

CHEMICAL WEAPONS CONVENTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE PROHIBITION OF DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION, OPENED FOR SIGNATURE AND SIGNED BY THE UNITED STATES AT PARIS ON JANUARY 13, 1993



NOVEMBER 23, 1993.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, November 23, 1993.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the "Chemical Weapons Convention" or CWC). The Convention includes the following documents, which are integral parts thereof: the Annex on Chemicals, the Annex on Implementation and Verification, and the Annex on the Protection of Confidential Information. The Convention was opened for signature and was signed by the United States at Paris on January 13, 1993. I transmit also, for the information of the Senate, the Report of the Department of State on the Convention.

In addition, I transmit herewith, for the information of the Senate, two documents relevant to, but not part of, the Convention: the Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons and the Text on the Establishment of a Preparatory Commission (with three Annexes), adopted by acclamation by Signatory States at Paris on January 13, 1993. These documents provide the basis for the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons (Preparatory Commission), which is responsible for preparing detailed procedures for implementing the Convention and for laying the foundation for the international organization created by the Convention. In addition, the recommended legislation necessary to implement the Chemical Weapons Convention, environmental documentation related to the Convention, and an analysis of the verifiability of the Convention consistent with Section 37 of the Arms Control and Disarmament Act, as amended, will be submitted separately to the Senate for its information.

The Chemical Weapons Convention is unprecedented in its scope. The Convention will require States Parties to destroy their chemical weapons and chemical weapons production facilities under the observation of international inspectors; subject States Parties' citizens and businesses and other nongovernmental entities to its obligations; subject States Parties' chemical industry to declarations and routine inspection; and subject any facility or location in the territory or any other place under the jurisdiction or control of a State Party to international inspection to address other States Parties' compliance concerns.

The Chemical Weapons Convention is also unique in the number of countries involved in its development and committed from the outset to its nonproliferation objectives. This major arms control treaty was negotiated by the 39 countries in the Geneva-based

IV

Conference on Disarmament, with contributions from an equal number of observer countries, representing all areas of the world. To date, more than 150 countries have signed the Convention since it was opened for signature in January of this year.

The complexities of negotiating a universally applicable treaty were immense. Difficult issues such as the need to balance an adequate degree of intrusiveness, to address compliance concerns, with the need to protect sensitive nonchemical weapons related information and constitutional rights, were painstakingly negotiated. The international chemical industry, and U.S. chemical industry representatives, in particular, played a crucial role in the elaboration of landmark provisions for the protection of sensitive commercial and national security information.

The implementation of the Convention will be conducted by the Organization for the Prohibition of Chemical Weapons (OPCW). The OPCW will consist of the Conference of the States Parties, which will be the overall governing body composed of all States Parties, the 41-member Executive Council, and the Technical Secretariat, an international body responsible for conducting verification activities, including on-site inspections. The OPCW will provide a forum in and through which members can build regional and global stability and play a more responsible role in the international community.

The Convention will enter into force 180 days after the deposit of the 65th instrument of ratification, but not earlier than 2 years after it was opened for signature. Thus, the Convention can enter into force on January 13, 1995, if 65 countries have deposited their instruments of ratification with the depositary for the Convention (the Secretary General of the United Nations) by July 1994. The 2-year delay before the earliest possible entry into force of the Convention was intended to allow Signatory States time to undertake the necessary national legislative and procedural preparations and to provide time for the Preparatory Commission to prepare for implementation of the Convention.

The Convention is designed to exclude the possibility of the use or threat of use of chemical weapons, thus reflecting a significant step forward in reducing the threat of chemical warfare. To this end, the Convention prohibits the development, production, acquisition, stockpiling, retention, and, direct or indirect, transfer to anyone of chemical weapons; the use of chemical weapons against anyone, including retaliatory use; the engagement in any military preparations to use chemical weapons; and the assistance, encouragement, or inducement of anyone to engage in activities prohibited to States Parties. The convention also requires all chemical weapons to be declared, declarations to be internationally confirmed, and all chemical weapons to be completely eliminated within 10 years after its entry into force (15 years in extraordinary cases), with storage and destruction monitored through on-site international inspection. The Convention further requires all chemical weapons production to cease within 30 days of the entry into force of the Convention for a State Party and all chemical weapons production facilities to be eliminated (or in exceptional cases of compelling need, and with the permission of the Conference of the States Parties, converted to peaceful purposes). Cessation of pro-

duction, and destruction within 10 years after the entry into force of the Convention (or conversion and peaceful production), will be internationally monitored through on-site inspection.

In addition, the Convention prohibits and use of riot control agents as a method of warfare, reaffirms the prohibition in international law on the use of herbicides as a method of warfare, and provides for the possibility for protection against and assistance in the event of use or threat of use of chemical weapons against a State Party. The Administration is reviewing the impact of the Convention's prohibition on the use of riot control agents as a method of warfare on Executive Order No. 11850, which specifies the current policy of the United States with regard to the use of riot control agents in war. The results of the review will be submitted separately to the Senate.

The Convention contains a number of provisions that make a major contribution to our nonproliferation objectives. In addition to verification of the destruction of chemical weapons, the Convention provides a regime for monitoring relevant civilian chemical industry facilities through declaration and inspection requirements. States Parties are also prohibited from providing any assistance to anyone to engage in activities, such as the acquisition of chemical weapons, prohibited by the Convention. Exports to non-States Parties of chemicals listed in the Convention are prohibited in some instances and subject to end-user assurances in others. Imports of some chemicals from non-States Parties are also banned. These restrictions will also serve to provide an incentive for countries to become parties as soon as possible. Finally, each State Party is required to pass penal legislation prohibiting individuals and businesses and other nongovernmental entities from engaging in activities on its territory or any other place under its jurisdiction that are prohibited to States Parties. Such penal legislation must also apply to the activities of each State Party's citizens, wherever the activities occur. Through these provisions, the Convention furthers the important goal of preventing the proliferation of chemical weapons, while holding out the promise of their eventual worldwide elimination.

The Convention contains two verification regimes to enhance the security of States Parties to the Convention and limit the possibility of clandestine chemical weapons production, storage, and use. The first regime provides for a routine monitoring regime involving declarations, initial visits, systematic inspections of declared chemical weapons storage, production and destruction facilities, and routine inspections of the relevant civilian chemical industry facilities. The second regime, challenge inspections, allows a State Party to have an international inspection conducted of any facility or location in the territory or any other place under the jurisdiction or control of another State Party in order to clarify and resolve questions of possible noncompliance. The Convention obligates the challenged State Party to accept the inspection and to make every reasonable effort to satisfy the compliance concern. At the same time, the Convention provides a system for the inspected State Party to manage access to a challenged site in a manner that allows for protection of its national security, proprietary, and constitutional con-

cerns. In addition, the Convention contains requirements for the protection of confidential information obtained by the OPCW.

The Convention prohibits reservations to the Articles. However, the CWC allows reservations to the Annexes so long as they are compatible with the object and purpose of the Convention. This structure prevents States Parties from modifying their fundamental obligations, as some countries, including the United States, did with regard to the Geneva Protocol of 1925 when they attached reservations preserving the right to retaliate with chemical weapons. At the same time, it allows States Parties some flexibility with regard to the specifics of their implementation of the Convention.

Beyond the elimination of chemical weapons, the Chemical Weapons Convention is of major importance in providing a foundation for enhancing regional and global stability, a forum for promoting international cooperation and responsibility, and a system for resolution of national concerns.

I believe that the Chemical Weapons Convention is in the best interests of the United States. Its provisions will significantly strengthen United States, allied and international security, and enhance global and regional stability. Therefore, I urge the Senate to give early and favorable consideration to the Convention, and to give advice and consent to its ratification as soon as possible in 1994.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 20, 1993.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the "Chemical Weapons Convention" or "CWC"), opened for signature at Paris on January 13, 1993, and signed by the United States of America and 153 other countries to date.

The Convention includes the following documents, which are integral parts thereof: the Annex on Chemicals, the Annex on Implementation and Verification, and the Annex on the Protection of Confidential Information. I recommend that you transmit the Convention to the Senate for its advice and consent to ratification by early 1994.

Also enclosed, for the information of the Senate, are two documents relevant to, but not part of, the Convention: the Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons and the Text on the Establishment of a Preparatory Commission (with three Annexes), adopted by acclamation by Signatory States at Paris on January 13, 1993. These documents provide the basis for the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons (Preparatory Commission), which is responsible for preparing detailed procedures for implementing the Convention and for laying the foundation for the international organization created by the Convention.

INTRODUCTION

The Chemical Weapons Convention is unprecedented in the scope of its provisions. It will not only require the United States to destroy its chemical weapons and chemical weapons production facilities under the observation of an international organization, but will also subject its chemical industry and citizens to the obligations of the Convention. Specifically, the Convention will ban the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. The CWC will also prohibit military preparations for using chemical weapons and the assistance to, an encouragement or inducement of, anyone to engage in activities prohibited by the Convention. The Chemical Weapons Convention is a major arms control agreement having significant non-proliferation benefits.

VIII

The Convention was negotiated in Geneva by the Conference on Disarmament (CD), and its predecessor bodies, between August 1968 and September 1992, when the CD forwarded the draft text to the United Nations (UN) for endorsement. After consensus endorsement by the UN General Assembly, the CWC was opened for signature at Paris on January 13, 1993.

The Convention will enter into force 180 days after the deposit of the 65th instrument of ratification, but not earlier than two years after it was opened for signature. Thus, the CWC can enter into force on January 13, 1995 if 65 countries have deposited their instruments of ratification by July 1994 with the Secretary-General of the United Nations, which is the depositary for the Convention. The two-year delay before the earliest possible entry-into-force of the CWC was intended to allow Signatory States time to undertake the necessary national legislative and procedural preparations and to provide them for the Preparatory Commission, composed of Signatory States, to prepare for implementation of the Convention.

In addition to the U.S. Arms Control and Disarmament Agency (ACDA) and the Department of State, representatives of the Chairman of the Joint Chiefs of Staff, the Central Intelligence Agency, the Department of Defense, the Defense Intelligence Agency, the On-Site Inspection Agency, the Department of Energy, the Department of Commerce, and the Department of Justice have all played important roles in the development of the Convention through participation in the negotiations in Geneva and in the development of policy in Washington. Additionally, the chemical industry (primarily through the Chemical Manufacturers Association) was actively involved in the negotiating process through consultations with the United States Government and participation in international industry meetings with CD negotiators.

Throughout the negotiating process, the United States consulted and worked closely with its Western allies in the CD (Australia, Belgium, Canada, the Federal Republic of Germany, France, Italy, Japan, the Netherlands and the United Kingdom) in the development of common Western negotiation positions on all aspects of the Convention.

BACKGROUND INFORMATION

The United States has been engaged in negotiations for the elimination of weapons for chemical and biological warfare over an extended period, during which the two categories of weapons have been closely linked. The two basic treaties now in force, to which more countries, including the United States, are parties, are: the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, opened for signature at Geneva on June 17, 1925 (Geneva Protocol of 1925); and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention), opened for signature at London, Moscow and Washington on April 10, 1972. The Geneva Protocol of 1925 prohibits the use in war by a Party against another Party of chemical and biological weapons, but places no restriction on production or possession of such weapons. In addition, reservations attached to the Protocol by

many countries, including the United States, preserve the right to use chemical weapons in retaliation. The Biological Weapons Convention outlaws the development, production, stockpiling, acquisition, or retention of biological and toxin weapons and provides for their destruction, but does not contain verification provisions. (Toxins are considered both chemical and biological weapons in that they are biologically derived but act in a chemical manner. Thus, toxins are also covered by the CWC.)

Since 1968, the United States has participated in negotiations within the framework of the multinational CD, and its predecessor bodies, and since 1984 has held bilateral discussions with the Soviet Union (and subsequently the Russian Federation), with a view toward achieving an effectively verifiable and universal ban on the development, production, possession, stockpiling, transfer and use of chemical weapons. The draft text of the Chemical Weapons Convention tabled in 1984 in the CD by then Vice-President Bush essentially served as the basis for the negotiations. The CD's negotiations on the Convention were concluded on September 3, 1992, when the CD forwarded the draft text to the United Nations for endorsement. On November 30, 1992, the UN General Assembly endorsed the CWC by consensus, with 145 countries cosponsoring the supporting resolution. The CWC was opened for signature on January 13, 1993, with 136 countries, including the United States, signing it during the first three days of its being opened for signature. Of the 154 Signatory States to date, four have also ratified the CWC.

The CWC calls for the Signatory States to convene a Preparatory Commission to develop detailed implementing procedures and to lay the foundation for the international Organization for the Prohibition of Chemical Weapons (OPCW), which is charged with verification and oversight of the implementation of the Convention. The Preparatory Commission began work in February 1993 in The Hague (site of the future headquarters of the (OPCW) and will continue until the CWC's entry into force. The work of the Preparatory Commission will be formally approved at the first meeting of States Parties, which is to take place shortly after the Convention's entry into force.

The OPCW will consist of three international bodies. A Technical Secretariat headed by a Director-General will be responsible for conducting verification activities, including inspections and compiling declarations. An Executive Council, consisting of 41 States Parties, will be responsible for supervising the Technical Secretariat and performing other executive responsibilities. Overseeing the entire Convention and its bodies will be the Conference of the States Parties (Conference), consisting of all States Parties to the Convention.

As a means of assisting in the development of the multilateral CWC, as well as to complement it, the United States and the Soviet Union (and subsequently the Russian Federation) have been negotiating a separate bilateral agreement providing for destruction and mutual verification of each country's chemical weapons stockpiles. At the June 1, 1990 Washington Summit, President Bush and Secretary-General Gorbachev signed the Agreement Be-

ist Republics on Destruction and Non-Production of Chemical Weapons and on Measures to Facilitate the Multilateral Convention on Banning Chemical Weapons (the "Bilateral Destruction Agreement" or "BDA"). The key provisions of the Agreement are: cessation of the production of chemical weapons; destruction of the vast bulk of declared stocks (all but 5,000 agent tons); on-site inspections of chemical weapons storage, production and destruction facilities; and development and use of safe and environmentally-sound methods of destruction. Further work, however, was necessary on detailed implementing procedures and updated provisions to respond to changed conditions, such as the dissolution of the former Soviet Union. In March 1993, the United States and Russian delegations agreed *ad referendum* on detailed implementing procedures and updated provisions to finalize the BDA. These procedures and provisions have been accepted by the United States, but not as yet by the Russian Federation.

While important in its own right, the Bilateral Destruction Agreement is less relevant than it was three years ago. At the time the BDA was signed, the United States and the Soviet Union assumed that completion of the CWC was many years away. The intent behind the BDA was to achieve Russian commitment to chemical weapons destruction as early as possible and to facilitate progress on the CWC. The Russian Federation has yet to agree to the detailed implementing procedures and updated provisions for the BDA, citing problems with the provisions on conversion of chemical weapons production facilities to peaceful uses and costs associated with destruction of its chemical weapons. The United States has offered financial and technical assistance, predicated upon concrete Russian plans for destruction, which are still being developed. The United States is actively continuing to work with the Russian Federation at both the political level and the technical level to secure agreement on the detailed implementing procedures and updated provisions for the Bilateral Destruction Agreement and concrete plans for destruction.

In anticipation of the BDA, the CWC allows for bilateral agreements between States Parties on destruction and verification as long as such agreements are consistent with CWC provisions and are approved by the Executive Council. Since the key provisions in the BDA on verification of the destruction of chemical weapons, as accepted by the United States, are reflected in the CWC, these BDA provisions are consistent with the provisions of the CWC. If the BDA enters into force, the United States and the Russian Federation would inspect each other's destruction efforts, with general oversight by the international inspectorate.

For the following reasons, the Administration has determined that final agreement of all of the provisions of the BDA should not delay submission of the CWC to the Senate for its advice and consent to ratification:

—It is in the interest of the United States to move the CWC forward. Submission of the Convention at this time to the Senate for advice and consent to ratification will enable the United States to maintain momentum toward early entry into force of the CWC in 1995 through continued leadership and application

- of pressure on other countries to undertake the necessary processes for entry into force;
- The United States is concerned about acquisition and potential use of chemical weapons by other countries besides the Russian Federation. It is important to spur their commitment to banning chemical weapons; and
- It underscores the importance placed by the United States on the non-proliferation of weapons of mass destruction.

THE CONVENTION: ITS STRUCTURE AND CONTENT

The Chemical Weapons Convention consists of a Preamble, 24 Articles and Three Annexes (the Annex on Chemicals, the Annex on Implementation and Verification, and the Annex on the Protection of Confidential Information). The principal obligations undertaken by States Parties pursuant to the Convention are contained in Article I. Specifically, each State Party is prohibited from:

- (a) Developing, producing, otherwise acquiring, stockpiling or retaining chemical weapons or transferring them, directly or indirectly, to anyone;
- (b) Using chemical weapons under any circumstances, including retaliatory use (which many countries protected under the Geneva Protocol of 1925);
- (c) Engaging in any military preparations to use chemical weapons or assisting, encouraging, or inducing anyone to engage in any activity prohibited by the CWC; and
- (d) Using riot control agents as a method of warfare.

Article I also obligates each State Party to destroy its chemical weapons and chemical weapons production facilities as well as any chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of the Convention.

The provisions of the Convention apply to geographic areas (i.e., any place under the jurisdiction or control of a State Party), to items belonging to a State Party (i.e., all chemical weapons or chemical weapons production facilities it owns or possesses) and to the activities undertaken by a State Party's natural and legal persons. Article VII of the Convention requires States Parties to adopt the necessary measures to implement their obligations under the CWC. In particular, each State Party must:

- (a) Prohibit 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 the Convention;
- (b) Not permit in any place under its control any activity prohibited by a State Party under the Convention; and
- (c) Extend its penal legislation enacted under subparagraph (a) above to any activity prohibited to a State Party under the Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

DESTRUCTION REQUIREMENTS UNDER THE CWC

CHEMICAL WEAPONS

Chemical weapons are defined by the CWC as the following, together or separately:

(a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;

(b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a) above, which would be released as a result of the employment of such munitions and devices; and

(c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b) above.

With regard to the term "purposes not prohibited under the Convention", the negotiators of the CWC chose to define what chemical activities were to be banned by forbidding all activities except those specifically not prohibited. This inclusive approach was chosen to facilitate verification and to preclude loopholes with regard to unknown or future chemicals of possible concern. The purposes not prohibited under the Convention are:

(a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and

(d) Law enforcement including domestic riot control purposes.

"Toxic chemical" is defined as any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or their method of production (which ensures inclusion of toxins), and regardless of whether they are produced in facilities, in munitions (e.g., binary chemical weapons) or elsewhere.

Each State Party is required to declare and destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of the Convention. Additionally, each State Party is required to declare all chemical weapons it abandoned on the territory of another State, and destroy those abandoned on the territory of another State party, in accordance with the provisions of the Convention. The Army is submitting a report to Congress on this subject as required by Section 176 of the Defense Authorization Act of 1993, Public Law 102-484.

The CWC outlines the order of destruction of specified categories of chemical weapons and requires their destruction not later than ten years after the Convention enters into force (currently predicted to be January 13, 2005). The Convention permits an extension of up to five years beyond the initial ten years. Such extensions, however, must be accompanied by specific plans for achieving the planned destruction and stringent verification measures and must be approved by the Conference.

Each State Party must pay for the costs of destruction of its chemical weapons and verification of their storage and destruction. In the absence of bilateral verification arrangements, State Parties with chemical weapons and chemical weapons production facilities must pay all of the costs of verification of their destruction by the OPCW. However, if bilateral verification arrangements are accepted, the State Parties involved must pay the bilateral costs, and all State Parties proportionately pay the costs of the monitoring by the international inspectorate. The United States proposed the bilateral verification provision based on a desire for direct involvement in monitoring the Russian chemical weapons destruction effort, the existence of the Bilateral Destruction Agreement, and a mutual desire with the Russian Federation to minimize costs where possible. The use of the BDA in conjunction with OPCW monitoring is expected to reduce costs for the United States and the Russian Federation, and thus expenses of the OPCW as well.

The CWC recognizes two special categories of chemical weapons—old chemical weapons and abandoned chemical weapons. With regard to all chemical weapons produced before 1925, a State Party is only required to destroy or otherwise dispose of them as “toxic waste.” With regard to chemical weapons produced between 1925 and 1946 that have deteriorated to such an extent that they are no longer usable as chemical weapons (1925–46 chemical weapons), the time-limits and order of destruction can be modified by the Executive Council. All chemical weapons that do not fall into these categories will be subject to the full verification and destruction regimes.

With regard to abandoned chemical weapons, the abandoning State Party is required to provide all necessary financial, technical, expert, facility and other resources. The State Party on whose territory the abandoned chemical weapons are located is required to provide appropriate cooperation. The ten-year destruction requirement applies to such weapons; however, in exceptional circumstances, the territorial State Party, individually or with the abandoning State Party, may request approval from the Executive Council for modification, or in the case of 1925–46 chemical weapons, suspension, of the time-limits and order of destruction.

CHEMICAL WEAPONS PRODUCTION FACILITIES

The CWC defines chemical weapons production facilities as any equipment, as well as any building housing such equipment, that was designed, constructed or used at any time since January 1, 1946:

(a) As part of the stage in the production of chemicals where the material flows would contain, when the equipment is in operation:

(i) Any chemical listed in Schedule 1 in the Annex on Chemicals (the toxic chemicals of greatest risk to the object and purpose of the CWC); or

(ii) Any other chemical that has no use, above one metric ton per year on the territory of a State Party or in any other place under the jurisdiction or control of a State Party, for purposes not prohibited under the Convention, but can be used for chemical weapons purposes; or

(b) For filling chemical weapons, including, *inter alia*, the filling of chemicals listed in Schedule 1 into munitions, devices or bulk storage containers; the filling of chemicals into containers that form part of assembled binary munitions and devices or into chemical submunitions that form part of assembled unitary munitions and devices, and the loading of the containers and chemical submunitions into the respective munitions and devices.

The CWC specifically excludes from the definition of chemical weapons production:

(a) Any facility having a production capacity for synthesis of chemicals specified in the above subparagraph (a) that is less than one metric ton;

(b) any facility in which a chemical specified in the above subparagraph (a) is or was produced as an avoidable by-product of activities for purposes not prohibited under the Convention, provided that the chemical does not exceed three percent of the total product and that the facility is subject to declaration and inspection under the Annex on Implementation and Verification; or

(c) The single small-scale facility for production of chemicals listed in Schedule 1 for purposes not prohibited under the Convention.

The term "building" refers to any building, including underground structures:

(a) containing specialized equipment in a production or filling configuration;

(b) which has distinctive features which distinguished it from buildings normally used for chemical production or filling activities not prohibited under the Convention; or

(c) constructed to prevailing industry standards for facilities not producing any chemical specified in the chemical weapons production facility definition, or corrosive chemicals.

The term "equipment" refers to:

(a) the main production train, including any reactor or equipment for production synthesis, separation or purification, any equipment used directly for heat transfer in the final technological stage, such as in reactors or in product separation, as well as any other equipment which has been in contact with any chemical specified in the production facility definition, or would be in contact with such a chemical if the facility were operated;

(b) any chemical weapon filling machines;

(c) any other equipment specially designed, built or installed for the operation of the facility as a chemical weapons production facility, as distinct from a facility constructed according to prevailing commercial industry standards for facilities not producing any chemical specified in the production facility definition, or corrosive chemicals, such as: equipment made of high-nickel alloys or other special corrosion-resistant material; special equipment for waste control, waste treatment, air filtering, or solvent recovery; special containment enclosures and safety shields; non-standard laboratory equipment used to analyze toxic chemicals for chemical weapons purposes; custom-de-

signed process control panels; or dedicated spares for specialized equipment;

(d) production equipment which is generally used in the chemical industry and is not included in the types of specialized equipment; and

(e) other equipment commonly used in the chemical industry, such as: fire-fighting equipment; guard and security/safety surveillance equipment; medical facilities, laboratory facilities; or communications equipment.

The CWC requires the destruction of chemical weapons production facilities by not later than ten years after the entry into force of the Convention. However, chemical weapons production facilities may be converted temporarily for use as destruction facilities. In addition, in exceptional cases of compelling need, States Parties may request approval from the Conference to convert chemical weapons production facilities to purposes not prohibited under the Convention. However, approval is contingent on the State Party's acceptance of stringent specified in the CWC which, *inter alia*, preclude the use of a converted facility to produce, process or consume Schedule 1 or 2 declaration and international monitoring of such activities and parameters for the State Party's conduct of such activities (e.g., very limited production of Schedule 1 chemicals for protective purposes, very limited Schedule 1 production capacity, and the use of only two Schedule 1 production facilities for protective purposes, which are to be subject to stringent verification measures).

VERIFICATION OF COMPLIANCE

The CWC contains two verification regimes implemented by the Technical Secretariat to enhance the security of States Parties, which are designed to preclude the possibility of clandestine chemical weapons production, storage and use. The first regime provides a routine monitoring regime involving declarations, initial visits and systematic inspections of chemical weapons storage, production and destruction facilities and relevant chemical industry. This regime specifies requirements regarding the extent of and time-frames for access to the facilities, inspection procedures to be used by the international inspectors, rights and obligations of inspectors and inspected States Parties during inspections, and inspection reports. The second regime, challenge inspections, allows a State Party to have an international inspection conducted of any facility or location in the territory or any other place under the jurisdiction or control of another State Party in order to clarify and resolve questions of possible non-compliance.

The challenge inspection procedures were the most sensitive and difficult treaty provisions to develop, as negotiators sought to balance the need for an adequate degree of intrusiveness to address compliance concerns with the need for protection of sensitive, non-chemical weapons related facilities and information of national security concern. The State Party to be inspected is under the obligation to accept a challenge inspection and to make every reasonable effort to satisfy the compliance concern. At the same time, the Convention provides for a system of managed access to a challenged

site which allows for protection of the inspected State Party's national security and constitutional concerns.

The CWC provides protection against abuse of challenge inspections in two ways: (1) it contains procedures to deter the challenging State Party from abusing the process; and (2) even more importantly, it contains inspection procedures which permit the protection of a State Party's sensitive, non-chemical weapons facilities and locations and preservation of its constitutional rights.

To deter abuse, the CWC contains provisions for both the requesting and inspected State Parties to have their concerns about compliance and possible abuse of the system addressed by the Executive Council at both the beginning and the conclusion of the inspection. A State Party must submit a request for a challenge inspection to the Executive Council and the Director-General of the Technical Secretariat. If the Executive Council considers the request to be frivolous, abusive or clearly beyond the scope of the Convention, it may, within 12 hours after having received the inspection request, decide (by a three-quarter majority vote of all its members) against carrying out the challenge inspection. After a challenge inspection, the Executive Council will review the final report of the inspection team and, in addition to addressing concerns about whether any non-compliance occurred, will address concerns regarding whether the request was within the scope of the Convention and whether the right to request a challenge inspection was abused. If the Executive Council concludes that there was abuse, it may recommend to the Conference measures to be taken against the requesting State Party and examine whether that State Party should bear any of the costs of the inspection. Finally, in addition to these specific provisions to address abuse, there is a general provision giving States Parties the right at any time to request the Executive Council to consider issues arising under the Convention, which could include concerns about abuse of the rights provided for under the CWC.

With regard to protection of States Parties' sensitive non-chemical weapons facilities and constitutional requirements, the CWC provides protection through, *inter alia*: the timeframes specified to provide access; limitations on observers; and the process of managed access at the site.

After receiving notification of an undeclared site to be inspected, the inspected State Party may take up to five days to provide access to the site. This time period allows inspected States Parties adequate time to prepare a site for inspection. Activities with regard to securing the site, however, will take place during this time period. Once at the site, the period of inspection itself is limited to 84 hours, extendable only by agreement with the inspected State Party.

The requesting State Party can request to have an observer accompany the inspection team. However, the inspected State party has the right to disapprove the participation of such an observer. If the inspected State Party allows the participation of an observer, it can limit the access and activities of the observer at the site.

The inspected State Party has the final say in determining the extent and nature of access within the challenged site. The inspected State Party will negotiate with the inspection team the fol-

lowing: the extent of access to any particular place or places within the final or requested perimeters; the particular inspection activities (including sampling); the performance of particular activities by the inspected State Party; and the provision of particular information by the inspected State Party. For example, under the "managed access" principle, the inspected State Party may give only individual inspectors access to certain parts of the inspection site, may shroud sensitive pieces of equipment, such as computer or electronic systems, and it may restrict sampling and sample analysis.

However, the inspected State Party is under the obligation to make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the challenge inspection if it provides less than full access to places, activities or information.

An analysis of the verifiability of the Convention consistent with Section 37 of the Arms Control and Disarmament Act, as amended, will be submitted separately to the Congress.

ORGANIZATIONAL BODIES OF THE CWC

To prepare for the implementation of the CWC, a Preparatory Commission consisting of all Signatory States has been established to develop the detailed implementing procedures and to establish the structure and operational procedures of the OPCW. The two-year delay for entry into force of the CWC was designed to allow time for the Preparatory Commission to accomplish these tasks and enable implementation of CWC provisions upon entry into force.

The Preparatory Commission began its work in The Hague in February 1993. The results of this work, including the Preparatory Commission's recommendations, will be approved by the Conference at its first meeting following the entry into force of the Convention.

All countries ratifying the CWC will become States Parties to the CWC and will make up the membership of the Organization for the Prohibition of Chemical Weapons, which is responsible for ensuring the implementation of the CWC. The OPCW, with headquarters in the Hague, will consist of the Conference of the States Parties and its Executive Council, and the Technical Secretariat.

The Conference, which will consist of all States Parties to the CWC, is the principal organ of the OPCW. The Conference is responsible for overseeing the implementation of the CWC and acting in order to promote its object and purpose, including reviewing compliance with the CWC. In non-compliance cases of particular gravity and urgency (e.g., alleged use of chemical weapons) the Conference will bring the matter, including relevant information and conclusions, directly to the attention of the UN General Assembly and the UN Security Council. It will also oversee the activities of the Executive Council and Technical Secretariat, and may issue guidelines in accordance with the CWC to either of them for the exercise of their functions.

The executive Council will be the executive organ of the OPCW and will be responsible to the Conference for its actions. In addition to carrying out the powers and functions outlined in the CWC, as well as functions delegated to it by the Conference, the Executive

XVIII

Council will promote effective implementation of and compliance with the CWC, supervise the activities of the Technical Secretariat, cooperate with the National Authority of each State Party, and facilitate consultations and cooperation among States Parties. The Executive Council has the right and duty to consider any issue or matter within its competence affecting the CWC and its implementation, including concerns regarding compliance and cases of non-compliance, and, as appropriate, inform States Parties and bring the issue or matter to the attention of the Conference.

The Executive Council will consist of 41 States Party, with each State Parties having the right, in accordance with the principle of rotation, to serve on the Council. The members of the Executive Council will be elected by the Conference for a term of two years. In order to ensure the effective functioning of the CWC, the composition of the Executive Council will be structured in such a way as to give due regard to equitable geographical distribution, to the importance of chemical industry, and to political and security interests. Through the application of the criteria specified for membership, the United States expects to have a permanent seat.

The Technical Secretariat will be comprised of a Director-General (its head and chief administrative officer), inspectors, and such scientific, technical and other personnel as may be required. The Conference will appoint the Director-General upon the recommendation of the Executive Council, and he or she will be responsible to them for the appointment of the staff and the organization and functioning of the Technical Secretariat. The Technical Secretariat will assist the conference and the Executive Council in the performance of their functions as well as carry out other functions specified in the CWC. A major responsibility of the Technical Secretariat will be to collect and monitor States Parties declarations, and conduct routine and challenge inspections. The Technical Secretariat will inform the Executive Council of any problem arising with regard to the discharge of its functions, including doubts, ambiguities or uncertainties about compliance with the CWC that come to its attention in the performance of its verification activities and that it has been unable to resolve or clarify through its consultations with the State Party concerned.

AMENDMENTS

Changes to the Articles and key provisions of the Annexes (protection of confidential information, challenge inspections and related definitions) may be made only through a stringent, formal amendment process requiring the support of a majority of all States Parties with no State Party casting a negative vote, followed by ratification or acceptance by all the supporting States Parties.

For the remainder of the Annexes, as with previous arms control agreements to which the United States is a party, changes of a technical or administrative nature, i.e., minor changes, based on future technological developments and practical experience, are permitted pursuant to a simplified procedure which does not involve ratification or acceptance. These changes can be made with the approval of two-thirds of the States Parties. However, changes to the remainder of the Annexes that are not of a technical or administra-

tive nature must be made pursuant to the formal amendment process.

RESERVATIONS

The basic obligations of the CWC are set forth in the Articles, with the more detailed implementing procedures contained in the Annexes. The convention prohibits reservations to the Articles. However, the CWC allows reservations to the Annexes so long as they are compatible with the object and purpose of the Convention. This structure prevents States Parties from modifying their fundamental obligations, as some countries, including the United States, did with regard to the Geneva Protocol of 1925 when they attached reservations preserving the right to retaliate with chemical weapons. At the same time, it allows States Parties some flexibility with regard to the specifics of their implementation of the Convention.

DURATION; WITHDRAWAL

The Convention will be of unlimited duration. However, as with other arms control agreements, each State Party has, in exercising its national sovereignty, the right to withdraw from the CWC if it decides that extraordinary events, related to the subject matter of the CWC, have jeopardized the supreme interests of its country. A State Party must give notice of such withdrawal 90 days in advance to all other States Parties, the Executive Council, the Depositary (the UN Secretary-General) and the UN Security Council. Such notice must include a statement of the extraordinary events the State Party regards as having jeopardized its supreme interests.

The withdrawal of a State Party does not, however, in any way affect its duty to continue fulfilling its obligations assumed under any relevant rules of international law, particularly, the Geneva Protocol of 1925.

CONFERENCES

The first meeting of the Conference of the States Parties will be convened no later than 30 days after entry into force of the CWC; this is expected to occur in the spring of 1995. Three years after the entry into force of the CWC, the Conference will meet to decide if the verification regime for "other chemical production facilities" should be delayed or eliminated. Not later than one year after the expiration of the fifth and tenth years after the entry into force of the Convention, and at such other times as may be decided upon within that time period, the Conference will convene in special sessions to undertake reviews of the operation of the Convention. Such reviews will take into account any relevant scientific and technological developments. Similar sessions will be convened at five-year intervals thereafter, unless decided otherwise. Special conferences may be convened at other times at the request of States Parties to address compliance concerns.

COSTS OF THE CONVENTION

The costs of the OPCW activities will be paid by States Parties in accordance with the UN scale of assessment adjusted to take into account differences in membership between the United Nations and the OPCW. The same formula applies to the costs of the Preparatory Commission. The United States share is a little more than 25 percent. States Parties' financial contributions to the Preparatory Commission are to be deducted in an appropriate way from their contributions to the regular OPCW budget. Additionally, States Parties with chemical weapons and chemical weapons production facilities are responsible for the costs of their destruction and international verification. However, as discussed earlier, if OPCW-approved bilateral verification arrangements paid for by the States Parties involved are in place, all States Parties will pay proportionately for the international monitoring required.

NATIONAL IMPLEMENTATION

The Convention requires that each State Party establish a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties. Each State Party is required to notify the OPCW of its National Authority at the time the CWC enters into force for that State Party.

The United States National Authority function will be performed by the formal interagency decision-making body chaired by the National Security Council staff, expanded to include representation from other agencies as appropriate. An executive office operated by ACDA, designed as the Office of National Authority (ONA), will be responsible for coordinating and facilitating administrative and logistical matters relating to CWC implementation. The ONA will provide the point of contact for the liaison of the United States with the OPCW in The Hague.

The recommended legislation necessary to implement the Chemical Weapons Convention will be submitted separately to the Congress. In addition, environmental documentation related to the Convention will be forwarded separately to the Senate for its information.

CONCLUSION

Accompanying this Report is the Article-by-Article Analysis of the Convention, including the Annexes, as well as the two documents relevant to the Convention and sent for the information of the Senate (the Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons and the Text of the Establishment of a Preparatory Commission).

I believe that this Convention, by banning chemical weapons in the manner described above, will significantly enhance the national security of the United States and its allies and will contribute to global and regional security. I therefore recommend that the Convention be submitted to the Senate for its advice and consent to ratification as soon as possible in 1994.

Respectfully submitted,

Richard H. Arling

Attachments: As stated.

**ARTICLE-BY-ARTICLE ANALYSIS
OF THE CONVENTION ON THE PROHIBITION OF THE
DEVELOPMENT, PRODUCTION, STOCKPILING AND USE
OF CHEMICAL WEAPONS AND ON THEIR
DESTRUCTION**

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, also known as the Chemical Weapons Convention ("the Convention"), consists of the main Convention text and three Annexes:

Annex on Chemicals;

Annex on Implementation and Verification ("the Verification Annex"); and

Annex on the Protection of Confidential Information ("the Confidentiality Annex").

Each of these Annexes is an integral part of the Convention, and therefore has the same legally-binding status as the Articles.

PREAMBLE

The Preamble to the Convention provides a ten-paragraph overview of the States Parties' purposes in entering into the Convention and what they hope to achieve. The first preambular paragraph states the States Parties' determination to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction. This exhortation reflects the U.S. long-term goal that all types of weapons of mass destruction must be eliminated. The elimination of all chemical weapons is an important step towards this goal.

The second preambular paragraph sets forth the States Parties' desire to contribute to the realization of the purposes and principles of the Charter of the United Nations. These purposes and principles are stated in Chapter I of the Charter, and include, for example, the undertaking in paragraph 1 of Article I "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace...."

In the third preambular paragraph the States Parties recall that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 ("the Geneva Protocol of 1925").

The fourth preambular paragraph recognizes that the Convention reaffirms the principles and objectives of, and obligations assumed under, the Geneva Protocol of 1925, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, signed at Washington, London and Moscow on 10 April 1972 ("the Biological Weapons Convention"). The United States is a party to both the Geneva Protocol of 1925 and the Biological Weapons Convention. The Geneva Protocol of 1925, read together with the reservations made to it, amounts to a ban on the first use of chemical weapons insofar as it relates to the United States. The Biological Weapons Convention bans the development, production, stockpiling, acquisition and retention of: (1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and (2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The fifth preambular paragraph states that the States Parties enter into the Convention bearing in mind the objective contained in Article IX of the Biological Weapons Convention. Article IX of the Biological Weapons Convention affirms the objective of an effective prohibition of chemical weapons and the undertaking to continue negotiations to achieve such a prohibition.

The sixth preambular paragraph sets forth the States Parties' determination, for the sake of all mankind, to exclude completely the possibility of any use of chemical weapons, through the implementation of the provisions of the Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925. Note that the Convention, which expands the obligations contained in the Geneva Protocol of 1925, "complements" rather than replaces that Protocol. Thus, the Geneva Protocol of 1925 will continue to apply to all States Parties to it. (The specific relationship between the Geneva Protocol of 1925 and the Convention is discussed in detail in Article XIII.)

The seventh preambular paragraph, although not legally binding, nevertheless recognizes the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare. Thus, the Convention does not add any new constraints on the use of herbicides. The key source of this prohibition is embodied in the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, signed at Geneva on 18 May 1977 ("the Enmod Convention"). The Second Review Conference of the parties to the Enmod Convention in September 1992 declared in the Final Declaration that:

The Conference confirms that the military or any other hostile use of herbicides as an environmental modification technique in the meaning of Article II [of the Enmod Convention] is a method of warfare prohibited by Article I [of the Enmod Convention] if such use of herbicides upsets the ecological balance of a region, thus causing widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party [to the Enmod Convention].

It is the understanding of the United States that the uses of herbicides proscribed in Executive Order 11850 do not cause such effects and are allowed under international law.

In the eighth preambular paragraph the States Parties set forth their consideration that achievements in the field of chemistry should be used exclusively for the benefit of mankind.

