Schedule 1 chemical for the manufacture of ketobemidone, a pain reducing opiate analgesic for children with cancer who are allergic to natural opiates (e.g., morphine). Between May and September 2010, Denmark consulted with the TS on the issue. The chemical HN2 was produced in excess of the 10 kilogram (kg) threshold limit imposed by paragraph 11 of Part VI of the Verification Annex in a reactor larger than the 100 liter (L) limit imposed by paragraph 8 of Part VI of the Verification Annex. This excess production indicates that the firm produced HN2 within the definition of a CWPF as defined by paragraph 8 (a) (i) (1) of Article II and in contradiction to paragraph 1 (a) of Article 1 of the Convention.² At the October 2010 EC-62, Denmark offered a national paper to redress the situation through two possible draft decisions, one that exempted pharmaceutical manufacturers from the provision of paragraph 8 (a) (i) (1) of Article II and the other that proposed raising the threshold of 10 kg per year for paragraph 11 of Part VI of the Verification Annex. The paper was considered by EC-62 and the EC requested the TS to provide a legal opinion on, and an assessment of, the proposals and their implications for the CWC. It requested the Chairperson to appoint a facilitator to effect “speedy initiation of consultations” and to “issue a report by the

possible, but where, under normal design or operating conditions, isolation does not occur.” China, like other States Parties to the Convention, would be expected to declare such “captive use” products if they otherwise fall within the declaration provisions of CWC. More specifically, China would be expected to declare a Schedule 1 Captive Use facility consuming nitrogen mustard as an intermediate step in the production of a pharmaceutical.

² Whether the production in that process would cause the facility to fall within the meaning of the Article 1 definition of a CWPF or the Verification Annex limitations is uncertain at this time and further analysis is being conducted into the negotiation history of related Treaty provisions and historical industry practices.

facilitator at the earliest possible stage” with the intent for the EC to take action no later than EC-63.

Compliance Discussions

Upon its review of the 2009 ADPA, the Government of Denmark voluntarily informed the OPCW of the situation and engaged in several informal meetings with the TS to advise the TS of the situation and seek advice on redressing the situation. During EC-62 (October 5-8, 2010), Denmark prepared for the Council’s consideration two options for redressing the situation. Denmark also brought two technical experts from the commercial company (PharmaZell) to hold consultations with members of the EC on the situation. The United States, and several other delegations, held bilateral consultations with the Danish government and the company representatives. Denmark also hosted an open meeting, which all interested delegations could attend and listen to technical presentations by the company, ask questions, and gather information. Since learning of this situation, the United States believes that Denmark is committed to seeking a timely and consensus resolution to the issue (by EC-63, February 2011), and that Denmark has acted in a transparent and responsible manner to redress the situation. The United States and other States Parties continue to conduct an analysis of relevant CWC provisions and study the Danish proposals in capitals.

COMPLIANCE ANALYSIS

During 2009, a research and development batch of ketobemidone resulted in a quantity of captively-produced HN2 that fell below the declaration threshold. Subsequently, two batches of ketobemidone, one of which was commercial-scale, have been produced, which places the facility, by definition, into the category of a CWPF. The Danes are hopeful that a resolution to this particular case can be reached to exempt PharmaZell’s ketobemidone production activities from resulting in its facility being defined as a CWPF. Whether the activities of the facility were inconsistent with the CWC or cause the facility to fall within the CWC definition of a CWPF remain under study.

The OPCW TS has reported that Denmark has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions, however, it does not address captive use of Schedule 1 chemicals. The text of the adopted measures has been provided to the OPCW. Denmark also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Denmark made its first declaration under this article in 1997 and has continued to do so annually since 2006.

IRAN

FINDING

Based on available information, the United States cannot certify whether Iran has met its CWPF declaration obligations, destroyed its specialized CW equipment or retained an undeclared CW stockpile.

BACKGROUND

The Convention entered into force for Iran on December 3, 1997. Iran made its initial declaration piecemeal in June 1998, January 1999, and March 1999.

The United States does not have sufficient information to be certain whether some Iranian facilities may be involved in or retain the capability to produce CW agents, and likewise insufficient information about the disposition of specialized CW equipment used in former CWPFs. The United States also has insufficient information about possible CW activity prior to entry into force of the Convention.