The ninth preambular paragraph expresses the States Parties' desire to promote free trade in chemicals as well as international cooperation and exchange of scientific and technical information in the field of chemical activities for purposes not prohibited under the Convention in order to enhance the economic and technological development of all States Parties. In particular, this paragraph expresses the desire of many developing states to facilitate free trade and exchange of information relating to chemicals. Free trade and exchange of information relating to chemicals, however, are qualified in that they must be "for purposes not prohibited under [the] Convention." (Such purposes are defined in paragraph 9 of Article II of the Convention. The specific rights and obligations related to free trade and exchange of information are discussed in Article XI.)

The tenth and final preambular paragraph states that the States Parties are convinced that the complete and effective prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons, and their destruction, represents a necessary step towards the achievement of the common objectives listed in the preamble.

ARTICLE I - GENERAL OBLIGATIONS

Article I consists of five paragraphs that set forth the basic obligations of the States Parties to the Convention. The Article requires States Parties: to destroy their chemical weapons, chemical weapons production facilities, and certain chemical weapons abandoned by them; to not acquire or reacquire chemical weapons; to not assist anyone else in acquiring chemical weapons; to not use chemical weapons; and to not militarily prepare to use chemical weapons. In addition, Article I requires that each State Party undertake not to use riot control agents as a method of warfare.

Paragraph 1 of Article I contains, in three subparagraphs, the most fundamental prohibitions of the Convention. The prohibitions are phrased as undertakings "never under any circumstances" to engage in certain activities related to chemical weapons. ("Chemical weapons" are defined in paragraph 1 of Article II.) Thus, the prohibitions apply to a State Party even if chemical weapons are used against it and even if those chemical weapons are used by a State not Party to the Convention, i.e. even "retaliatory use" of chemical weapons is banned. Moreover, the prohibition on the use of chemical weapons extends beyond solely their use in international armed conflicts, i.e. chemical weapons may not be used in any type of situation, including purely domestic conflicts, civil wars or state-sponsored terrorism. As such, this article closes a loophole in the Geneva Protocol of 1925, which covered only uses in war, i.e. international armed conflicts. Note that the phrase "never under any circumstances" reflects a similar phrase in Article I of the Biological Weapons Convention.

Subparagraph 1(a) states that each State Party to the Convention undertakes never under any circumstances to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone. This means that, inter alia, every State Party is prohibited from retaining its chemical weapons, from obtaining chemical weapons through any means, and from giving its chemical weapons to anyone else.

In subparagraphs 1(b) and 1(c), the States Parties undertake never under any circumstances to use chemical weapons or to engage in any military preparations to use chemical weapons. Preparation for use may include planning, organization and training for the purpose of using chemical weapons. This provision forbidding military preparations to use chemical weapons was added to further restrict the possibilities for a clandestine or breakout chemical weapons capability. The prohibitions on use, and military preparations to use, chemical weapons codify the central desire of the States Parties that chemical weapons never again be used. Note, however, that pursuant to paragraph 2 of Article X, States Parties are specifically allowed to conduct research into, develop, produce, acquire, transfer or use means of protection against chemical weapons.

In subparagraph 1(d) the States Parties undertake never under any circumstances to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention. This means that a State Party is not allowed to help another State, non-government entity, such as a corporation, or individual do anything prohibited to a State Party under the Convention. Accordingly, this provision ensures that a State Party cannot legally circumvent its obligations under the Convention by working through other entities.

JURISDICTION AND CONTROL

Paragraphs 2 and 4 of Article I, as well as other provisions in the Convention, use a common formula to indicate the scope of a State Party's obligations with regard to treaty-related objects such as chemical weapons -- "owns or possesses, or that are located in any place under [the State Party's] jurisdiction or control." This formula differs from that used in Article II of the Biological Weapons Convention -- "in [a State Party's] possession or under [a State Party's] jurisdiction or control," i.e. it adds the concept of "ownership" and links the concepts of "jurisdiction" and "control" to places rather than objects. The formula in the Convention represents an evolution of the Biological Weapons Convention formula, and is designed to be as broad as possible while at the same time using legal terms that are relatively precise and well-defined under international law.

The first two elements of the Convention's formula -- "ownership" and "possession" -- are well-defined legal concepts that pertain to the legal and physical relationships, respectively, between a State Party and the objects in question. These terms represent the basic relationships that are likely to be subject to the Convention. Nonetheless, in order to broaden each State Party's obligations as far as possible, the drafters also included the concepts of "jurisdiction" and "control."

The application of the concepts of "jurisdiction" and "control" to an object is less well-defined under international law than "ownership" and "possession". This became clear during the negotiations when, for example, no agreement could be reached on whether a State Party "controls" a chemical agent developed by a company that is partly owned by the State Party but located in another State Party. However, as discussed below, the concepts of "jurisdiction" and "control" by a State Party over places are relatively well-defined and agreed under international law. Accordingly, to minimize disputes and ambiguities with regard to the scope of obligations, the drafters decided to apply these concepts to the places in which the treaty-related objects are located rather than the objects themselves. The result is that each States Party also incurs obligations with regard to all treaty-related objects located in places over which the State Party exercises legal or physical control, regardless of who owns or possesses the objects.

Since the State Party could, and indeed probably will, own and/or possess treaty-related objects located in places under its jurisdiction and control, there is some overlap between the various concepts. However, under the formula as a whole, the overall responsibility of a State Party is for all treaty-related objects located in places under its jurisdiction or control, as well for any other treaty-related objects, located outside of these places, that a State Party legally owns or physically possesses.

The Convention uses two formulations for expressing the principal geographical scope of the obligations undertaken by State Parties -- "any place under [a State Party's] jurisdiction or control" and "territory or any other place under [a State Party's] jurisdiction or control." The two formulations evolved from different starting points during the negotiation of the Convention, but in their final form express the same geographical scope.

The term "any place under [a State Party's] jurisdiction or control" means any place over which a State Party exercises legal or physical control of activities occurring in that place. Places under a State Party's jurisdiction include the territory of the State Party, ships and aircraft registered under the flag of the State Party, and, in certain cases, the territory of another State. Places under a State Party's control include military and government facilities and bases located outside the territory of a State Party, and occupied territory. Note that for the United States the term "territory" means the various States, the District of Columbia, and the territories and possessions of the United States.

Paragraph 2 of Article I sets forth the basic obligation to destroy existing chemical weapons. It states that each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any other place under its jurisdiction or control, in accordance with the provisions of the Convention. Article IV and Part IV(A) of the Verification Annex set forth the detailed provisions relating to the destruction of chemical weapons. Part IV(B) of the Verification Annex sets forth separate detailed provisions relating to special types of chemical weapons -- old chemical weapons and abandoned chemical weapons.

Paragraph 3 of Article I addresses chemical weapons that have been abandoned by one State Party on the territory of another State Party. ("Abandoned chemical weapons" are defined in paragraph 6 of Article II.) Paragraph 3 states that each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of the Convention. As noted above, specific provisions addressing reporting and destruction of abandoned chemical weapons are contained in Part IV(B) of the Verification Annex.

Note that, read together, paragraphs 2 and 3 create a joint and severable obligation for chemical weapons abandoned by a State Party on the territory of another State Party. In other words, the abandoning State Party and the territorial State Party each have a separate, full, legal obligation to destroy the chemical weapons; each such obligation is not mitigated by the action or refusal to act of the other State Party.

Nonetheless, the provisions of Part IV(B) of the Verification Annex place a greater share of the responsibility on the abandoning State Party. Pursuant to paragraph 15 of Part IV(B), the abandoning State Party is specifically charged with providing all financial and technical assistance, while the territorial State Party is specifically responsible only for cooperating with the abandoning State Party.

Note also that, pursuant to paragraph 1(b)(iii) of Article III, while a State Party must declare all known chemical weapons abandoned on a State's territory after 1 January 1925, in general, a State Party is not responsible for destroying chemical weapons that it abandoned on the territory of States that are not Parties to the Convention. If, however, the place where the chemical weapons were abandoned in the non-State Party is currently under the jurisdiction or control of the State Party (e.g. a foreign military base), the State Party is obligated to destroy these chemical weapons pursuant to paragraph 2 of Article I.

Paragraph 4 of Article I sets forth the basic obligation to destroy chemical weapons production facilities. (Such facilities are defined in paragraph 8 of Article II.) Paragraph 4 states that each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of the Convention. Article V and Part V of the Verification Annex set forth the detailed provisions relating to chemical weapons production facilities.

Note that paragraph 13 of Article V allows, in exceptional cases of compelling need, for the conversion and use of chemical weapons production facilities for purposes not prohibited under the Convention (i.e. for production of chemicals that are of less risk to the object and purpose of the Convention and then strictly for peaceful, commercial purposes), if agreed by the governing body of the Convention -- the Conference of the States Parties. Such converted facilities, however, unlike other commercial facilities, are subject to continuous monitoring and on-site inspection.

Paragraph 5 of Article I addresses riot control agents, which are defined separately from chemical weapons. It states that each State Party undertakes not to use riot control agents as a method of warfare. ("Riot control agents" are defined in paragraph 7 of Article II.) Note that paragraph 1(e) of Article III requires each State Party to submit declarations of those riot control agents it holds for riot control purposes.

ARTICLE II – DEFINITIONS AND CRITERIA

Article II consists of 12 paragraphs setting forth definitions for use in the Articles and Annexes of the Convention. Additional definitions are found in paragraph 1 of Article X, Part I of the Verification Annex, and paragraph 12 of Part IV(A) of the Verification Annex.

Paragraph 1 of Article II defines "chemical weapons" for purposes of the Convention. It states that "chemical weapons" means the following, together or separately:

- (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;
- (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

Subparagraph 1(a) means that all toxic chemicals and their precursors are chemical weapons, except where they are intended for purposes not prohibited under the Convention and provided further that the types and quantities of such toxic chemicals and precursors are consistent with such permitted purposes. The intention of this broad definition is to prohibit all known and unknown, and future toxic chemicals in types and quantities that cannot be justified for permitted purposes.

Thus novel, as well as traditional chemical agents, are captured by this definition. The terms "toxic chemical," "precursor" and the phrase "purposes not prohibited under this Convention" are defined below.

Subparagraphs 1(b) and 1(c) mean that munitions and devices (e.g. empty spray tanks and canisters) that have been designed to cause death or other harm through the release of toxic chemicals and their precursors, or any equipment specifically designed for use directly in connection with the employment of such munitions and devices, are also "chemical weapons" for purposes of the Convention. As such, all provisions that apply to "chemical weapons" apply to such munitions, devices and equipment. Such items must be declared and destroyed as part of the declaration and destruction of chemical weapons.

Note that the term "directly" in subparagraph 1(c) is intended to mean "solely." Thus, dual-use munitions and their components are not considered to be chemical weapons provided they do not otherwise meet this definition. For example, dual-use munitions may be used to disperse chemicals not prohibited by the Convention, such as smoke, provided the munitions have not been specifically designed to cause death through the release of toxic chemicals. Also, dual-use weapons systems such as artillery or aircraft that are capable of employing chemical weapons are not covered by this definition, and so are not subject to the destruction requirements.

Paragraph 2 of Article II defines "toxic chemical" as any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This paragraph further states that this includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere. The wording of this definition is intended to cover toxins, as well as organic and inorganic chemicals, and chemicals produced by binary and multicomponent weapons.

Paragraph 2 also notes, parenthetically, that the toxic chemicals that have been identified for the application of verification measures are listed in Schedules in the Annex on Chemicals. Note that the Schedules contain, *inter alia*, the chemical agents traditionally and/or currently used in chemical weapons, but that it is paragraphs 1 and 2 of Article II, not a listing on the Schedules, that define which chemicals are considered to be "chemical weapons" for purposes of the Convention. This ensures that the prohibitions and verification measures related to chemical weapons are not limited to only those chemicals listed in the Schedules. (Schedules are discussed in detail after paragraph 2 of Article VI.) However, most States Parties will likely focus on the Schedules to determine which chemical agents and their precursors are considered to be chemical weapons.

Paragraph 3 of Article II defines "precursor" as any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system. This paragraph also states parenthetically, like toxic chemicals under paragraph 2, that precursors which have been identified thus far for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.

The Convention uses the term "key component," as shorthand for "key component of binary or multicomponent chemical systems." Paragraph 4 of Article II defines this term as the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system. Note that "key components" must be declared pursuant to paragraph 2(e) of Part IV(A) of the Verification Annex.

Paragraph 5 of Article II defines "old chemical weapons" as:

- (a) Chemical weapons which were produced before 1925; or
- (b) Chemical weapons produced in the period between 1925 and 1946 that have deteriorated to such extent that they can no longer be used as chemical weapons.

Detailed provisions regarding these chemical weapons are contained in Section B of Part IV(B) of the Verification Annex. The date of 1925 corresponds to the signing of the Geneva Protocol of 1925 and represents the approximate end of production of World War I era chemical weapons. The dates 1925 to 1946 are the approximate production dates of World War II era chemical weapons.

Paragraph 6 of Article II defines "abandoned chemical weapons" as chemical weapons including old chemical weapons, abandoned by a State after 1 January 1925 on the territory of another State without the consent of the latter. Detailed provisions regarding these chemical weapons are contained in Section C of Part IV(B) of the Verification Annex.

Note that in paragraph 3 of Article I each State Party undertakes to destroy all chemical weapons it has abandoned on the territory of another State Party. In addition, pursuant to paragraph 2 of Article I, each State Party undertakes to destroy all chemical weapons located in any place under its jurisdiction or control, i.e., *inter alia*, its territory. This undertaking is without regard to whether the chemical weapons are "owned" or "possessed" by the State Party or were abandoned by another State. Therefore, in those cases where the territorial State and the abandoning State are both State Parties, both have an obligation to destroy the chemical weapons. Paragraph 15 of Part IV(B) of the Verification Annex does provide, however, that the abandoning State Party in these cases shall have the primary responsibility for technical and financial assistance.

Paragraph 7 of Article II defines "riot control agent" as any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. Paragraph 1(e) of Article III requires declaration of the names, structural formulae and Chemical Abstracts Service registry numbers of each chemical held for riot control purposes.

Paragraph 8 of Article II defines a "chemical weapons production facility" as essentially those facilities designed, constructed or used for the production and filling of chemical weapons, but contains several specific exceptions. Subparagraph 8(a) states that a chemical weapons production facility means any equipment, as well as any building housing such equipment, that was designed, constructed or used at any time since 1 January 1946, as part of the stage in the production of chemicals ("final technological stage") where the material flows would contain, when the equipment is in operation: (1) any chemical listed in Schedule 1 in the Annex on Chemicals, or (2) any other chemical that has no use, above one metric ton per year on the territory of a State Party or in any other place under the jurisdiction or control of a State Party, for purposes not prohibited under the Convention, but which can be used for chemical weapons purposes.

The purpose of the latter provision is to ensure that the definition captures facilities that produce not only Schedule 1 chemicals, i.e. chemicals that have traditionally been used as chemical weapons and key precursors, but also any other current or future chemicals that have no legitimate commercial or other non-chemical weapons related purpose above one metric ton per year, but can be used as chemical weapons.

The definition further states that a chemical weapons production facility also means any equipment, as well as any building housing such equipment, that was designed, constructed or used at any time since 1 January 1946 for filling chemical weapons, including, *inter alia*, the filling of chemicals listed in Schedule 1 into munitions, devices or bulk storage containers; the filling of chemicals into containers that form part of assembled binary munitions and devices or into chemical submunitions that form part of assembled unitary munitions and devices, and the loading of the containers and chemical submunitions into the respective munitions and devices.

It is understood that this definition of chemical weapons production facility refers only to that portion of the facility that houses the final production or filling phases, not to the entire facility.

Note that the cutoff date of 1 January 1946 was determined on the basis of likely availability of information on chemical weapons production facilities and on their relevance to the object and purpose of the Convention. State Parties are considered to have significantly less information on pre-1946 facilities and such facilities are considered to be of less concern because of the nature of the chemical weapons produced. Note also, however, that the phrase "at any time since 1 January 1946" means that even if a facility is no longer producing or filling chemical weapons, or even no longer exists, it is still a chemical weapons production facility subject to declaration and/or destruction so long it was designed, constructed or used at some point after 1 January 1946.

The exceptions to these main provisions are intended to exclude destruction of facilities conducting permitted activities (e.g. research and military purposes not prohibited) and producing amounts of Schedule 1 chemicals that are not significant. Subparagraph 8(b) provides, first, that a chemical weapons production facility does not mean any facility having a production capacity for synthesis of chemicals specified in the above provisions (i.e. Schedule 1 chemicals and chemicals that have no legitimate commercial or other non-chemical weapons related purpose, and can be used as chemical weapons) that is less than one metric ton. (Production capacity is defined in paragraph 10 of Article II.)

Second, a chemical weapons production facility does not mean any facility in which a chemical specified in the above provisions is or was produced as an unavoidable by-product of activities for purposes not prohibited under the Convention, provided that the chemical does not exceed three per cent of the total product and that the facility is subject to declaration and inspection under the Verification Annex, i.e. the facility is subject to declaration and inspection as some other type of facility, e.g. a Schedule 2 producer.

The purpose of this second exception, contained in part (ii) of paragraph 8(b), is to exempt from destruction facilities that produce Schedule 2, 3 and other permitted chemicals, but that also produce in small quantities as a by-product of other processes Schedule 1 chemicals and chemicals that have no legitimate commercial or other non-chemical weapons related purpose,

but can be used as chemical weapons. Such facilities are still subject to declaration and verification in accordance with the regimes for the chemicals that constitute their primary production.

Finally, this subparagraph states that a chemical weapons production facility does not mean the single small-scale facility for production of chemicals listed in Schedule 1 for purposes not prohibited under the Convention as referred to in Part VI of the Verification Annex. Note that the single small-scale facility is a facility with limited capacity that a State Party is allowed to have for producing small amounts of Schedule 1 chemicals for permitted purposes, such as developing protection against chemical weapons, and medical and pharmaceutical research. (Other facilities that produce very small amounts of Schedule 1 chemicals are also allowed and are specified in paragraphs 10 through 12 of Part VI of the Verification Annex.)

Paragraph 9 of Article II defines, in four subparagraphs, the phrase "purposes not prohibited under this Convention." This phrase is important because it forms the basis for many exceptions to obligations or prohibited activities. This paragraph defines such purposes as:

- (a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
- (b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and
- (d) Law enforcement including domestic riot control purposes.

This provision means that toxic chemicals and their precursors that are used for one or more of these enumerated purposes are not chemical weapons, so long as they are of a type and quantity consistent with these permitted purposes. U.S. armed forces will still be allowed chemicals for protective purposes (e.g. gaining confidence in chemical defense training and equipment and using riot control agents for chemical defense training), as well as for purposes not dependent upon the toxic properties of the chemicals as a method of warfare, such as the use of toxic chemicals as fuels, lubricants or cleaners. Finally, States Parties will still be allowed to use toxic chemicals for law enforcement. Note, however, that the type of toxic chemical used must be consistent with the purpose. For example, nerve gas cannot be used for capturing escaping prisoners.

Paragraph 10 of Article II defines the term "production capacity," which is used, *inter alia*, in the definitions of facilities that are not chemical weapons production facilities (paragraph 8(b)(i) of Article II), the detailed declarations for chemical weapons production facilities (paragraph 1(f) of Part V of the Verification Annex), the destruction schedule for chemical weapons production facilities (paragraph 30 of Part V of the Verification Annex), and the declarations for chemical industry (Part VI of the Verification Annex). This paragraph states that production capacity means the annual quantitative potential for manufacturing a specific chemical based on the technological process actually used or, if the process is not yet operational, planned to be used at the relevant facility. This paragraph further states that production capacity shall be deemed to be equal to the nameplate capacity or, if the nameplate capacity is not available, to the design capacity.

Finally, this paragraph states that the nameplate capacity is the product output under conditions optimized for maximum quantity for the production facility, as demonstrated by one or more test-runs, and the

design capacity is the corresponding theoretically calculated product output.

Paragraph 11 of Article II defines the term "Organization" as the Organization for the Prohibition of Chemical Weapons established pursuant to Article VIII. Pursuant to paragraph 4 of Article VIII, it consists of the Conference of the States Parties ("the Conference") (the governing body containing all States Parties), the Executive Council (the executive authority containing 41 States Parties), and the Technical Secretariat (the international body responsible for verification, and technical, emergency and humanitarian assistance in cases of use of chemical weapons).

Paragraph 12 of Article II defines three terms, in three subparagraphs, for the purposes of Article VI, i.e. the verification measures for chemical industry.

Subparagraph 12 (a) states that the term "production" of a chemical means its formation through chemical reaction.

Subparagraph 12 (b) states that the term "processing" of a chemical means a physical process, such as formulation, extraction and purification, in which a chemical is not converted into another chemical.

Subparagraph 12 (c) states that the term "consumption" of a chemical means its conversion into another chemical via a chemical reaction.

Note that these terms are not actually used in Article VI, but rather in the detailed provisions for the Article contained in Parts VI through IX of the Verification Annex. Placement of these definitions in Article II highlights their importance and excludes them from technical or administrative changes, pursuant to Article XV, and from reservations, pursuant to Article XXII.

ARTICLE III – DECLARATIONS

Article III consists of two paragraphs. Paragraph 1, in five subparagraphs, provides for declarations of chemical weapons, including old and abandoned chemical weapons, chemical weapons production facilities, and facilities or establishments that have been designed, constructed or used primarily for development of chemical weapons since 1 January 1946. Paragraph 2 exempts certain sea-dumped or land-buried chemical weapons from these declarations.

Paragraph 1 of Article III, in five subparagraphs, requires each State Party to submit to the Organization, not later than 30 days after the Convention enters into force for it, declarations with respect to chemical weapons, old chemical weapons and abandoned chemical weapons, chemical weapons production facilities, chemical weapons development facilities and riot control agents.

Subparagraph 1(a), in five parts, requires declarations with respect to chemical weapons. This subparagraph further provides, in each of these parts, that the declarations are to be made in accordance with their respective provisions in the Verification Annex containing the detailed procedures for the declarations.

Part (i) of subparagraph 1(a) requires each State Party to declare whether it owns or possesses any chemical weapons, or whether there are any chemical weapons located in any place under its jurisdiction or control. Note that this declaration is a simple yes-or-no statement. If a State Party answers yes to this declaration, then it must make a more specific declaration pursuant to part (ii) and/or part (iii). In general, part (ii) requires specific information about the State Party's chemical weapons while part (iii) requires information about chemical weapons of another State located on the State Party's territory.

Part (ii) of subparagraph 1(a) requires each State Party to specify the precise location, aggregate quantity and detailed inventory of chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with paragraphs 1 through 3 of Part IV(A) of the Verification Annex, except for those chemical weapons referred to in part (iii), i.e. those that are owned and possessed by another State and located in a place under the jurisdiction or control of another State.

Part (iii) of subparagraph 1(a) requires each State Party to report any chemical weapons on its territory that are owned and possessed by another State and located in any place under the jurisdiction or control of another State, in accordance with paragraph 4 of Part IV(A) of the Verification Annex. Note that for these chemical weapons, pursuant to paragraph 4 of Part IV(A) of the Verification Annex, a State Party is not obligated to supply all of the information required pursuant to part (ii) if it is not able. However, the State Party must then provide the reasons for its inability to provide this information.

The purpose of this exception is to recognize that where there are chemical weapons on a State Party's territory that are clearly under the control of another State, the State Party may be unable to provide a high level of detail (because of, e.g., legal or political constraints) regarding such chemical weapons. Note, however, that the exemption is narrowly drawn, i.e. for the lesser burden to apply, the chemical weapons must meet three criteria – ownership by another State, possession by another State, and location in a place under the jurisdiction or control of another State (e.g. another State's military base on the territory of the State Party), as well as be unable to obtain detailed information. Note also that if the other State is a State Party, then that State Party, i.e. the non-territorial State, has an unqualified obligation pursuant to part (ii) to specify the location, aggregate quantity and detailed inventory of the chemical weapons.

Part (iv) of subparagraph 1(a) requires each State Party to declare whether it has transferred or received, directly or indirectly, any chemical weapons since 1 January 1946 and specify the transfer or receipt of such weapons, in accordance with paragraph 5 of Part IV (A) of the Verification Annex. Note that this means that all transfers or receipts of chemical weapons during or prior to World War II do not need to be reported.

Part (v) of subparagraph 1(a) requires each State Party to provide its general plan for destruction of chemical weapons that it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with paragraph 6 of Part IV (A) of the Verification Annex.

Subparagraph 1(b) of Article III, in three parts, requires declarations with respect to old chemical weapons and abandoned chemical weapons. (These chemical weapons are defined in paragraphs 5 and 6 of Article II, respectively.) This subparagraph further provides, in each of these parts, that the declarations are to be made in accordance with their respective provisions in the Verification Annex containing the detailed procedures for the declarations.

Part (i) of subparagraph 1(b) requires each State Party to declare whether it has on its territory old chemical weapons and provide all available information in accordance with paragraph 3 of Part IV(B) of the Verification Annex.

Part (ii) of subparagraph 1(b) requires each State Party to declare whether there are abandoned chemical weapons on its territory and provide all available information in accordance with paragraph 8 of Part IV(B) of the Verification Annex.

Part (iii) of subparagraph 1(b) requires each State Party to declare whether it has abandoned chemical weapons on the territory of other States and provide all available information in accordance with paragraph 10 of Part IV(B) of the Verification Annex.

Subparagraph 1(c) of Article III, in seven parts, requires declarations with respect to chemical weapons production facilities. This subparagraph further provides, in each of these parts, that the declarations are to be made in accordance with their respective provisions in the Verification Annex containing the detailed procedures for the declarations.

Part (i) of subparagraph 1(c) requires each State Party to declare whether it has or has had any chemical weapons production facility under its ownership or possession, or that is or has been located in any place under its jurisdiction or control at any time since 1 January 1946. Note that, as with chemical weapons, this declaration is a simple yes–or–no statement, which if answered "yes" requires more specific declarations with regard to the State Party's chemical weapons production facilities and those of other States located on its territory. Note also that, unlike chemical weapons, a State Party must declare chemical weapons production facilities that no longer exist, provided they existed subsequent to 1 January 1946.

Part (ii) of subparagraph 1(c) requires each State Party to specify any chemical weapons production facility it has or has had under its ownership or possession or that is or has been located in any place under its jurisdiction or control at any time since 1 January 1946, in accordance with paragraph 1 of Part V of the Verification Annex, except for those facilities referred to in part (iii), i.e. those that are owned and possessed by another State and located in a place under the jurisdiction or control of another State.

Part (iii) of subparagraph 1(c) requires each State Party to report any chemical weapons production facility on its territory that another State has or has had under its ownership and possession and that is or has been located in any place under the jurisdiction or control of another State at any time since 1 January 1946, in accordance with paragraph 2 of Part V of the Verification Annex.

Note that, as with chemical weapons, for these chemical weapons production facilities, pursuant to paragraph 2 of Part V of the Verification Annex, a State Party is not obligated to supply all of the information required pursuant to part (ii) if it is not able, but in such cases, the State Party must then state the reasons for its inability to provide this information. (The reasons for this exemption are discussed with regard to chemical weapons in the analysis of part (iii) of subparagraph 1(a).)

Part (iv) of subparagraph 1(c) requires each State Party to declare whether it has transferred or received, directly or indirectly, any equipment for the production of chemical weapons since 1 January 1946 and specify the transfer or receipt of such equipment, in accordance with paragraphs 3 to 5 of Part V of the Verification Annex. Note that this means that all transfers or receipts of such equipment during or prior to World War II do not need to be reported.

Part (v) of subparagraph 1(c) requires each State Party to provide its general plan for destruction of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, in accordance with paragraph 6 of Part V of the Verification Annex. Note that this plan must be provided even if the State Party plans to convert the facility for peaceful purposes, pursuant to paragraph 13 of Article V, since the Conference may turn down its request to do so.

Part (vi) of subparagraph 1(c) requires each State Party to specify actions to be taken for closure of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, in accordance with paragraph 1(i) of Part V of the Verification Annex.

Part (vii) of subparagraph 1(c) requires each State Party to provide its general plan for any temporary conversion of any chemical weapons production facility it owns or possesses, or that is located in any place under its jurisdiction or control, into a chemical weapons destruction facility, in accordance with paragraph 7 of Part V of the Verification Annex.

Subparagraph 1(d) of Article III requires a declaration that specifies the precise location, nature and general scope of activities of any facility or establishment under its ownership or possession, or located in any place under its jurisdiction or control, and that has been designed, constructed or used since 1 January 1946 primarily for development of chemical weapons. The term "primarily" is intended to exclude facilities that only had a minimal or otherwise peripheral association with chemical weapons development, such as wind tunnels that tested bombs designed to contain chemical agents. This subparagraph also states that such declaration shall include, inter alia, laboratories and test and evaluation sites.

Subparagraph 1(e) of Article III requires the following declaration with respect to riot control agents: specification of the chemical name, structural formula and Chemical Abstract Service (CAS) registry number, if assigned, of each chemical it holds for riot control purposes. ("Riot control agent" is defined in paragraph 7 of Article II.) This subparagraph also states that this declaration shall be updated not later than 30 days after any change becomes effective.

Paragraph 2 of Article III exempts specific sea-dumped and land-buried chemical weapons from the obligations of Article III and the Verification Annex. Specifically, this paragraph states that the provisions of Article III and the relevant provisions of Part IV of the Verification Annex shall not, at the discretion of a State Party, apply to chemical weapons buried on its territory before 1 January 1977 and which remain buried, or which had been dumped at sea before 1 January 1985.

The purpose of this paragraph is, in conjunction with paragraph 17 of Article IV, to relieve States Parties of the potentially dangerous and expensive obligation to destroy chemical weapons that are considered to pose less risk to the object and purpose of the Convention. The cutoff dates for exclusion were developed taking into account the dates of the most recently admitted burial or dumping by the negotiating states and the desire to preclude states from disposing of chemical weapons in such a manner immediately before the expected entry in force of the Convention.

ARTICLE IV – CHEMICAL WEAPONS

Article IV consists of 17 paragraphs. This Article sets forth the general obligations of States Parties with regard to destruction of chemical weapons, except for old or abandoned chemical weapons, which are covered separately in Part IV(B) of the Verification Annex. Specifically, it provides for the scope of the obligation, access for verification, destruction of chemical weapons, reporting of destruction activities, subsequent destruction of chemical weapons, safety and environmental standards for destruction, removal of other States' chemical weapons, cooperation, bilateral and multilateral verification arrangements between or among States Parties, costs of verification and destruction, and exemptions for certain buried and sea-dumped chemical weapons. The detailed implementation procedures for Article IV are set forth in Parts III and IV(A) of the Verification Annex.

Paragraph 1 of Article IV sets forth the scope of States Parties' obligations with regard to chemical weapons. Specifically, this paragraph states that the provisions of Article IV and the detailed procedures for its implementation, i.e., inter alia, Parts III and IV(A) of the Verification Annex, shall apply to all chemical weapons owned or possessed by a State Party, or that are located in any place under its jurisdiction or control, except old chemical weapons and abandoned chemical weapons to which Part IV(B) of the Verification Annex applies.

Note that this means that each State Party is responsible for destroying all chemical weapons on its territory or in, e.g., its foreign bases, regardless of their ownership.

Paragraph 2 of Article IV states that detailed procedures for the implementation of Article IV are set forth in the Verification Annex, i.e., inter alia, Parts III (general provisions for verification measures) and IV(A) (destruction of chemical weapons and its verification) of the Verification Annex.

Paragraph 3 of Article IV establishes the principle that all places at which chemical weapons are stored or destroyed are subject to verification by the Technical Secretariat. Specifically, this paragraph states that all locations at which chemical weapons specified in paragraph 1 are stored or destroyed, i.e. all chemical weapons for which a State Party is responsible, shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments, in accordance with Part IV (A) of the Verification Annex.

Note that this paragraph establishes the principle that inspections and monitoring with instruments will be "on-site" and that such verification will be "systematic," i.e. regular or continuous.

Finally, note that while not defined in the Convention, the terms "verification," "inspection" and "monitoring" are used in a consistent, hierarchical pattern in the Convention, i.e. "inspection" and "monitoring" are separate activities, as part of "verification."

Paragraph 4 of Article IV establishes a corollary requirement that each State Party must provide access to its chemical weapons storage facilities and must not remove chemical weapons from these locations, except for destruction. Specifically, this paragraph states that each State Party shall, immediately after the declaration under paragraph 1(a) of Article III has been submitted, provide access to chemical weapons specified in paragraph 1 for the purpose of systematic verification of the declaration through on-site inspection. (Paragraph 1(a) of Article III requires, within 30 days after entry into force of the Convention for a State Party, declarations of chemical weapons, specification of their location, reporting of chemical weapons of other States located on its territory, declarations of past transfers and receipts, and provision of a general plan for destruction.)

This paragraph further states that thereafter, each State Party shall not remove any of these chemical weapons, except to a chemical weapons destruction facility. Note that, pursuant to paragraph 2(d) of Part VI of the Verification Annex, a State Party is allowed, however, to withdraw specified small amounts of Schedule 1 chemicals from chemical weapons stocks for permitted purposes. Finally, this paragraph states that a State Party shall provide access to such chemical weapons, for the purpose of systematic on-site verification. This means that a State Party must continue to provide access once the initial verification of the declaration has been conducted.

Paragraph 5 of Article IV establishes the requirement that each State Party must also provide access to its chemical weapons destruction facilities. Specifically, this paragraph states that each State Party shall provide access to any chemical weapons destruction facilities and their storage areas, that it owns or possesses, or that are located in any place under its jurisdiction or control, for the purpose of systematic verification through on-site inspection and monitoring with on-site instruments.

Paragraph 6 of Article IV makes clear that each State Party must destroy all chemical weapons that it is responsible for and establishes the general schedule for such destruction. Specifically, this paragraph states that each State Party shall destroy all chemical weapons specified in paragraph 1 pursuant to the Verification Annex, i.e., *inter alia*, Parts III (general provisions for verification measures) and IV(A) (destruction of chemical weapons and its verification), and in accordance with the agreed rate and sequence of destruction ("order of destruction"). Note that the specific order of destruction is set forth in paragraph 17 of Part IV(A) of the Verification Annex.

This paragraph further states that such destruction shall begin not later than two years after the Convention enters into force for the State Party and shall finish not later than 10 years after entry into force of the Convention. Note that while the beginning date for destruction depends on when a State Party joins the Convention, the completion date, as well as the intermediate destruction deadlines, is the same for all States Parties. The only exceptions are where a State Party joins after the ten-year destruction period, which is dealt with in paragraph 8 of Article IV, and where a State Party is granted an extension pursuant to paragraphs 24 through 28 of Part IV(A) of the Verification Annex. Note also that the ten-year requirement applies only to chemical munitions containing Schedule 1 chemicals. Pursuant to paragraphs 17(b) and (c) of Part IV(A) of the Verification Annex, chemical munitions that contain other chemicals, or are unfilled, must be destroyed within five years after entry into force. Finally, this paragraph states that a State Party is not precluded from destroying such chemical weapons at a faster rate.

Paragraph 7 of Article IV sets forth, in three subparagraphs, the obligation of each State Party to submit detailed plans for destruction of the chemical weapons it is responsible for and certification of their destruction.

Subparagraph 7(a) states that each State Party shall submit detailed plans for the destruction of chemical weapons specified in paragraph 1 not later than 60 days before each annual destruction period begins, in accordance with paragraph 29 of Part IV(A) of the Verification Annex, i.e. the specific contents of the destruction plans. This subparagraph also states that the detailed plans shall encompass all stocks to be destroyed during the next annual destruction period.

Subparagraph 7(b) states that each State Party shall submit declarations annually regarding the implementation of its plans for destruction of chemical weapons specified in paragraph 1 not later than 60 days after the end of each annual destruction period.

Subparagraph 7(c) states that each State Party shall certify, not later than 30 days after the destruction process has been completed, that all chemical weapons specified in paragraph 1 have been destroyed.

Paragraph 8 of Article IV addresses the correlative obligation of States that join the Convention after the ten-year destruction period has ended. Specifically, this paragraph states that if a State ratifies or accedes to the Convention after the ten-year period for destruction set forth in paragraph 6, it shall destroy chemical weapons specified in paragraph 1 as soon as possible. This paragraph further states that the order of destruction and procedures for stringent verification for such a State Party shall be determined by the Executive Council.

Paragraph 9 of Article IV provides for States Parties that discover chemical weapons after they have made their initial declaration. Specifically, this paragraph states that any chemical weapons discovered by a State Party after the initial declaration of chemical weapons shall be reported, secured and destroyed in accordance with Part IV(A) of the Verification Annex.

Paragraph 10 of Article IV covers safety and environmental standards with regard to the disposal of chemical weapons. Specifically, this paragraph states that each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. This paragraph further states that each State Party shall transport, sample, store and destroy chemical weapons in accordance with its national standards for safety and emissions. Note that the specific safety and environmental standards for destruction of chemical weapons will be established by each State Party, and not by the Organization. Nonetheless, destruction of chemical weapons through dumping in any body of water, land burial or open pit burning is prohibited pursuant to paragraph 13 of Part IV(A) of the Verification Annex.

Paragraph 11 of Article IV provides special rules for chemical weapons of another State on the territory of a State Party. This paragraph addresses the case where, rather than abandoning chemical weapons on another State Party's territory, a State maintains a stockpile on another State Party's territory. Specifically, this paragraph states that any State Party which has on its territory chemical weapons that are owned or possessed by another State, or that are located in any place under the jurisdiction or control of another State, shall make the fullest efforts to ensure that these chemical weapons are removed from its territory not later than one year after the Convention enters into force for it. This paragraph further states that if the chemical weapons are not removed within one year, the State Party may request the Organization and other States Parties to provide assistance in the destruction of these chemical weapons.

The purpose of this paragraph is to take into account the possible significant legal and political difficulties a State Party may face when the chemical weapons it is required to destroy belong to another State or are the subject of disputes as to ownership. Accordingly, as a limited option, during the first year after entry into force of the Convention for a State Party, i.e. before a State Party's destruction obligation begins pursuant to paragraph 6 of Article IV, such chemical weapons may be removed from the State Party's territory rather than destroyed. Note that if the chemical weapons belong to another State that is a Party to the Convention, that State Party also bears responsibility for the weapons' destruction. In addition, the State Party on whose territory the chemical weapons are located is given a specific right to seek aid in destroying such chemical weapons if they are not removed.

Note, however, that nothing in this paragraph relieves the State Party of its ultimate obligation, pursuant to paragraph 6 of Article IV, to destroy these chemical weapons if they are not removed.

Paragraph 12 of Article IV states that each State Party undertakes to cooperate with other States Parties that request information or assistance on a bilateral basis or through the Technical Secretariat regarding methods and technologies for the safe and efficient destruction of chemical weapons.

Paragraph 13 of Article IV provides for the avoidance of duplication of verification of the destruction of chemical weapons by the Technical Secretariat where State Parties are or will be verifying such destruction pursuant to bilateral or multilateral verification arrangements. Specifically, this paragraph states that in carrying out verification activities pursuant to Article IV and Part IV(A) of the Verification Annex, the Organization shall consider measures to avoid unnecessary duplication of bilateral or multilateral agreements on verification of chemical weapons storage and their destruction among States Parties. This paragraph further states that to this end, the Executive Council shall decide to limit verification to measures complementary to those undertaken pursuant to such a bilateral or multilateral agreement, if it considers that:

- (a) verification provisions of such an agreement are consistent with the verification provisions of Article IV and Part IV(A) of the Verification Annex;
- (b) implementation of such an agreement provides for sufficient assurance of compliance with the relevant provisions of the Convention; and
- (c) parties to the bilateral or multilateral agreement keep the Organization fully informed about their verification activities.

The purpose of this paragraph is to reduce the costs of verification of destruction of chemical weapons by avoiding duplication of verification activities that are planned to be conducted by States Parties, such as the United States and the Russian Federation pursuant to the Agreement Between the United States of America and the Union of Soviet Socialist Republics on Destruction and Non–Production of Chemical Weapons and on Measures to Facilitate the Multilateral Convention on Banning Chemical Weapons, signed at Washington on June 1, 1990 ("the Bilateral Destruction Agreement").

To avoid bilateral and multilateral agreements that would be inconsistent with the standards and objectives of the Chemical Weapons Convention, the Convention requires such agreements to meet three criteria before a reduction in the multilateral regime is allowed. First, the verification provisions of such an agreement must be consistent with the verification procedures of Article IV and Part IV (A) of the Verification Annex. Second, implementation of the agreement must provide for sufficient assurance of compliance with the relevant provisions of the Convention. Third, parties to the bilateral or multilateral agreement must keep the organization fully informed about their verification activities.

To encourage the acceptance of legitimate bilateral or multilateral regimes, reduction of duplication is required if the Executive Council finds that the proposed bilateral or multilateral verification regime meets the three criteria above.

Note that the verification provisions of Part IV(A) of the Verification Annex were adopted from the draft Implementation Protocol to the Bilateral Destruction Agreement.

Paragraph 14 of Article IV states that if the Executive Council takes a decision pursuant to paragraph 13, the Organization shall have the right to monitor the implementation of the bilateral or multilateral agreement.

The purpose of this paragraph is to ensure that the Technical Secretariat has the right to monitor the bilateral or multilateral verification activities. The United States understands this as the right to ensure that such verification activities are being conducted in a manner consistent with the verification provisions of the Convention, but that this does not include the right to become directly involved in such verification activities, e.g. by supervising bilateral inspectors.

Paragraph 15 of Article IV states that nothing in paragraphs 13 and 14, i.e. the reduction of Technical Secretariat verification of chemical weapons destruction, shall affect the obligation of a State Party to provide declarations pursuant to Article III, Article IV and Part IV (A) of the Verification Annex. This means that all States Parties with chemical weapons must fully declare them, even if the Executive Council decides to rely on bilateral or multilateral arrangements to verify the destruction of such chemical weapons.

Paragraph 16 of Article IV provides for the costs of destruction and verification of destruction of chemical weapons. Specifically, this paragraph states that each State Party shall meet the costs of destruction of chemical weapons it is obliged to destroy. This paragraph further states that it shall also meet the costs of verification of storage and destruction of these chemical weapons unless the Executive Council decides otherwise. Finally, this paragraph states that if the Executive Council decides to limit verification measures of the Organization pursuant to paragraph 13, the costs of complementary verification and monitoring by the Organization shall be paid in accordance with the United Nations (UN) scale of assessment, as specified in paragraph 7 of Article VIII, i.e. the UN scale adjusted to take into account differences in membership between the UN and the Organization. This cost factoring will encourage States Parties with chemical weapons to agree to less costly bilateral or multilateral arrangements that meet the requirements of the Convention.

Paragraph 16 means that, inter alia, if the Executive Council chooses to complement a bilateral or multilateral regime, then the costs of the Technical Secretariat's verification is borne by all States Parties. However, if the Executive Council decides that the bilateral arrangements are not necessary and subsequently activates the full-scale verification regime provided for in the Convention, the cost of such a regime must be borne by the States Party subject to such verification.

Paragraph 17 of Article IV exempts certain sea-dumped and land-buried chemical weapons from the obligations of Article IV and the Verification Annex. Specifically, this paragraph states that the provisions of Article IV and the relevant provisions of Part IV of the Verification Annex shall not, at the discretion of a State Party, apply to chemical weapons buried on its territory before 1 January 1977 and which remain buried, or which had been dumped at sea before 1 January 1985. The purpose of this paragraph is to relieve States Parties of the potentially dangerous and expensive obligation to destroy chemical weapons that are not considered to pose a risk to the object and purpose of the Convention.

ARTICLE V – CHEMICAL WEAPONS PRODUCTION FACILITIES

Article V consists of 19 paragraphs. This Article sets forth the general obligations of States Parties with regard to destruction of chemical weapons production facilities. Specifically, it provides for the scope of the obligation, access for verification, immediate cessation of chemical weapons production, a prohibition on new or modified chemical weapons production facilities, closure and destruction of chemical weapons production facilities, reporting of destruction activities, subsequent destruction of chemical weapons production facilities, safety and environmental standards for destruction, conversion of chemical weapons production facilities to destruction facilities or for purposes not prohibited under the Convention, bilateral and multilateral verification arrangements between or among States Parties, and costs of verification and destruction. The detailed implementation procedures for Article V are set forth in Parts III and V of the Verification Annex.

Paragraph 1 of Article V sets forth the scope of States Parties' obligations with regard to chemical weapons production facilities. Specifically, this paragraph states that the provisions of Article V and the detailed procedures for its implementation, i.e., *inter alia*, Parts III and V of the Verification Annex, shall apply to all chemical weapons production facilities owned or possessed by a State Party, or that are located in any place under its jurisdiction or control.

Note that, as with chemical weapons, this means that each State Party is responsible for destroying all chemical weapons production facilities on its territory or any other place under its jurisdiction or control (such as facilities in its foreign bases) regardless of their ownership. This includes chemical weapons production facilities that are owned or controlled by other states.

Paragraph 2 of Article V states that detailed procedures for the implementation of Article V are set forth in the Verification Annex, i.e., inter alia, Parts III (general provisions for verification measures) and V (destruction of chemical weapons production facilities and its verification) of the Verification Annex.

Paragraph 3 of Article V establishes the general principle that all chemical weapons production facilities are subject to verification by the Technical Secretariat. Specifically, this paragraph states that all chemical weapons production facilities specified in paragraph 1, i.e. all chemical weapons production facilities for which a State Party is responsible, shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part V of the Verification Annex.

Paragraph 4 of Article V requires each State Party to cease immediately all activity at chemical weapons production facilities specified in paragraph 1, except activity required for closure. The purpose of this paragraph is to require that all activities related to chemical weapons production at existing chemical weapons production facilities be stopped upon entry into force of the Convention for the State Party.

Paragraph 5 of Article V states that no State Party shall construct any new chemical weapons production facilities or modify any existing facilities for the purpose of chemical weapons production or for any other activity prohibited under the Convention, e.g., production of Schedule 1 chemicals in amounts greater than allowed. The purpose of this paragraph is to establish a corollary requirement that no new activities related to chemical weapons production are initiated after entry into force of the Convention for a State Party.

Paragraph 6 of Article V establishes a requirement that each State Party must provide access to its chemical weapons production facilities for verification of its declaration. Specifically, this paragraph states that each State Party shall, immediately after the declaration under Article III, paragraph 1(c) has been submitted, provide access to chemical weapons production facilities specified in paragraph 1, for the purpose of systematic verification of the declaration through on-site inspection. Paragraph 1(c) of Article III requires, within 30 days after entry into force of the Convention for a State Party, declarations of chemical weapons production facilities, specification of their location, reporting of chemical weapons production facilities of other States, declarations of past transfers and receipts of equipment for the production of chemical weapons, provision of a general plan for destruction, specification of actions for closure, and provision of a general plan for any temporary conversion to chemical weapons destruction facilities.

Paragraph 7 of Article V sets forth, in two subparagraphs, the obligation of each State Party to close and provide continuing access to the chemical weapons production facilities for which it is responsible. The United States understands that "to close" involves a series of actions to disable the facilities' production capability. Some examples of "closure" are provided in paragraph 13 of Part V of the Verification Annex.

Subparagraph 7(a) of Article V states that each State Party shall close, not later than 90 days after the Convention enters into force for it, all chemical weapons production facilities specified in paragraph 1, in accordance with Part V of the Verification Annex, and give notice thereof.

Subparagraph 7(b) of Article V states that each State Party shall provide access to chemical weapons production facilities specified in paragraph 1, subsequent to closure, for the purpose of systematic verification through on-site inspection and monitoring with on-site instruments in order to ensure that the facility remains closed and is subsequently destroyed. This means that a State Party must continue to provide access to its chemical weapons production facilities even after the initial verification of the declaration has been conducted.

Paragraph 8 of Article V makes clear that each State Party must destroy all chemical weapons production facilities for which it is responsible and establishes the general schedule for such destruction. Specifically, this paragraph states that each State Party shall destroy all chemical weapons production facilities specified in paragraph 1 and related facilities and equipment, pursuant to the Verification Annex, i.e., *inter alia*, Parts III (general provisions for verification measures) and V (destruction of chemical weapons production facilities and its verification) and in accordance with an agreed rate and sequence of destruction ("order of destruction"). Note that the order of destruction is addressed in paragraph 30 of Part V of the Verification Annex, but unlike for chemical weapons, no specific amounts or percentages of destruction per year are specified. Note also that, unlike for chemical weapons, no special provisions are made for removal of chemical weapons production facilities on a State Party's territory that belong to another State.

This paragraph further states that such destruction shall begin not later than one year after the Convention enters into force for that State Party and shall finish not later than 10 years after entry into force of the Convention. Note that, as with chemical weapons, while the beginning date for destruction depends on when a State Party joins the Convention, the completion date is the same for all States Parties. The only exception is where a State Party is permitted, pursuant to paragraphs 13 through 15 of Article V, to convert a chemical weapons

production facility to a facility for purposes not prohibited under the Convention. Finally, this paragraph states that a State Party is not precluded from destroying such chemical weapons production facilities at a faster rate.

Paragraph 9 of Article V sets forth, in three subparagraphs, the obligation of each State Party to submit detailed plans for destruction of the chemical weapons production facilities for which it is responsible and certification of their destruction.

Subparagraph 9(a) states that each State Party shall submit detailed plans for the destruction of chemical weapons production facilities specified in paragraph 1, not later than 180 days before the destruction of each facility begins.

Subparagraph 9(b) states that each State Party shall submit declarations annually regarding the implementation of its plans for destruction of chemical weapons production facilities specified in paragraph 1 not later than 90 days after the end of each annual destruction period.

Subparagraph 9(c) states that each State Party shall certify, not later than 30 days after the destruction process has been completed, that all chemical weapons production facilities specified in paragraph 1 have been destroyed.

Paragraph 10 of Article V provides for the correlative obligation of States that join the Convention after the 10-year destruction period has ended. Specifically, this paragraph states that if a State ratifies or accedes to the Convention after the 10-year period for destruction set forth in paragraph 8, it shall destroy chemical weapons production facilities specified in paragraph 1 as soon as possible. This paragraph further states that the order of destruction and procedures for stringent verification for such a State Party shall be determined by the Executive Council.

Paragraph 11 of Article V addresses safety and environmental standards with regard to the destruction of chemical weapons production facilities. Specifically, this paragraph states that each State Party, during the destruction of chemical weapons production facilities, shall assign the highest priority to ensuring the safety of people and to protecting the environment. This paragraph further states that each State Party shall destroy chemical weapons production facilities in accordance with its national standards for safety and emissions.

Note that, as with chemical weapons, the specific safety and environmental standards for destruction of chemical weapons production facilities will be established by each State Party, and not by the Organization.

Paragraph 12 of Article V allows a State Party to temporarily convert a chemical weapons production facility into a chemical weapons destruction facility. Specifically, this paragraph states that chemical weapons production facilities specified in paragraph 1 may be temporarily converted for destruction of chemical weapons in accordance with paragraphs 18 to 25 of Part V of the Verification Annex. Paragraphs 18 through 25 of Part V of the Verification Annex, *inter alia*, require a similarly stringent verification regime for such facilities, provide for initial inspections, require notification of such conversion, provide safeguards against reconversion to a production facility, and require that conversion measures be facility-specific or in some other way unique to the facility concerned.

Paragraph 12 further requires that such a converted facility must be destroyed as soon as it is no longer in use for destruction of chemical weapons but, in any case, not later than 10 years after entry into force of the Convention, i.e. the same time period for destruction of chemical weapons production facilities in general.

Paragraph 13 of Article V allows a State Party, in limited circumstances, to convert a chemical weapons production facility to a facility for permitted purposes and to continue to use it, potentially indefinitely, for those purposes. Specifically, this paragraph states that a State Party may request, in exceptional cases of compelling need, permission to use a chemical weapons production facility specified in paragraph 1 for purposes not prohibited under the Convention. (Pursuant to paragraph 9 of Article II, the term "purposes not prohibited under the Convention" means: industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; protective purposes; military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and law enforcement including domestic riot control purposes.) Note, however, that paragraph 71 of Part V of the Verification Annex prohibits such converted facilities from producing, processing or consuming Schedule 1 or Schedule 2 chemicals, regardless of the purpose to which the facilities would be put, and, unless the Conference determines otherwise, prohibits the production of any highly toxic chemical. (Schedules are discussed after paragraph 2 of Article VI.)

Paragraph 13 further states that upon the recommendation of the Executive Council, the Conference shall decide whether or not to approve the request and shall establish the conditions upon which approval is contingent in accordance with Section D of Part V of the Verification Annex. Section D of Part V of the Verification Annex contains procedures for requesting conversion, actions pending a decision, conditions for conversion, decisions by the Executive Council and the Conference of the States Parties, detailed plans for conversion, and review of detailed plans, including specific verification provisions. Note that the Conference may act only after a positive decision by the Executive Council.

This paragraph recognizes that some States Parties may have exceptional cases of compelling need which could warrant subsequent or continued use of chemical weapons production facilities for non-chemical weapons related purposes. However, because this is a significant departure from the principle that all such facilities should be destroyed, this paragraph requires the approval of both political bodies of the Organization — the Executive Council and the Conference of the States Parties.

Paragraph 14 of Article V sets forth the general standard for conversion of chemical weapons production facilities. Detailed procedures for conversion and verification will be developed by the Preparatory Commission. Specifically, this paragraph states that the chemical weapons production facility shall be converted in such a manner that the converted facility is not more capable of being reconverted into a chemical weapons production facility than any other facility used for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes not involving chemicals listed in Schedule 1. Note that the comparison facilities do not include facilities used for protective purposes, military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare, and law enforcement including domestic riot control purposes.

Paragraph 15 of Article V states that all converted facilities shall be subject to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Section D of Part V of the Verification Annex. Section D of Part V of the Verification Annex, in particular paragraph 85, provides for a ten-year, post-conversion period during which inspection teams are to be given unimpeded access to the facility, including the ability to receive and analyze samples, and managed access to the plant site. After the ten-year period has run, the Executive Council shall decide on further verification measures.

Paragraph 16 of Article V provides for the avoidance of duplication of verification of the destruction of chemical weapons production facilities by the Technical Secretariat where State Parties are or will be verifying such destruction pursuant to bilateral or multilateral verification arrangements. Specifically, this paragraph states that in carrying out verification activities pursuant to Article V and Part V of the Verification Annex (destruction of chemical weapons production facilities and its verification), the Organization shall consider measures to avoid unnecessary duplication of bilateral or multilateral agreements on verification of chemical weapons production facilities and their destruction among States Parties. This paragraph further states that, to this end, the Executive Council shall decide to limit verification to measures complementary to those undertaken pursuant to such a bilateral or multilateral agreement, if it considers that:

- (a) verification provisions of such an agreement are consistent with the verification provisions of Article V and Part V of the Verification Annex;
- (b) implementation of the agreement provides for sufficient assurance of compliance with the relevant provisions of the Convention; and
- (c) parties to the bilateral or multilateral agreement keep the Organization fully informed about their verification activities.

As with chemical weapons, the purpose of this paragraph is to reduce the costs of verification of destruction of chemical weapons production facilities by avoiding duplication of verification activities that may be conducted by States Parties.

As with the destruction of chemical weapons, to avoid bilateral or multilateral agreements that would be inconsistent with the standards and objectives of the Chemical Weapons Convention, the Convention requires such agreement to meet three criteria before a reduction in the multilateral regime is allowed. First, the verification provisions of such an agreement must be consistent with the verification procedures of Article V and Part V of the Verification Annex. Second, implementation of the Agreement must provide for sufficient assurance of compliance with the relevant provisions of the convention. Third, parties to the bilateral or multilateral agreement must keep the Organization fully informed about their verification activities.

To encourage the acceptance of legitimate bilateral or multilateral regimes, reduction of duplication is required if the Executive Council finds that the proposed bilateral or multilateral verification regime meets the three criteria above.

Paragraph 17 of Article V states that if the Executive Council takes a decision pursuant to paragraph 16, the Organization shall have the right to monitor the implementation of the bilateral or multilateral agreement. As with chemical weapons, the purpose of this paragraph is to insure that the Technical Secretariat has the right to monitor the bilateral or multilateral verification activities but, at the same time is not permitted to directly oversee these activities.

Paragraph 18 of Article V states that nothing in paragraphs 16 and 17, i.e. the reduction of Technical Secretariat verification of chemical weapons production facilities destruction, shall affect the obligation of a State Party to provide declarations pursuant to Article III, Article V and Part V of the Verification Annex. Like its chemical weapons destruction counterpart, this provision means that all States Parties with chemical weapons production facilities must fully declare them, even if the Executive Council decides to rely on bilateral or multilateral arrangements to verify the destruction of such facilities.

Paragraph 19 of Article V allocates for the costs of destruction and verification of destruction of chemical weapons production facilities. Specifically, this paragraph states that each State Party shall meet the costs of destruction of chemical weapons production facilities it is obliged to destroy. This paragraph further states that it shall also meet the costs of verification under Article V, unless the Executive Council decides otherwise. Finally, this paragraph states that if the Executive Council decides to limit verification measures of the Organization pursuant to paragraph 16, the costs of complementary verification and monitoring by the Organization shall be paid in accordance with the United Nations scale of assessment, as specified in paragraph 7 of Article VIII, i.e. adjusted to take into account differences in membership between the UN and the Organization.

This means that, as a general rule, States Parties with chemical weapons production facilities must pay all costs incurred by the destruction and verification of the destruction of these facilities. However, as with its counterpart provision relating to the destruction of chemical weapons, this also means that, *inter alia*, if the Executive Council chooses to complement a bilateral or multilateral regime, then the cost of the Technical Secretariat verification is borne by all States Parties using the UN scale of assessment. However, if the Executive Council decides that the bilateral arrangements are not satisfactory and subsequently activates the full-scale verification regime provided for in the Convention, the cost of such a regime must be borne by the State Party subject to such verification.

ARTICLE VI — ACTIVITIES NOT PROHIBITED UNDER THE CONVENTION

Article VI consists of 11 paragraphs. This Article sets forth the activities involving toxic chemicals and their precursors that are not prohibited by the Convention and the general obligations pertaining to verification of the production, processing and consumption of Schedule 1, 2 and 3 chemicals and of other chemical production facilities. (Schedules are discussed in detail after paragraph 2 of this Article.) Whereas Articles IV and V provide for destruction of existing chemical weapons and chemical weapons production facilities, Article VI establishes an international verification regime for chemical industry. It defines permitted activities in the chemical industry and provides for verification procedures to guard against clandestine production of chemical weapons.

Paragraph 1 of Article VI sets forth the activities involving toxic chemicals and their precursors that each State Party is permitted to continue under the Convention. Specifically, this paragraph states that each State Party has the right, subject to the provisions of the Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under the Convention.

("Toxic chemical" is defined in paragraph 2 of Article II. Pursuant to paragraph 9 of Article II, the term "purposes not prohibited under the Convention" means: industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; protective purposes; military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and law enforcement including domestic riot control purposes.)

Paragraph 2 of Article VI sets forth the general obligation of each State Party to take the necessary measures to ensure that all activities related to toxic chemicals and precursors identified for application of verification measures are consistent with the Convention, including submitting such chemicals to international verification. Specifically, this paragraph states that each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under the Convention. (As noted above, such purposes are defined in paragraph 9 of Article II.)

Paragraph 2 further states that to this end, and in order to verify that activities are in accordance with obligations under the Convention, each State Party shall subject toxic chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals, facilities related to such chemicals, and other facilities specified in the Verification Annex (i.e. other chemical production facilities specified in Part IX of the Verification Annex) that are located on its territory or in any other place under its jurisdiction or control, to verification measures as provided in the Verification Annex.

Note that paragraph 2 complements the obligation in paragraph 1 of Article VII to adopt the necessary measures to implement its obligations under the Convention. Note also that even though toxic chemicals that are not listed in the Schedules or not captured by the provisions regarding other chemical production facilities are not subject to this routine inspection regime, they are subject to challenge inspection (discussed in the analysis of Article IX). In addition, if such toxic chemicals are produced for chemical weapons purposes, they are subject to the chemical weapons verification and destruction regimes.

SCHEDULES

A large number of different chemicals are currently produced, processed and consumed in the international chemical industry by many different types of facilities. These chemicals and facilities vary in importance to the Convention based on their potential risk to the object and purpose of the Convention, i.e., principally, the prohibition and destruction of chemical weapons. The Convention contains three categories of chemicals (labeled Schedules 1, 2 and 3) that are based on increasing utility in civilian production and a decreasing perception of risk, e.g. their value as, or in producing, chemical weapons. Differing limits on production, verification regimes for the facilities that produce, process and consume the chemicals, and requirements for declarations are associated with each Scheduled chemical, and its associated facilities, as well as with a fourth category, other chemical production facilities, i.e. facilities that do not produce Scheduled chemicals but nevertheless pose a risk to the Convention on the basis of their potential to produce Scheduled chemicals but nevertheless pose a risk to the Convention on the basis of their potential to produce Scheduled chemicals (discussed in Part IX of the Verification Annex).

Specifically, the concept of risk is based on the toxicity of the chemical, its potential use in the chemical weapons production process, and the purpose for which it has been, is currently, or could be used. The placement of a chemical on a specific Schedule takes into account a number of different factors. Some factors specifically identified in the Annex on Chemicals for future additions include: the potential for use in an activity prohibited by the Convention; the volume of peaceful production; past history of use as a chemical weapon; and level of toxicity. Other factors considered by the negotiators included the potential for adverse impact on industry and the feasibility of verification. Schedule 1 contains chemicals considered to pose the most risk to the object and purpose of the Convention, e.g. chemical agents or their precursors (chemical building blocks) that have been developed,

produced, stockpiled or used for chemical weapons purposes. These chemicals have little or no use for commercial purposes and thus are not produced commercially on a large-scale. Schedule 2 includes chemicals of lesser, but still significant, risk to the object and purpose of the Convention, e.g. precursors of Schedule 1 chemicals that are not produced in large quantities for commercial purposes that nevertheless have some commercial uses. Schedule 3 contains chemicals that pose some risk to the object and purpose of the Convention, e.g. chemicals that were once used as chemical warfare agents, that are precursors of Schedule 1 or 2 chemicals or that are produced commercially in large quantities.

Paragraph 3 of Article VI places restrictions on Schedule 1 chemicals and requires States Parties to subject Schedule 1 chemicals and facilities related to them to verification by the Technical Secretariat. Specifically, this paragraph states that each State Party shall subject Schedule 1 chemicals to the prohibitions on production, acquisition, retention, transfer and use as specified in Part VI of the Verification Annex. Note that paragraphs 1 through 6 of Part VI restrict these activities to the territory of States Parties, limit the purposes for which these activities can be conducted, limit the amounts of Schedule 1 chemicals that can be acquired, and require detailed declarations.

This paragraph further states that each State Party shall subject Schedule 1 chemicals and facilities specified in Part VI of the Verification Annex to systematic verification through on-site inspection and monitoring with on-site instruments in accordance with Part VI of the Verification Annex.

Paragraph 4 of Article VI requires States Parties to subject Schedule 2 chemicals and facilities related to them to verification by the Technical Secretariat. Specifically, this paragraph states that each State Party shall subject Schedule 2 chemicals and facilities specified in Part VII of the Verification Annex to data monitoring, i.e. submission of data by the

State Party for evaluation by the Technical Secretariat, and on-site verification in accordance with Part VII of the Verification Annex.

Note that, pursuant to paragraph 31 of Part VII of the Verification Annex, beginning three years after entry into force of the Convention, Schedule 2 chemicals shall only be transferred to or received from States Parties. Pursuant to paragraph 32 of Part VII of the Verification Annex, during the interim three-year period in which transfers to States not a Party to the Convention are allowed, each State Party must adopt the necessary measures to ensure that the transferred chemicals are only used for purposes not prohibited under the Convention, including requiring end-use certificate for transfers of Schedule 2 chemicals to such States.

Paragraph 5 of Article VI requires States Parties to subject Schedule 3 chemicals and facilities related to them to verification by the Technical Secretariat. Specifically, this paragraph states that each State Party shall subject Schedule 3 chemicals and facilities specified in Part VIII of the Verification Annex to data monitoring and on-site verification in accordance with Part VIII of the Verification Annex.

Note that, pursuant to paragraph 26 of Part VIII of the Verification Annex, when transferring Schedule 3 chemicals to non-States Parties, each State Party shall adopt the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited by the Convention and, *inter alia*, shall require from the recipient State an end-user certificate. Finally, note that, pursuant to paragraph 27 of Part VIII of the Verification Annex, five years after the entry into force of the Convention, the Conference shall consider the need to establish other measures, i.e. additional restrictions, regarding transfers of Schedule 3 chemicals to non-States Parties.

Paragraph 6 of Article VI requires States Parties to subject other chemical production facilities to verification by the Technical

Secretariat. These facilities do not produce Scheduled chemicals but have the capability to do so. Specifically, this paragraph states that each State Party shall subject facilities specified in Part IX of the Verification Annex to data monitoring and, unless decided otherwise by the Conference pursuant to paragraph 22 of Part IX of the Verification Annex, eventual on-site verification in accordance with Part IX of the Verification Annex.

In general, pursuant to paragraph 1 of Part IX of the Verification Annex, the other chemical production facilities that must be declared, and are subject to inspection, are plant sites that produce more than 200 metric tons of unscheduled discrete organic chemicals, or comprise one or more plants which produce more than 30 metric tons of an unscheduled discrete organic chemical containing the elements phosphorus, sulphur or fluorine ("PSF"). These elements are most commonly used in the production of chemical weapons. (Note that PSF plant sites producing 30–200 metric tons are subject only to declaration.) However, plant sites that exclusively produce explosives or hydrocarbons are specifically excluded pursuant to paragraph 2 of Part IX of the Verification Annex. Pursuant to paragraph 7 of Article VI, implementation of the data monitoring begins 30 days after entry into force of the Convention, while, pursuant to paragraph 22 of Part IX, implementation of the verification provisions begins in the fourth year after entry into force of the Convention, unless the Conference decides otherwise. (The purposes of these provisions are discussed in detail in Part IX.)

Paragraph 7 of Article VI provides for initial declarations regarding toxic chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals, facilities related to such chemicals, and other chemical production facilities. Specifically, this paragraph states that not later than 30 days after the Convention enters into force for it, each State Party shall make an initial declaration on relevant chemicals and facilities in accordance with the Verification Annex.

Paragraph 8 of Article VI provides for subsequent declarations regarding toxic chemicals and their precursors listed in Schedules 1, 2 and 3 of the Annex on Chemicals, facilities related to such chemicals, and other chemical production facilities. Specifically, this paragraph states that each State Party shall make annual declarations regarding the relevant chemicals and facilities in accordance with the Verification Annex.

Paragraph 9 of Article VI requires each State Party to provide access for these inspections. Specifically, this paragraph states that for the purpose of on-site verification, each State Party shall grant to the inspectors access to facilities as required in the Verification Annex. The purpose of this paragraph is to make clear that State Parties must provide access for all routine inspections of chemical industry.

Paragraph 10 of Article VI sets forth a corresponding protection for States Parties. Specifically, this paragraph states that in conducting verification activities, the Technical Secretariat shall avoid undue intrusion into the State Party's chemical activities for purposes not prohibited under the Convention and, in particular, abide by the provisions set forth in the Annex on the Protection of Confidential Information. ("Purposes not prohibited by the Convention" are defined in paragraph 9 of Article II.)

Paragraph 11 of Article VI applies the prohibition on hampering the economic or technological development of States Parties contained in paragraph 1 of Article XI. Specifically to chemical industry verification. Specifically, this paragraph states that the provisions of Article VI shall be implemented in a manner which avoids hampering the economic or technological development of States Parties, and international co-operation in the field of chemical activities for purposes not prohibited under the Convention, including the international exchange of scientific and technical information and chemicals and equipment for the production, processing or use of chemicals for purposes not prohibited

under the Convention. Although paragraph 1 of Article XI includes chemical industry verification, this provision was added to further alleviate concerns of developing countries concerning the impact of the Convention on their chemical industries by highlighting the application of paragraph 1 of Article XI to that verification regime.

ARTICLE VII – NATIONAL IMPLEMENTATION MEASURES

Article VII consists of seven paragraphs. This Article sets forth the obligations of States Parties with regard to their domestic implementation of the Convention and their relationships with other States Parties and the Organization.

Paragraph 1 of Article VII, in three subparagraphs, requires each State Party to, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under the Convention and, in particular, to prohibit or not permit natural and legal persons from engaging in activities prohibited to a State Party. The purpose of Paragraph 1 is to extend the prohibition on activities by States Parties, primarily the Article I prohibitions on the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons, to activities by private individuals and non-governmental entities, such as corporations. Thus, in addition to each State Party's Article I, paragraph 1(d) obligation not to assist, encourage, or induce anyone to engage in prohibited activities, each State Party has an obligation to take affirmative steps to prevent private individuals and non-governmental entities from engaging in prohibited activities.

Subparagraph 1(a) requires each State Party to prohibit 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 the Convention, including enacting penal legislation with respect to such activity. This subparagraph thus governs the activities of private individuals and non-governmental entities, regardless of their nationality, on a State Party's territory or anywhere outside its territory that is nevertheless under its jurisdiction, e.g. ships or aircraft flying its flag.

It is understood that for a State Party to "prohibit" activities it must enact legislation governing the conduct of private individuals and non-governmental entities. The term "penal" was understood by the negotiators to mean that the legislation can be of a criminal, civil and/or administrative nature, so long as penalties are involved.

Subparagraph 1(b) requires each State Party to not permit in any place under its control any activity prohibited to a State Party under the Convention. This subparagraph thus governs the activities of private individuals and non-governmental entities, regardless of their nationality, in places under the State Party's control but not under its jurisdiction, such as occupied territory. To "not permit" is understood to mean to not allow such activities in these places.

Subparagraph 1(c) requires each State Party to extend its penal legislation enacted under subparagraph 1(a) to any activity prohibited to a State Party under the Convention undertaken anywhere by its nationals, in conformity with international law. This means that each State Party must extend the reach of its legislation to include activities conducted by its citizens outside its territory or other places under its jurisdiction.

Note that there is no requirement that such legislation extend extra-territorially to non-governmental entities, such as corporations. This provision represents a compromise between the proponents and opponents of extra-territorial reach for the Convention, and recognizes that nationality of individuals is subject to less dispute than legal entities, such as corporations.

Paragraph 2 of Article VII requires States Parties to co-operate with each other and to accord the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1. The purpose of this paragraph is to require States Parties to work together

on the enforcement of their domestic prohibitions on the activities of private individuals and non-governmental entities.

Paragraph 3 of Article VII requires each State Party, during the implementation of its obligations under the Convention, to assign the highest priority to ensuring the safety of people and to protecting the environment, and to cooperating as appropriate with other States Parties in this regard. This paragraph creates a general obligation on the part of each State Party to protect people and the environment from activities that are required under the Convention, an obligation that is repeated in more detail for the destruction of chemical weapons (paragraph 10 of Article IV), for the destruction of chemical weapons production facilities (paragraph 11 of Article V), and for the permitted production of Schedule 1 chemicals (paragraph 7 of Part VI of the Verification Annex).

Paragraph 4 of Article VII requires each State Party to designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties and to notify the Organization of its National Authority when the Convention enters into force for it. The purpose of this paragraph is to facilitate the interaction between a State Party and the Organization or other State Parties regarding implementation of the Convention by ensuring that each State Party will have a central point of contact for such interaction.

Paragraph 5 of Article VII requires each State Party to inform the Organization of the legislative and administrative measures taken to implement this Convention.

Paragraph 6 of Article VII requires each State Party to treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of the Convention and to treat such information and data exclusively in connection with its rights and obligations under the

Convention and in accordance with the provisions set forth in the Confidentiality Annex. The purpose of this paragraph is to protect information gathered by the Organization, and shared with States Parties for purposes of implementing the Convention, from being used by States Parties for purposes that are not related to the Convention, e.g. providing commercial information to domestic chemical industries to enable them to obtain a competitive advantage. The Confidentiality Annex provides guidelines and principles for handling and releasing such information.

Paragraph 7 of Article VII requires each State Party to cooperate with the Organization in the exercise of all its functions and, in particular, to provide assistance to the Technical Secretariat.

ARTICLE VIII – THE ORGANIZATION

Article VIII consists of 51 paragraphs, divided into five sections. The first section establishes the Organization for the Prohibition of Chemical Weapons and its three constituent organs, the Conference of the States Parties, the Executive Council, and the Technical Secretariat, which are charged with implementing the Convention, and sets forth general provisions regarding the Organization. The Conference consists of all States Parties and is the ultimate policy-making body for the Convention. The Executive Council consists of 41 members, on a rotating basis, and is the executive authority for the Convention. The Technical Secretariat is the international body charged with conducting the international verification provided for in the Convention.

The next three sections delineate the composition, procedures, powers and functions of the Conference, the Executive Council, and the Technical Secretariat, respectively. The last section establishes the privileges and immunities necessary for the Organization, its delegates and representatives and the Director General and his or her staff to carry out their functions.

Section A (paragraphs 1 through 8) of Article VIII sets forth the general provisions on the Organization.

Paragraph 1 of Article VIII states that the States Parties to the Convention establish the Organization to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

Paragraph 2 of Article VIII states that all States Parties to the Convention are members of the Organization and that a State Party may not be deprived of its membership in the Organization. However,

pursuant to paragraph 8 of this Article, a member may be deprived of its vote in the Organization if it has failed to pay its financial contribution for two years. Also, pursuant to paragraph 2 of Article XII, a member's rights and privileges may be restricted or suspended by the Conference, upon the recommendation of the Executive Council if it fails to fulfill a request by the Executive Council to take measures to redress a situation raising problems regarding the member's compliance.

Paragraph 3 of Article VIII states that the seat of the Headquarters of the Organization shall be The Hague, Kingdom of the Netherlands.

Paragraph 4 of Article VIII establishes, as organs of the Organization, the Conference of the States Parties, the Executive Council, and the Technical Secretariat.

Paragraph 5 of Article VIII establishes guidelines for protecting legitimate interests of States Parties during the conduct of activities by the Organization. Specifically, this paragraph states that the Organization will conduct its verification activities in the least intrusive manner, consistent with the timely and efficient accomplishment of their objectives. It further states that the Organization shall request only the information and data necessary to fulfill its responsibilities under the Convention. Finally, this paragraph requires the Organization to take every precaution to protect the confidentiality of information on civil and military activities and facilities coming to its knowledge in the implementation of the Convention and, in particular, to abide by the provisions set forth in the Confidentiality Annex.

Paragraph 6 of Article VIII states that, in undertaking its verification activities, the Organization shall consider measures to make use of scientific and technological advances. The purpose of this paragraph is to make clear that the Organization, particularly the Technical Secretariat, is expected to regularly consider scientific advancements for improvements to its verification equipment.

Paragraph 7 of Article VIII sets forth the general rules for financing the Organization. Specifically, this paragraph states that the costs of the Organization's activities shall be paid by the States Parties in accordance with the UN scale of assessment, adjusted for differences in membership between the UN and the Organization. This provision is subject to the provisions of Articles IV and V whereby States Parties with chemical weapons pay for the costs of destruction and international verification of destruction of their chemical weapons and chemical weapons production facilities, respectively.

Paragraph 7 also states that a member's financial contribution to the Preparatory Commission shall be deducted in an appropriate way from contributions to the regular budget. This is understood to mean that those States Parties that did not financially contribute to the Preparatory Commission will pay proportionately more of the regular budget. The purpose of the provision is to encourage states to sign the Convention and participate in the Preparatory Commission before the Convention enters into force.

Finally, paragraph 7 states that the budget of the Organization shall be composed of two separate chapters: one relating to administrative and other costs; and one relating to verification costs. The purpose of this division is to facilitate budget preparation, given the relatively fixed costs of administration versus the requisite variable costs of verification. Note that this division does not affect the scale of contributions for States Parties.

Paragraph 8 of Article VIII sets forth the voting provisions for dealing with States Parties that have not made timely payments to the Organization. Specifically, this paragraph states that a member of the Organization which is in arrears in the payment of its financial contribution to the Organization shall have no vote in the Organization if the amount of its arrears equals or exceeds the amount of the contribution due it for the preceding two full years. This paragraph

further states that the Conference may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member. This provision is similar to Article 19 of the UN Charter.

Section B (paragraphs 9 through 22) of Article VIII specifies the composition, procedures, decision-making, and powers and functions of the Conference of the States Parties.

Paragraph 9 of Article VIII states that the Conference shall be composed of all members of the Organization and that each member shall have one representative in the Conference, who may be accompanied by alternates and advisers.

Paragraph 10 of Article VIII states that the first session of the Conference shall be convened not later than 30 days after the Convention's entry into force, while paragraph 11 states that the Conference shall meet in regular annual sessions unless it decides otherwise.

Paragraphs 12 and 13 of Article VIII contain the provisions for special sessions, other than the regular sessions, to address serious problems in implementing the Convention. Specifically, paragraph 12 of Article VIII states that special sessions shall be held if decided by the Conference, if requested by the Executive Council, or when requested by any member of the Conference with the support of one-third of the members. It further states that such sessions shall be convened not later than 30 days after receipt of the request by the Director-General, unless specified otherwise in the request.

Paragraph 12 also states that special sessions shall be held in accordance with paragraph 22 to undertake reviews of the operation of the Convention. Paragraph 22 provides for such review conferences no later than one year after the fifth and tenth years after the Convention's entry

into force and at five–year intervals thereafter, as well as at other times if decided upon.

Paragraph 13 of Article VIII states that the Conference may be convened in the form of an Amendment Conference in accordance with paragraph 2 of Article XV, i.e. a special session to consider amendments to the Convention.

Paragraph 14 of Article VIII states that sessions of the Conference shall meet at the seat of the Organization, i.e. The Hague, unless it decides otherwise.

Paragraph 15 of Article VIII addresses Conference rules of procedure and selection of officers of the Conference. Specifically, this paragraph requires the Conference to adopt its rules of procedure and, at the beginning of each session, to elect its Chairman and such other officers as required, who shall hold office until a new Chairman and other officers are elected at the next regular session.

Paragraph 16 of Article VIII stipulates that a majority of the members of the Organization constitute a quorum for the Conference.

Paragraph 17 of Article VIII states that each member of the Conference shall have one vote in the Conference.

Paragraph 18 of Article VIII contains the rules for voting in the Conference on questions of procedure and of substance. Specifically, this paragraph states that decisions on questions of procedure are taken by a simple majority, i.e. fifty percent plus one, of the members present and voting. On matters of substance, paragraph 18 states that decisions should be taken as far as possible by consensus, but if consensus is not reached, the Chairman must defer any voting for 24 hours and continue to attempt to reach consensus. Before the end of this period, he or she must report to the Conference on his or her efforts. This paragraph further states that if consensus is still not reached, the Conference shall

take the decision by a two-thirds majority of the members present and voting, unless the Convention specifically provides otherwise.

Finally, this paragraph states that when an issue arises as to whether a particular question is one of substance or procedure, the question is to be treated as a matter of substance unless otherwise decided by the Conference by the majority required for decisions on matters of substance, i.e. two-thirds of the members present and voting. The purpose of this last provision is to prevent a simple majority of the Conference from circumventing the two-thirds requirement for substantive issues by deciding that all questions are questions of procedure requiring only a simple majority.

The powers and functions of the Conference are set out in paragraphs 19 through 22.

Paragraph 19 of Article VIII sets forth the general powers and functions of the Conference as the principal organ of the Organization. Specifically, this paragraph states that the Conference, as the principal organ of the Organization, and shall consider any questions, matters or issues within the scope of the Convention, including those relating to the powers and functions of the Executive Council and the Technical Secretariat. Paragraph 19 also states that the Conference may make recommendations and take decisions on any questions, matters or issues related to the Convention raised by a State Party or brought to its attention by the Executive Council.