Compliance Discussions

On the margins of OPCW EC meetings in 2001 and 2004, the United States engaged the Iranian delegation about Iran's CWC compliance. The outcome of the discussions did not completely resolve any of the issues.

COMPLIANCE ANALYSIS

Due to a combination of irregularities in the Iranian declaration and insufficient clarification from Iran, the United States cannot certify:

- that Iran has met its CWPF declaration obligations because of possible CW-capable infrastructure, to include the possibility of a clandestine offensive CW production capability dispersed among industrial chemical plants and at military-owned facilities;
- that it has destroyed its specialized CW equipment (Iran has probably failed to meet its CWC obligations by failing to declare and destroy some of its specialized CW production equipment); and
- that it has not retained an undeclared CW stockpile.

The OPCW TS has reported that Iran has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. As part of its obligations under paragraph 4 of Article X of the CWC, Iran submitted a declaration in 2003 acknowledging that it had a national protection program. Iran has submitted declarations annually since that time.

IRAQ

FINDING

Iraq made its initial CW, CWPF and industry declarations but has not yet produced a complete General Plan for Destruction, nor has it hosted the necessary visits to declared CWPFs

and chemical weapons storage facilities (CWSFs) by the OPCW TS.³

BACKGROUND

The Convention entered into force for Iraq on February 12, 2009. Iraq made its initial CW and CWPF declaration based on available United Nations (UN) documentation. Due to the fact that CWSF bunkers containing declared CW are sealed and having only incomplete UN documentation in relation to the bunkers, Iraq has had difficulty in formulating its General Plan for Destruction of its declared CW. Additionally the OPCW TS has not made required visits to Iraq's declared CWPFs and CWSFs, which would likely allow the TS to make destruction planning recommendations, at least in relation to the General Plans for Destruction of Iraq's declared CWPFs. Thus, Iraq has not yet produced complete General Plans for Destruction of its CW and CWPFs as required by the Convention. During the reporting period Iraq continued to consult with the OPCW TS and States Parties on the issue.

Compliance Discussions

The United States has maintained a dialogue with Iraq in relation to preparation of its General Plan for Destruction of its CW and CWPFs.

COMPLIANCE ANALYSIS

Iraq indicated its intent to meet its declaration and CW destruction obligations by attempting to produce General Plans for Destruction based on the limited information available to it. Recommendations by Iraqi experts none the less were made and the Iraqi Council of Ministers has approved guidance for the plans in late 2010. As of December 31, 2010, there was no evidence that the plans were drafted.

The OPCW TS has reported that Iraq has not implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. Iraq has not declared a national program for protection under paragraph 4 of Article X of the CWC.

LIBYA

FINDING

Libya's disclosure regarding its CW program, its accession to the CWC, and the destruction of its unfilled CW munitions, solid precursor chemicals, and specialized CW production equipment are significant steps toward Libya coming into full compliance with its CWC obligations. By December 31, 2010, Libya had destroyed all of its Category 3 CW and met its one percent Category 1 CW destruction deadline. In February 2011, Libya retained less than 50 percent of its declared Category 1 CW and less than 60 percent of its declared Category 2 CW. Libya has not yet met its obligations under Article VII.

³ The TS made overflights of the declared CWSFs and CWPFs on May 4, 2011.

BACKGROUND

The Convention entered into force for Libya on February 5, 2004, and Libya made its initial declaration in March 2004. Tripoli declared a CW stockpile, CWPFs and chemical industry facilities under Article VI of the Convention.

Libya requested and received approval in January 2005 to convert the CWPFs in Pharma 150 at Rabta to purposes not prohibited by the CWC.

In February and March 2004, under the oversight of OPCW inspectors, Libya completed destruction, and activities related to destruction, of its declared Category 3 CW unfilled aerial bombs. In addition, it secured all sensitive CW materials, agents, and equipment pending their elimination under the CWC.

Libya made significant progress in the elimination of its CW stockpile and facilities during the 2004-2005 timeframe. The progress included submitting to the OPCW its detailed plan for the destruction of the mobile units that were declared as CWPFs, as well as all other spare and dismantled equipment from the Al Rabta CWPFs. Libya destroyed its solid Category 2 CW, i.e., precursor chemicals, in 2005 under the auspices of the OPCW TS. The TS also confirmed the destruction in March 2005 of Libya's mobile units that were declared as CWPFs, and of the specialized CW production equipment.

The Libyans began the conversion of the two former CWPFs at Al Rabta in January 2005, which included the dismantling of the CW production facilities, the elimination of all declared spare and dismantled equipment under full verification measures, and inspection by the OPCW inspectors. The TS informed States Parties that Libya planned to complete the conversions by January 2008. Libya later indicated it expected to complete conversions by December 31, 2009,⁴ and succeeded in accomplishing the conversions on time.

In July 2005, Libya requested U.S. assistance in destroying its remaining CW and precursor chemicals. Libyan officials told the United States that Libya's cabinet had refused funding and desired U.S. assistance to demonstrate strong U.S.-Libyan political ties. The United States responded that it was prepared, in principle, to assist Libya in meeting its CWC obligations, provided that: (1) it was understood that Libya remains ultimately responsible for destroying its CW stockpile and meeting its treaty obligations, including approved destruction deadlines; (2) U.S. funds were available; and (3) the United States and Libya were able to conclude the necessary implementing agreements and arrangements, including liability responsibility and cost-sharing by Libya.

In December 2006, the United States and Libya signed a government-to-government contract to provide financial and technical support to design, build, and operate a chemical weapons destruction facility (CWDF). Negotiations with a U.S.-designated firm to design and build a CWDF were initiated as agreed under the government-to-government contract. However, in June 2007, Libya terminated the Libya contract following a 30-day notification, citing disagreement in the negotiations with the U.S.-designated firm.

⁴ Conversion of the Rabta CWPFs was completed by December 31, 2009.

In July 2009, Libya reported the reloading of mustard, pinacolyl alcohol and isopropanol from leaking storage containers at Ruwagha. In April 2010, Libya began destruction by hydrolysis of the precursors, phosphorus trichloride and thionyl chloride, at Ruwagha with the Libyan-designed Ruwagha Hydrolysis and Neutralization System (RHNS). This was quickly halted due to technical difficulties. Libya then ordered from the Italian firm SIPSA a skid mounted hydrolysis unit that was scheduled to, but did not, start up at Ruwagha in December 2010 as the RHNS-2. SIPSA was also contracted to construct a skid mounted hydrolysis unit, RHNS-1, to meet the 1 percent and possibly the 20 percent deadlines for destruction of its Category 1 sulfur mustard stockpile. The skid unit was planned to be installed at Ruwagha and operate in the November to mid-December 2010 time frame. SIPSA was also contracted to fabricate, deliver and install equipment for the Rabta Toxic Chemical Destruction Facility (RTCDF) with delivery scheduled for December 2010, installation to be completed by January 31, 2011, and start-up to occur in March 2011, to meet the 45 and 100 percent destruction deadlines for the Category 1 stockpile. The facility would include a furnace for mustard, 2-chloroethanol and tributylamine incineration, a rotary kiln to incinerate contaminated dunnage and other combustible items, an autoclave to destroy mustard heel in polyethylene containers and a hydrolysis unit to be used for unspecified purposes. The hydrolysis unit would in part be constructed from equipment salvaged from the RNHS-2.

In light of further delays in Libya's CW destruction program, in November 2005, CSP-10 agreed further to extend Libya's 1, 20 and 45 percent deadlines "in principle," with specific dates to be proposed by Libya by March 31, 2006. EC-46 in July 2006, recommended approval of the all the dates requested by Libya. In December 2006, CSP-11 established the following dates for the intermediate Category 1 destruction deadlines: 1 percent, May 1, 2010; 20 percent, July 1, 2010. and 45 percent, November 1, 2010, and granted an extension to December 31, 2010, of the deadline for destruction of all Libya's Category 1 CW; and called upon Libya to destroy all of its Category 2 CW no later than December 31, 2011. At the Destruction Informals prior to EC-57 in July 2009, Libya announced that it might have difficulty in achieving the 1 percent deadline of May 1, 2010, due to "environmental concerns," and in August 2009 formally indicated that it could not meet the second set of extended deadlines. EC-58 in October 2009, recommended extending the Libyan Category 1 intermediate destruction deadlines to: 1 percent, November 1, 2010, 20 percent, December 15, 2010, and 45 percent, January 31, 2010. CSP-14 in December 2009, granted these intermediate Category 1 CW destruction deadlines, and amended the 100 percent deadline to May 15, 2011. In September 2010, Libya reported that due to necessary technical specification changes and to destruction facility design changes that it would need to further extend its 20 percent and 45 percent Category 1 intermediate deadlines to March 30, 2011, and April 25, 2011, respectively. These extensions were granted by CSP-15 in November 2010; the 1 percent and 100 percent deadlines established by CSP-14 remained the same.⁵ Libya was reported to have destroyed one percent of its Category 1 stockpile on October 31, 2010, and achieved 22.33 percent destruction prior to December 31, 2010.⁶ (U)