Paragraph 20 of Article VIII makes the Conference the principal overseer of the implementation of the Convention. Specifically, this paragraph states that the Conference shall oversee the implementation of the Convention and act in order to promote its object and purpose. To this end, this paragraph further states that the Conference shall review compliance with the Convention as well as oversee the activities of the Executive Council and the Technical Secretariat, and may issue

guidelines in accordance with the Convention to the Executive Council and the Technical Secretariat in the exercise of their functions.

Paragraph 21 of Article VIII consists of eleven subparagraphs that enumerate the specific powers and responsibilities of the Conference. Subparagraphs 21(a) through (g) provide that the Conference shall: consider and adopt at its regular sessions, the report, program, and budget of the Organization, submitted by the Executive Council, as well as consider other reports; decide the scale of financial contributions to be paid by States Parties under paragraph 7 of this Article, i.e. make the adjustments to the UN scale of assessment necessary to take into account differences in membership; elect the members of the Executive Council, i.e. ratify the selection made by each of the regional groups pursuant to paragraph 23 of this Article; appoint the Director–General of the Technical Secretariat; approve the rules of procedure of the Executive Council submitted by the Executive Council; establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with the Convention; and foster international cooperation for peaceful purposes in the field of chemical activities.

Subparagraph 21(h) states that the Conference shall review scientific and technological developments that could affect the operation of the Convention. This subparagraph further states that, in this context, the Conference shall direct the Director–General to establish a Scientific Advisory Board ("the Board") to enable the Director–General, in the performance of his or her functions, to render specialized advice in the areas of science and technology relevant to the Convention to the following parties: the Conference, the Executive Council and States Parties. Finally, this subparagraph requires the Board to be composed of independent experts appointed in accordance with terms of reference adopted by the Conference, i.e. appointed pursuant to selection criteria determined by the Conference. Note that paragraph 45 of this Article sets forth the composition of the Board and the Director–General's specific responsibilities with regard to it.

Subparagraphs 21(i) and (j) provide that, at its first session, the Conference shall consider and approve any draft agreements, provisions and guidelines developed by the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons ("the Preparatory Commission") and establish the voluntary fund for assistance in accordance with Article X. (Paragraph 7(a) of Article X establishes a voluntary fund for assistance as one of the measures for providing assistance and protection against chemical weapons.) Note that references to subparagraph 21(i) appear throughout the Convention with reference to details that are to be elaborated by the Preparatory Commission prior to entry into force of the Convention.

Subparagraph 21(k) states that the Conference shall take the necessary measures to ensure compliance with the Convention and to redress and remedy any situation which contravenes the provisions of the Convention, in accordance with Article XII. (Article XII contains measures to redress a situation and to ensure compliance, including sanctions.)

Paragraph 22 of Article VIII provides for scheduled review conferences. Specifically, this paragraph states that the Conference shall, not later than one year after the expiry of the fifth and tenth year after the entry into force of the Convention, and at such other times within that time period as may be decided upon, convene in special sessions to undertake reviews of the operation of the Convention. This means that sometime during the sixth year and the eleventh year after entry into force of the Convention, as well as anytime during those eleven years that it decides to, the Conference shall review the operation of the Convention.

Paragraph 22 also states that such reviews shall take into account any relevant scientific and technological developments, e.g. new types of chemicals and new verification technologies. Finally, this paragraph states that at intervals of five years thereafter, i.e. beginning the sixteenth year after entry into force, unless otherwise decided upon, further

sessions of the Conference shall be convened with the same objective. Note that, pursuant to paragraph 12(a) of this Article, the Conference also could hold special sessions to review the Convention during these latter five–year intervals.

Section C (paragraphs 23 through 36) of Article VIII specifies the composition, procedures, decision–making, and powers and functions of the Executive Council.

Paragraph 23 of Article VIII sets forth the composition of the Executive Council. Specifically, this paragraph states that the Executive Council shall have 41 members, with each State Party, in accordance with the principle of rotation, having the right to serve on the Executive Council. This paragraph further states that the members of the Executive Council shall be elected by the Conference, i.e. pursuant to paragraph 21(c) of this Article, for a term of two years.

Paragraph 23 also sets forth, in six subparagraphs, the composition of the Executive Council by regional group and general industrial criteria, and sets forth the criteria used to develop this composition: to ensure the effective functioning of the Convention, due regard being specially paid to equitable geographical distribution, to the importance of chemical industry, as well as to political and security interests.

Subparagraphs 23(a) through (f) establish the geographic apportionment of the seats among States Parties from Africa, Asia, Eastern Europe, Latin America and the Caribbean, and Western Europe and Other States, i.e. Western Europe, the U.S., Canada, Australia, and New Zealand, plus a rotating seat. Each of these subparagraphs further states that the members of the Executive Council shall be designated by States Parties in their respective region. Subparagraphs 23(a) through (e) then provide, for each of the five regions, that as a basis for this determination it is understood that a certain number, fixed for each region, of the States Parties will, as a rule, be those with the most

significant national chemical industry in the region as determined by internationally reported and published data ("industrial seats"). Each subparagraph further states that, in addition, the regional group shall agree also to take into account other regional factors in designating these members.

This formula represents a compromise between the negotiating states with significant chemical industry, primarily the U.S. and Western Europe, and developing countries that were opposed to permanent seats for specific states. The formula is intended to make very likely, but not absolutely guarantee, that the States Parties with the most significant chemical industry, i.e. those that will bear the greatest implementation burden, will be permanent members of the Executive Council. In addition to having the most significant chemical industry in the Western European and Other States group, the U.S. has reached a political agreement within the group that the U.S. will have a permanent seat on the Executive Council.

Subparagraphs 23(a) through (e) subdivide 40 of the 41 seats on the Executive Council as follows:

Nine seats to Africa, of which three are to be industrial seats;

Nine seats to Asia, of which four are to be industrial seats;

Five seats to Eastern Europe, of which one is to be an industrial seat;

Seven seats to Latin America and the Caribbean, of which three are to be industrial seats; and

Ten seats to the Western European and Other States, of which five are to be industrial seats.

Subparagraph 23(f) creates a 41st seat that is to be rotated between States Parties from Asia and Latin America and the Caribbean.

Paragraph 24 of Article VII states that, for the first election of the Executive Council, 20 members will be elected for a term of one year, due regard being paid to the numerical proportions described in paragraph 23, i.e. the regional allocations. The purpose of this paragraph is to ensure that the composition of the Executive Council is not subject to a complete change every two years.

Paragraph 25 of Article VIII states that the composition of the Executive Council may be reviewed, upon a request of a majority of the members of the Executive Council, by the Conference after full implementation of Articles IV and V, i.e. after all chemical weapons have been destroyed and all chemical weapons production facilities destroyed or converted. The reason for this provision is that after destruction and conversion are certified as complete, the routine verification activities of the Convention will largely focus on verification of commercial activities. This review provision also represents a compromise between those negotiating states desiring a larger, or even open-ended, Executive Council and those, including the U.S., desiring a smaller, more efficient Executive Council.

Paragraph 26 of Article VIII states that the Executive Council shall elaborate its rules of procedure and submit them to the Conference for approval, i.e. as provided for in paragraph 21(e) of this Article.

Paragraph 27 of Article VIII states that the Executive Council shall elect its Chairman from among its members.

Paragraph 28 of Article VIII states that the Executive Council shall meet for regular sessions, but that between regular sessions, it shall meet as often as may be required for the fulfillment of its powers and functions.

Paragraph 29 of Article VIII addresses the issue of voting within the Executive Council. Specifically, this paragraph states that each member of the Executive Council shall have one vote. This paragraph further states that, unless otherwise specified in the Convention, the Executive Council shall take decisions on matters of substance by a two-thirds majority of all its members. Note that, unlike the Conference, the Executive Council is not required to first seek consensus. Note also that, pursuant to paragraph 17 of Article IX, an Executive Council vote to stop a challenge inspection requires a three-quarters majority, and that, pursuant to paragraph 10 of Article X, an Executive Council vote to provide assistance against chemical weapons requires only a simple majority.

Paragraph 29 also states that the Executive Council shall take decisions on matters of procedure by a simple majority of all its members. The paragraph further states that if the issue arises of whether a question is one of substance or not, i.e. substantive or procedural, the question is treated as a matter of substance unless otherwise decided by the Executive Council by the majority required for decisions on matters of substance. In other words, where an issue arises as to whether a question is substantive or procedural, the Executive Council will treat it as substantive unless it decides by a two-thirds majority to treat it as procedural. Note that, unlike the Conference, both the simple and two-thirds majorities must be those of the entire membership of the Executive Council, not just of those present and voting.

The powers and functions of the Executive Council are elaborated in paragraphs 30 through 36.

Paragraph 30 of Article VIII addresses the central purpose and responsibilities of the Executive Council. Specifically, this paragraph states that the Executive Council is the executive organ of the Organization, but is responsible, i.e. subordinate, to the Conference. This paragraph further states that the Executive Council shall carry out the powers and functions entrusted to it under the Convention, as well as those functions delegated to it by the Conference. Finally, this paragraph states that, in doing so, the Executive Council must act in conformity with the recommendations, decision and guidelines of the Conference and assure their proper and continuous implementation.

Paragraph 31 of Article VIII sets forth the implementation tasks of the Executive Council. Specifically, this paragraph states that the Executive Council is to promote the effective implementation of, and compliance with, the Convention. This paragraph further states that the Executive Council is to supervise the activities of the Technical Secretariat, cooperate with the National Authority of each State Party (discussed in paragraph 4 of Article VII) and facilitate cooperation and consultations among States Parties at their request.

Paragraph 32 of Article VIII sets forth the Executive Council's responsibilities with regard to Conference. Specifically, this paragraph requires the Executive Council to: consider and submit to the Conference draft Organizational programs, budgets and reports on the implementation of the Convention; reports on the performance on its own activities; and such other reports as it deems necessary or as requested by the Conference. Finally, this paragraph directs the Executive Council to make arrangements for the sessions of the Conference, including the draft agenda.

Paragraph 33 of Article VIII states that the Executive Council may request the convening of a special session of the Conference. Pursuant to paragraph 12(b) of this Article, the Conference is required to convene such a session.

Paragraph 34 of Article VIII sets forth, in three subparagraphs, the Executive Council's powers with regard to concluding arrangements or agreements with entities outside the Organization. Subparagraph 34(a) states that the Executive Council, subject to prior approval by the Conference, may conclude agreements or arrangements with States and international organizations on behalf of the Organization. Note that agreements and arrangements are functionally the same, but some states take the view that only the former are legally binding. Note also that, pursuant to paragraph 39(a) of this Article, the Technical Secretariat negotiates the arrangements or agreements while the Executive Council formally approves them.

Subparagraph 34(b) states that the Executive Council may conclude agreements with States Parties on behalf of the Organization in connection with Article X, e.g. those for the procurement of assistance against chemical weapons pursuant to paragraph 7(b) of Article X, and supervise the voluntary fund referred to in Article X, i.e. the voluntary fund for assistance against chemical weapons pursuant to paragraph 7(a) of Article X.

Subparagraph 34(c) permits the Executive Council to approve agreements or arrangements negotiated by the Technical Secretariat relating to the implementation of verification activities, e.g. facility agreements pursuant to paragraph 3 of Part III of the Verification Annex

Paragraphs 35 and 36 of Article VIII set forth the broad powers of the Executive Council with regard to the Convention, in particular those related to compliance with the Convention by States Parties. Paragraph 35 of Article VIII gives the Executive Council the power to consider any issue or matter affecting the Convention and its implementation, including concerns regarding compliance, and cases of non-compliance. The term "concerns regarding compliance and cases of non-compliance" is intended to indicate that the Executive Council should

address concerns and situations related to compliance, as opposed to actually deciding whether or not there has been compliance with the Convention.

Note that the phrase "concern regarding compliance" is understood to mean that the issue is unresolved or ambiguous, while "cases of non-compliance" is understood to mean that a State Party has made a decision that another State Party is not in compliance with the Convention.

Paragraph 35 also states that the Executive Council shall, as appropriate, inform States Parties and bring the issue to the attention of the Conference.

Paragraph 36 of Article VIII specifically addresses what the Executive Council can do in cases of questions on compliance. Specifically, this paragraph states that, in its consideration of doubts or concerns regarding compliance and cases of non-compliance, including, *inter alia*, abuse of the rights provided for under the Convention, the Executive Council shall consult with the States Parties involved and request that measures be taken to redress the situation within a specified time. Note that, *inter alia*, pursuant to paragraph 2 of Article XII, if a State Party fails to fulfill this request within the specified time, if the Executive Council so recommends, the Conference may restrict or suspend the State Party's rights and privileges under the Convention.

Paragraph 36 further states that, to the extent the Executive Council considers further action to be necessary, it shall take, *inter alia*, one or more of the following measures: inform all States Parties of the issue or matter; bring the issue or matter to the attention of the Conference; or make recommendations to the Conference on measures to redress the situation and ensure compliance. Note that, as discussed above, one of the recommendation could be to suspend the State Party's rights and privileges under the Convention.

Finally, Paragraph 36 states that in cases of particular gravity and urgency, the Executive Council shall bring the matter to the attention of the UN General Assembly and the UN Security Council while at the same time informing all States Parties of this step.

Section D (paragraphs 37 through 47) of Article VIII contains the general provisions with regard to the Technical Secretariat.

Paragraph 37 of Article VIII sets forth the primary task of the Technical Secretariat, which is to carry out verification measures. Specifically, this paragraph states that the Technical Secretariat shall assist the Conference and the Executive Council in the performance of their functions and shall carry out the verification measures provided for in the Convention, other functions entrusted to it under the Convention, and those functions delegated to it by the Conference and the Executive Council.

Paragraph 38 of Article VIII, in five subparagraphs, specifies the other functions of the Technical Secretariat, including those related to implementation. Subparagraphs 38(a) and (b) task the Technical Secretariat with preparing and submitting to the Executive Council the Organization's draft program and budget, the draft report on implementation of the Convention, and such other reports as the Conference or the Executive Council may request. Subparagraph 38(c) tasks the Technical Secretariat with providing administrative and technical support to the Conference, the Executive Council and subsidiary organs. Subparagraph 38(d) states that the Technical Secretariat shall address and receive communications on behalf of the Organization to and from States Parties on matters pertaining to implementation. Note that, pursuant to subparagraph (a) of Article XXIII, the communications role of the depositary (the UN Secretary-General) is largely limited to notices regarding states joining the Convention. Finally, subparagraph 38(e) states that the Technical Secretariat shall provide technical assistance and technical evaluation to

States Parties on the implementation provisions of the Convention, including the evaluation of scheduled and unscheduled chemicals, i.e. those chemicals listed on Schedules 1, 2 or 3 of the Annex on Chemicals, as well any other chemicals.

Paragraph 39 of Article VIII sets forth, in three subparagraphs, the responsibilities of the Technical Secretariat with regard to agreements and assistance. Subparagraph 39(a) states that the Technical Secretariat is responsible for the negotiation of agreements or arrangements relating to the implementation of verification activities with States Parties, subject to approval by the Executive Council, i.e. in accordance with paragraph 34(a) of this Article.

Subparagraph 39(b) states that the Technical Secretariat shall, not later than 180 days after the Convention's entry into force, coordinate the establishment and maintenance of permanent stockpiles of emergency and humanitarian assistance by States Parties in accordance with paragraphs 7(b) and (c) of Article X, i.e. agreements or declarations by States Parties to provide assistance and protection against chemical weapons. This subparagraph further states that the Technical Secretariat may inspect the items maintained for serviceability. Finally, this paragraph states that the lists of items to be stockpiled are to be considered approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. using reports prepared by the Preparatory Commission.

Subparagraph 39(c) states that the Technical Secretariat is responsible for administering the voluntary fund established under Article X, i.e. paragraph 7(a) of Article X, compiling declarations made by States Parties, i.e. declarations of assistance pursuant to paragraph 7(c) of Article X, and registering, when requested, bilateral agreements concluded between States Parties for the purposes of Article X, i.e. those referred to in paragraph 6 of Article X, or between a State Party and the Organization for the purposes of Article X, i.e. pursuant to paragraph 7(b) of Article X.

Paragraph 40 of Article VIII requires the Technical Secretariat to notify the Executive Council when problems arise with regard to its implementation of the Convention. Specifically, this paragraph requires the Technical Secretariat to inform the Executive Council of any problem that has arisen with regard to the discharge of its functions, including doubts, ambiguities, or uncertainties about compliance with the Convention that have come to its notice in the performance of its verification activities and that it has been unable to resolve or clarify through its consultations with the State Party concerned. However, it is not the Technical Secretariat's prerogative to determine a State Party's compliance with the Convention. Note that States Parties also have the right to request, through the Executive Council, clarification of concerns and doubts regarding its compliance or the compliance of another State Party, pursuant to Article IX.

Paragraphs 41 through 47 set out the organizational structure of the Technical Secretariat and the specific responsibilities of its Director-General.

Paragraph 41 of Article VIII states that the Technical Secretariat shall consist of a Director-General, who shall be its head and chief administrative officer, inspectors, and such scientific, technical and other personnel as may be required.

Paragraph 42 of Article VIII states that the Inspectorate is a unit of the Technical Secretariat and shall act under the supervision of the Director-General.

Paragraph 43 of Article VIII states that the Director-General is appointed by the Conference, upon the recommendation of the Executive Council, for a four-year term. This paragraph further states that the Director-General's term may be renewed for one further term, i.e. four more years, but not thereafter.

Paragraph 44 of Article VIII concerns the recruitment of staff for the Technical Secretariat. Specifically, this paragraph states that the Director–General is responsible to the Conference and the Executive Council for the appointment of the staff, and the organization and functioning of the Technical Secretariat. This paragraph further states that the paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.

Paragraph 44 also states that only citizens of States Parties may serve as the Director–General, inspectors or as other members of the professional and clerical staff of the Technical Secretariat. Finally, this paragraph specifies that due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible and that recruitment shall be guided by the principle that the staff shall be kept to the minimum necessary for the proper discharge of the responsibilities of the Technical Secretariat.

Paragraph 45 of Article VIII makes the Director–General also responsible for the Scientific Advisory Board. Specifically, this paragraph states that the Director–General shall be responsible for the organization and functioning of the Board referred to in paragraph 21(h) of this Article, and, in consultation with States Parties, shall appoint its members, who shall serve in their individual capacity, i.e. offering their personal or technical advice rather than representing a State Party. This paragraph also states that the members of the Board are to be appointed on the basis of their expertise in the particular scientific fields relevant to the implementation of the Convention. This paragraph further states that the Director–General may, in consultation with the Board, establish temporary working groups of scientific experts to provide recommendations on specific issues. Finally, this paragraph states that in regard to the above, States Parties may submit lists of experts to the Director–General.

Paragraph 46 of Article VIII states that, in the performance of their duties, the Director–General, the inspectors and the other members of the staff shall not seek or receive instructions from any Government or from any other source external to the Organization. This paragraph further states that the Director–General, the inspectors and the other members of the staff shall refrain from any action which might reflect on their positions as international officers responsible only to the Conference and the Executive Council. This means that they may not act as representatives of, or in support of, their countries' interests. This requirement does not preclude the seconding of State Party personnel as a method of staffing the Technical Secretariat, however.

Paragraph 47 of Article VIII states that each State Party shall respect the international character of the responsibilities of the Director–General, the inspectors, and the other members of the staff and not seek to influence them in the discharge of their responsibilities.

Section E (paragraphs 48 through 51) of Article VIII sets forth the general privileges and immunities to be accorded the Organization. (Specific privileges and immunities for members of inspection teams and observers are discussed in Section B of Part II of the Verification Annex.)

Paragraph 48 of Article VIII states that the Organization shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and privileges and immunities as are necessary for the exercise of its functions. This provision and paragraph 49 are similar to those for other international organizations such as the UN and the International Atomic Energy Agency.

Paragraph 49 of Article VIII states that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with their alternates and advisers, and the Director–General and staff of the Organization shall enjoy such

privileges and immunities as are necessary in the independent exercise of their functions.

Paragraph 50 of Article VIII states that the legal capacity, privileges and immunities referred to in this Article shall be defined in agreements between the Organization and the States Parties as well as in an agreement between the Organization and the State in which the headquarters of the Organization is seated, i.e. the Kingdom of the Netherlands. Note that the agreements between the Organization and States Parties will concern, *inter alia*, the privileges and immunities to be accorded inspectors, inspection assistants, and observers. These agreements may be similar to those with other international organizations, such as the International Atomic Energy Agency.

Paragraph 51 of Article VIII states that the privileges and immunities enjoyed by the Director-General and the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in Section B of Part II of the Verification Annex, i.e. the specific privileges and immunities set forth for inspectors and inspection assistants. The purpose of this provision is to make clear that the agreements between the Organization and the States Parties, pursuant to paragraph 50, will include these privileges and immunities.

ARTICLE IX — CONSULTATIONS, COOPERATION AND FACT-FINDING

Article IX consists of 25 paragraphs. This Article sets forth procedures for clarifying and investigating concerns about possible non-compliance with the Convention. Paragraphs 1 through 7 contain procedures for a State Party to request and receive clarification from another State Party of a situation with regard to compliance with the Convention.

Paragraphs 8 through 25 contain the basic rights and obligations pertaining to special inspections that can be requested by a State Party that has concerns about compliance with the Convention by another State Party ("challenge inspections"). (The detailed procedures for conducting challenge inspections are contained in Part X of the Verification Annex.)

Paragraph 1 of Article IX creates a broad general obligation for States Parties to consult and cooperate on any matter related to the object and purpose, or the implementation, of the Convention. Specifically, this paragraph requires States Parties to consult and cooperate, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the UN and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of the Convention.

Paragraph 2 of Article IX gives a State Party the right to request clarification of a situation involving compliance with the Convention directly from another State Party and requires the other State Party to provide such clarification. Specifically, this paragraph states that without prejudice to the right of any State Party to request a challenge inspection, States Parties should, whenever possible, first make every effort to clarify and resolve, through exchange of information and consultations among themselves, any matter which may cause doubt

about compliance with the Convention, or which gives rise to concerns about a related matter which may be considered ambiguous. This paragraph further states that a State Party that receives a request from another State Party for clarification of any matter about which the requesting State Party has a doubt or concern shall provide the requesting State Party as soon as possible, but in any case within 10 days after the request, with information sufficient to answer the doubt or concern raised along with an explanation of how the information provided resolves the matter. Finally, this paragraph states that nothing in the Convention shall affect the right of any two or more States Parties to arrange by mutual consent for inspections or any other procedures among themselves to clarify and resolve any matter that may cause doubt about compliance or that gives rise to a concern about a related matter that may be considered ambiguous, and that such arrangements shall not affect the rights and obligations of any State Party under other provisions of the Convention.

Note that, while encouraging consultations as a first step, a State Party is not required to first exhaust such attempts at resolving concerns bilaterally before requesting a challenge inspection. Note also that the paragraph makes clear that provisions for resolving concerns about compliance in bilateral inspection regimes, such as the U.S./Russia Bilateral Destruction Agreement, are neither modified by nor modify the provisions of this Article.

Paragraph 3 of Article IX gives each State Party the right to request assistance from the Executive Council in obtaining clarification of a situation involving compliance with the Convention. Specifically, this paragraph gives a State Party the right to request that Executive Council assist in clarifying any situation that may be considered ambiguous or that gives rise to a concern about the possible non-compliance of another State Party with the Convention. This paragraph further requires that the Executive Council provide appropriate information in its possession relevant to such a concern. Note that the provision of

such information must be in conformity with the provisions for release of information contained in the Confidentiality Annex.

Paragraph 4 of Article IX gives each State Party the further right to request that Executive Council obtain clarification from another State Party on any situation that may be considered ambiguous or that gives rise to a concern about its possible non-compliance with the Convention. The procedures for this are set forth in six subparagraphs.

Subparagraph 4(a) requires the Executive Council to forward the request for clarification to the State Party concerned through the Director-General within 24 hours after its receipt.

Subparagraph 4(b) requires the requested State Party to provide the clarification to the Executive Council as soon as possible, but in any case within 10 days after the receipt of the request.

Subparagraph 4(c) requires the Executive Council to take note of the clarification and forward it to the requesting State Party within 24 hours after its receipt.

Subparagraph 4(d) gives the requesting State Party, if it deems the clarification to be inadequate, the right to request that the Executive Council obtain further clarification from the requested State Party.

Subparagraph 4(e) states that for the purpose of obtaining further clarification when the clarification provided has been deemed to be inadequate, the Executive Council may call on the Director-General to establish a group of experts from the Technical Secretariat, or if appropriate staff are not available in the Technical Secretariat, from elsewhere, to examine all available information and data relevant to the situation causing the concern. This subparagraph further states that the group of experts shall submit a factual, i.e. non-judgmental, report to the Executive Council on its findings. There is no set time-frame required for the submission of this report. However, to be effective, the

report would have to be submitted within the 60–day time period for resolving concerns before the Conference is consulted, as specified in paragraph 7 of this Article.

Subparagraph 4(f) gives the requesting State Party, if it considers the clarifications obtained earlier to be unsatisfactory, the right to request a special session of the Executive Council in which States Parties involved that are not members of the Executive Council shall be entitled to take part. This subparagraph further states that in such a special session, the Executive Council shall consider the matter and may recommend any measure it deems appropriate to resolve the situation.

Paragraph 5 of Article IX gives a State Party that has received a request for clarification a corresponding right to request Executive Council assistance in clarifying the situation. Specifically, this paragraph provides a State Party with the right to request the Executive Council to clarify any situation which has been considered ambiguous or has given rise to a concern about its possible non–compliance with the Convention. This paragraph further states that the Executive Council shall respond by providing such assistance as appropriate. This means that both the State Party that has concerns about compliance by another State Party and the State Party about which there are concerns have the right to seek Executive Council assistance in clarifying the situation.

Paragraph 6 of Article IX requires the Executive Council to inform the States Parties about any request for clarification made pursuant to this Article.

Paragraph 7 of Article IX reiterates the right of a State Party, if supported by one–third of the members of the Conference, to convene a special session of the Conference when its concerns have not been resolved or it believes the concerns warrant urgent consideration, and requires the Conference to consider the matter. Specifically, this paragraph states that if the doubt or concern of a State Party about a

possible non-compliance has not been resolved within 60 days after the submission of the request for clarification to the Executive Council, or it believes its doubts warrant urgent consideration, notwithstanding its right to request a challenge inspection, it may request a special session of the Conference in accordance with paragraph 12(c) of Article VIII. (Paragraph 12(c) of Article VIII states that special sessions of the Conference shall be convened when requested by any member and supported by one-third of the members.) This paragraph further states that at such a special session, the Conference shall consider the matter and may recommend any measure it deems appropriate to resolve the situation.

Paragraphs 8 through 25 set forth provisions for States Parties to request challenge inspections when they have concerns about compliance by other States Parties.

Paragraph 8 of Article IX gives each State Party the general right to have the Technical Secretariat conduct a challenge inspection anywhere in another State Party. Specifically, this paragraph states that each State Party has the right to request an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the Convention, and to have this inspection conducted anywhere without delay by an inspection team designated by the Director-General and in accordance with the Verification Annex. Note that this inspection is automatic unless, as provided for in paragraph 17 of Article IX, the Executive Council votes against it.

Paragraph 9 of Article IX requires a challenge inspection request to be related only to a concern regarding a possible violation of the Convention. Specifically, this paragraph states that each State Party is under the obligation to keep its inspection request within the scope of

the Convention and to provide in the inspection request all appropriate information on the basis of which a concern has arisen regarding possible non-compliance with the Convention as specified in the Verification Annex. (Paragraph 4(d) of Part X of the Verification Annex reiterates this requirement in the detailed provisions implementing Article IX.)

The term "all appropriate information" is understood to mean that a State Party does not need to provide all of the information that forms the basis for its concern. Thus, a State Party is not required to provide sensitive intelligence to meet the requirements regarding the contents of an inspection request.

Paragraph 9 further states that each State Party shall refrain from unfounded inspection requests, care being taken to avoid abuse and that the challenge inspection shall be carried out for the sole purpose of determining facts relating to the possible non-compliance.

Paragraph 10 of Article IX creates a corresponding, unconditional obligation on each State Party to permit requested challenge inspections. Specifically, this paragraph states that for the purpose of verifying compliance with the provisions of the Convention, each State Party shall permit the Technical Secretariat to conduct the on-site challenge inspection pursuant to paragraph 8. Note that, unlike other treaties such as the Conventional Forces in Europe Treaty, a State Party has no right of refusal with regard to acceptance of challenge inspections.

Paragraph 11 of Article IX sets forth, in three subparagraphs, the basic obligations and rights of an inspected State Party with regard to challenge inspections, which are to be exercised pursuant to a request for a challenge inspection of a facility or location and in accordance with the procedures provided for in the Verification Annex. The purpose of this paragraph is to summarize the basic balance between the obligation of an inspected State Party to allow and assist challenge inspections and

to make every reasonable effort to show that it is in compliance with the Convention, with the right of the inspected State Party to take measures to protect sensitive information and installations not related to chemical weapons.

Subparagraph 11(a) gives the inspected State Party the right and the obligation to make every reasonable effort to demonstrate its compliance with the Convention and, to this end, to enable the inspection team to fulfill its mandate. Note that the right to demonstrate compliance was made explicit to alleviate the concerns of some developing countries regarding abuse of challenge inspections. (Under paragraph 18 of this Article, the inspection mandate is the inspection request filed by the requesting State Party put into operational terms by the Technical Secretariat.)

Subparagraph 11(b) requires the inspected State Party to provide access within the requested site for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance. Note that the nature and extent of access is governed by Section C of Part X of the Verification Annex.

Subparagraph 11(c) gives the inspected State Party the right to take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to the Convention.

Paragraph 12 of Article IX sets forth, in three subparagraphs, the right of a requesting State Party to request that an observer accompany the inspection team on a challenge inspection and the expectation that the inspected State Party will grant such a request.

Subparagraph 12(a) states that the requesting State Party may, subject to the agreement of the inspected State Party, send a representative who may be a national either of the requesting State Party or of a third State Party, to observe the conduct of the challenge inspection.

Subparagraph 12(b) requires the inspected State Party to grant access to the observer, if allowed, in accordance with the Verification Annex. (Paragraphs 53 through 56 of Part X of the Verification Annex provide for coordination of the arrival of the observer and the inspection team, communications between the observer and the embassy of the requesting State Party, recommendations by the observer to the inspection team, and provision of amenities for the observer. Pursuant to paragraph 55 of Part X, the observer has the right to arrive at the perimeter of the inspection site, but access within the perimeter is determined by the inspected State Party.)

Subparagraph 12(c) requires the inspected State Party to, as a rule, accept the proposed observer, but states that if the inspected State Party exercises a refusal, that fact shall be recorded in the final report.

Paragraph 13 of Article IX contains the first of the provisions setting forth the process for initiating, conducting and concluding a challenge inspection. Specifically, this paragraph requires the requesting State Party to present an inspection request for an on-site challenge inspection to the Executive Council and at the same time to the Director-General for immediate processing.

Paragraph 14 of Article IX concerns the response of the Director-General to a request for a challenge inspection. Specifically, this paragraph requires the Director-General to immediately ascertain that the inspection request meets the requirements specified in paragraph 4 of Part X of the Verification Annex, and, if necessary, assist the requesting State Party in filing the inspection request accordingly. (Paragraph 4 of Part X requires an challenge inspection request to contain the name of the State Party to be inspected and, if applicable, the Host State; the point of entry to be used; the size and type of the inspection site; the concern regarding possible non-compliance with the Convention, including the relevant provisions of the Convention, the nature and circumstances of the possible non-compliance, and all

appropriate information on the basis of which the concern has arisen; and the name of the observer.)

Note that the inspection request does not have to contain the location of the inspection site. Pursuant to paragraph 6 of Part X of the Verification Annex, the requesting State Party need only provide this information in time for the Director-General to provide the information to the inspected State Party no less than 12 hours before the planned arrival of the inspection team at the point of entry. Finally, Paragraph 14 also states that when the inspection request fulfills the requirements, preparations for the challenge inspection shall begin.

Paragraph 15 of Article IX concerns notification of the inspected State Party of a request for a challenge inspection. Specifically, this paragraph requires the Director-General to transmit the inspection request to the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry. Note that it is only at this point in the process, which may be days after the inspection request is received, that the inspected State Party is first notified of an impending challenge inspection. (However, if the inspected State Party is one of the forty-one members of the Executive Council, it will know of the challenge inspection request immediately upon its submission.)

Paragraph 16 of Article IX concerns the involvement of the Executive Council in the challenge inspection process. Specifically, this paragraph states that after having received the inspection request, the Executive Council shall take cognizance of the Director-General's actions on the request and shall keep the case under its consideration throughout the inspection procedure. This paragraph further states that the Executive Council's deliberations, however, shall not delay the inspection process. The purpose of this paragraph is to provide Executive Council oversight of the inspection while, except as provided for in paragraph 17, retaining the automaticity of the challenge inspection.

Paragraph 17 of Article IX gives the Executive Council the power, in limited circumstances, to cancel a challenge inspection. Specifically, this paragraph states that the Executive Council may, not later than 12 hours after having received the inspection request, decide by a three–quarters majority of all its members against carrying out the challenge inspection, if it considers the inspection request to be frivolous, abusive or clearly beyond the scope of the Convention as described in paragraph 8. (Paragraph 8 of Article IX limits challenge inspections to any facility or location in the territory or in any other place under the jurisdiction or control of a State Party and requires such inspections to be for the sole purpose of clarifying and resolving any questions concerning possible non–compliance with the provisions of the Convention.)

Paragraph 17 further states that neither the requesting nor the inspected State Party shall participate in such a decision. Note that this does not preclude these States Parties from attending the meeting if they are members of the Executive Council. Finally, this paragraph states that if the Executive Council decides against the challenge inspection, preparations shall be stopped, no further action on the inspection request shall be taken, and the States Parties concerned shall be informed accordingly.

Paragraph 17 is a compromise between, on the one hand, certain developing countries that wanted the Executive Council to be able to decide whether challenge inspections should take place because of their concerns of possible abuse and, on the other hand, other negotiating states, including the U.S., that desired automaticity in conducting challenge inspections. The very short time–frame of 12 hours for consideration, coupled with the requirement for a three–quarters majority vote, could make it difficult to stop an inspection.

Paragraph 18 of Article IX concerns the creation of a mandate for the challenge inspection based on the inspection request. Specifically, this paragraph requires the Director–General to issue an inspection mandate for the conduct of the challenge inspection. The inspection mandate is the inspection request referred to in paragraphs 8 and 9 of this Article put into operational terms (i.e., instructions issued to the inspection team for the conduct of a particular inspection), which shall conform with the inspection request. (Paragraphs 8 and 9 of this Article establish the rights and limitations regarding requests for challenge inspections.)

Paragraph 19 of Article IX states that challenge inspections shall be conducted in accordance with Part X or, in the case of alleged use, in accordance with Part XI of the Verification Annex. (Part X provides the general rules for challenge inspections while Part XI provides special rules for investigations of alleged use of chemical weapons.) Paragraph 19 further states that the inspection team shall be guided by the principle of conducting the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. (This provision is repeated in paragraph 45 of Part X of the Verification Annex.)

Paragraph 20 of Article IX sets forth the basic obligations of an inspected State Party. Specifically, this paragraph requires the inspected State Party to assist the inspection team throughout the challenge inspection and facilitate its task. This paragraph also states that if the inspected State Party proposes, pursuant to Section C of Part X of the Verification Annex, arrangements to demonstrate compliance with this Convention, alternative to full and comprehensive access, it shall make every reasonable effort, through consultations with the inspection team, to reach agreement on the modalities for establishing the facts with the aim of demonstrating its compliance.

(Section C of Part X of the Verification Annex contains the general rules and the rules of managed access for conducting challenge inspections, including a provision allowing the inspected State Party to take into account its constitutional obligations with regard to proprietary rights or searches and seizures (paragraph 41 of Part X).)

This means that, in most cases, an inspected State Party is expected to take steps to demonstrate its compliance by providing full and comprehensive access to an inspection site. However, if a State Party chooses to exercise its rights to take measures to protect sensitive installations and information, including denial of access to parts of the inspection site, it then must consult with the inspection team and make every reasonable effort to reach agreement on the best alternative method for demonstrating that it is in compliance with the Convention.

Paragraph 21 of Article IX sets forth the requirements concerning the contents and transmittal to the Executive Council and States Parties of the final report of the inspection team, and transmittal to the Executive Council and States Parties of the assessments of the involved States Parties and the views of other States Parties. Specifically, this paragraph states that the final report shall contain the factual findings as well as an assessment by the inspection team of the degree and nature of access and cooperation granted for the satisfactory implementation of the challenge inspection.

This paragraph further states that the Director-General shall promptly transmit the final report of the inspection team to the requesting State Party, to the inspected State Party, to the Executive Council and to all other States Parties. Finally, this paragraph requires the Director-General to further transmit promptly to the Executive Council the assessments of the requesting and of the inspected States Parties, as well as the views of other States Parties which may be conveyed to the Director-General for that purpose, and then to provide them to all States Parties.

Paragraph 22 of Article IX provides for Executive Council review of the final report and requires it to address any concerns related to non-compliance, the scope of the request, or abuse of the right to request a challenge inspection. Specifically, this paragraph requires the Executive Council to, in accordance with its powers and functions, review the final report of the inspection team as soon as it is presented, and address any concerns as to whether any non-compliance has occurred, whether the request had been within the scope of the Convention, and whether the right to request a challenge inspection had been abused.

Note that the Executive Council is not given any special powers in regard to determining compliance or non-compliance. Instead, it must act in accordance with "its powers and functions," i.e. paragraphs 30 through 36 of Article VIII. In particular, paragraph 36 gives the Executive Council the power to request States Parties to take measures to redress situations within a specified time, and if they do not comply, to, *inter alia*, make recommendations to the Conference regarding these measures and measures to ensure compliance.

Note also that the phrase "address any concerns" is understood to mean the Executive Council may "address" a State Party's concerns. However, the phrase does not provide for the Executive Council to decide whether non-compliance with the Convention has occurred. The language in paragraph 22 is a compromise between certain developing countries that wanted an international body to decide whether a violation had occurred, and other negotiating states, including the U.S., that wanted decisions on violations to be left up to each State Party itself to determine.

Paragraph 23 of Article IX requires the Executive Council to take certain specific steps if it concludes that further action is necessary to respond to the results of a challenge inspection. Specifically, this paragraph states that if the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be

necessary with regard to paragraph 22, it shall take the appropriate measures to redress the situation and to ensure compliance with the Convention, including specific recommendations to the Conference. This means that if the Executive Council concludes that it must undertake further action, one of the steps it must take is the otherwise optional action permitted under paragraph 36(c) of Article VIII, i.e. recommendations to the Conference concerning measures to redress the situation and to ensure compliance.

Finally, paragraph 23 states that in the specific case of abuse of the right to request a challenge inspection, the Executive Council shall examine whether the requesting State Party should bear any of the financial implications of the challenge inspection.

Paragraph 24 of Article IX gives the requesting State Party and the inspected State Party the right to participate in the review process and requires the Executive Council to inform the States Parties and the next session of the Conference of the outcome of the process.

Paragraph 25 of Article IX states that if the Executive Council has made specific recommendations to the Conference, the Conference shall consider action in accordance with Article XII. (Article XII specifies measures that may be taken by the Conference to redress situations and to ensure compliance with the Convention.) Thus, this paragraph ensures a linkage between actions taken by the Executive Council in response to the results of a challenge inspection and the general provisions for the Conference to ensure compliance with the Convention.

ARTICLE X – ASSISTANCE AND PROTECTION AGAINST CHEMICAL WEAPONS

Article X consists of eleven paragraphs. This Article establishes procedures for State Party requests, and possible responses to such requests, for assistance and protection when chemical weapons have been used against it, when riot control agents have been used against it as a method of warfare, or when it is threatened by actions or activities of any State that are prohibited for States Parties by Article I, i.e. the basic prohibitions with regard to chemical weapons, such as the acquisition of chemical weapons.

Paragraph 1 of Article X defines "assistance" for the purposes of this Article as meaning the coordination and delivery to States Parties of protection against chemical weapons, including, inter alia, detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and any advice on any of these protective measures. Note that the resources contemplated in this Article include a data bank with public information on protection against chemical weapons, expert advice from the Technical Secretariat on protective capacity, bilateral assistance, a voluntary fund for assistance, and other general types of assistance.

Paragraph 2 of Article X states that nothing in the Convention shall be interpreted as impeding the right of a State Party to conduct research into, develop, produce, acquire, transfer or use any means for protection against chemical weapons for purposes not prohibited under the Convention. The purpose of this paragraph is to make clear that programs for the continuing development of defenses against chemical weapons are permitted under the Convention, although information on them must be reported pursuant to paragraph 4 of this Article.

Paragraph 3 of Article X states that each State Party undertakes to facilitate, and has the right to participate in, the fullest possible exchange of equipment, material, and scientific and technological information concerning means of protection against chemical weapons. Note that paragraph 2 (b) of Article XI contains similar language regarding chemistry in general.

Paragraph 4 of Article X requires that, for the purposes of increasing the transparency of national programs related to protective purposes, each State Party must provide to the Technical Secretariat annually information on its program, in accordance with procedures to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. using guidelines prepared by the Preparatory Commission.

The purpose of this paragraph is to increase confidence that programs for protective purposes are not being used for prohibited activities, such as the development of new chemical weapons. (Pursuant to paragraph 9 (b) of Article II, "protective purposes" are those purposes directly related to protection against toxic chemicals and to protection against chemical weapons.)

Paragraph 5 of Article X requires the Technical Secretariat to establish, not later than 180 days after the Convention's entry into force, and maintain a data bank for the use of any requesting State Party containing freely available information, i.e. from open public sources, on the various means of protection against chemical weapons, as well as such information as may be provided by States Parties. This paragraph also requires the Technical Secretariat, within the resources available to it, to provide expert advice and assistance to a State Party in identifying how its programs for the development and improvement of a protective capacity against chemical weapons could be implemented.

Paragraph 6 of Article X states that nothing in the Convention shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance. The purpose of this paragraph is to make clear that the provisions of Article X are not intended to replace bilateral forms of assistance, but to complement them. Note that, when requested, the Technical Secretariat will register such bilateral agreements concerning assistance, pursuant to paragraph 39(c) of Article VIII.

Paragraph 7 of Article X requires each State Party to provide assistance through the Organization, and to that end to elect one or more of the measures set forth in three subparagraphs. Subparagraph 7 (a) allows a State Party to meet its obligation by contributing to the voluntary fund for assistance to be established by the Conference at its first session. Note that this fund is administered by the Technical Secretariat, pursuant to paragraph 38 (c) of Article VIII, and supervised by the Executive Council, pursuant to paragraph 34 (b) of Article VIII.

Subparagraph 7 (b) allows a State Party to conclude, if possible not later than 180 days after the Convention enters into force for it, agreements with the Organization concerning the procurement, upon demand, of assistance. Note that these agreements are concluded by the Executive Council, pursuant to paragraph 34 (c) of Article VIII, and, when requested, registered by the Technical Secretariat, pursuant to paragraph 39 (c) of Article VIII.

Finally, subparagraph 7 (c) allows a State Party to declare, not later than 180 days after entry into force for it, the kind of assistance it might provide in response to an appeal by the Organization. This subparagraph further states that if a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this paragraph. This means that a State Party is not bound to provide the type of assistance it

declares, but it is bound to provide some type of assistance of its own choosing. Note that the Technical Secretariat is tasked with compiling these declarations, pursuant to paragraph 39 (c) of Article VIII.

This paragraph represents a compromise between negotiating states desiring guaranteed assistance from the Technical Secretariat and all States Parties, and other negotiating states, including the U.S., desiring only voluntary assistance by States Parties made available through the Technical Secretariat. Note that, pursuant to paragraph 39(b) of Article VIII, the Technical Secretariat will coordinate the establishment and maintenance of the permanent stockpiles of emergency and humanitarian assistance promised under paragraphs 7 (b) and (c).

Paragraph 8 of Article X sets out the circumstances in which a State Party may request and receive assistance under Article X. Specifically, this paragraph states that each State Party has the right to request and to receive assistance and protection against the use or threat of use of chemical weapons if the State Party considers that one of three conditions is met. This paragraph, however, makes receipt of assistance subject to the procedures set forth in paragraphs 9, 10 and 11 of this Article, i.e. forwarding of the request to those States Parties that have volunteered to provide assistance, Executive Council approval of supplemental assistance by the Technical Secretariat, and emergency assistance by the Technical Secretariat from resources approved a priori by the Conference. The conditions for requesting and receiving assistance are: that the State Party considers that chemical weapons have been used against it; that riot control agents have been used against it as a method of warfare; or that it is threatened by the actions or activities of any State that are prohibited for a State Party under the Convention (i.e., in addition to the uses mentioned above, the development, production, acquisition, stockpiling or retention of chemical weapons; the transfer, directly or indirectly, of chemical weapons to anyone; military preparations to use chemical weapons; and assistance,

encouragement or inducement of anyone to engage in any activity prohibited to a State Party under the Convention).

Note that a State Party may receive assistance in response to actual use by anyone, including entities that are not States, and may receive assistance when threatened by the use or other relevant actions of any State, including those that are not a Party to the Convention. The purpose of these provisions is to provide security measures for States Parties in regions where not all states are parties to the Convention.

Paragraphs 9, 10, and 11 of Article X set out the procedures to be followed once a request for assistance has been made by a State Party.

Paragraph 9 of Article X sets forth a detailed set of procedures for investigation and reporting by the Director-General in response to a request for assistance. Basically, the request is submitted to the Director-General, then transmitted directly to the Executive Council and all States Parties. Within 12 hours, the Director-General forwards the request to all States Parties who have volunteered protective and emergency assistance under paragraph 7. Within 24 hours, the Director-General must initiate an investigation, which must be completed within 72 hours and a report submitted to the Executive Council. However, if additional time is needed, an interim report can be submitted and additional periods of 72 hours may be used for investigation, with interim reports submitted at the end of each period.

Specifically, paragraph 9 states that the request, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties. The Director-General must then immediately forward the request to States Parties which have volunteered, in accordance with paragraphs 7 (b) and (c) (i.e. agreements or declarations) to dispatch emergency assistance in case of use of chemical weapons or use of riot control agents as a method of warfare, or humanitarian assistance in

case of serious threat of use of chemical weapons or serious threat of use of riot control agents as a method of warfare to the State Party concerned not later than 12 hours after receipt of the request. This paragraph further states that the Director–General shall initiate, not later than 24 hours after receipt of the request, an investigation in order to provide foundation for further action, complete the investigation within 72 hours and forward a report to the Executive Council. This paragraph also states that if additional time, which shall not exceed 72 hours, is required for completion of the investigation, an interim report shall be submitted within the same time–frame, and that the period of time for investigations may, however, be further extended by similar periods, although reports at the end of each additional period must be submitted to the Executive Council. Finally, this paragraph states that the investigation shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as the type and scope of supplementary assistance and protection needed.

Paragraph 10 of Article X sets forth the procedures for provision of supplemental assistance by the Director–General, as directed by the Executive Council in response to the Director–General's investigation. Specifically, this paragraph states that the Executive Council shall meet not later than 24 hours after receiving an investigation report to consider the situation and shall take a decision by simple majority within the following 24 hours on whether to instruct the Technical Secretariat to provide supplementary assistance, i.e. assistance in addition to that provided by States Parties pursuant to paragraphs 7 (b) and (c) of this Article. This paragraph further states that the Technical Secretariat shall immediately transmit to all States Parties and relevant international organizations the investigation report and the decision taken by the Executive Council. This paragraph also states that, when so decided by the Executive Council, the Director–General shall provide assistance immediately, i.e. assistance financed by the voluntary fund pursuant to paragraph 7(a) of this Article, and that for this purpose, the Director–

General may cooperate with the requesting State Party, other States Parties and relevant international organizations. Finally, this paragraph states that the States Parties shall make the fullest possible efforts to provide assistance.

Paragraph 11 of Article X contemplates those situations in which there may not be sufficient time to take the steps outlined in paragraphs 9 and 10. Specifically, this paragraph states that if the information available from the ongoing investigation or other reliable sources would give sufficient proof that there are victims of use of chemical weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his or her disposal for such contingencies. This paragraph further states that the Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.

ARTICLE XI - ECONOMIC AND TECHNOLOGICAL DEVELOPMENT

Article XI consists of just two paragraphs, but represents one of the most difficult compromises reached in the Convention. This Article balances the desire to encourage free trade in chemicals, equipment and technology with the desire to prevent the proliferation of chemical weapons.

Paragraph 1 establishes the broad principle that the Convention should be implemented in a manner which avoids hampering the economic and technological development of States Parties. Specifically, this paragraph states that the provisions of the Convention shall be implemented in a manner which avoids hampering the economic or technological development of States Parties, and international cooperation in the field of chemical activities for purposes not prohibited under the Convention including the international exchange of scientific and technical information and chemicals and equipment for the production, processing or use of chemicals for purposes not prohibited under the Convention. ("Purposes not prohibited under this Convention" are defined in paragraph 9 of Article II.)

The purpose of this paragraph is to address the concerns of developing countries that, under the guise of banning chemical weapons, the Convention might be used to gain an unfair competitive advantage over their chemical industries. Note that the language is adapted from similar language in paragraph 2 of Article X of the Biological Weapons Convention. Note also that, as discussed above, paragraph 11 of Article VI of the Convention repeats this obligation specifically for chemical industry verification activities by the Technical Secretariat.

Paragraph 2 contains, in five subparagraphs, the basic rights and obligations of States Parties with regard to trade in chemicals, equipment and technology. The chapeau of this paragraph states that all of these rights and obligations are subject to the provisions of the Convention and without prejudice to the principles and applicable rules of international law. The purpose of this chapeau is to make clear that these rights and obligations do not override any other treaty obligations, such as those contained in the General Agreement on Tariffs and Trade, or any other rights and obligations under international law, such as the right to have export controls.

Subparagraphs 2 (a) and 2 (b) are corollaries to the principle enunciated in paragraph 1. Specifically, subparagraph 2 (a) states that States Parties shall have the right, individually or collectively, to conduct research with, to develop, produce, acquire, retain, transfer, and use chemicals. The purpose of this subparagraph is to make clear that States Parties retain all rights under international law with regard to chemicals, except as specifically limited by the Convention and any other applicable international law.

Subparagraph 2 (b) states that States Parties undertake to facilitate, and have the right to participate in, the fullest possible exchange of chemicals, equipment and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under the Convention. Note that this language is drawn from similar obligations and rights in paragraph 1 of Article X of the Biological Weapons Convention.

Subparagraphs 2 (c) and 2 (d) represent the balance struck between the need not to unduly restrict free trade in chemicals while at the same time recognizing the legitimate need of States Parties to impose export controls for national security or other concerns and to coordinate these controls with like-minded states.

Subparagraph 2 (c) states that States Parties shall not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under the Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.

Broadly speaking, subparagraph 2 (c) states that the States Parties may not, among themselves, maintain any restrictions which would restrict or impede trade and development. This seeming ban on such restrictions, however, is modified by the clause, "incompatible with the obligations undertaken under the Convention." Therefore, the restrictions on trade and development which cannot be maintained under the Convention are those which are incompatible with obligations undertaken under the Convention. An important obligation under the Convention is the prohibition on assisting, encouraging or inducing in any way, anyone to engage in, *inter alia*, the development, production, stockpiling or use of chemical weapons. Export controls designed to prevent the proliferation of chemical weapons, whether imposed by States Parties unilaterally or in coordination with other States Parties, are clearly compatible with, and even serve to further, this obligation. Therefore, subparagraph 2 (c) does not limit the sovereign right of the U.S. or any other State Party to impose or coordinate export controls on chemicals, equipment, or technology that are determined to be useful in the development, production, stockpiling, or use of chemical weapons.

Subparagraph 2 (c) also does not limit the right of the U.S. to coordinate these controls with other states, e.g. through the Australia Group. Only export controls imposed pursuant to an international agreement, i.e. an agreement governed by international law, that are incompatible with the obligations undertaken in the Convention are prohibited. The Australia Group, and its restrictions, are not the result of any international agreement, since the Australia group is not an international organization

established by treaty, the decisions taken by its members are not legally-binding on them, and the export controls imposed are those each member imposes unilaterally. Note, however, that during the negotiations, the members of the Australia Group issued a formal statement undertaking to review, in the light of the implementation of the Convention, the measures that they take to prevent the spread of chemical substances and equipment for purposes contrary to the objectives of the Convention, with the aim of removing such measures for the benefit of States Parties to the Convention acting in full compliance with their obligations under the Convention.

This statement was issued to address the desires of several developing countries for members of the Australia Group to cease imposing non-proliferation controls once they became States Parties. It is intended to take into account States Parties compliance with the Convention in determining imposition of export controls without guaranteeing unconditional lifting of such controls.

In addition, subparagraph 2 (c) does not limit the right of the U.S. to impose embargoes unilaterally on trade with states, such as Cuba and North Korea, that are not related to the proliferation of chemical weapons, but that might involve trade in chemicals. Even if such restrictions were somehow incompatible with obligations assumed under the Convention, as discussed above, the obligations contained in, *inter alia*, subparagraph 2(c) are without prejudice to the principles and applicable rules of international law. The U.S. maintains that international law clearly allows for its embargoes on Cuba and North Korea, and therefore they do not violate the Convention.

Finally, note that the limitations on trade-related restrictions referred to in subparagraph 2 (c) involve only those that impact trade in chemicals for peaceful purposes. It is important to note that the term "purposes not prohibited by this Convention" was not used here because this term also includes protective purposes, military purposes not related to

chemical weapons, and law enforcement purposes. It was agreed that there should be no limitations whatsoever by the Convention on restrictions by States Parties on trade in chemicals for protective purposes, military purposes not related to chemical weapons, and law enforcement purposes, e.g. a State Party can place any restrictions on trade in chemicals for rocket propellants that may be used for military purposes not related to chemical weapons.

Subparagraph 2 (d) states that States Parties shall not use the Convention as grounds for applying any measures other than those provided for, or permitted, under the Convention nor use any other international agreement for pursuing an objective inconsistent with the Convention.

Subparagraph 2 (d) is intended to address the concerns of some developing countries that the Convention could be misused by States Parties individually or collectively as grounds to impose restrictions not provided for or permitted under the Convention.

Subparagraph 2 (e) states that States Parties undertake to review their existing national regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the Convention. The purpose of this provision is to address the concerns of some developing countries that there exists some national regulations that are inconsistent with subparagraph (c). It is, however, also useful in requiring States Parties with weak or non-existent export controls to ensure that such controls contain appropriate measures regarding national obligations under the Convention with regard to exports and imports of chemicals.

ARTICLE XII - MEASURES TO REDRESS A SITUATION AND TO ENSURE COMPLIANCE, INCLUDING SANCTIONS

Article XII consists of four paragraphs. This Article establishes mechanisms that the Conference may utilize to enforce the Convention.

Paragraph 1 of Article XII obligates the Conference to take steps, as provided for in this Article, to deal with cases of non-compliance with the Convention, taking into account actions by the Executive Council. Specifically, this paragraph states that the Conference shall take the necessary measures, as set forth in paragraphs 2 (restriction or suspension of rights and privileges), 3 (collective measures) and 4 (referral to the United Nations), to ensure compliance with the Convention and to redress and remedy any situation that contravenes the provisions of the Convention. This paragraph further states that in considering action pursuant to this paragraph, the Conference shall take into account all information and recommendations on the issues submitted by the Executive Council.

Paragraph 2 of Article XII gives the Conference the power, subject to Executive Council recommendation, to restrict or suspend a State Party's rights and privileges under the Convention if the State Party has not responded to an Executive Council request for action regarding suspected non-compliance. Specifically, this paragraph states that in cases where a State Party has been asked by the Executive Council to take measures to redress a situation raising problems with regard to its compliance, and where the State Party fails to fulfill the request within the specified time, the Conference may, *inter alia*, upon the recommendation of the Executive Council, restrict or suspend the State Party's rights and privileges under the Convention until it undertakes the necessary action to conform with its obligations under the Convention.

Note that the power of the Executive Council to request that a State Party take measures to redress a situation is contained in paragraph 36 of Article VIII, which states that in its consideration of doubts or concerns regarding compliance and cases of non-compliance, including, inter alia, abuse of rights provided for under the Convention, the Executive Council shall consult with the States Parties involved and, as appropriate, request the State Party to take measures to redress the situation within a specified time.

Note also that when the action contemplated by the Conference is the restriction or suspension of the rights and privileges of a State Party, the Conference may not act unless there has been a prior Executive Council recommendation to restrict or suspend the rights and privileges of a State Party. (Paragraph 36 (c) of Article VIII provides that the Executive Council may make recommendations to the Conference regarding measures to redress a situation and to ensure compliance.) The requirements of paragraph 2 thus go beyond the paragraph 1 requirement that the Conference "take into account" the recommendations of the Executive Council.

Paragraph 3 of Article XII states that in cases where serious damage to the object and purpose of the Convention may result from activities prohibited under the Convention, in particular by Article I, the Conference may recommend collective measures to States Parties in conformity with international law. Thus, the Conference is given the power to recommend collective action by States Parties in cases of a serious breach of the Convention, particularly for violations of the prohibitions on the development, production, acquisition, stockpiling, retention, transfer, military preparation for use or use of chemical weapons, violations of the destruction requirements, or violations of the prohibitions on the use of riot control agents as a method of warfare.

Note that the Conference does not have the power to impose collective measures, only to recommend them. Note also that while the title of Article XII refers to sanctions as an example of measures to redress a situation and to ensure compliance, this paragraph on collective measures, as well as the rest of the text of Article XII, does not specifically mention sanctions. However, it is understood that the term "collective measures" is intended to include, but is not limited to, sanctions.

Paragraph 4 of Article XII requires the Conference to bring very serious breaches of the Convention to the attention of the UN. Specifically, this paragraph states that the Conference shall in cases of particular gravity, bring the issue, including relevant information and conclusions, to the attention of the UN General Assembly and the UN Security Council.

ARTICLE XIII - RELATION TO OTHER INTERNATIONAL AGREEMENTS

Article XIII states that nothing in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol of 1925 or the Biological Weapons Convention. The purpose of this Article is to establish, as a matter of international law, that the Convention does not undercut any State's obligations under the Geneva Protocol of 1925 or the Biological Weapons Convention. Note that paragraph 3 of Article XVI specifically provides that a State Party that withdraws from the Convention is still bound by any other treaty to which it is a party, in particular, the Geneva Protocol of 1925.

ARTICLE XIV - SETTLEMENT OF DISPUTES

Article XIV consists of six paragraphs. This Article sets forth the general mechanisms for the settlement of disputes between States Parties or between the States Parties and the Organization. Additional mechanisms for dealing with disputes are contained in Article IX (questions regarding compliance) and Articles VIII and XII (measures to redress a situation). Note that while the Executive Council and the Conference play an important role in dispute resolution, nothing in the Convention gives them the power to impose a resolution of a dispute.

Paragraph 1 of Article XIV requires that disputes that may arise concerning the application or the interpretation of the Convention be settled in accordance with the relevant provisions of the Convention and in conformity with the provisions of the Charter of the United Nations. Chapter VI and paragraph 3 of Article II of Chapter I of the UN Charter states that, *inter alia*, disputes shall be settled peacefully.

Paragraph 2 of Article XIV states that when a dispute arises between two or more States Parties, or between one or more States Parties and the Organization, relating to the interpretation or application of the Convention, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of the Convention and, by mutual consent, referral to the International Court of Justice ("ICJ") in conformity with the Statute of the Court. This paragraph also states that the States Parties involved shall keep the Executive Council informed of the actions being taken.

The purpose of paragraph 2 of Article XIV is to establish the means by which States Parties and the Organization are to settle disputes over the interpretation or application of the Convention. The paragraph requires mandatory consultations but does not require referral to the

International Court of Justice for settlement, unless both parties consent. Such settlement must be "in conformity with the Statute of the Court." Since paragraph 1 of Article 34 of the Statute of the International Court of Justice provides that only states may come before it with disputes, this means that only disputes between States Parties, not disputes between the Organization and States Parties, may be referred to the ICJ for resolution. Pursuant to paragraph 5 of Article XIV, however, the Executive Council and/or the Conference may request advisory opinions of the ICJ.

Paragraph 3 of Article XIV gives the Executive Council the power to intervene in a dispute. Specifically, this paragraph states that the Executive Council may contribute to the settlement of a dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to start the settlement process of their choice and recommending a time-limit for any agreed procedure.

Paragraph 4 of Article XIV requires the Conference to deal with disputes brought before it and gives the Conference the power to establish ad hoc bodies to aid it in resolving such disputes. Specifically, this paragraph requires the Conference to consider questions related to disputes raised by States Parties or brought to its attention by the Executive Council and, as it finds necessary, establish or entrust organs with tasks related to the settlement of these disputes in conformity with paragraph 21 (f) of Article VIII. (Paragraph 21 (f) of Article VIII provides that the Conference shall establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with the Convention.)

Paragraph 5 of Article XIV states that the Conference and the Executive Council are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising

within the scope of the activities of the Organization. The paragraph further states that an agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with paragraph 34(a) of Article VIII. (Paragraph 34(a) of Article VIII provides that the Executive Council shall conclude agreements or arrangements with States and international organizations on behalf of the Organization, subject to prior approval by the Conference.)

Paragraph 5 of Article XIV states that the Conference and the Executive Council are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the activities of the Organization. The paragraph further states that an agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with paragraph 34 (a) of Article VIII. (Paragraph 34 (a) of Article VIII provides that the Executive Council shall conclude agreements or arrangements with States and international organizations on behalf of the Organization, subject to prior approval by the Conference.)

The purpose of paragraph 5 of Article XIV states is to provide both the Conference and the Executive Council with the power to request a non-binding advisory opinion by the International Court of Justice on any legal question concerning their activities or the activities of the Technical Secretariat. Although international organizations cannot be parties to a dispute before the ICJ, paragraph 1 of Article 65 of the ICJ's Statute provides that such organizations can request advisory opinions, if such requests are authorized by or in accordance with the UN Charter. Paragraph 2 of Article 96 of the UN charter provides that specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the ICJ on legal questions arising within the scope of their activities.

The exact relationship between the Organization and the UN remains to be worked out in the Preparatory Commission and the Conference. However, for the Organization to exercise this provision, it would have to be a specialized agency at least for the purposes of paragraph 2 of Article 96 of the UN Charter. Note that to avoid the possible delay involved in seeking a UN General Assembly resolution for each request for an advisory opinion, paragraph 5 provides for an agreement with the United Nations granting a priori approval for such requests.

Paragraph 6 states that Article XIV is without prejudice to Article IX or to the provisions on measures to redress a situation and to ensure compliance, including sanctions. The purpose of this paragraph is to make clear that a State Party may not invoke the provisions of Article XIV as means of avoiding or delaying requests for clarification regarding compliance, including challenge inspections (Article IX) or requests to take measures to redress a situation (Article XII and paragraph 36 of Article VIII).

ARTICLE XV - AMENDMENTS

Article XV consists of five paragraphs. This Article provides for two methods of modifying the Convention -- a formal amendment process, which applies to any part of the Convention and requires ratification by States Parties without dissent, and a "simplified" procedure for making minor changes of an administrative or technical nature, which is limited to most provisions of the Annexes of the Convention and does not require ratification or consensus among States Parties.

Paragraph 1 of Article XV states that any State Party may propose amendments to the Convention and changes, as specified in paragraph 4, i.e. if they are related to matters of an administrative or technical nature, to the Annexes of the Convention. This paragraph further states that amendments and changes shall be subject to the respective procedures set forth in the Article.

Paragraph 2 of Article XV provides for special sessions of the Conference to consider proposed amendments. Specifically, this paragraph requires the text of a proposed amendment to be submitted to the Director-General for circulation to all States Parties and to the Depositary (the Secretary-General of the UN). This paragraph further states that the proposed amendment then would be considered only by an Amendment Conference, which must be convened if one-third or more of the States Parties notify the Director-General within 30 days after the circulation of the proposed amendment that they support further consideration of the proposal. Finally, this paragraph states that an Amendment Conference must be held immediately following a regular session of the Conference, unless the requesting States Parties ask for an earlier meeting, but in no case sooner than 60 days after the circulation of the proposed amendment.

Paragraph 3 of Article XV sets forth the conditions that must be met before an amendment is considered binding on all States Parties. Specifically, this paragraph states that amendments shall enter into force for all States Parties 30 days after the deposit of the instruments of ratification or acceptance by all States Parties casting a positive vote at the Amendment Conference, provided the amendment is adopted by the Amendment Conference by a positive vote of a majority of all States Parties with no State Party casting a negative vote.

This means that in order for an amendment to enter into force three conditions must be met -- a majority of all States Parties to the Convention must cast positive votes for the amendment at an Amendment Conference, there must be no negative votes at the Amendment Conference, and all of the States Parties that cast a positive vote for the amendment must subsequently ratify or accept the amendment. In essence, there is a double veto opportunity -- a State Party may prevent an amendment from entering into force either by casting a negative vote at the Amendment Conference or by casting a positive vote, but subsequently failing to ratify or accept the amendment.

The purpose of this voting mechanism is to give States Parties and their legislators the opportunity to block proposed amendments while at the same time not delaying the entry into force of amendments by requiring ratification or acceptance by States Parties that did not participate or vote in the Amendment Conference.

If the requisite conditions are met, then the amendment enters into force for all States Parties, regardless of whether they cast a positive vote, abstained, or did not vote at the Amendment Conference. Entry into force occurs 30 days after the last deposit of the instrument of ratification or acceptance of the States Parties that cast a positive vote for the amendment at the Amendment Conference.

Paragraph 4 of Article XV sets forth the parts of the Annexes that may be changed by the "simplified" process, i.e. without formal amendment of the Convention, and the criteria for such changes. Specifically, this paragraph states that in order to improve the viability and effectiveness of the Convention, provisions in the Annexes shall be subject to changes in accordance with paragraph 5, i.e. the procedures for making changes to the Convention that do not constitute amendments, if proposed changes are related only to matters of an administrative or technical nature. This means that States Parties may propose changes of an administrative or technical nature, i.e. minor changes, in order to improve the viability and effectiveness of the Convention.

This paragraph further states that all changes to the Annex on Chemicals shall be made in accordance with paragraph 5. Sections A and C of the Confidentiality Annex, Part X of the Verification Annex, and those definitions in Part I of the Verification Annex which relate exclusively to challenge inspections, shall not be subject to changes in accordance with paragraph 5.

This means that administrative and technical changes may be made to most of the Annexes. Moreover, any proposed changes to the schedules of chemicals and the process for changing the schedules must be made by the "simplified" process, i.e. all changes to the Annex on Chemicals are considered to be of an administrative or technical nature. However, for a limited number of provisions of the Annexes, no changes can be made except by the formal amendment process. These are: the sections of the Confidentiality Annex related to general principles (Section A) and to measures to protect sensitive installations and prevent disclosure of confidential data in the course of on-site verification activities (Section C); the detailed challenge inspection procedures in the Verification Annex (Part X); and the definitions in the Verification Annex (Part I) which relate exclusively to challenge inspections.

Paragraph 5 of Article XV sets forth, in seven subparagraphs, the procedures for consideration and adoption of proposed changes of a technical or administrative nature, i.e. the "simplified" process. Specifically, subparagraph 5(a) states that the text of the proposed changes shall be transmitted together with the necessary information to the Director-General. This subparagraph further states that additional information for the evaluation of the proposal may be provided by any State Party and the Director-General, and that the Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary (the Secretary-General of the UN).

Subparagraph 5(b) states that within 60 days after its receipt, the Director-General shall evaluate the proposed change to determine all its possible consequences for the provisions of the Convention and its implementation and shall communicate any such information to all States Parties and the Executive Council.

Subparagraph 5(c) states that the Executive Council shall examine the proposal in the light of all information available to it, including whether the proposal is of a technical or administrative nature. This subparagraph further states that within 90 days of its receipt of the proposal, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration, and that States Parties shall acknowledge receipt of the recommendation within 10 days.

Subparagraph 5(d) states that if the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. This subparagraph further states that if the Executive Council recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation.

Subparagraph 5(e) states that if a recommendation of the Executive Council does not meet with acceptance, a decision on the proposal, including whether it is of an administrative or technical nature, shall be taken as a matter of substance by the Conference at its next session.

Subparagraph 5(f) states that the Director-General shall notify all States Parties and the Depositary of any decision under the "simplified" process.

Subparagraph 5(g) states that changes approved under the "simplified" process shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

This means that under the "simplified" process proposed changes are first evaluated by the Technical Secretariat, and then the evaluation provided to States Parties and the Executive Council. This evaluation is limited to an analysis of the impact of the change on the Convention and the activities of the Technical Secretariat, and does not involve a formal approval or recommendation. The proposed changes are then evaluated by the Executive Council.

The Executive Council first determines whether the proposed change is of an administrative or technical nature and whether the provision is one that may be modified by the "simplified" process. If the change meets these criteria, then the Executive Council will evaluate the merits of the proposed change and make either a positive or negative recommendation concerning the proposed change to all States Parties.

If the Executive Council recommends that a change be made, it becomes binding on all States Parties unless a State Party objects within 90 days. A State Party may object on either procedural grounds (e.g. the change is not of an administrative nature) or substantive grounds (e.g. the change will not improve the operation of the Convention). If a State

Party objects, the Conference determines whether the proposed change meets the procedural requirements and whether the change is desirable. Adoption of the change requires a two-thirds majority of States Parties present and voting. If the Conference votes for the change, the change is binding on all States Parties, regardless of their vote. Finally, a State Party may also force Conference consideration of a negative recommendation by the Executive Council if it objects to such a recommendation.

ARTICLE XVI - DURATION AND WITHDRAWAL

Paragraph 1 of Article XVI states that the Convention shall be of unlimited duration.

Paragraph 2 of Article XVI sets forth the conditions for withdrawal from the Convention. Specifically, this paragraph states that each State Party shall, in exercising its national sovereignty, have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardized the supreme interests of its country. This paragraph further states that a withdrawing State Party shall give notice of such withdrawal 90 days in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council. Finally, this paragraph states that such notice shall include a statement of the extraordinary events the withdrawing State Party regards as having jeopardized its supreme interests.

Note that this provision is virtually identical to those used in prior U.S. arms control agreements, e.g. Article XV of the Intermediate-Range Nuclear Forces Treaty and paragraph 3 of Article XVII of the Strategic Arms Reduction Treaty.

Paragraph 3 of Article XVI states that the withdrawal of a State Party from the Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925. The purpose of this paragraph is to make clear that a State Party that withdraws from the Convention is, at a minimum, still prohibited, by customary international law and the Geneva Protocol, from the first use of chemical weapons in war. (The general relationship between the Convention and the Geneva Protocol of 1925, as well as the Biological Weapons Convention, is discussed in Article XIII.)

ARTICLE XVII - STATUS OF THE ANNEXES

Article XVII states that the Annexes form an integral part of the Convention and that any reference to the Convention includes the Annexes. The purpose of this Article is to make clear that the Annexes to the Convention, i.e. the Annex on Chemicals, the Verification Annex and the Confidentiality Annex, have the same legal status as the Articles to the Convention.

ARTICLE XVIII - SIGNATURE

Article XVIII states that the Convention shall be open for signature for all States before its entry into force. The purpose of this Article is to allow for universal acceptance of the Convention.

ARTICLE XIX - RATIFICATION

Article XIX states that the Convention shall be subject to ratification by States Signatories according to their respective constitutional processes.

ARTICLE XX - ACCESSION

Article XX states that any State which does not sign the Convention before its entry into force may accede to it at any time thereafter. The purpose of this Article is to allow states to join the Convention after it enters into force.

ARTICLE XXI - ENTRY INTO FORCE

Paragraph 1 of Article XXI establishes the date of entry into force for the Convention. Specifically, this paragraph states that the Convention shall enter into force 180 days after the date of the deposit of the 65th instrument of ratification, but in no case earlier than two years after its opening for signature. This means that the earliest the Convention will enter into force is 13 January 1995, i.e. two years after 13 January 1993, the date the Convention was opened for signature. For this to occur, 65 states will have to ratify the Convention by 17 July 1994, i.e. 180 days before the two-year starting point. The purpose of the two-year delay is to provide the Preparatory Commission with time to set up the Organization and develop detailed implementing procedures, and to provide states, especially those with large chemical industries, with sufficient time to establish domestic legislation and ratify the Convention. The purpose of the 180-day delay is to provide sufficient advance notice to the (provisional) Technical Secretariat to prepare for activities it must conduct soon after entry into force, e.g. inspections of chemical weapons production facilities.

Paragraph 2 of Article XXI establishes the date of entry into force for those States that join the Convention after it enters into force. Specifically, this paragraph states that for States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the 30th day following the date of deposit of their instrument of ratification or accession.

ARTICLE XXII - RESERVATIONS

Article XXII states that the Articles of the Convention shall not be subject to reservations. The Article further states that the Annexes of the Convention shall not be subject to reservations incompatible with its object and purpose. Note that in allowing reservations to the Annexes of the Convention, Article XXII repeats the requirements of Article 19(c) of the Vienna Convention on the Law of Treaties, i.e. a State may form a reservation to a treaty unless the reservation is incompatible with the object and purpose of the treaty.

Article XXII is a compromise between those countries that desired no reservations to the Convention and the United States, which desired to preserve the rights of its executive and legislative branches to make reservations. The approach taken represents the view of most countries that basic obligations, which are contained in the Articles, should not be subject to reservations, but the detailed implementing measures, which are contained in the Annexes, might not be necessary or practical for all States Parties, and therefore reservations for them should be allowed, so long as they are not incompatible with the object and purpose of the Convention.

ARTICLE XXIII - DEPOSITARY

Consistent with other recent multilateral arms control treaties, such as the Enmod Convention, Article XXIII establishes the Secretary-General of the United Nations as the depositary for the Convention and sets forth, in three subparagraphs, the responsibilities of the depositary. Specifically, this Article states that the Secretary-General of the United Nations is designated as the Depositary of this Convention. This Article further states that the depositary shall, *inter alia*, have the responsibilities set forth in the following subparagraphs.

Subparagraph (a) of Article XXIII states that the depositary shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession and the date of the entry into force of the Convention, and of the receipt of other notices. Note that, pursuant to paragraph 38(d) of Article VIII, the Technical Secretariat is responsible for communications on behalf of the Organization to and from States Parties on matters pertaining to the implementation of the Convention.

Subparagraph (b) of Article XXIII states that the depositary shall transmit duly certified copies of the Convention to the Governments of all signatory and acceding States.

Subparagraph (c) of Article XXIII states that the depositary shall register the Convention pursuant to Article 102 of the Charter of the United Nations. (Paragraph 1 of Article 102 states that every treaty and every international agreement entered into by any Member of the United Nations shall as soon as possible be registered with the Secretariat and published by it.)

ARTICLE XXIV - AUTHENTIC TEXTS

Article XXIV states that the Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. Note that these languages are the official languages of the United Nations.

THE ANNEX ON CHEMICALS

The Annex on Chemicals contains two sections — Section A (Guidelines for Schedules of Chemicals) and Section B (Schedules of Chemicals). Section A consists of three paragraphs setting forth criteria by which toxic chemicals or precursors are to be evaluated for inclusion in Schedules 1, 2, or 3, respectively. ("Toxic chemicals" and "precursors" are defined in paragraphs 2 and 3 of Article II, respectively. Schedules are discussed after paragraph 2 of Article VI.) Chemicals already on the Schedules are listed in Section B. It is understood that in the future, new or currently unknown chemicals that meet these criteria may be proposed for addition to the Schedules. Note that proposals for adding chemicals to a Schedule can be adopted by the "simplified process" for changes to the Annexes pursuant to paragraphs 4 and 5 of Article XV. Under these procedures, the Executive Council will decide which chemicals are added, unless objected to by a State Party, in which case the Conference will decide.

Paragraph 1 of Section A sets forth, in three subparagraphs, the criteria that shall be taken into account in considering whether a toxic chemical or precursor should be included in Schedule 1:

- (a) It has been developed, produced, stockpiled or used as a chemical weapon as defined in Article II, i.e. toxic chemicals that are not intended for permitted purposes;
- (b) It otherwise poses a high risk to the object and purpose of the Convention by virtue of its high potential for use in prohibited activities because one or more of the following conditions are met:
 - (i) It possesses a chemical structure closely related to that of other toxic chemicals listed in Schedule 1, and has, or can be expected to have, comparable properties;

(ii) It possesses such lethal or incapacitating toxicity as well as other properties that would enable it to be used as a chemical weapon; or

(iii) It may be used as a precursor in the final single technological stage of production of a toxic chemical listed in Schedule 1, regardless of whether such a stage took place in facilities, in munitions or elsewhere (the meaning of "final technological stage" is contained in paragraph 8(a)(i) of Article II);

(c) It has little or no use for purposes not prohibited under the Convention. (Such purposes are defined in paragraph 9 of Article II.)

Note that while each of these criteria must be taken into account, a specific chemical does not have to meet all of the criteria to be added to Schedule 1.

Paragraph 2 of Section A outlines, in four subparagraphs, the criteria to be taken into account in considering whether the following types of chemicals should be included on Schedule 2: toxic chemicals not listed on Schedule 1; precursors to chemicals listed in Schedule 1; and precursors to chemicals listed in part A of Schedule 2 (i.e. Schedule 2 toxic chemicals). (As noted above, these are the types of chemicals that are currently on Schedule 2, although the list is not an inclusive one of such chemicals.) The criteria are:

(a) It poses a significant risk to the object and purpose of the Convention because it possesses such lethal or incapacitating toxicity as well as other properties that could enable it to be used as a chemical weapon;

(b) it may be used as a precursor in one of the chemical reactions at the final stage of formation of a chemical listed in Schedule 1 or part A of Schedule 2;

(c) it poses a significant risk to the object and purpose of the Convention by virtue of its importance in the production of a chemical listed in Schedule 1 or part A of Schedule 2;

(d) it is not produced in large commercial quantities for purposes not prohibited under the Convention.

Note that the principal differences in criteria between Schedule 2 and Schedule 1 are: less risk to the objectives of the Convention ("significant" versus "high"); further removed from the final stage of production ("precursor" or "importance to production" versus only "precursor"); and at least some commercial value in small amounts ("not produced in large commercial quantities" versus "little or no use"). Note also that, as with the other Schedules, while each of these criteria must be taken into account, a specific chemical does not have to meet all of the criteria to be added to Schedule 2.

Paragraph 3 of Section A lists, in four subparagraphs, the criteria to be used in considering whether a toxic chemical or precursor, not listed in other Schedules, should be included in Schedule 3. The criteria are:

(a) It has been produced, stockpiled or used as a chemical weapon;

(b) it poses otherwise a risk to the object and purpose of the Convention because it possesses such lethal or incapacitating toxicity as well as other properties that might enable it to be used as a chemical weapon;

(c) it poses a risk to the object and purpose of the Convention by virtue of its importance in the production of one or more chemicals listed in Schedule 1 or part B of Schedule 2, i.e. Schedule 2 toxic chemicals;

(d) it may be produced in large commercial quantities for purposes not prohibited under the Convention.

Note that the principal differences in criteria between Schedule 3 and Schedule 2 are: even less risk to the objectives of the Convention ("risk" versus "significant risk"); even further removed from the final stage of production ("importance to production" only versus "precursor" or "importance to production"); and significant commercial value in large amounts ("produced" versus "not produced" in large commercial quantities). Note also that, unlike Schedule 2 chemicals, prior use as a chemical weapon is a criteria for Schedule 3 chemicals. Finally, note that, as with the other Schedules, while each of these criteria must be taken into account, a specific chemical does not have to meet all of this criteria to be added to Schedule 3.