Compliance Discussions

⁵ Libya missed the Category 1 100 percent destruction deadline.

⁶ As of February 6, 2011, Libya retained less than 50 percent of its declared Category 1 chemical agent and less than 60 percent of its declared chemical precursors.

Between March and December 2003, the United States and the United Kingdom had numerous exchanges with and visits to Libya to discuss the modalities of weapons of mass destruction (WMD) destruction, including Libya's accession to the CWC. In March 2003, Libya approached the United Kingdom and United States, expressing interest in removing concerns about whether it was pursuing WMD programs. In the course of subsequent discussions and visits, the Libyans made significant disclosures about their chemical weapons programs, as well as other WMD activities. The United States and the United Kingdom conducted a number of exchanges with the Libyans, with the intention of exploring the depth and commitment of their initiative. A team of American and British experts traveled to Libya twice - in October and December 2003 - to receive detailed presentations on Libya's nuclear, chemical and biological activities. In addition to extensive discussion during a total of three weeks of meetings, the experts were shown covert facilities and equipment and were told about years of Libyan efforts to develop chemical weapons capabilities. With regard to chemical issues, Libya showed these initial U.S.-UK teams a significant quantity of sulfur mustard chemical agent that was produced at the Pharma 150 plant at Al Rabta more than a decade previously; aerial bombs that were designed to be filled with mustard agent on short notice; equipment in storage that could be used to outfit a second CW production facility; and dual-use chemical precursors that could be used to produce mustard and nerve agent.

After Libya terminated the contract with the United States in relation to U.S. assistance for Libyan CW destruction in July 2007, the United States has held several informal discussions with Libya, on the margins of meetings of the OPCW, concerning its progress toward destruction of its CW and conversion of the Rabta CWPFs.

COMPLIANCE ANALYSIS

Libya has destroyed all of its Category 3 CW, all of its solid Category 2 CW and some of its liquid Category 2 CW precursors. It successfully met its Category 1 one percent destruction and 20 percent destruction deadlines. The OPCW TS has reported that Libya has not yet met its Article VII obligations. The TS has reported that Libya's Article VII national implementation legislation has undergone legal review, but still has to go to the General People's Congress (National Assembly). The OPCW TS provided assistance with drafting Libya's legislation. Libya has a National Authority, but has not yet enacted implementing legislation or administrative measures required under Article VII. As part of its obligations under paragraph 4 of Article X of the CWC, Libya submitted a declaration in 2005 acknowledging that it had a national protection program. Libya has not submitted any subsequent Article X declarations.

RUSSIA

FINDING

The United States is unable to ascertain whether Russia has met its obligations for declaration of its CWPFs, CW development facilities, and CW stockpiles, and whether Russia is complying with the CWC-established criteria for destruction and verification of its CW, although we have ascertained that Russia is now destroying CW agent hydrolysis reaction masses at its

operating CWDFs.

BACKGROUND

In May 1997, the Duma passed, and President Yeltsin signed, the Russian Federal Law on Chemical Weapons Destruction, approving implementation of a 1996 destruction plan. The Convention entered into force for Russia on December 5, 1997, and it made its initial declaration on time in March 1998. The Russian declaration included CWPFs, CWSFs, a CWDF, and a stockpile of 39,969 metric tons of CW agent, in both bulk and weaponized form. Its Article VI declaration included Schedule 2, Schedule 3, and other chemical production facility (OCPF) plant sites.

Russia submitted plans and received OPCW approval for the destruction or conversion of its declared CWPFs. Under the CWC, all CWPFs were required to be destroyed no later than April 29, 2007. According to the OPCW TS, all CWPF destructions had not yet been completed by December 31, 2007, but have since been completed.⁷

As noted above, in May 1997, the Duma passed, and President Yeltsin signed, the Russian Federal Law on Chemical Weapons Destruction, approving implementation of a destruction plan. The Russians provided additional details on and changes to their destruction plan in June 2002 and September 2003. In recent years, Russia has taken steps to strengthen its CW destruction program, and has significantly increased funding for this program, although admittedly from a low starting point.