Section B of the Annex on Chemicals lists individual chemicals and chemical families comprising each Schedule. This section states that for the purpose of implementing the Convention, these Schedules identify chemicals for the application of verification measures according to the provisions of the Verification Annex. (Part VI of the Verification Annex corresponds to Schedule 1, Part VII corresponds to Schedule 2, and Part VIII corresponds to Schedule 3.) This section further notes that pursuant to paragraph 1(a) of Article II (i.e., the definition of what toxic chemicals and their precursors constitute chemical weapons), these Schedules do not constitute a definitive definition of chemical weapons. In other words, as noted previously, chemical weapons are not limited to chemicals listed on the Schedules.

Finally, this section notes that whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted.

Essentially, Schedule 1 consists of chemicals that have actually been developed, produced, stockpiled or used as chemical weapons, chemicals that are immediate precursors to such chemical weapons, and all other chemicals that pose a high potential for use as chemical weapon precursors and have no significant civilian use. (In this regard, procedures for determining toxicity are expected to be developed by the Preparatory Commission.)

Schedule 2 chemicals include toxic chemicals and their immediate precursors that are produced, generally in small commercial quantities for peaceful purposes by industry but nevertheless pose a significant risk to the objectives of the Convention because of their potential as chemical weapons.

Schedule 3 chemicals are chemicals that typically are produced in large commercial quantities, but also may have been a chemical weapon in the past or pose a risk to the objectives of the Convention because of their toxicity or importance as precursors to Schedule 1 or 2 chemicals.

Schedule 2 is divided into parts A and B. Chemicals identified under part A are highly toxic chemicals which themselves could be used as chemical weapons. Chemicals listed under part B are precursors to toxic chemicals. Part A chemicals require declaration and verification at lower production thresholds than part B chemicals. In addition, this section provides that the chemical BZ is subject to lower thresholds for declaration and verification than other part A chemicals, as specified in Part VII of the Verification Annex. BZ, which was weaponized (i.e. actually filled into munitions and manufactured to be stockpiled as a

chemical weapon), is considered to pose a higher risk than other part A Schedule 2 chemicals but in light of its commercial utility was nevertheless placed on Schedule 2 rather than Schedule 1. Schedules 1 and 3 were also broken into parts A and B identifying chemicals as toxic chemicals or precursors; however, this was done to parallel the structure in Schedule 2 and not to provide differing verification regimes.

ARTICLE-BY-ARTICLE ANALYSIS OF THE ANNEX ON IMPLEMENTATION AND VERIFICATION

The Annex on Implementation and verification is divided into eleven Parts. The Verification Annex provides the guidelines to be used in the implementation of the declaration, monitoring and inspection provisions of the Convention. Specifically, the Verification Annex Contains:

definitions;

the general rules of verification;

general provisions for verification measures for chemical weapons, chemical weapons production facilities, and permitted Schedule 1 production;

specific provisions for destruction and verification of destruction of chemical weapons;

specific provisions for destruction or conversion, and verification of destruction or conversion, of chemical weapons production facilities;

specific provisions regarding permitted production and use of Schedule 1 chemicals;

specific provisions for declaration and verification of Schedule 2 chemicals and related facilities;

specific provisions for declaration and verification of Schedule 3 chemicals and related facilities;

specific provisions for declaration and anticipated verification of other chemical production facilities;

procedures for challenge inspections; and

procedures for investigation of alleged use of chemical weapons

VERIFICATION ANNEX
PART I
DEFINITIONS

Part I of the Verification Annex consists of 26 paragraphs containing definitions for terms used in this Annex, as well as in the rest of the Convention.

Paragraph 1 of Part I defines the term "approved equipment" to mean the devices and instruments necessary for the performance of the inspection team's duties that have been certified by the Technical Secretariat in accordance with regulations prepared by the Technical Secretariat pursuant to paragraph 27 of Part II of this Annex. (Paragraph 27 of Part II provides for the establishment of a list of approved equipment for use by inspection teams on inspections.) This paragraph further states that such equipment may also refer to the administrative supplies or recording materials that would be used by the inspection team.

Paragraph 2 of Part I defines the term "building," as referred to in the definition of chemical weapons production facility in Article II, i.e. paragraph 8 of Article II, as comprising specialized buildings and standard buildings.

In turn, subparagraph 2(a) defines the term "specialized building" to mean:

- (i) Any building, including underground structures, containing specialized equipment in a production or filling configuration;
- (ii) Any building, including underground structures, which has distinctive features which distinguish it from buildings normally used for chemical production or filling activities not prohibited under the Convention.

Subparagraph 2(b) defines the term "standard building" to mean any building, including underground structures, constructed to prevailing industry standards for facilities not producing any chemical specified in paragraph 8(a)(i) of Article II, or corrosive chemicals. (The chemicals in paragraph 8(a)(i) of Article II, which is part of the definition of a chemical weapons production facility, are any Schedule 1 chemical or any other chemical that has no use, above 1 metric ton per year on the territory of a State Party or in any other place under the jurisdiction or control of a State Party, for purposes not prohibited under the Convention, but which can be used for chemical weapons purposes.

Paragraph 3 of Part I defines the term "challenge inspection" to mean the inspection of any facility or location in the territory or in any other place under the jurisdiction or control of a State Party requested by another State Party pursuant to paragraphs 8 through 25 of Article IX, i.e. the general rules for challenge inspections.

Paragraph 4 of Part I defines the term "discrete organic chemical" to mean any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstracts Service (CAS) registry number, if assigned. Note that the term is understood to include polymers.

Paragraph 5 of Part I defines the term "equipment," as referred to in the definition of chemical weapons production facility in Article II, i.e. paragraph 8 of Article II, as comprising specialized equipment and standard equipment.

In turn, subparagraph 5(a) defines the term "specialized equipment" to mean:

(i) The main production train, including any reactor or equipment for product synthesis, separation or purification, any equipment used directly for heat transfer in the final technological stage, such as in reactors or in product separation, as well as any other equipment which has been in contact with any chemical specified in paragraph 8(a)(i) of Article II, or would be in contact with such a chemical if the facility were operated. (As noted above, the chemicals in paragraph 8(a)(i) of Article II are any Schedule 1 chemical or any other chemical that has no permitted large-scale use other than for chemical weapons purposes.);

(ii) Any chemical weapon filling machines. (This is understood to include specially designed or configured, or arranged machines to facilitate the introduction of Scheduled chemicals into a chemical weapon and the closing of the chemical weapon);

(iii) Any other equipment specially designed, built or installed for the operation of the facility as a chemical weapons production facility, as distinct from a facility constructed according to prevailing commercial industry standards for facilities not producing any chemical specified in paragraph 8(a)(i) of Article II, or corrosive chemicals, such as: equipment made of high-nickel alloys or other special corrosion-resistant material; special equipment for waste control, waste treatment, air filtering, or solvent recovery; special containment enclosures and safety shields; non-standard laboratory equipment used to analyze toxic chemicals for chemical weapons purposes; custom-designed process control panels; or dedicated spares for specialized equipment.

Subparagraph 5(b) defines the term "standard equipment" to mean:

- (i) Production equipment which is generally used in the chemical industry and is not included in the types of specialized equipment;
- (ii) Other equipment commonly used in the chemical industry, such as: fire-fighting equipment; guard and security/safety surveillance equipment; medical facilities, laboratory facilities; or communications equipment.

Paragraph 6 of Part I defines the term "facility," in the context of Article VI, i.e. declarations and verification of civilian chemical industry, to mean any of the industrial sites as defined below ("plant site", "plant" and "unit").

Subparagraph 6(a) defines the term "plant site" to mean the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as: administration and other offices; repair and maintenance shops; medical centers; utilities; the central analytical laboratory; research and development laboratories; the central effluent and waste treatment area; and warehouse storage. Subparagraph 6(a) also lists two terms — works and factory — that are understood in the chemical industry to refer to the same thing as plant site.

Subparagraph 6(b) defines the term "plant" to mean a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as: small administrative sections; storage/handling areas for feedstock and products; effluent/waste handling/treatment areas; control/analytical laboratories; first aid service/related medical sections; and records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate. Subparagraph 6(b) also lists two terms — production facility and

workshop — that are understood in the chemical industry to refer to the same thing as plant.

Subparagraph 6(c) defines the term "unit" to mean the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

Subparagraph 6(c) also lists two terms — production unit and process unit — that are understood in the chemical industry to refer to the same thing as unit.

Paragraph 7 of Part I defines the term "facility agreement" to mean an agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Articles IV (chemical weapons storage and destruction facilities), V (chemical weapons production facilities) and VI (chemical industry).

Paragraph 8 of Part I defines the term "host state" to mean the State on whose territory lie facilities or areas of another State Party to the Convention, which are subject to inspection under the Convention. Note that a Host State may or may not be a State Party to the Convention.

Paragraph 9 of Part I defines the term "in-country escort" to mean individuals specified by the inspected State Party and, if appropriate, by the Host State, if they so wish, to accompany and assist the inspection team during the in-country period.

Paragraph 10 of Part I defines the term "in-country period" to mean the period from the arrival of the inspection team at a point of entry until its departure from the State at a point of entry.

Paragraph 11 of Part I defines the term "initial inspection" to mean the first on-site inspection of facilities to verify declarations submitted pursuant to Articles III (general declarations), IV (chemical weapons and their associated facilities), V (chemical weapons production facilities) and VI (Scheduled chemicals, their associated facilities, and other chemical production facilities) and the Verification Annex.

Paragraph 12 of Part I defines the term "inspected State Party" to mean the State Party on whose territory or in any other place under its jurisdiction or control an inspection pursuant to this Convention takes place, or the State Party whose facility or area on the territory of a Host State is subject to such an inspection. This paragraph further states that the term does not, however, include the State Party specified in paragraph 21 of Part II of this Annex. (The State Party referred to in paragraph 21 of Part II is a State Party that has an area or facility on its territory that is under the jurisdiction and control of a non-State Party.)

Paragraph 13 of Part I defines the term "inspection assistant" to mean an individual designated by the Technical Secretariat as set forth in Section A of Part II of this Annex (i.e. the special rules for such designations) to assist inspectors in an inspection or visit, such as medical, security and administrative personnel and interpreters.

Paragraph 14 of Part I defines the term "inspection mandate" to mean the instructions issued by the Director-General to the inspection team for the conduct of a particular inspection.

Paragraph 15 of Part I defines the term "inspection manual" to mean the compilation of additional procedures, i.e. more detailed procedures and guidelines in addition to those provided for in the Convention, for the conduct of inspections developed by the Technical Secretariat.

Paragraph 16 of Part I defines the term "inspection site" to mean any facility or area at which an inspection is carried out and which is specifically defined in the respective facility agreement, the inspection

request or mandate, or the inspection request as expanded by the alternative or final perimeter.

Paragraph 17 of Part I defines the term "inspection team" to mean the group of inspectors and inspection assistants assigned by the Director-General to conduct a particular inspection.

Paragraph 18 of Part I defines the term "inspector" to mean an individual designated by the Technical Secretariat according to the procedures as set forth in Section A of Part II of this Annex, i.e. the special rules for such designations, to carry out an inspection or visit in accordance with the Convention.

Paragraph 19 of Part I defines the term "model agreement" to mean a document specifying the general form and content for an agreement, e.g. a facility agreement, concluded between a State Party and the Organization for fulfilling the verification provisions specified in this Annex.

Paragraph 20 of Part I defines the term "observer" to mean a representative of a requesting State Party or a third State Party to observe a challenge inspection.

Paragraph 21 of Part I defines the term "perimeter," in case of challenge inspection, to mean the external boundary of the inspection site, defined by either geographic coordinates or description on a map. This paragraph further defines, in three subparagraphs, the different types of perimeters associated with challenge inspections.

Subparagraph 21(a) defines the term "requested perimeter" to mean the inspection site perimeter as specified by the requesting State Party in conformity with paragraph 8 of Part X of this Annex (which sets the limits on where the requested perimeter may be located).

Subparagraph 21(b) defines the term "alternative perimeter" to mean the inspection site perimeter as specified, alternatively to the requested perimeter, by the inspected State Party and which shall conform to the requirements specified in paragraph 17 of Part X of this Annex (which sets the limits on where the alternative perimeter may be located).

Subparagraph 21(c) defines the term "final perimeter" to mean the final inspection site perimeter as agreed in negotiations between the inspection team and the inspected State Party, in accordance with paragraphs 16 through 21 of Part X of this Annex (which specifies the rules for determining the final perimeter);

Subparagraph 21(d) defines the term "declared perimeter" to mean the external boundary of the facility declared pursuant to Articles III (general declarations, including chemical weapons development facilities), IV (chemical weapons storage and destruction facilities), V (chemical weapons production facilities) and VI (chemical industry).

Paragraph 22 of Part I defines the term "period of inspection," for the purposes of Article IX (i.e. challenge inspections) to mean the period of time from provision of access to the inspection team to the inspection site until its departure from the inspection site, exclusive of time spent on briefings before and after the verification activities. Note that the starting point for this period ("provision of access") differs from that for routine inspections ("arrival at the inspection site"), as defined in paragraph 23, due to the fact that access within the inspection site for challenge inspections may occur days after arrival at the inspection site, while access within the site for routine inspections will occur within hours of arrival. Note also that it is understood that these are continuous hours, e.g. a period of inspection of 84 hours beginning at eight a.m. on day 1 will end at 8 p.m. on day four.

Paragraph 23 of Part I defines the term "period of inspection," for the purposes of Articles IV (chemical weapons storage and destruction facilities), V (chemical weapons production facilities) and VI (chemical industry), to mean the period of time from arrival of the inspection team at the inspection site until its departure from the inspection site, exclusive of time spent on briefings before and after the verification activities. Note that, as with challenge inspections, it is understood that these are continuous hours.

Paragraph 24 of Part I defines the terms "point of entry" and "point of exit" to mean a location designated for the in-country arrival of inspection teams for inspections pursuant to this Convention or for their departure after completion of their mission. (Procedures for designation of points of entry by States Parties are discussed in paragraphs 16 through 21 of Part II of this Annex.)

Paragraph 25 of Part I defines the term "requesting State Party" to mean a State Party which has requested a challenge inspection pursuant to Article IX.

Paragraph 26 of Part I defines the term "tonne" to mean metric ton, i.e. 1,000 kg or approximately 2,200 pounds.

VERIFICATION ANNEX
PART II
GENERAL RULES OF VERIFICATION

Part II of the Verification Annex contains general rules of verification, which apply to all inspections unless there are different rules for a specific type of inspection. Part II contains provisions on the designation of inspectors and inspection assistants, privileges and immunities to be accorded members of the inspection team and observers, pre-inspection activities, conduct of inspections, and the departure and reports of the inspection team. (Pursuant to paragraph 66 of this Part, these general rules apply to all inspections, except where the specific rules for specific types of inspections e.g. challenge inspections, differ from these general rules, in which case the specific rules take precedence.)

Section A (paragraphs 1 through 9) of Part II of the Verification Annex provides for the designation by the Technical Secretariat of inspectors and inspection assistants and for their acceptance or rejection by a State Party.

Paragraph 1 of Part II requires the Technical Secretariat to provide States Parties with background information on its inspectors and inspection assistants. Specifically, this paragraph states that, within 30 days after entry into force of the Convention, the Technical Secretariat shall communicate, in writing, to all States Parties the names, nationalities and ranks of the inspectors and inspection assistants proposed for designation, as well as a description of their qualifications and professional experiences.

Paragraph 2 of Part II gives each State Party, at the time of the initial designation of inspectors and inspection assistants, the right to bar specific inspectors or inspection assistants from participating in any

inspections of the State Party. Specifically, this paragraph requires each State Party to immediately acknowledge receipt of the list of inspectors and inspection assistants proposed for designation and to inform the Technical Secretariat in writing of its acceptance of each inspector and inspection assistant, within 30 days after acknowledgement of receipt of the list. This paragraph also states that any inspector and inspection assistant included in this list shall be regarded as designated unless a State Party, not later than 30 days after acknowledgement of receipt of the list, declares its non-acceptance in writing. The State Party may also, but is not required to, include the reason for the objection. This paragraph further states that in the case of non-acceptance, the proposed inspector or inspection assistant shall not undertake or participate in verification activities on the territory or in any other place under the jurisdiction or control of the State Party which has declared its non-acceptance. Finally, this paragraph requires the Technical Secretariat to, as necessary, submit further proposals in addition to the original list.

Note that rejection of an inspector or inspection assistant by a State Party does not prohibit the inspector or inspection assistant from participating in inspections of other States Parties that have accepted them.

Paragraph 3 of Part II states that verification activities under the Convention shall only be performed by designated inspectors and inspection assistants.

Paragraph 4 of Part II gives a State Party the right to also reject specific inspectors and inspection assistants after their initial designation, except when the State Party has already received notice of an inspection to which the inspectors and inspection assistants have been assigned. Specifically, this paragraph states that, subject to the provisions of paragraph 5, a State Party has the right at any time to object to an inspector or inspection assistant who has already been designated.

(Paragraph 5 prohibits a State Party which has received notice of an inspection from rejecting an inspector or inspection assistant who has already been designated for that inspection.)

Paragraph 4 further states that the State Party shall notify the Technical Secretariat of its objection in writing and may include the reason for the objection. Finally, this paragraph states that such objection shall come into effect 30 days after receipt by the Technical Secretariat and the Technical Secretariat shall immediately inform the State Party concerned of the withdrawal of the designation of the inspector or inspection assistant.

Paragraph 5 of Part II states that a State Party that has been notified of an inspection shall not seek to have removed from the inspection team for that inspection any of the designated inspectors or inspection assistants named in the inspection team list. The purpose of this paragraph is to prevent a State Party from using its right to reject an inspector from delaying or hindering an inspection.

Paragraph 6 of Part II states that the number of inspectors or inspection assistants accepted by and designated to a State Party must be sufficient to allow for availability and rotation of appropriate numbers of inspectors and inspection assistants. The purpose of this paragraph is prohibit, without imposing specific numerical constraints, a State Party from using its right to reject inspectors and inspection assistants to interfere with the ability of the Technical Secretariat to carry out inspections of that State Party.

Paragraph 7 of Part II allows the Director-General to refer to the Executive Council any problems created by rejections of inspectors and inspection assistants by States Parties. Specifically, this paragraph states that if, in the opinion of the Director-General, the non-acceptance of proposed inspectors or inspection assistants impedes the designation of a sufficient number of inspectors or inspection assistants or otherwise

hampers the effective fulfillment of the tasks of the Technical Secretariat, the Director-General shall refer the issue to the Executive Council.

The purpose of this paragraph is to provide a mechanism for dealing with abuse of the right to reject inspectors and inspection assistants.

Paragraph 8 of Part II provides for replacements of rejected inspectors and inspection assistants using the same procedures for designation. Specifically, this paragraph states that whenever amendments to the above-mentioned lists of inspectors and inspection assistants are necessary or requested, replacement inspectors and inspection assistants shall be designated in the same manner as set forth with respect to the initial list.

Paragraph 9 of Part II states that the members of the inspection team carrying out an inspection of a facility of a State Party located on the territory of another State Party shall be designated in accordance with the procedures set forth in this Annex as applied both to the inspected State Party and the host State Party. This means that where inspections of State Party take place on the territory of another State Party, inspectors and inspection assistants must be accepted by both the host State Party and the inspected State Party.

Section B (paragraphs 10 through 15) of Part II of the Verification Annex sets forth the diplomatic privileges and immunities to be accorded inspectors, inspection assistants and observers by States Parties during inspections and transit through States Parties. These privileges and immunities are similar to those granted inspectors under other arms control agreements such as the Intermediate-Range Nuclear Forces Treaty ("INF") and Strategic Arms Reduction Treaty ("START").

Paragraph 10 of Part II requires each State Party to grant, a priori, two-year visas for all accepted inspectors and inspection assistants. Specifically, this paragraph requires each State Party, within 30 days after acknowledgement of receipt of the list of inspectors and inspection assistants or of changes thereto, to provide multiple entry/exit and/or transit visas and other such documents to enable each inspector or inspection assistant to enter and to remain on the territory of that State Party for the purpose of carrying out inspection activities. This paragraph further states that these documents shall be valid for at least two years after their provision to the Technical Secretariat.

Note that this means each State Party must process visas for those inspectors and inspection assistants that it accepts at the same time it decides whether to initially reject an inspector or inspection assistant.

Paragraph 11 sets forth, in nine subparagraphs, the specific privileges and immunities that are to be accorded inspectors and inspection assistants, and the terms and conditions under which they are to be accorded. Specifically, this paragraph states that to exercise their functions effectively, inspectors and inspection assistants shall be accorded privileges and immunities as set forth in subparagraphs (a) to (i). This paragraph further states that privileges and immunities shall be granted to members of the inspection team for the sake of the Convention and not for the personal benefit of the individuals themselves. Finally, this paragraph states that such privileges and immunities shall be accorded to inspectors and inspection assistants for the entire period between arrival on and departure from the territory of the inspected State Party or Host State, and thereafter with respect to acts previously performed in the exercise of their official functions.

Except as noted below, these are the same privileges and immunities accorded in other U.S. arms control agreements such as INF and START. Note also that the Convention can require only States Parties, not all States, to accord privileges and immunities, and therefore an

inspector or inspection assistant inspecting a facility or location of a State Party on the territory of a non-State Party will not necessarily enjoy diplomatic privileges and immunities with regard to the territorial non-State Party. However, the Article VII, paragraph 7 requirement that each State Party must provide assistance to the Technical Secretariat means that a State Party whose facilities are located on the territory of a non-State Party would have to seek such privileges and immunities for inspection team members from the non-State Party.

Subparagraph 11(a) grants the members of the inspection team the inviolability enjoyed by diplomatic agents pursuant to Article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961. Article 29 of the Vienna Convention provides that the person of a diplomatic agent shall be inviolable. Article 29 further provides that a diplomatic agent shall not be liable to any form of arrest or detention. Finally, Article 29 provides that the receiving State (i.e. for the purposes of the Convention, the inspected State Party and the Host State Party) shall treat the diplomatic agent with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Subparagraph 11(b) grants the living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to the Convention the inviolability and protection accorded to the premises of diplomatic agents pursuant to paragraph 1 of Article 30 of the Vienna Convention on Diplomatic Relations. Paragraph 1 of Article 30 of the Vienna Convention provides that the private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission. The inviolability and protection of the mission is spelled out in Article 22 of the Vienna Convention. Specifically, Paragraph 1 of Article 22 provides that the premises of a mission shall be inviolable and the agents of the receiving State, i.e., for the purposes of the Convention, the inspected State Party and the host State Party, may not enter them, except with the consent of the head of the mission. Paragraph 2 of Article 22 provides that the receiving State

is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. Paragraph 3 of Article 22 provides that the premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Note that, unlike other U.S. arms control agreements, such as INF or START, even short-term inspectors enjoy inviolable living quarters, i.e. even hotel rooms are protected. The purpose of this was to accord additional protection to inspectors in potentially hostile situations such as challenge inspections.

Subparagraph 11(c) of Part II grants the papers and correspondence, including records, of the inspection team the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to Article 30, paragraph 2 of the Vienna Convention on Diplomatic Relations. In general, Paragraph 2 of Article 30 of the Vienna Convention provides that the papers, correspondence, and, with certain exceptions, the property of a diplomatic agent shall enjoy inviolability.

Subparagraph 11(c) also grants the inspection team the right to use codes for their communications with the Technical Secretariat.

Subparagraph 11(d) states that samples and approved equipment carried by members of the inspection team shall be inviolable subject to provisions contained in the Convention, and exempt from all customs duties. Note that paragraphs 52 through 58 of this Part contain the general rules regarding samples, while paragraphs 27 through 30 contain the general rules regarding approved equipment. Subparagraph 11(d) also states that hazardous samples shall be transported in accordance with relevant regulations.

Subparagraph 11(e) states that the members of the inspection team shall be accorded the immunities accorded to diplomatic agents pursuant to paragraphs 1, 2 and 3 of Article 31 of the Vienna Convention on Diplomatic Relations. Paragraph 1 of Article 31 of the Vienna Convention provides that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State (i.e., for the purposes of the Convention, the inspected State Party and the Host State Party) and shall, with certain exceptions, also enjoy immunity from its civil and administrative jurisdiction. Paragraph 2 of Article 31 provides that a diplomatic agent is not obliged to give evidence as a witness. Paragraph 3 of Article 31 prohibits most legal actions, except in certain limited cases.

Note that, nonetheless, paragraphs 13 and 14 of this Part require members of the inspection team to respect local laws and allow for waiver of immunity for violations.

Subparagraph 11(f) states that the members of the inspection team carrying out prescribed activities pursuant to this Convention shall be accorded the exemption from dues and taxes accorded to diplomatic agents pursuant to Article 34 of the Vienna Convention on Diplomatic Relations. Article 34 of the Vienna Convention provides that diplomatic agents shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except for: indirect taxes normally incorporated into the prices of goods; real estate taxes and other fees related to property situated in the territory of the receiving State (unless held for the sending State for purposes of the mission); estate taxes, except on personal movable property; charges for specific services rendered; income and capital taxes related to private income and commercial investments made in the receiving State (i.e., for purposes of the Convention, the inspected State Party and the Host State Party); and registration, court or record fees, mortgage dues and stamp duty with respect to immovable property, except for the premises of the mission. Thus, for purposes of the Convention, the living quarters and

working spaces of the inspection team are exempt from all national, regional or municipal dues and taxes.

Note that this provision differs from U.S. arms control agreements negotiated with the former Soviet Union, such as INF and START, which allow this exemption from dues and taxes for only long-term inspectors. The purpose of this provision is provide minimal constraints on international inspectors as they conduct their activities in a wide variety of economic, legal and political systems.

Subparagraph 11(g) states that the members of the inspection team shall be permitted to bring into the territory of the inspected State Party or Host State Party, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the import or export of which is prohibited by law or controlled by quarantine regulations.

Subparagraph 11(h) states that the members of the inspection team shall be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions.

Subparagraph 11(i) states that the members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party or the Host State.

Paragraph 12 of Part II sets forth the privileges and immunities to be accorded when the inspection team is in transit. Specifically, this paragraph states that when transiting the territory of non-inspected States Parties, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents pursuant to paragraph 1 of Article 40 of the Vienna Convention on Diplomatic Relations. Paragraph 1 of Article 40 of the Vienna Convention provides that if a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning

to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return, which shall also apply to family members who enjoy privileges or immunities who are accompanying the diplomatic agent, or traveling separately to join the agent or to return to their country.

Paragraph 12 also states that papers and correspondence, including records, and samples and approved equipment, carried by members of the inspection team, shall be accorded the privileges and immunities set forth in subparagraphs 11(c) and (d), i.e. inviolability. Approved equipment is the devices and instruments necessary for the performance of the inspection team's duty, including administrative supplies and recording materials, that have been certified by the Technical Secretariat as necessary to fulfill the inspection requirements (paragraph 1 of Part I of this Annex.)

Paragraph 13 of Part II provides for possible abuses of privileges and immunities. Specifically, this paragraph states that without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party or Host State and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. This paragraph further states that if the inspected State Party or Host State Party considers that there has been an abuse of privileges and immunities specified in this Annex, consultations shall be held between the State Party and the Director-General to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

Paragraph 14 of Part II allows for waiver of the privileges and immunities of the members of the inspection team by the Director-General when members have abused their privileges and immunities. Specifically, this paragraph states that the immunity from jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of the Convention. This paragraph further states that waiver must always be express.

Paragraph 15 of Part II states that observers shall be accorded the same privileges and immunities accorded to inspectors pursuant to this section, except for those accorded pursuant to subparagraph 11(d). Subparagraph 11(d) gives inviolability to samples and approved equipment. The purpose of this exception is to prevent observers, who are present only on challenge inspections, from bringing or removing unauthorized samples or approved equipment to or from an inspection site under the protection of their privileges and immunities. (Other provisions regarding observers are contained in paragraph 12 of Article IX and paragraphs 53 through 56 of Part X of this Annex.)

Section C (paragraphs 16 through 30) of Part II of the Verification Annex contains the standing arrangements for inspections regarding points of entry, respective rights and obligations when more than one State is involved in an inspection, use of non-scheduled aircraft, administrative arrangements, and use of approved equipment.

Paragraph 16 of Part II requires each State Party to designate points of entry for inspection teams. Specifically, this paragraph requires each State Party to designate points of entry and to supply the required information to the Technical Secretariat within 30 days after the Convention enters into force for it. This paragraph further states that

these points of entry shall be such that the inspection team can reach any inspection site from at least one point of entry within 12 hours.

Note that this corresponds to the general rule that States Parties must assist an inspection team to reach an inspection site within 12 hours of arrival at the point of entry (paragraph 36 of this Part). However, for inspections of undeclared sites, i.e. challenge inspections, a State Party has 36 hours to transport the inspection team to the inspection site (paragraph 18 of Part X). Therefore, this means that a State Party will probably designate entry points from which it can reach any declared site, i.e. chemical weapons production, destruction or storage facilities, and scheduled chemicals facilities and other chemical production facilities, within 12 hours, provided it can also transport an inspection team from these points of entry to anywhere on its territory or any other place under its jurisdiction or control within 36 hours.

Finally, paragraph 16 states that locations of points of entry shall be provided to all States Parties by the Technical Secretariat.

Paragraph 17 of Part II provides for changes of points of entry. Specifically, this paragraph permits each State Party to change its points of entry by giving notice of such change to the Technical Secretariat. This paragraph further states that changes shall become effective 30 days after the Technical Secretariat receives such notification to allow appropriate notification to all States Parties.

Paragraph 18 of Part II provides for consultations between the Technical Secretariat and a State Party if timely conduct of inspections would be affected by the choice of points of entry. Specifically, this paragraph states that if the Technical Secretariat considers that there are insufficient points of entry for the timely conduct of inspections or that changes to the points of entry proposed by a State Party would hamper such timely conduct of inspections, it shall enter into consultations with the State Party concerned to resolve the problem.

Paragraphs 19 through 21 clarify the obligations and rights of States Parties where the facility or area of a State is located on the territory of another State. Paragraph 19 concerns the facility or area of a State Party located on the territory of another State Party. Paragraph 20 concerns the facility or area of a State Party located on the territory of a non State Party. Paragraph 21 concerns the facility or area of a non-State Party located on the territory of a State Party.

Paragraph 19 of Part II delineates the respective rights and obligations of States Parties in the case of an inspection of the facility or area of a State Party located on the territory of another State Party. Specifically, this paragraph states that in cases where facilities or areas of an inspected State Party are located on the territory of a Host State Party or where the access from the point of entry to the facilities or areas subject to inspection requires transit through the territory of another State Party, the inspected State Party shall exercise the rights and fulfill the obligations concerning such inspections in accordance with this Annex. This paragraph further states that the Host State Party shall facilitate the inspection of those facilities or areas and shall provide for the necessary support to enable the inspection team to carry out its tasks in a timely and effective manner. Finally, this paragraph states that States Parties through whose territory transit is required to inspect facilities or areas of an inspected State Party shall facilitate such transit.

This means that where two States Parties are involved in an inspection, the State Party whose facilities or areas are involved in the inspection is given the primary responsibility and authority with respect to the inspection.

Paragraph 20 of Part II sets forth the rights and obligations of a State Party in the case of an inspection of the facility or area of a State Party located on the territory of a State that is not a Party to the Convention. Specifically, this paragraph states that in cases where facilities or areas of an inspected State Party are located on the territory of a non-State

Party, the inspected State Party shall take all necessary measures to ensure that inspections of those facilities or areas can be carried out in accordance with the provisions of this Annex. This paragraph further states that a State Party that has one or more facilities or areas on the territory of a non State Party shall take all necessary measures to ensure acceptance by the Host State of inspectors and inspection assistants designated to that State Party, and if the inspected State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

The purpose of paragraph 20 is to acknowledge that the legal reach of the Convention on the territory of a State that is not a Party to the Convention is limited by that State's sovereign rights. Accordingly, a State Party legally may not be able to fully comply with its obligations with regard to inspections where the consent of a territorial non State Party is necessary in order to provide access for an inspection team. Therefore, in such a situation a State Party is required to do everything possible to allow the inspection. However, if the territorial non State Party refuses to permit the inspection, then the inspected State Party is not in breach of its obligation to allow an inspection if the inspected State Party shows that it exercised its best efforts to obtain consent from the territorial non State Party to conduct the inspection.

Note that the term "facility or area of a State Party" is not defined in the Convention. Nonetheless, the negotiators generally understood the term to refer to such things as military bases (i.e. places under a State Party's jurisdiction or control) as well as to other government-owned facilities, but not to facilities or areas owned by private companies, even if the companies are incorporated by the State Party. Responsibility for inspections of privately-owned facilities or areas is considered to lie with the State on which they are situated, regardless of where they are incorporated, except as provided in paragraph 21 as discussed below.

Paragraph 21 of Part II sets forth the rights and obligations of a State Party in the case of an inspection of the facility or area of a State that is not a Party to the Convention that is located on the territory of the State Party, i.e. the opposite situation from paragraph 20. The purpose of this paragraph is similar to that of paragraph 20. However, here the exceptions to the obligations of a State Party are more narrowly drawn because in this case the State Party is the territorial entity and the facilities or areas of a non-State Party are present with the permission of the State Party.

Specifically, paragraph 21 states that in cases where the facilities or areas sought to be inspected are located on the territory of a State Party, but in a place under the jurisdiction or control of a State not Party to the Convention, the State Party shall take all necessary measures as would be required of an inspected State Party and a Host State Party to ensure that inspections of such facilities or areas can be carried out in accordance with the provisions of this Annex. This means that while such a State Party is not an inspected State Party, it nevertheless has the same obligations as an inspected State Party. For example, if consent is given by the non-State Party for an inspection, the State Party must assist the inspection team in conducting the inspection. In addition, the State Party must fulfill the obligations of a host State Party, e.g. it must allow the inspection team to transit its territory.

Paragraph 21 further states that if the State Party is unable to ensure access to those facilities or areas, it shall demonstrate that it took all necessary measures to ensure access. Note that this exception does not apply to all facilities or areas of a non-State Party, but only to those that are located in a place under the jurisdiction or control of that non-State Party. This means that a State Party must provide access to any facility or area that is on its territory, even if it is owned or incorporated by a non-State Party, unless such facility or area is also located in a place under the jurisdiction or control of the non-State Party.

In addition, paragraph 21 specifies that it does not apply where the facilities or areas sought to be inspected are those of the State Party. This means that a State Party must provide access to all of its own facilities or areas on its territory, regardless of where they are located. For example, State Party X must grant access to a State Party X facility that is located on a military base of non-State Party Y located on X's territory.

Finally, note that for challenge inspections, in each of the cases dealt with in paragraphs 19 through 21, the State Party remains under the obligation to make every reasonable effort to demonstrate compliance (subparagraph 11(a) of Article IX), and so must still take steps not involving actual inspection to demonstrate its compliance when the refusal of a non-State Party prevents access.

Paragraph 22 of Part II provides for the use of non-scheduled aircraft by the inspection team. Specifically, this paragraph states that for inspections pursuant to Article IX (i.e. challenge inspections) and for other inspections where timely travel is not feasible using scheduled commercial transport, an inspection team may need to utilize aircraft owned or chartered by the Technical Secretariat. This paragraph further states that within 30 days after the Convention enters into force for it, each State Party shall inform the Technical Secretariat of the standing diplomatic clearance number for non-scheduled aircraft transporting inspection teams and equipment necessary for inspection into and out of the territory in which an inspection site is located. Finally, this paragraph states that aircraft routings to and from the designated point of entry shall be along established international airways that are agreed upon between the States Parties and the Technical Secretariat as the basis for such diplomatic clearance.

The purpose of this paragraph is to provide for the possibility of using non-scheduled aircraft where the use of commercial transportation is not feasible. Such circumstances could arise when the commercial

transportation is not reliable, is not scheduled to fly at the time required by the inspection team, or is unavailable due to the short inspection notice (e.g., 12 hours for challenge inspections.) Note, however, that challenge inspection teams are not prohibited from using commercial transportation.

Paragraph 23 of Part II provides for the filing of a flight plan for the use of non-scheduled aircraft by an inspection team. Specifically, this paragraph states that when a non-scheduled aircraft is used, the Technical Secretariat shall provide the inspected State Party with a flight plan, through the National Authority, for the aircraft's flight from the last airfield prior to entering the airspace of the State in which the inspection site is located to the point of entry, not less than six hours before the scheduled departure time from that airfield. This paragraph further states that such a plan shall be filed in accordance with the procedures of the International Civil Aviation Organization applicable to civil aircraft. Finally, this paragraph states that for its owned or chartered flights, the Technical Secretariat shall include in the remarks section of each flight plan the standing diplomatic clearance number and the appropriate notation identifying the aircraft as an inspection aircraft.

Note that in order not to exceed the notice time provided to an inspected State Party for a challenge inspection (i.e. 12 hours), this paragraph requires that the non-scheduled aircraft be able to fly from the last airfield to the point of entry within 6 hours.

Paragraph 24 of Part II requires the inspected State Party to ensure approval of the flight plan. Specifically, this paragraph states that not less than three hours prior to the scheduled departure of the inspection team from the last airfield prior to entering the airspace of the State in which the inspection is to take place, the inspected State Party or Host State Party shall ensure that the flight plan filed in accordance with paragraph 23 is approved so that the inspection team may arrive at the point of entry by the estimated arrival time.

Paragraph 25 of Part II requires the inspected State Party to provide certain amenities for non-scheduled aircraft, most of which must be paid for by the Technical Secretariat. Specifically, this paragraph requires the inspected State Party to provide parking, security protection, servicing and fuel as required by the Technical Secretariat for the aircraft of the inspection team at the point of entry when such aircraft is owned or chartered by the Technical Secretariat. This paragraph further states that such aircraft shall not be liable for landing fees, departure tax, and similar charges and that the Technical Secretariat shall bear the cost of such fuel, security protection and servicing.

Note that paragraphs 23 through 25 are similar to those found in other recent arms control agreements such as the Treaty on Open Skies and START.

Paragraph 26 of Part II requires the inspected State Party to also provide certain basic amenities to the inspection team, all of which, however, are to be paid for by the Organization. Specifically, this paragraph requires the inspected State Party to provide or arrange for the amenities necessary for the inspection team such as communication means, interpretation services to the extent necessary for the performance of interviewing and other tasks, transportation, working space, lodging, meals and medical care. This paragraph also states that in this regard, the inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team.

Paragraph 27 of Part II provides for the establishment of a list of approved equipment for use by inspection teams on inspections. Specifically, this paragraph states that subject to paragraph 29 (i.e. the right of the inspected State Party to inspect equipment to verify its identity), there shall be no restriction by the inspected State Party on the inspection team bringing into the inspection site such equipment, approved in accordance with paragraph 28, which the Technical Secretariat has determined to be necessary to fulfill the inspection

requirements. This paragraph further states that the Technical Secretariat shall prepare and, as appropriate, update a list of approved equipment, which may be needed for the purposes described above, and regulations governing such equipment which shall be in accordance with the Verification Annex.

This paragraph also states that in establishing the list of approved equipment and these regulations, the Technical Secretariat shall ensure that safety considerations for all the types of facilities at which such equipment is likely to be used are taken fully into account. Finally, this paragraph states that a list of approved equipment shall be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Note that for challenge inspections, the provisions of paragraph 47 of Part X of this Annex take precedence where different from the provisions of paragraphs 52 through 58 of this part, e.g. the inspection team and the inspected State Party shall negotiate: the extent of access to any particular place or places within the final and requested perimeters; the particular activities, including sampling, to be conducted by the inspection team; the performance of particular activities by the inspected State Party; and the provision of particular information by the inspected State Party. This means that for challenge inspections, the inspected State Party can negotiate restrictions on the use of approved equipment within the inspection site.

Paragraph 28 of Part II provides for sole control of approved equipment by the Technical Secretariat and requires the Technical Secretariat to tailor the equipment used to the specific type of inspection to be conducted. Specifically, this paragraph states that the equipment shall be in the custody of the Technical Secretariat and be designated, calibrated and approved by the Technical Secretariat. This paragraph further states that the Technical Secretariat shall, to the extent possible, select that equipment which is specifically designed for the specific kind

of inspection required. Finally, this paragraph states that designated and approved equipment shall be specifically protected against unauthorized alteration.

Paragraph 29 of Part II gives the inspected State Party a limited right to inspect and exclude equipment. Specifically, this paragraph states that the inspected State Party shall have the right, without prejudice to the prescribed time-frames, to inspect the equipment in the presence of inspection team members at the point of entry, that is, to check the identity of the equipment brought in or removed from the territory of the inspected State Party or the Host State. This paragraph also states that to facilitate such identification, the Technical Secretariat shall attach documents and devices to authenticate its designation and approval of the equipment.

This paragraph further states that the inspection of the equipment shall also ascertain to the satisfaction of the inspected State Party that the equipment meets the description of the approved equipment for the particular type of inspection and that the inspected State Party may exclude equipment not meeting that description or equipment without the above-mentioned authentication documents and devices. Finally, this paragraph states that procedures for the inspection of equipment shall be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on drafts prepared by the Preparatory Commission. Note that these procedures are expected to address the timing and intrusiveness of such examinations.

Paragraph 30 of Part II provides for the use by the inspection team of other than approved equipment. Specifically, this paragraph states that in cases where the inspection team finds it necessary to use equipment available on site not belonging to the Technical Secretariat and requests the inspected State Party to enable the team to use such equipment, the inspected State Party shall comply with the request to the extent it can. Note that the inspected State Party is only required to respond to

requests for use of equipment at an inspection site to extent that it is able. Therefore, if, for example, a private company does not wish its equipment to be used, the inspected State Party may refuse the request of an inspection team.

Section D (paragraphs 31 through 37) of Part II of the Verification Annex sets forth provisions for pre-inspection activities, specifically, notification, entry of the inspection team into the territory of the inspected State Party or Host State, transit to the inspection site, and pre-inspection briefing of the inspection team.

Paragraph 31 of Part II establishes the general rule that the Director-General shall notify the State Party prior to the planned arrival of the inspection team at the point of entry and within the prescribed time-frames, where specified, of its intention to carry out an inspection.

Paragraph 32 of Part II contains the information to be provided in a notification of inspection. Specifically, each notification must include the type of inspection, the point of entry, the date and estimated time of arrival at the point of entry, the means of arrival at the point of entry, the site to be inspected, the names of inspectors and inspection assistants, and, if appropriate, aircraft clearance for special flights.

Paragraph 33 of Part II requires the inspected State Party to acknowledge the receipt of a notification by the Technical Secretariat of an intention to conduct an inspection within one hour after receipt of such notification.

Paragraph 34 of Part II states that in the case of an inspection of a facility of a State Party located on the territory of another State Party, both States Parties shall be simultaneously notified in accordance with paragraphs 31 and 32, i.e. the provision of required notification information by the Technical Secretariat. This means that when more than one State Party is involved in an inspection, all States Parties involved receive the same information regarding the inspection. Note

that there is no requirement for the Technical Secretariat to provide such information to a host State that is not a Party to the Convention because there are no formal ties between the Organization and such States. However, such information presumably would be provided by the inspected State Party, pursuant to its obligation under paragraph 20 of Part II to take all necessary measures to ensure that inspections in such situations can be carried out.

Paragraph 35 of Part II requires an inspected State Party or a Host State Party to ensure immediate entry and safe conduct to an inspection team. Specifically, this paragraph requires a inspected State Party or Host State Party which has been notified of the arrival of an inspection team to ensure the inspection team's immediate entry into the territory and, through an in-country escort or by other means, to do everything in its power to ensure the safe conduct of the inspection team and its equipment and supplies, from its point of entry to the inspection site(s) and to a point of exit.

Paragraph 36 of Part II requires the inspected State Party or Host State Party to, as necessary, assist the inspection team in reaching the inspection site no later than 12 hours from the arrival at the point of entry. Note that, in general, the inspected State Party, or if applicable, the host State Party, is not explicitly required to actually transport the inspection team, nor are they required to guarantee that the inspection team arrives within the prescribed time-frame. However, pursuant to paragraphs 14, 15(b), 18 and 19 of Part X of this Annex, for challenge inspections the inspected State Party must meet these requirements.

Paragraph 37 of Part II provides for a pre-inspection briefing of the inspection team by representatives of the inspection site. Specifically, this paragraph states that upon arrival at the inspection site and before the commencement of the inspection, the inspection team shall be briefed by facility representatives, with the aid of maps and other documentation as appropriate, on the facility, the activities carried out

there, safety measures and administrative and logistic arrangements necessary for the inspection. This paragraph further states that the time spent for the briefing shall be limited to the minimum necessary and in any event not exceed three hours.

Section E (paragraphs 38 through 60) of Part II of the Verification Annex sets forth provisions for the conduct of inspections. Specifically, this includes general rules, provisions on safety and communications, inspection team and inspected State Party rights, and provisions on the collection, handling and analysis of samples, extension of inspection duration, and debriefing by the inspection team. Note that additional State Party rights are set forth in Section C of the Confidentiality Annex (measures to protect sensitive installations and prevent disclosures of confidential data in the courses of on-site verification activities).

Paragraph 38 of Part II establishes the general principle that the actions of inspection teams must be in accordance with the Convention. Specifically, this paragraph states that the members of the inspection team shall discharge their functions in accordance with the provisions of the Convention, as well as rules established by the Director-General and facility agreements concluded between States Parties and the Organization.

Paragraph 39 of Part II requires the inspection team to strictly observe the inspection mandate issued by the Director-General and to refrain from activities going beyond this mandate.

Paragraph 40 of Part II sets forth the inspection team's responsibilities regarding its interaction with the operation of an inspected facility. Specifically, this paragraph states that the activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party or Host State and disturbance to the facility or area inspected. This paragraph further states that the inspection team shall

avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting its safety and, in particular, shall not operate any facility. Finally, this paragraph states that if inspectors consider that, to fulfill their mandate, particular operations should be carried out in a facility, they shall request the designated representative of the inspected facility to have them performed, and the representative shall carry out the request to the extent possible.

Paragraph 41 of Part II gives the inspected State Party the right to accompany inspectors at all times, so long as it does not interfere with the inspectors' activities. Specifically, this paragraph states that in the performance of their duties on the territory of an inspected State Party or Host State, the members of the inspection team shall, if the inspected State Party so requests, be accompanied by representatives of the inspected State Party, but the inspection team must not thereby be delayed or otherwise hindered in the exercise of its functions.

Note that the inspected State Party is not required to accompany inspectors and there may be instances, e.g. routine inspections of chemical industry, where escorts are not provided.

Paragraph 42 of Part II states that detailed procedures for the conduct of inspections shall be developed for inclusion in the inspection manual by the Technical Secretariat, taking into account guidelines to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on drafts prepared by the Preparatory Commission.

Paragraph 43 of Part II requires the inspection team to observe the safety rules pertaining to each inspected facility. Specifically, this paragraph states that in carrying out their activities, inspectors and inspection assistants shall observe safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. This paragraph

further states that in order to implement these requirements, appropriate detailed procedures shall be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on drafts prepared by the Preparatory Commission.

Paragraph 44 of Part II gives the inspection team the right, at all times, to use telecommunication to communicate with its headquarters and among its members. Specifically, this paragraph states that inspectors shall have the right throughout the in-country period to communicate with the Headquarters of the Technical Secretariat. This paragraph further states that for this purpose they may use their own, duly certified, approved equipment and may request that the inspected State Party or Host State Party provide them with access to other telecommunications. Finally, this paragraph states that the inspection team shall have the right to use its own two-way system of radio communications between personnel patrolling the perimeter and other members of the inspection team.

Paragraph 45 of Part II establishes a general principle of unimpeded access for inspectors, subject to particular provisions for specific inspections. Specifically, this paragraph states that the inspection team shall, in accordance with the relevant Articles and Annexes of the Convention as well as with facility agreements and procedures set forth in the inspection manual, have the right to unimpeded access to the inspection site. This paragraph also states that the items to be inspected will be chosen by the inspectors.

The purpose of this provision is to establish that while the activities of an inspection team are regulated by provisions of the Convention, facility agreements, and the detailed inspection procedures contained in the inspection manual, nonetheless, an inspected State Party is expected to provide unimpeded access to an inspection site. This means that in balancing requests for access and the need to protect non-chemical weapons related information, as provided for by the Confidentiality

Annex, the inspected State Party is required to provide such access as is consistent with the provisions of the Convention permitting access to be constrained.

Note, however, that for challenge inspections, the provisions of paragraph 47 of Part X of this Annex take precedence where they differ from the provisions of paragraphs 45 through 51 of this Part, i.e. the inspection team and the inspected State Party shall negotiate the extent of access to any particular place or places within the final and requested perimeters, the particular activities, including sampling, to be conducted by the inspection team, the performance of particular activities by the inspected State Party and the provision of particular information by the inspected State Party. This means that, for challenge inspections, within the final perimeter the inspected State Party can negotiate conditions that restrict such things as access within the inspection site, sampling, interviews with personnel, inspection of documents, and taking photographs.

Paragraph 46 of Part II gives the inspection team the limited right to interview the personnel of an inspected facility. Specifically, this paragraph gives inspectors the right to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts. This paragraph further states that inspectors shall only request information and data which are necessary to the conduct of the inspection, and the inspected State Party shall furnish such information upon request. This paragraph gives the inspected State Party the right to object to questions posed to the facility personnel if those questions are deemed not relevant to the inspection. This paragraph also states that if the head of the inspection team objects and states their relevance, the questions shall be provided in writing to the inspected State Party for reply.

Finally, this paragraph states that the inspection team may note any refusal to permit interviews or to allow questions to be answered and any explanations given, in that part of the inspection report that deals with the cooperation of the inspected State Party.

Note that specific representatives of the facility are not absolutely required to answer questions, and thus, with regard to this provision, their Fifth Amendment rights of personnel at U.S. facilities against any possible self-incrimination are protected. However, the inspected State Party is required to provide information and data that are necessary to the conduct of the inspection. Additionally, if an inspected State Party does not require or allow personnel to answer questions, for whatever reason, this will almost certainly be noted in the inspection report.

Paragraph 47 of Part II gives inspectors the right to inspect documentation and records they deem relevant to the conduct of their mission.

Paragraph 48 of Part II sets forth the procedures for taking photographs during an inspection. Specifically, this paragraph gives inspectors the right to have photographs taken at their request by representatives of the State Party or of the inspected facility. This paragraph further states that the capability to take instant development photographic prints shall be available. This paragraph also states that the inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Finally, this paragraph states that the inspection team and the inspected State Party shall each retain one copy of every photograph. Note that, while there are no limits on what can be photographed, the inspection team itself does not have the right to take photographs, only to direct that the inspected State Party take them. The purpose of this is to reduce opportunities for the taking of photographs not connected with the inspection.

Paragraph 49 of Part II gives the representatives of the inspected State Party the right to observe all verification activities carried out by the inspection team.

Paragraph 50 of Part II states that the inspected State Party shall receive copies, at its request, of the information and data gathered about its facility(ies) by the Technical Secretariat.

Paragraph 51 of Part II sets forth procedures for clarifying ambiguities that arise during an inspection. Specifically, this paragraph gives inspectors the right to request clarifications in connection with ambiguities that arise during an inspection, which shall be made promptly through the representative of the inspected State Party. This paragraph further states that the representative of the inspected State Party shall provide the inspection team, during the inspection, with such clarification as may be necessary to remove the ambiguity. This paragraph also states that if questions relating to an object or a building located within the inspection site are not resolved, the object or building shall, if requested, be photographed for the purpose of clarifying its nature and function. Note that both the inspection team and the inspected State Party may require photographs to be taken. Finally, this paragraph states that if the ambiguity cannot be removed during the inspection, the inspectors shall notify the Technical Secretariat immediately and the inspectors shall include in the inspection report any such unresolved question, relevant clarifications, and a copy of any photographs taken.

Paragraph 52 of Part II gives the inspection team the right to have samples taken for them and the possibility of their taking samples. Specifically, this paragraph states that representatives of the inspected State Party or of the inspected facility shall take samples at the request of the inspection team in the presence of inspectors. This paragraph also states that if so agreed in advance with the representatives of the

inspected State Party or of the inspected facility, the inspection team may take samples itself.

Note that the inspection team itself does not have the right to take samples, only to direct that the inspected State Party take them. If so agreed in advance, however, the inspection team may take samples itself. As with photographs, the purpose of this is to lessen opportunities for taking samples not connected with the inspection. Note also, however, that for challenge inspections, the provisions of paragraph 47 of Part X of this Annex take precedence where different from the provisions of paragraphs 52 through 58 of this Part, e.g. the inspection team and the inspected State Party shall negotiate the extent of access to any particular place or places within the final and requested perimeters, the particular activities, including sampling, to be conducted by the inspection team, the performance of particular activities by the inspected State Party and the provision of particular information by the inspected State Party. This means that, for challenge inspections, within the final perimeter the inspected State Party can negotiate conditions that restrict activities regarding sampling, e.g., where, when and how samples are taken, whether samples are removed from the site, and how samples are analyzed.

Paragraph 53 of Part II sets forth the procedures for the on-site analysis of samples. Specifically, this paragraph states that where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it. This paragraph further states that at the request of the inspection team, the inspected State Party shall, in accordance with agreed procedures (i.e. as agreed between the inspection team and the inspected State Party and expected Technical Secretariat guidelines), provide assistance for the analysis of samples on-site. This paragraph states that alternatively, the inspection team may request that appropriate analysis on-site be performed in its presence.

Paragraph 54 of Part II gives the inspected State Party the right to retain portions of all samples taken or take duplicate samples and be present when samples are analyzed on-site. This means that the inspected State Party has two options for providing a control for each sample — retaining a portion of the original sample or taking a duplicate sample. Regardless of which method is used, the inspected State Party has the right to be present when samples are analyzed on-site.

Paragraph 55 of Part II gives the inspection team the right to take samples from the site for analysis at designated laboratories. Specifically, this paragraph states that the inspection team shall, if it deems it necessary, transfer samples for analysis off-site at laboratories designated by the Organization. Note that designation of laboratories in different countries is a political as well as technical decision, as reflected by the fact that the Organization decides the designation while the Director-General, pursuant to subparagraph 56(b) of this Part certifies the designated laboratories.

Paragraph 56 sets forth, in four subparagraphs, general rules regarding the conduct of off-site analysis of samples. Specifically, this paragraph states that the Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for analysis off-site is protected. This paragraph further states that the Director-General shall do so in accordance with procedures, to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII (i.e. based on reports prepared by the Preparatory Commission) for inclusion in the inspection manual.

Subparagraph 56(a) requires the Director-General to establish a stringent regime governing the collection, handling, transport and analysis of samples.

Subparagraph 56(b) requires the Director-General to certify the laboratories designated to perform different types of analysis.

Subparagraph 56(c) requires the Director-General to oversee the standardization of equipment and procedures at these designated laboratories, mobile analytical equipment and procedures, and monitor quality control and overall standards in relation to the certification of these laboratories, mobile equipment and procedures.

Subparagraph 56(d) requires the Director-General to select from among the designated laboratories those which shall perform analytical or other functions in relation to specific investigations.

Paragraph 57 of Part II sets forth the procedures for analyzing samples in off-site laboratories. Specifically, this paragraph states that when off-site analysis is to be performed, samples shall be analyzed in at least two designated laboratories. The purpose of this provision is to minimize erroneous results by conducting separate independent analyses of samples. Note that this does not exclude the laboratories in the inspected State Party or in the requesting State Party from conducting the analysis, provided they are designated laboratories. This paragraph also requires the Technical Secretariat to ensure the expeditious processing of the analysis (i.e. the analytical result).

Finally, this paragraph states that the samples shall be accounted for by the Technical Secretariat and any unused samples or portions thereof shall be returned to the Technical Secretariat.

Paragraph 58 of Part II describes the procedure for reporting a sample analysis. Specifically, this paragraph requires the Technical Secretariat to compile the results of the laboratory analysis of samples relevant to compliance with the Convention and include them in the final inspection report. This paragraph also requires the Technical Secretariat to include in the report detailed information concerning the equipment and methodology employed by the designated laboratories.

Paragraph 59 of Part II states that periods of inspection may be extended by agreement with the representative of the inspected State Party.

Paragraph 60 of Part II sets forth the procedures for providing the preliminary results of the inspection to the inspected State Party. Specifically, this paragraph states that upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. This paragraph requires the inspection team to provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off site. This paragraph further states that the document shall be signed by the head of the inspection team and that in order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. Finally, this paragraph states that this meeting shall be completed not later than 24 hours after the completion of the inspection.

Section F (paragraph 61) of Part II of the Verification Annex states that upon completion of the post-inspection procedures, the inspection team shall leave, as soon as possible, the territory of the inspected State Party or the Host State.

Section G (paragraphs 62 through 65) of Part II of the Verification Annex sets forth provisions regarding the final report of an inspection.

Paragraph 62 of Part II sets forth the contents of the final report of an inspection. Specifically, this report states that not later than 10 days after the inspection, inspectors shall prepare a factual, final report on the activities conducted by them and on their findings. This paragraph

requires that the final report only contain facts relevant to compliance with the Convention, as provided for under the inspection mandate and also provide information as to the manner in which the inspected State Party cooperated with the inspection team. This paragraph also states that differing observations made by inspectors may be attached to the report. Finally, this paragraph requires that the report be kept confidential. (Procedures for handling confidential information are contained in Section A of the Confidentiality Annex.) Note that such reports of routine inspections are not required to be provided to all States Parties. Reports of challenge inspections, however, must be provided to all States Parties pursuant to paragraph 21 of Article IX. Note further that paragraph 2(b)(ii) of the Confidentiality Annex requires the Director-General to provide States Parties with general reports on the results and effectiveness of verification activities. The reports of routine inspections, as well as of challenge inspections, are part of the data required to ensure States Parties of the continued compliance with the Convention by other States Parties.

Paragraph 63 of Part II provides for comments by the inspected State Party on the final report and for final submission to the Director-General. Specifically, this paragraph states that the final report shall immediately be submitted to the inspected State Party. This paragraph further states that any written comments, which the inspected State Party may immediately make on its findings, shall be annexed to the final report. Finally, this paragraph states that the final report together with annexed comments made by the inspected State Party shall be submitted to the Director-General not later than 30 days after the inspection.

Paragraph 64 of Part II states that should the report contain uncertainties, or should cooperation between the National Authority and the inspectors not measure up to the standards required, the Director-General shall approach the State Party for clarification. This means that if the inspection reveals contested data, compliance concerns

or other ambiguities, or if representatives of a facility or the inspected State Party or host State Party did not cooperate adequately with the inspection, the Director-General must raise the matter with the appropriate State Party.

Paragraph 65 of Part II states that if the uncertainties cannot be removed or the facts established are of a nature to suggest that obligations undertaken under the Convention have not been met, the Director-General shall inform the Executive Council without delay.

Paragraph 66 of Part II establishes the relationship between the general provisions applicable to all inspections contained in this Part and the specific provisions for each type of inspection contained in Parts III through XI of this Annex. Specifically, this paragraph states that the provisions of Part II of the Verification Annex shall apply to all inspections conducted pursuant to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts III to XI of the Verification Annex, in which case the latter provisions shall take precedence.

Note that a specific provision takes precedence over a general provision whenever the specific provision differs from the general provision, not merely when they conflict. The purpose of this formulation is to ensure that any doubts over which provision governs will be settled in favor of the specific provision. This is particularly important in the case of challenge inspections, whose provisions in some cases differ significantly from the general rules for inspections.

VERIFICATION ANNEX
PART III
GENERAL PROVISIONS FOR VERIFICATION MEASURES
PURSUANT TO ARTICLES IV, V AND VI, PARAGRAPH 3

Part III of the Verification Annex consists of 18 paragraphs. This Part sets forth the general provisions for initial inspections and facility agreements, standing arrangements for monitoring systems, and inspection notification time-frames for each declared facility subject to on-site inspection pursuant to Article IV (chemical weapons storage and destruction facilities), Article V (chemical weapons production facilities), and paragraph 3 of Article VI (Schedule 1 production facilities). (The detailed provisions related to these facilities are discussed in Parts IV(A), V and VI of the Verification Annex, respectively.)

Section A (paragraphs 1 through 9) of Part III sets forth the procedures for initial inspections and facility agreements.

Paragraph 1 of Part III states that each declared chemical weapons storage, destruction and production facility and each declared Schedule 1 production facility shall receive an initial inspection promptly after the facility is declared, for the following purposes: to verify the information provided, e.g. in declarations; to obtain any additional information needed for planning future verification activities at the facility, including on-site inspections and continuous monitoring with on-site instruments; and to work on the facility agreements.

Paragraph 2 of Part III requires States Parties to ensure that verification activities can be accomplished on time. Specifically, it states that States Parties shall ensure that the verification of declarations and the initiation of the systematic verification measures can be accomplished by the Technical Secretariat at all facilities within the established time-frames after the Convention enters into force for them.

Paragraph 3 of Part III states that each State Party shall conclude a facility agreement with the Organization for each chemical weapons storage, destruction and production facility and each declared Schedule 1 production facility.

Paragraphs 4 through 7 establish the time–frames for completing facility agreements for chemical weapons storage, destruction and production facilities and Schedule 1 production facilities. Note that several different time–frames are established for chemical weapons destruction facilities. The reason for this is that completion of the facility agreement is linked to when inspections begin. Destruction facilities may be constructed or converted from a chemical weapons production facility both before and well after entry into force, and verification will begin only when they become operational. Thus, inspections, and hence facility agreements, could begin at different times for different destruction facilities.

Paragraph 4 of Part III sets forth the time–frame for completion of facility agreements for chemical weapons storage facilities, chemical weapons production facilities, and Schedule 1 production facilities. Specifically, it states that facility agreements shall be completed not later than 180 days after the Convention enters into force for the State Party or after the facility has been declared for the first time, except for a chemical weapons destruction facility to which paragraphs 5 through 7 shall apply.

Paragraph 5 sets forth the time–frame for completion of facility agreements for chemical weapons destruction facilities that begin operations well after entry into force. Specifically, it states that for a chemical weapons destruction facility that begins operations more than one year after the Convention enters into force for the State Party, a facility agreement shall be completed not less than 180 days before the facility begins operation.

Paragraph 6 of Part III sets forth the time–frame for completion of facility agreements for chemical weapons destruction facilities that begin operation before entry into force or soon after, but also lists alternative arrangements. Specifically, it states that if a chemical weapons destruction facility is in operation when the Convention enters into force for the State Party, or begins operation not later than one year later, the facility agreement shall be completed not later than 210 days after the Convention enters into force for the State Party.

This paragraph further provides that the Executive Council, however, may decide that transitional verification arrangements are sufficient, provided they:

- are approved in accordance with paragraph 51 of Part IV(A) of this Annex. (Paragraph 51 of Part IV(A) sets forth detailed provisions for creating and approving transitional verification arrangements for destruction operations during the first 390 days after the entry into force of the Convention.);
- include a transitional facility agreement;
- include sufficient provisions for verification through on–site inspection and monitoring with on–site instruments; and
- include a sufficient time–frame for application.

This means that verification at such destruction facilities may be governed by permanent facility agreements or, if decided by the Executive Council, temporary facility agreements or even a combination of temporary and permanent facility agreements. (The purpose of transitional verification arrangements is discussed in paragraph 51 of Part IV(A) of this Annex.)

Paragraph 7 of Part III states that for chemical weapons destruction facilities referred to in paragraph 6 (i.e. those in operation prior to one year after entry into force of the Convention for a State Party) that will cease operations not later than two years after entry into force for the State Party, the Executive Council may decide that the same transitional arrangements found in paragraph 6 are sufficient. Note that this paragraph essentially repeats the same provisions for this subset of the facilities referred to in paragraph 6. This means that while all facilities that begin operation prior to one year after entry into force can be governed by a variety of types of facility agreements, the facilities that will cease operations relatively soon are may be governed by transitional facility agreements for the life of their operations. The effect of this provision is designed to avoid costly modifications that would be required to monitor destruction activities at the Johnston Atoll chemical agent disposal plant when these activities are expected to be completed soon after entry into force of the Convention.

Paragraph 8 of Part III states that facility agreements shall be based on models and provide for detailed arrangements which shall govern inspections at each facility. This paragraph further states that the model agreements shall include provisions to take into account future technological developments and shall be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. using reports prepared by the Preparatory Conference.

Paragraph 9 of Part III states that the Technical Secretariat may retain at each site a sealed container for photographs, plans and other information that it may wish to refer to in the course of subsequent inspections.

Section B (paragraphs 10 through 16) of Part III sets forth standing arrangements with regard to monitoring systems at chemical weapons storage, destruction and production facilities, and Schedule 1 production facilities.

Paragraph 10 of Part III states that, where applicable, the Technical Secretariat has the right to have installed and to use continuous monitoring instruments, systems, and seals, in conformity with the relevant provisions in the Convention and the facility agreements between States Parties and the Organization. Note that, except where agreement on aspects of verification cannot be reached (e.g., paragraphs 40 and 83 of Part V), such continuous monitoring is not required by the Convention, but the Technical Secretariat has the right to conduct it, if it deems necessary.

Paragraphs 11 and 12 of Part III set forth the rights and responsibilities of the inspection team and the inspected State Party with regard to monitoring instruments and systems. Specifically, these paragraphs provide that the inspected State Party shall:

--in accordance with agreed procedures, have the right to inspect any instrument used or installed by the inspection team, i.e. the inspection team's instruments installed prior to the inspection pursuant to paragraph 10, and to have the instrument tested in the presence of the inspected State Party's own representatives; and

--provide the necessary preparation and support for the establishment of continuous monitoring instruments and systems.

In turn, the inspection team shall have the right to:

—use instruments installed by the inspected State Party for the inspected State Party's own monitoring of the technological process of the destruction of chemical weapons; and

—inspect the instruments of the inspected State Party that the inspection team intends to use for purposes of verification of the destruction of chemical weapons and to have them tested in the inspection team's presence.

This means that the inspection team has the right to use both its own instruments and those of inspected State Party for monitoring of destruction of chemical weapons.

Paragraph 13 of Part III states that in order to implement paragraphs 11 and 12, the appropriate detailed procedures must be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. using reports prepared by the Preparatory Conference.

Paragraph 14 of Part III provides that the inspected State Party shall:

—immediately notify the Technical Secretariat if an event occurs or may occur at a facility where monitoring instruments are installed, which may have an impact on the monitoring system; and

—coordinate subsequent actions with the Technical Secretariat with a view to restoring the operation of the monitoring system and establishing interim measures, if necessary, as soon as possible.

The purpose of paragraph 14 is to place the responsibility on the inspected State Party to notify the Technical Secretariat in the event the monitoring devices are affected by, e.g. an accident at the site, or could be affected by, e.g. future scheduled facility maintenance.

Paragraph 15 of Part III states that the inspection team, during each inspection, shall verify that the monitoring system functions correctly and that emplaced seals have not been tampered with. This paragraph also provides for the inspection team to make visits as required to service the monitoring system to perform any necessary maintenance or replacement of equipment, or to adjust the coverage of the monitoring

system as required. Note that these visits will not be counted as part of the quota of inspections.

Paragraph 16 of Part III states that if the monitoring system indicates any anomaly, the Technical Secretariat shall immediately take action to determine whether this resulted from equipment malfunction or activities at the facility. This paragraph further states that if the problem remains unresolved after such examination, the Technical Secretariat shall ascertain the actual situation, through immediate on-site inspection of, or visit to, the facility if necessary. Finally, this paragraph states that the Technical Secretariat is required to report any such problem after its detection to the inspected State Party which is required to assist in its resolution.

Section C (paragraphs 17 and 18) of Part III set forth the time frames for notification of inspections of chemical weapons storage, destruction and production facilities and Schedule 1 production facilities.

Paragraphs 17 and 18 of Part III provide that for chemical weapons storage, destruction and production facilities and Schedule 1 production facilities, the inspected State Party shall:

—be notified of initial inspections of not less than 72 hours in advance of the estimated time of arrival of the inspection team at the point of entry; and

—be notified of inspections of such facilities not less than 24 hours in advance of the planned arrival of the inspection team at the point of entry.

Note that in addition to the requirement for notice 24 hours before the planned arrival of the inspection at the point of entry ("POE"), there is also a requirement for notice 48 hours before the planned arrival at the specific chemical weapons storage or production facility. (Paragraphs 45 of Part IV(A) and 52 of Part V.) Since the inspected State Party must

assist the inspection team in arriving at the inspection site within 12 hours of their arrival at the POE (paragraph 36 of Part II), the 24-hour pre-POE notice could end up being given as much as 12 hours after the 48-hour pre-inspection site notice. The Preparatory Commission is expected to develop procedures to reconcile this inconsistency with a view to making a 48 hours pre-inspection site notice timeline the standard for notification.

VERIFICATION ANNEX
PART IV(A)
DESTRUCTION OF CHEMICAL WEAPONS AND ITS
VERIFICATION PURSUANT TO ARTICLE IV

Part IV of the Verification Annex is divided into two parts; Part IV(A) – Chemical Weapons, and Part IV(B) – Old and Abandoned Chemical Weapons. Part IV(A) consists of 70 paragraphs, setting forth the obligations of each State Party with regard to the treatment of chemical weapons for which it is responsible. Specifically, it establishes procedures for declarations; submission of destruction plans; securing storage facilities; method and order of destruction; and verification and monitoring of declarations, storage and destruction.

Section A (paragraphs 1 through 6) of Part IV(A) contains detailed declaration requirements for chemical weapons, including chemical weapons belonging to other States, past transfers and receipts, and the general plan for destruction.

Paragraph 1 of Part IV(A) requires declaration of information on location, quantity and composition of chemical weapons, pursuant to paragraph 1(a)(ii) of Article III. Locations housing chemical weapons, regardless of type or quantity, are referred to as storage facilities.

Subparagraph 1(a) requires each State Party to declare the aggregate quantity of each chemical declared (exclusive of weapon or container weight). The purpose of this subparagraph is to obtain specific information on each of the different types of chemicals possessed by States Parties that are considered chemical weapons.

Subparagraph 1(b) requires each State Party to provide the name, geographical coordinates, and a detailed site diagram of each chemical weapon storage facility. The diagram is to include a boundary map and the location of bunkers or storage areas within the facility containing

chemical weapons. The purpose of this paragraph is to obtain identifying information for each site that contains chemical weapons to facilitate verification and monitoring activities.

Subparagraph 1(c) requires the declaration of a detailed inventory for each storage facility of chemicals defined as chemical weapons; unfilled munitions, sub-munitions, devices and equipment defined as chemical weapons; and all equipment and chemicals specifically designed for use directly in connection with the employment of munitions, sub-munitions, devices or equipment. The purpose of this paragraph is to obtain information on the specific contents of each declared storage facility related to chemical weapons to facilitate verification and monitoring activities.

Paragraph 2 of Part IV(A) prescribes how chemicals are to be declared.

Subparagraph 2(a) requires all chemicals to be declared in accordance with the Schedules specified in the Annex on Chemicals. The purpose of this subparagraph is to require chemicals to be listed by the item number provided in the Schedules rather than by common name or by a State Party's unique military nomenclature.

Subparagraph 2(b) provides for declaration of chemicals not listed in the Schedules. The State Party must provide additional information (toxicity of the pure compound, toxicity and identity of the principal final reaction product of precursors) so that such chemicals can be considered for possible inclusion in the Schedules in accordance with paragraph 5 of Article XV (the simplified process for changing the Annexes). The purpose of this subparagraph is to include chemicals that may not have been known to have been stored or weaponized as chemical weapons, but are included in the definition of chemical weapons and covered by the general purpose criteria.

Subparagraph 2(c) requires identification of each declared chemical by its International Union of Pure and Applied Chemistry (IUPAC)

nomenclature, its structural formula, and Chemical Abstracts Service (CAS) registry number if the chemical is assigned such a number. For precursors of chemical weapons, the provision of the toxicity and identity of the final reaction product(s) is required. The purpose of this paragraph is to create a uniform chemical reporting procedure for all State Parties using internationally recognized chemical identification guidelines.

Subparagraph 2(d) provides rules for declaration of chemical weapons made up of more than one chemical. It requires the declaration of each chemical, and the percentage of each chemical in the mixture. The chemical weapon will be declared under the category of the most toxic chemical component. If one of the chemical components (i.e. a component of a binary or multicomponent chemical weapon) is itself a mixture of two or more chemicals, each of these chemicals must also be identified and the percentages of each reported. The purpose of this paragraph is to clarify any ambiguity that may exist in the declaration of a chemical weapon containing more than one chemical.

Subparagraph 2(e) provides rules for the declaration of binary chemical weapons for each storage facility.

Part (i) of subparagraph 2(e) requires the declaring State Party to declare binary chemical weapons by their toxic end-products within the framework of the three categories referred to in paragraph 16 (Schedule 1 chemicals, parts and components; all other chemicals, parts and components; and unfilled munitions and devices, and equipment specifically designed for use in connection with employment of chemical weapons).

Part (ii) of subparagraph 2(e) requires declaration of the chemical composition and quantity of each component. The purpose of this subparagraph is to have the declaring State Party provide the chemical name in accordance with IUPAC nomenclature, the structural formula,

and the CAS registry number if assigned for the declared binary components and the aggregate quantity of each component.

Part (iii) of subparagraph 2(e) requires declaration of the weight ratio between the components as they are to be used in a munition. The purpose of this paragraph is to obtain information on quantities of each component as designed for their employment as a chemical weapon. This information is necessary for accounting for the destruction of the components, and to allow inspectors to balance declarations.

Part (iv) of subparagraph 2(e) requires the declaring State Party to identify the key component of the binary munition. The purpose of this paragraph is to obtain information from the declaring State Party on the precursor which plays the most important role in determining the toxic properties of the final product. The key component will be treated the same as its toxic end-product for the purposes of destruction accountability. ("Key component" is defined in paragraph 4 of Article II.)

Part (v) of subparagraph 2(e) requires the declaring State Party to identify the projected quantity of the toxic end-product based on the chemical reaction between the key component and non-key components of a binary chemical weapon. This quantity is calculated from the key component, assuming 100 percent yield. This subparagraph establishes that the declared amount of the key component will be considered equivalent to the amount of final toxic chemical if the reaction were completed with 100 percent yield. For example, if one kilogram of a key component were reacted with the non-key components to produce one and one-half kilograms of chemical agent, each kilogram of key component would be considered one and one-half kilograms of chemical agent when a State's destruction requirements are calculated. The purpose of this paragraph is to obtain information necessary to establish how much toxic end-product could be made from the declared quantity of key component.

Subparagraph 2(f) establishes that chemical weapons based on more than two components will be declared in a manner analogous to binary chemical weapons. The purpose of this paragraph is to establish rules for the declaration of chemical weapons that may contain two or more chemical components that are not chemical agents but when combined result in such an agent.

Subparagraph 2(g) establishes that for each chemical, the form of storage shall be declared, i.e., munitions, sub-munitions, devices, equipment, or bulk containers and other containers. The purpose of this paragraph is to obtain information on the configuration of the declared chemical weapons. This will assist the Technical Secretariat in preparing for inspections and evaluating general and specific plans for destruction.

Part (i) of subparagraph 2(g) requires the type of storage container, i.e., munitions, sub-munitions, devices, equipment, or bulk containers and other containers.

Part (ii) of subparagraph 2(g) requires the size of bulk container and other containers or the caliber of munitions, sub-munitions, or devices.

Part (iii) of subparagraph 2(g) requires the number of each type of item declared to contain chemicals.

Part (iv) of subparagraph 2(g) requires the nominal weight of the chemical contained in each item. Nominal weight is understood to be the estimated or theoretical weight of the chemical fill.

Subparagraph 2(h) requires the total weight of each chemical contained at each storage facility. The purpose of this subparagraph is to obtain information on the aggregate amount present at the storage facility of each chemical declared. This will assist the Technical Secretariat in preparing for inspections and evaluating general and specific plans for destruction.

Subparagraph 2(i) requires the percentage purity of chemicals stored in bulk containers, if the data is known. This will assist the Technical Secretariat in preparing for inspections and evaluating general and specific plans for destruction. This provision does not require analysis of bulk agent by the State Party.

Paragraph 3 of Part IV(A) requires the declaration of unfilled munitions, sub-munitions, devices or equipment (referred to in paragraph 1(c)(ii)) at each storage facility. The purpose of this paragraph is to obtain inventory information on chemical weapons that do not contain agent.

Subparagraph 3(a) requires the number of items of each type.

Subparagraph 3(b) requires the nominal fill volume per item of each type. Nominal fill is understood to be the estimated or theoretical volume.

Subparagraph 3(c) requires the intended chemical to be used to fill each type of item.

Paragraph 4 of Part IV(A) requires each State Party to declare all applicable information specified in paragraphs 1 through 3 of Part IV(A) for chemical weapons on its territory that are owned and possessed by another State and that are located in a place under another State's jurisdiction or control. This paragraph further states that it is the responsibility of the State Party on whose territory the chemical weapons are located to make appropriate arrangements with the other State to ensure that the declarations are made. If the State Party on whose territory the chemical weapons are located is not able to fulfill its obligations under this paragraph, it shall state the reasons why it is unable to do so. The purpose of this paragraph is to ensure, to the extent possible, detailed declarations of all chemical weapons located on the territory of States Parties.

Paragraph 5 of Part IV(A) requires States Parties to declare all transfers and receipts of chemical weapons since 1 January 1946 which exceeded 1 metric ton per chemical per year in bulk and/or munition form. The inventory format used in paragraphs 1 and 2 of Part IV(A) will be used for each annual declaration. The declaration must also include the supplier and recipient countries, the dates of the transfers or receipts, and, as precisely as possible, the current location of the transferred items. When not all the specified information is available for transfers or receipts of chemical weapons for the period between 1 January 1946 and 1 January 1970, the State Party shall declare whatever information is still available to it and provide an explanation as to why it cannot submit a full declaration. The purpose of this paragraph is to provide transparency to past cooperative efforts that may have contributed to an offensive chemical weapons capability. This obligation recognizes that complete records from that entire period can not be guaranteed. Records from the period 2 January 1970 to the present are assumed to be complete and available for declarations (based on the information from the U.S. and other countries), and therefore all States Parties are obligated to provide information on all transfers made during this period.

Paragraph 6 of Part IV(A) specifies that the general chemical weapons destruction plan required by States Parties pursuant to paragraph 1(a)(v) of Article III shall provide an overview of the entire national chemical weapons destruction program of the State Party and information on the efforts of the State Party to fulfill the destruction requirements contained in the Convention. The purpose of the paragraph is to provide the Technical Secretariat with information which it can use to evaluate the State Party's preparations and intentions for destruction. The data will also be used by the Technical Secretariat to begin planning its allocation of resources for on-site verification. The general plan is required to specify the following:

- (a) a general schedule for destruction, giving types and approximate quantities of chemical weapons planned to be destroyed in each annual destruction period for each existing chemical weapons destruction facility and, if possible, for each planned chemical weapons destruction facility;
- (b) the number of chemical weapons destruction facilities existing or planned to be operated over the destruction period;
- (c) the name and location of each existing or planned chemical weapons destruction facility and the types and approximate quantities of chemical weapons, and the type (for example, nerve agent or blister agent) and approximate aggregate quantity of chemical fill to be destroyed;
- (d) the plans and programs for training personnel for operation of the destruction facility;
- (e) the national standards for safety and emissions that the destruction facilities must satisfy. (Note that pursuant to paragraph 11 of Article V, the State Party must conduct its destruction activities in accordance with such standards and must assign the highest priority to ensuring the safety of people and to protecting the environment);
- (f) information on the development of new methods for destruction of chemical weapons and on the improvement of existing methods;
- (g) the cost estimates for destroying the chemical weapons; and
- (h) any issues which could adversely affect its national destruction program.