Russia completed destruction of both its Category 2 and 3 weapons within the Convention's timelines.

In July 2005, Russia's revised overall CW destruction plan received cabinet-level approval. Details of Russia's revised plan were later provided to the OPCW. Under this plan, Russia, with significant international assistance, was to have constructed seven CW destruction facilities at Kambarka, Maradykovskiy, Leonidovka, Shchuch'ye, Pochep, Kizner, and Gorny. As of October 2008, Kambarka and Gorny had been constructed and had completed destruction operations. Maradykovskiy, Shchuch'ye, and Leonidovka were operational as of October 4, 2010, with construction of a second train underway at Shchuch'ye. Pochep started up in the last quarter of 2010, and Kizner construction was projected to continue into 2011.

Following two intermediate CW destruction deadline decisions, in March 2006, the OPCW established December 31, 2009, as the deadline for Russia to destroy 45 percent of its CW stocks with the final deadline remaining April 29, 2012. Russia met the 45 percent deadline and as of October 2010, Russia had destroyed 48.46 percent of its Category 1 stockpile. In 2010, Russia announced that it would not meet the April 29, 2012, deadline for 100 percent Category 1 CW destruction and that destruction activities would continue through 2015.

The Russian CW Stockpile. The United States assesses that Russia's CWC declaration is

⁷The OPCW TS reported in February 2009 that Dzerzhinsk CWPF has been destroyed and that Russia had completed destruction of CWPFs scheduled for destruction.

incomplete with respect to chemical agent and weapons stockpiles.

Undeclared CWPFs and CW-Capable Facilities. The United States notes that there are additional facilities that Russia may have been required to declare as CWPFs. The United States continues to seek clarification of reports about mobilization capabilities at declared and non-declared facilities.

Russian CW Development Facilities. The United States does not share the Russian view that development facilities, including CW testing facilities, should not be declared because of the Russian interpretation of the CWC “primarily for” criterion in Article III of the CWC.

The Issue of 100 Percent Destruction. Russia is using a two-step process to destroy its nerve agent stocks at some of its CWDFs: (1) neutralizing the nerve agent; and (2) disposal of the reaction mass (e.g., incineration et alia). Russia has argued that first-step neutralization of the nerve agents would meet CWC destruction requirements, but the United States and some other member states are not convinced that first-step neutralization satisfies the CWC requirement that CW destruction be “essentially irreversible,” given the presence of a significant amount of Schedule 2 chemicals in the reaction mass. The TS has agreed to give Russia destruction credit for the completion of the first step of CW agent neutralization so long as Russia destroys, under TS supervision, the reaction mass in a second step. Indeed, Russia is destroying the reaction masses at Shchuch’ye by bituminization and at Maradykovskiy and Leonidovka by incineration. Pochep, which came on line in the fourth quarter of 2010, also destroys the hydrolysis reaction mass by incineration.

Compliance Discussions

The United States has engaged in numerous exchanges with Russia regarding a number of compliance issues in 2002, 2003, and 2006, during which the United States discussed the accuracy of Russia’s CWC declaration.

In 2006 and again in 2010 the United States reiterated its proposal to hold expert-level consultations, but, as of July 2010, Russia had not yet agreed to renew such consultations.

COMPLIANCE ANALYSIS

Russia has completed destruction of those CWPFs scheduled for destruction, but has not met the CWPF conversion deadline. In the absence of additional information from Russia, the United States is unable to ascertain whether Russia has declared all of its CW stockpile, all CWPFs, and all of its CW development facilities. Russia is destroying in a second step, reaction masses resulting from hydrolysis of the CW agents at its operating CWDFs.

The OPCW TS has reported that Russia has fully implemented legislation under Article VII of the CWC that includes measures to control transfers of scheduled chemicals and penal provisions. The text of the adopted measures has been provided to the OPCW. Russia also has acknowledged and declared that it has a national program for protection under paragraph 4 of Article X of the CWC. Russia made its first declaration under this article in 2005 and has

continued to do so annually.