Section B (paragraphs 7 through 11) set forth measures for securing storage facilities and preparing them for inspections.

Paragraph 7 of Part IV(A) requires a State Party to take such measures as it considers appropriate to secure its chemical weapons storage facilities not later than when it submits its declaration of chemical weapons (within 30 days after entry into force of the Convention for the State Party). Beginning not later than 30 days after entry into force, the State Party shall also prevent any movement of its chemical weapons out of the facilities, except their removal for destruction. The purpose of this provision is to facilitate accountability and verification of declared chemical weapons by keeping them in place once declared. However, as provided for in paragraph 2(d) of Part VI of this Annex, movement of up to one metric ton total of chemical weapons agent per year to facilities declared under Part VI is allowed. Procedures for declaration and verification of such movement are expected to be developed by the Preparatory Commission.

Paragraph 8 of Part IV(A) requires a State Party to ensure that chemical weapons at its storage facilities are configured to allow ready access for verification in accordance with paragraphs 37 to 49 of Part IV(A) (the procedures for verification of declarations, systematic verification and inspection and visits). The purpose of this paragraph is to facilitate inspection activities and provide unimpeded access to all munitions.

Paragraph 9 of Part IV(A) permits a State Party to continue standard maintenance activities at the storage facility, including standard maintenance of chemical weapons; safety monitoring and physical security activities; and preparation of chemical weapons for destruction. The purpose of this paragraph is to allow normal activities which are required to maintain the facility and chemical weapons in a safe condition.

Paragraph 10 of Part IV(A) prohibits maintenance activities, including replacement of agent or of munition bodies, or modification of the original characteristics of munitions, or modification of parts or components thereof, except in preparation for destruction. This paragraph modifies paragraph 9 and therefore limits the activities permitted. The purpose of this paragraph is to prohibit States Parties from conducting activities which maintain or enhance a chemical weapons' capabilities. This paragraph, however, does not preclude modifications to munitions to facilitate their destruction.

Paragraph 11 of Part IV(A) establishes that all maintenance activities shall be subject to monitoring by the Technical Secretariat. The purpose of this paragraph is to give the Technical Secretariat the right to monitor all maintenance activities if it so desires.

Section C (paragraphs 12 through 16) of Part IV(A) sets forth the destruction procedures, including principles and methods, order of destruction, modification of intermediate destruction deadlines, extension of completion deadlines, detailed annual plans, and annual reports on destruction.

Paragraph 12 of Part IV(A) defines "destruction of chemical weapons" to mean a process by which chemicals are converted in an essentially irreversible way to a form unsuitable for production of chemical weapons, and which in an irreversible manner renders munitions and other devices unusable as such. The purpose of this paragraph is to establish a definition of destruction which does not presuppose a specific destruction technique. The paragraph uses the term "essentially" in recognition of the near impossibility of an "irreversible" chemical reaction. The techniques to be used for destruction will be evaluated by the Technical Secretariat for compliance with the obligation to destroy chemical weapons. Note that the standard for destruction of munition bodies and other devices allows for re-use of metal contained in the munition, consistent with rendering them unusable as munitions.

Paragraph 13 of Part IV(A) permits each State Party to determine how to destroy its chemical weapons, except that the following processes may not be used: dumping in any body of water, land burial or open-pit burning. It requires each State Party to only destroy chemical weapons at specifically designated and appropriately designed and equipped facilities. Note that this does not preclude the use of mobile facilities that otherwise meet these criteria.

Paragraph 14 of Part IV(A) requires each State Party to ensure that its chemical weapons destruction facilities are constructed and operated in a manner to ensure the destruction of the chemical weapons; and that the destruction process can be verified under the provisions of the Convention.

Paragraph 15 of Part IV(A) provides the rationale for the order of destruction used in the Convention. Specifically, this paragraph states that the order of destruction of chemical weapons is based on the obligations specified in Article I (e.g. the prohibition on use, development, stockpiling, etc.) and the other Articles, including obligations regarding systematic on-site verification. The order of destruction takes into account interests of States Parties for undiminished security during the destruction period; confidence-building in the early part of the destruction stage; gradual acquisition of experience in the course of destroying chemical weapons; and applicability irrespective of the actual composition of the stockpiles and the methods chosen for the destruction of chemical weapons. Finally, it states that the order of destruction is based on the principle of leveling out.

The principle of leveling out is understood to mean that States Parties with larger stockpiles are required to destroy at a larger annual amount than States Parties with smaller stockpiles so that all States Parties finish destruction concurrently, by the end of the tenth year after entry into force of the Convention.

Paragraph 16 divides chemical weapons into three categories for the purpose of destruction scheduling.

Category 1: chemical weapons on the basis of Schedule 1 chemicals and their parts and components;

Category 1 chemical weapons are understood to be Schedule 1 chemicals stored in bulk containers, filled munitions, devices, sub-munitions, and components of the filled munitions, devices and sub-munitions. Weaponized chemicals not on Schedule 1 at entry into force, but declared under paragraph 2(b) of Part IV(A) and subsequently placed on Schedule 1 are also included in Category 1.

Category 2: chemical weapons on the basis of all other chemicals and their parts and components. Note this includes those based on Schedule 2 or 3 chemicals as well as unscheduled chemicals.

Category 2 chemical weapons are understood to be Schedule 2 or 3 chemicals stored in bulk containers, munitions, devices, sub-munitions filled with Schedule 2 or 3 chemicals, and components of filled munitions, devices and sub-munitions. Munitions, devices, and sub-munitions filled with chemicals not listed in Schedule 2 or 3, but intended for use as chemical weapons are also included in this category until reclassified in accordance with paragraph 2(b) of Part IV(A).

Category 3: Unfilled munitions and devices, and equipment specifically designed for use directly in connection with employment of chemical weapons.

Category 3 chemical weapons are understood to be unfilled munitions, devices, sub-munitions and the components of unfilled munitions, devices and sub-munitions. This category also includes equipment designed solely for use in direct connection with the employment of Category 1 or Category 2 chemical weapons, such as a filling apparatus

or specially designed chemical munitions handling equipment and specific chemical weapons delivery systems.

Paragraph 17 of Part IV(A) establishes the commencement and completion of the destruction of the three categories of chemical weapons. The rationale for spreading destruction of Category 1 items over the 10 year period and requiring the destruction of Category 2 and 3 items within 5 years is that it is technically easier to destroy Category 2 and 3 items. However, paragraph 6 of Article IV states that a State Party is not precluded from destroying chemical weapons at a faster rate, therefore the goals established by the subparagraphs can be exceeded.

Subparagraph 17(a) establishes that each State Party must begin the destruction of Category 1 chemical weapons not later than two years after the Convention enters into force for it, and must complete the destruction not later than ten years after the Convention enters into force. This subparagraph establishes deadlines for four phases of Category 1 destruction.

Part (i) of subparagraph 17(a) requires that a State Party must complete testing of its first destruction facility not later than two years after entry into force of the Convention. At a minimum, one per cent of a State Party's Category 1 chemicals must be destroyed by the end of the third year after the Convention enters into force. Note that the one per cent that must be destroyed must occur in the first three years after entry into force of the Convention; chemical weapons destroyed prior to entry into force do not count towards this requirement. The first three years after the entry into force of the Convention is called Phase I.

Part (ii) of subparagraph 17(a) requires a State Party to destroy, at a minimum, twenty per cent of its Category 1 chemical weapons within the first five years after entry into force of the Convention. The period including the fourth and fifth years after entry into force of the Convention is called Phase 2.

Part (iii) of subparagraph 17(a) requires a State Party to destroy, at a minimum, forty–five per cent of its Category 1 chemical weapons within the first seven years after entry into force of the Convention. The period including the sixth and seventh years after entry into force of the Convention is called Phase 3.

Part (iv) of subparagraph 17(a) requires a State Party to destroy all of its Category 1 chemical weapons by the end of the tenth year after entry into force of the Convention. The period including the seventh through the tenth year after entry into force of the Convention is called Phase 4.

Subparagraph 17(b) establishes that a State Party must begin destroying its Category 2 chemical weapons by the end of the first year after entry into force of the Convention. Category 2 chemical weapons must be destroyed in equal annual amounts. The subparagraph establishes that the method for determining quantities for annual destruction is chemical agent weight, regardless of munition or container size, type, or quantity. All Category 2 chemical weapons must be destroyed by the end of the fifth year after entry into force of the Convention.

Subparagraph 17(c) establishes that a State Party must begin destroying its Category 3 chemical weapons by the end of the first year after entry into force of the Convention. Category 3 chemical weapons must be destroyed in equal annual amounts. This subparagraph establishes that the method to determine the amount of Category 3 chemical weapons to be destroyed each year is nominal fill volume (m^3) for munitions, devices, sub–munitions and containers and number of items for equipment. All Category 3 chemical weapons must be destroyed by the end of the fifth year after entry into force of the Convention.

Paragraph 18 of Part IV(A) establishes destruction accounting criteria for binary chemical weapons. The provisions contained in the subparagraphs to paragraph 18 are designed to enhance confidence building to ensure equitable destruction of chemical weapons capability by taking into account the different configuration of unitary, binary and multicomponent weapons. This is done by establishing a ratio of key to non-key components and maintaining that ratio as the quantities of both components are reduced.

Subparagraph 18(a), consistent with paragraph 2(e)(v) of Part IV(A), establishes that the quantity of the key component of a binary chemical weapon is to be equivalent to its toxic chemical end-product. (Key component is defined in paragraph 4 of Article II.)

Subparagraph 18(b) establishes that a State Party must destroy key components and non-key components in a ratio that is consistent with the actual weight ratio declared for the munitions or devices in which they would be used. For example, if a munition was to contain one liter of key component "a" and two liters of non-key component "b," then two liters of non-key component "b" must be destroyed for every liter of key component "a."

Subparagraph 18(c) requires excess non-key component be destroyed in the first two years after destruction operations begin. Thus, a State Party will need to determine the amount of non-key component needed to form complete binary chemical weapons. The requirement to destroy excess non-key component in the first two years after destruction begins means that such destruction must occur between two and four years after entry into force of the Convention for that State Party. (Destruction operations are required to begin no later than two years after entry into force for a State Party.)

Subparagraph 18(d) allows States Parties to retain the amount of non-key component that maintains a proper weight ratio with the key component at the end of each year. This quantity is to be determined annually based on the amount of key component remaining after each year's actual destruction.

Paragraph 19 of Part IV(A) establishes that chemical weapons based on more than two components will be destroyed in a manner analogous to the procedures in paragraph 18 for binary chemical weapons.

Paragraph 20 of Part IV(A) requires the Executive Council review the general plans for destruction of chemical weapons, submitted pursuant to paragraph 1(a)(v) of Article III, and in accordance with paragraph 6 of Part IV(A), *inter alia*, to assess their conformity with the order of destruction set forth in paragraphs 15 through 19. The Executive Council will consult with any State Party whose plan does not conform with the Convention in order to bring the plan into conformity. The purpose of this paragraph is to establish a mechanism for the review of State Party destruction plans and operations to ensure that the Party can meet the destruction timetable and requirements.

Paragraph 21 of Part IV(A) permits a State Party to propose changes in the destruction levels specified for Phase 1 (three years), Phase 2 (five years) or Phase 3 (eight years) of the order of destruction of Category 1 chemical weapons if it believes that it cannot achieve those levels. The only criterion for requesting an exception is the existence of "exceptional circumstances beyond [the State Party's] control." Such a proposal must be made not later than 120 days after the entry into force of the Convention and shall contain a detailed explanation of the reasons for the proposal. The purpose of this provision is to allow a State Party, soon after entry into force, to notify the Executive Council that it foresees difficulty in achieving one or more interim destruction deadlines.

Paragraph 22 of Part IV(A) requires a State Party to take all necessary measures to ensure destruction in accordance with destruction deadlines as changed pursuant to paragraph 21. However, if it believes it will not be able to ensure the destruction of the percentage of Category 1 chemical weapons required by an intermediate destruction deadline, it may request the Executive Council to recommend to the Conference of States Parties that an extension of the obligation to meet the intermediate deadline be granted. Such a request must be made not less than 180 days before the intermediate destruction deadline and shall contain a detailed explanation of the reasons for the request and the plans of the State Party for ensuring that it will be able to fulfill its obligation to meet the next intermediate destruction deadline.

Paragraph 23 of Part IV(A) establishes that if an extension is granted pursuant to paragraph 22, the State Party shall still be under the obligation to meet the cumulative destruction requirements set forth for the next destruction deadline. This means, for example, that if a State Party is permitted to destroy less than three per cent during Phase I, it must make up the reduction by the end of Phase II, i.e. it still must destroy twenty percent by that time. This paragraph further states that extensions granted pursuant to this Section will not modify the obligation of the State Party to destroy all Category 1 chemical weapons within 10 years after the entry into force of the Convention.

Paragraph 24 of Part IV(A) establishes that if a State Party believes that it will be unable to ensure the destruction of all Category 1 chemical weapons within 10 years after entry into force of the Convention, it may submit a request to the Executive Council for an extension of the deadline for completing the destruction of such chemical weapons. Such a request must be made not later than nine years after the entry into force of the Convention. Note that the requirements for this extension, as set forth below, are greater than for the extensions of intermediate deadlines discussed above.

Paragraph 25 of Part IV(A) establishes that the request must contain the duration of the proposed extension, a detailed explanation of the reasons for the proposed extension, and a detailed plan for destruction during the remaining portion of the original 10–year period for destruction and the proposed extension period.

Paragraph 26 of Part IV(A) requires that a decision shall be taken by the Conference at its next session, on the recommendation of the Executive Council.

This paragraph further establishes that any extension of a State Party's destruction period must be the minimum time period necessary for a State Party to complete its destruction of all chemical weapons, but in no case shall the deadline be extended beyond 15 years after the entry into force of the Convention. This paragraph also requires the Executive Council to set conditions for the granting of the extension, including the specific verification measures deemed necessary, as well as specific actions to be taken by the State Party to overcome problems in its destruction program. Finally, it requires the costs of verification during the extension period be allocated in accordance with paragraph 16 of Article IV (i.e. the requesting State Party bears the cost of verification unless the Executive Council decides otherwise).

Paragraph 27 of Part IV(A) establishes that if an extension is granted, the State Party is required to take appropriate measures to meet all subsequent deadlines determined by the Executive Council. The paragraph does not elaborate on the time periods between subsequent deadlines, but these are understood to be determined by the Executive Council when forming its extension recommendation to the Conference.

Paragraph 28 of Part IV(A) requires the State Party to continue to submit detailed annual plans for destruction in accordance with paragraph 29 and annual reports on the destruction of Category 1 chemical weapons in accordance with paragraph 36, until all Category 1 chemical weapons are destroyed. Additionally, it requires the State Party report to the Executive Council on its destruction activity not later than at the end of each 90 days of the extension period. This paragraph also requires the Executive Council to review progress towards completion of destruction and take the necessary measures to document this progress. Finally, all information concerning the destruction activities during the extension period shall be provided by the Executive Council to States Parties, upon request.

Paragraph 29 of Part IV(A) requires all States Parties to submit detailed plans for destruction of chemical weapons to the Technical Secretariat not less than 60 days before each annual destruction period begins. These detailed plans are established by paragraph 7(a) of Article IV. The purpose and timing of provision of this information is to assist the Technical Secretariat to evaluate the State Party's plans and to prepare for on-site verification activities. Note that the term "annual destruction period" is not defined by the Convention but is understood to mean not calendar years but 365 day periods measured from the date of the entry into force of the Convention.

Subparagraph 29(a) requires each declaration contain the quantity of each specific type of chemical weapon to be destroyed at each destruction facility and the inclusive dates when the destruction of each specific type of chemical weapon will be accomplished.

Subparagraph 29(b) requires each declaration contain a detailed site diagram for each chemical weapons destruction facility and any changes to previously submitted diagrams.

Subparagraph 29(c) requires a detailed schedule of activities for each chemical weapons destruction facility for the upcoming year, identifying time required for design, construction or modification of the facility, installation of equipment, equipment check-out and operator training, destruction operations for each specific type of chemical weapon, and scheduled periods of inactivity.

Paragraph 30 of Part IV(A) requires each State Party provide detailed information for each of its destruction facilities to assist the Technical Secretariat in developing preliminary inspection procedures for use at the facilities.

Paragraph 31 of Part IV(A) establishes the required minimum information for each destruction facility to be used by the Technical Secretariat for use in developing preliminary inspection procedures for each facility.

Subparagraph 31(a) requires the State Party to provide each facility's name, address and location.

Subparagraph 31(b) requires the State Party to provide detailed, annotated facility drawings. Annotated facility drawings are understood to include the identification of roads, rail lines, exits/entrances, buildings, and structures. This information enables the Technical Secretariat to understand the layout of the facility and the location of various parts of the destruction complex within the facility. These drawings will be supplemented by the information required in subparagraph (c) and (d).

Subparagraph 31(c) requires the State Party to provide facility design drawings, process drawings, and piping and instrumentation design drawings. This information will be used for the Technical Secretariat to determine the facility's design capacity, processes and product flow. The details will also be necessary to design customized monitoring equipment for the facility.

Subparagraph 31(d) requires the State Party to provide detailed technical descriptions, including design drawings and instrument specifications, for the equipment required for: removing the chemical fill from the munitions, devices, and containers; temporarily storing the drained chemical fill; destroying the chemical agent; and destroying the munitions, devices, and containers. This information is required for the Technical Secretariat to understand the types of equipment used and the equipment's capabilities, and to determine specific components for monitoring destruction activity.

Subparagraph 31(e) requires the State Party to provide detailed technical descriptions of the destruction process, including material flow rates, temperatures and pressures, and designed destruction efficiency. This information, added to that information provided in paragraphs (c) and (d), will be used by the Technical Secretariat to determine the rate at which the facility can process material.

Subparagraph 31(f) requires the State Party provide the destruction facility's design capacity for each specific type of chemical weapon to be destroyed there during the upcoming destruction period. This information will be used by the Technical Secretariat to evaluate the State Party's destruction program.

Subparagraph 31(g) requires the State Party to provide for each facility a detailed description of the products of destruction and the method of their ultimate disposal. This information will be used by the Technical Secretariat to determine the completeness of chemical weapons destruction and the State Party's compliance with the provisions for safe and ecologically sound destruction.

Subparagraph 31(h) requires the State Party to provide a detailed technical description of measures to facilitate inspections in accordance with this Convention. Specific measures are not defined by the Convention. This information will be used by the Technical Secretariat to evaluate the means in which it will verify the destruction process at the specific facility.

Subparagraph 31(i) requires the State Party to provide a detailed description of any temporary holding area at the destruction facility that will be used to provide chemical weapons directly to the destruction facility, including site and facility drawings and information on the storage capacity for each specific type of chemical weapon to be destroyed at the facility. This information will be used by the Technical Secretariat to plan for the accounting and security of chemical weapons stored at the destruction facility, as well as accounting for weapons removed from other storage locations to the site.

Subparagraph 31(j) requires the State Party to provide a detailed description of the safety and medical measures in force at the facility. This information will be used by the Technical Secretariat to plan for the safety and medical support of its personnel who will be assigned to conduct on-site verification at the facility.

Subparagraph 31(k) requires the State Party to provide a detailed description of the living quarters and working premises (area) for the inspectors. This information will be used by the Technical Secretariat to plan for the lodging and work of the personnel who will be assigned to conduct on-site verification at the facility.

Subparagraph 31(l) permits the State Party to provide suggested measures for international verification. This paragraph provides a mechanism for the State Party to offer verification procedures that are compatible with its destruction program. This information will assist in the development of the destruction facility's facility agreement.

Paragraph 32 of Part IV(A) requires a State Party to provide, for each of its chemical weapons destruction facilities, the plant's operations manuals, the safety and medical plans, the laboratory operations and quality assurance and control manuals, and the environmental permits that have been obtained, except that this shall not include material previously provided. This information will be used by the Technical Secretariat to gain an in-depth understanding of the operation of the destruction facility.

Paragraph 33 of Part IV(A) requires a State Party to notify the Technical Secretariat promptly of any developments that could affect inspection activities at its destruction facilities. The purpose of this provision is to provide for the early notification of the Technical Secretariat in the event that developments occur which would necessitate revision of planned verification activities.

Paragraph 34 of Part IV(A) requires the Preparatory Commission to establish deadlines for the submission of the information specified in paragraphs 30 through 32 for consideration and approval by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Paragraph 35 of Part IV(A) requires the Technical Secretariat, after a review of the detailed facility information for each destruction facility, if necessary, to enter into consultation with the State Party concerned. Such consultations are to ensure that the State Party's chemical weapons destruction facilities are designed to assure the destruction of chemical weapons, to allow advanced planning on how verification measures may be applied, to ensure that the application of verification measures is consistent with proper facility operation, and that the facility operation allows appropriate and safe monitoring.

Paragraph 36 of Part IV(A) requires annual reports on destruction and information regarding the implementation of plans for destruction of chemical weapons to be submitted to the Technical Secretariat not later than 60 days after the end of each annual destruction period, as required by paragraph 7(b) of Article IV. The information will specify the actual amounts of chemical weapons which were destroyed during the previous year at each destruction facility. This paragraph also states that, if appropriate, reasons for not meeting destruction goals should be stated at that time.

Section D (paragraphs 37 through 70) of Part IV(A) sets forth the procedures for verification of storage facilities and the destruction of chemical weapons.

Paragraph 37 of Part IV(A) establishes that the purpose of the verification of chemical weapons declarations is to confirm the accuracy of the relevant declarations made pursuant to Article III through on-site inspection.

Paragraph 38 of Part IV(A) establishes that Technical Secretariat inspectors shall conduct verification of declarations promptly after a declaration is submitted. It states that the inspectors will, among other things, verify the quantity and identity of chemicals, and the types and number of munitions, devices and other equipment.

Paragraph 39 of Part IV(A) establishes that the inspectors shall, as appropriate (i.e. have the right to) employ approved seals, markers or other inventory control procedures to facilitate an accurate inventory of the chemical weapons at each storage facility.

Paragraph 40 of Part IV(A) establishes that as the inventory progresses, inspectors shall install such agreed seals as may be necessary to clearly indicate if any stocks are removed, and to ensure the securing of the storage facility during the inventory. After completion of the inventory, the seals will be removed unless otherwise agreed.

Paragraph 41 of Part IV(A) establishes that the purpose of the systematic verification of storage facilities is to ensure that no undetected removal of chemical weapons takes place.

Paragraph 42 of Part IV(A) requires that the systematic verification be initiated as soon as possible after the declaration of chemical weapons is submitted and continue until all chemical weapons have been removed from the storage facility. It establishes that, in accordance with the facility agreement, combined on-site inspection and monitoring with on-site instruments may be used.

Paragraph 43 of Part IV(A) requires the Technical Secretariat to confirm the declaration of a State Party that all chemical weapons have been removed from the storage facility. After this confirmation, the Technical Secretariat is required to terminate the systematic verification of the storage facility and promptly remove any monitoring instruments installed by the inspectors. This means that once inspectable material is verified to no longer exist at the facility, the facility is no longer subject to systematic verification.

Paragraph 44 of Part IV(A) requires the Technical Secretariat to choose each particular storage facility for inspection in such a way as to preclude the prediction of precisely when the facility is to be inspected.

This paragraph further states that the guidelines for determining of the frequency of systematic on-site inspections are to be elaborated by the Technical Secretariat, taking into account recommendations considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Paragraph 45 of Part IV(A) requires the Technical Secretariat to notify the inspected State Party of its decision to inspect or visit a storage facility 48 hours before the planned arrival of the inspection team at the facility for systematic inspections or visits. The paragraph also establishes that in cases of inspections or visits to resolve urgent

problems, this period may be shortened. "Urgent problems" could include evidence indicating the unannounced movement of chemical weapons at the facility. When providing the notification, the Technical Secretariat is required to specify the purpose of the inspection or visit. Note that paragraph 17 of Part III of this Annex also requires notification 24 hours before the arrival of the inspection team at the point of entry.

Paragraph 46 of Part IV(A) requires the inspected State Party to make any necessary preparations for the arrival of the inspectors and shall ensure their expeditious transportation from their point of entry to the storage facility specified for inspection. It also establishes that the facility agreement will specify administrative arrangements for inspectors. Note that, pursuant to paragraph 36 of Part II of this Annex, the inspected State Party must assist, as necessary, the inspection team in arriving at the site within 12 hours of arriving at the point of entry.

Paragraph 47 of Part IV(A) requires the inspected State Party to provide specific data to the inspection team when it arrives at the chemical weapons storage facility to be inspected. Specific information to be included is listed in subparagraphs (a) through (c).

Subparagraph 47(a) requires the State Party to provide the number of storage buildings and storage locations within the declared storage facility subject to inspection.

Subparagraph 47(b) requires the State Party to provide for each declared storage building and storage location, the type and the identification number or designation, shown on the site diagram. This means that the State Party must clearly indicate building identification markings and their relation to the site diagram.

Subparagraph 47(c) requires the State Party to provide for each storage building and storage location at the facility, the number of items of each specific type of chemical weapon, and, for containers that are not part

of binary munitions, the actual quantity of chemical fill in each container.

Paragraph 48 of Part IV(A) provides inspector rights during an inspection of a chemical weapons storage facility. Specific rights for the carrying out a complete or partial inventory of declared chemical weapons are listed in subparagraphs (a) and (b).

Subparagraph 48(a) gives inspectors the right to use any of the following inspection techniques:

- (i) inventory all the chemical weapons stored at the facility;
- (ii) inventory all the chemical weapons stored in specific buildings or locations at the facility, as chosen by the inspectors; or
- (iii) inventory all the chemical weapons of one or more specific types stored at the facility, as chosen by the inspectors.

The purpose of this provision is to provide inspectors flexibility in determining the method by which they inventory chemical weapons.

Subparagraph 48(b) gives inspectors the right to check all items inventoried against records agreed in the facility agreement. This means that inspectors may confirm that facility records accurately reflect the chemical weapons stored at the facility and are accurate representations of the declarations made to the Technical Secretariat.

Paragraph 49 of Part IV(A) provides inspectors with specific rights, in accordance with facility agreements. The rights listed below in subparagraphs (a) and (b) are intended to provide the inspector with the requisite authority to complete an inventory of chemical weapons.

Subparagraph 49(a) allows inspectors unimpeded access to all parts of the storage facilities including any munitions, devices, bulk containers, or other containers therein. While conducting their activity, however,

inspectors must comply with the safety regulations at the facility. Inspectors will select the items to be inspected.

Subparagraph 49(b) provides inspectors with the right, during the first and any subsequent inspection of each chemical weapons storage facility, to designate munitions, devices, and containers from which samples are to be taken, and to affix to a unique tag to such munitions, devices, and containers. The tag is designed so that any attempt to remove or alter the tag will be apparent. A sample may be taken from a tagged item at either a chemical weapons storage facility or at a chemical weapons destruction facility as soon as it is practically possible in accordance with the corresponding destruction programs. In any case, the sample will be taken not later than by the end of the State Party's destruction operations.

This process gives the inspected State Party the right to deny sampling of munitions at a storage facility (sampling at such locations may not be allowed under its national standards, e.g. U.S. environmental regulations), but obligates the State Party to permit any selected munition to be ultimately sampled.

Paragraph 50 of Part IV(A) establishes that the purpose of verification of destruction of chemical weapons is to confirm the identity and quantity of the chemical weapons stocks to be destroyed and to confirm that these stocks have been destroyed.

Paragraph 51 of Part IV(A) establishes "transitional verification agreements" for destruction operations underway prior to the establishment of international verification. Specifically, this paragraph states that chemical weapons destruction operations that are already underway during the first 390 days after entry into force of the Convention shall be governed by transitional verification arrangements. Such arrangements are to include a transitional facility agreement, provisions for verification through on-site inspection and monitoring

with on-site instruments, and the time-frame for application of the arrangements. The transitional agreements will be agreed between the Organization and the inspected State Party and shall be approved by the Executive Council within 60 days after entry into force of the Convention.

The transitional agreement will take into account recommendations of the Technical Secretariat, which shall be based on its evaluation of the information provided by the State Party under Paragraph 31 of Part IV(A), and a visit to the facility. Guidelines for such transitional verification will be established by the Executive Council, based on recommendations considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission. Finally, this paragraph states that the transitional verification arrangements shall be designed to verify, throughout the entire transitional period, the destruction of chemical weapons in accordance with the purposes set forth in paragraph 50 (i.e. confirm the identity, quantity and destruction of stocks), and to avoid hampering ongoing destruction operations.

This paragraph recognizes that it will take time for the Technical Secretariat to establish what will probably be a continuous presence at the destruction facility and therefore special rules may be necessary for this period. This paragraph also recognizes that there may be destruction facilities that will cease operations shortly after the Convention enters into force, such as the U.S. facility on Johnston Atoll, for which full verification measures may be neither necessary nor practical.

Paragraph 52 of Part IV(A) establishes that paragraphs 53 through 61 apply to chemical weapons destruction operations that are to begin no earlier than 390 days after the entry into force of the Convention. The rationale for the 13 month delay is that while States Parties are required to begin destruction not later than 2 years after the Convention enters into force for them, preparation time is necessary to provide full verification of destruction activities. Note that chemical weapons destruction operations that begin before the 390 day mark and continue past that point are not specifically addressed. However, read together, paragraphs 51 and 53 suggest that in such a situation destruction operations would be governed by paragraph 51 until the 390 day mark and by paragraphs 53 through 61 thereafter.

Paragraph 53 of Part IV(A) establishes that the Technical Secretariat will design draft plans for inspecting destruction facilities, and consult with the inspected State Party on the implementation of these plans. A draft plan will be provided to the State Party to be inspected not later than 270 days before a facility begins destruction operations pursuant to the Convention. These plans must be based on previous inspection experience, the destruction plans submitted by the State Party under paragraphs 6 and 29 through 34 of Part IV(A), and if applicable as agreed under paragraph 35 of Part IV(A). Any difference between the plans of the Technical Secretariat and the inspected State Party will be worked out through consultations. If differences should remain after consultations, the matter will be referred to the Executive Council for appropriate action with a view to facilitating the full implementation of the Convention.

Paragraph 54 of Part IV(A) requires the Technical Secretariat to conduct an initial visit to the destruction facility to familiarize itself with the facility and assess the adequacy of its plan for verifying chemical weapons destruction. This visit must occur at least 240 days prior the beginning of destruction operations pursuant to the Convention.

Paragraph 55 of Part IV(A) relieves the State Party from the responsibility of decontaminating the facility to accommodate the presence of Technical Secretariat personnel, limits the duration of the inspection to five days, and limits the maximum number of visiting personnel to fifteen. The purpose of these provisions is to minimize the disruption on ongoing destruction operations caused by the initial visit.

Paragraph 56 of Part IV(A) establishes that the Technical Secretariat will forward the plan for destruction verification, as it is agreed between the States Party and the Technical Secretariat, to the Executive Council, with its recommendation. The Executive Council shall review the plan with a view to approving it, (i.e. it is assumed that the plan will, as a rule, be validated by the Executive Council), consistent with verification objectives and obligations under the Convention. The Executive Council should also confirm that verification schemes for destruction are consistent with verification aims (paragraph 50) and are efficient and practical.

Finally, this paragraph states that the review should be completed at least 180 days prior to the beginning of the destruction period. This is understood to mean at least 180 days prior to planned commencement of destruction operations.

Paragraph 57 of Part IV(A) establishes the right of each member of the Executive Council to independently consult with the Technical Secretariat on issues regarding the adequacy of the plan for verification. The paragraph also establishes that if there are not objections by any member of the Executive Council, the plan shall be put into operation, i.e. an objection raised by any member of the Executive Council may result in the non-approval of the destruction verification plan, depending on the consultations undertaken pursuant to paragraph 58.

Paragraph 58 of Part IV(A) establishes that if there are any difficulties, the Executive Council shall enter into consultations with the State Party

with whom the destruction verification plan was agreed to reconcile them, and then, if difficulties remain, they shall be referred to the Conference.

Paragraph 59 of Part IV(A) requires the detailed facility agreements for chemical weapons destruction facilities to specify the detailed on-site inspection procedures and provisions for verification through continuous monitoring through on-site instruments and physical presence of inspectors.

Paragraph 60 of Part IV(A) requires the inspected State Party to permit Technical Secretariat inspectors access into each chemical weapons destruction facility at least 60 days prior to the commencement of destruction operations so the inspectors can supervise the installation of the inspection equipment, inspect it once it is installed, and test its operation. The inspectors may also carry out a final engineering review of the facility.

The paragraph also requires any ongoing chemical weapons destruction to stop for a maximum of 60 days for installation and operational testing of inspection equipment (i.e. destruction operations that began before the 390-day mark). The paragraph also establishes the opportunity for the Technical Secretariat and the inspected State Party to agree to additions and changes to the detailed facility agreement after the equipment is installed and tested, and after the final engineering review.

Paragraph 61 of Part IV(A) requires the State Party to notify the chief of the destruction facility inspection team of any movement of chemical weapons to the facility. This notification must be made at least four hours prior to the departure of the chemical weapons from their storage facility. The purpose of this provision is to allow the inspection team enough time to prepare for verification activities necessary to validate that the shipment has been received and remains under the observation of Technical Secretariat personnel.

The paragraph also requires the notification to specify the name of the storage facility, the estimated times of departure and arrival, the specific types and quantities of chemical weapons being transported, whether any tagged items are being moved, and the method of transportation. This provision provides the inspection team chief with information necessary to maintain accountability of the chemical weapons being transferred to the destruction facility. The tagged items referred to are understood to be the chemical weapons to be sampled, as specified in paragraph 49(b) of Part IV(A).

The paragraph permits the notification to consolidate reports if more than one shipment is being made to the same destruction facility within the same time period. The paragraph also requires the State Party to promptly notify the inspection team chief of changes to the notifications.

Paragraph 62 of Part IV(A) requires the State Party to permit the inspection team to verify the arrival of the chemical weapons shipped pursuant to the notification provided under paragraph 61 of Part IV(A). The inspectors must verify the inventory of each shipment prior to its eventual destruction, using procedures as agreed (i.e. in the detailed facility agreement) consistent with the facility's safety regulations. The paragraph establishes that allowed verification activities may include applying agreed seals, markers, or other inventory controls to facilitate an accurate inventory of the chemical weapons prior to destruction.

Paragraph 63 of Part IV(A) requires chemical weapons stored at chemical weapons destruction facilities be subject to systematic verification in accordance with the facility agreements for each facility. The paragraph establishes the verification will take effect as soon as and as long as the chemical weapons remain within the facility.

Paragraph 64 of Part IV(A) requires inspectors to conduct an inventory of stored chemical weapons at the end of an active destruction phase.

The end of an active destruction phase is understood to mean any break in continuous operations resulting in a halt in the destruction process for an extended period. The inspection team is to verify the accuracy of the inventory of all chemical weapons that remain, using the inventory control procedures mentioned in paragraph 62.

Paragraph 65 of Part IV(A) establishes that the inspectors will be given access to the destruction facility and the chemical weapon storage facility to conduct their activities during the entire active phase of destruction. This is understood to mean the inspectors will be given the access necessary for the conduct of their verification activities, as agreed between the Technical Secretariat and the State Party in the detailed facility agreement pursuant to paragraph 3 of Part III, and that this access will be given during the entire period that destruction operations are occurring.

Paragraph 66 of Part IV(A) establishes that inspectors have the right to verify non-diversion and complete destruction of chemical weapons through their physical on-site presence and through monitoring with on-site instruments. The information, objects and activities to which inspectors have the right to have access to verify are: the receipt of chemical weapons at the destruction facility; the temporary holding areas for chemical weapons and the specific type and quantity of chemical weapons stored in that area; the specific type and quantity of the chemical weapons being destroyed; the destruction process; the end-product of the destruction process; the mutilation of metal parts; and the integrity of the destruction process and of the facility as a whole.

This is understood by the United States to mean that the State Party must: in form the inspection team of the type and quantity of stored chemical weapons (which in turn is understood to mean that the inspection team has the right to access this area to verify the information); in form the inspection team of the types and quantity of chemical weapons being destroyed (which in turn is understood to mean

that the inspection team has the right to verify the information); and provide the inspection team with sufficient access for monitoring the physical process of destruction to preclude diversion and facilitate verification of total destruction. Paragraph 66 is also understood to mean that the inspectors have the right to verify that chemical weapons are in fact rendered unusable as such, as referred to in paragraph 12 of Part IV(A), and to verify that the entire destruction process is a closed system, providing no means of diversion.

Note that, in accordance with paragraph 70, this means that the inspection team is permitted access to the entire facility to provide assurance that no chemical weapons are being diverted. It is understood that this access can be limited by the detailed facility agreement's definition of the "facility," access restrictions for safety reasons, and general restrictions placed on inspection activities by the Convention.

Paragraph 67 of Part IV(A) gives inspectors the right to tag munitions, devices, or containers located in the temporary holding areas at the chemical weapons destruction facility for sampling. Note that this is in addition to those tagged at chemical weapons storage facilities under paragraph 49(b) of Part IV(A) for sampling.

Paragraph 68 of Part IV(A) establishes that information from routine facility operations, to the extent that it meets inspection requirements, will be used for inspection purposes. The purpose of this paragraph is to permit the inspection team to draw on routine operations data, with appropriate data authentication, for inclusion in its inspection report if such information is necessary.

Paragraph 69 of Part IV(A) establishes that after each period of destruction, the Technical Secretariat will confirm the State Party's quantitative data on the destruction period. Period of destruction is understood to mean the annual period referred to in paragraph 7(b) of Article IV.

Paragraph 70 of Part IV(A) provides the inspection team with the right to access in all parts of the destruction facility and associated chemical weapons storage facilities, consistent with the provisions of the detailed facility agreement for the facility. Subparagraphs (a) through (c) further define the activities inspectors may conduct.

Subparagraph 70(a) provides the inspectors with unimpeded access to all parts of the chemical weapons destruction facility, and to the chemical weapons storage facility located at such facilities. This access includes access to any munitions, devices, bulk containers, or other containers within these areas. Inspectors choose items to be inspected in accordance with the agreed verification plan.

Subparagraph 70(b) provides inspectors with the right to monitor the on-site analysis of samples during the destruction process. This means that the inspectors can maintain an audit trail of samples taken from the munitions, devices, or containers referred to in paragraphs 49(b) and 67 of Part IV(A).

Subparagraph 70(c) provides the inspectors with the right to receive samples, if necessary, from devices, bulk containers and other containers at the destruction facility or the storage facility located at the destruction facility. Note that this is in addition to the right to obtain samples from tagged munitions, devices and containers in accordance with paragraphs 49(b) and 67. It is understood that the inspectors' handling of these samples will be governed by the procedures contained in the detailed facility agreement for each facility.

VERIFICATION ANNEX
PART IV(B)
OLD CHEMICAL WEAPONS AND ABANDONED
CHEMICAL WEAPONS

Part IV (B) contains the provisions for declaration and destruction of old chemical weapons and abandoned chemical weapons.

Pursuant to paragraph 5 of Article II, old chemical weapons are defined as either (a) chemical weapons produced before 1925 ("pre-1925 chemical weapons") or (b) chemical weapons produced between 1925 and 1946 that have deteriorated to such extent that they can no longer be used as a chemical weapons ("1925-46 chemical weapons"). Pursuant to paragraph 6 of Article II abandoned chemical weapons are chemical weapons including old chemical weapons, abandoned by a State after 1 January 1925 on the territory of another State without the consent of the latter.

Section A (paragraphs 1 and 2) provides that old chemical weapons shall be destroyed as provided for in Section B (i.e. the regime for old chemical weapons) while abandoned chemical weapons, including abandoned chemical weapons that are also 1925-46 chemical weapons, shall be destroyed as provided for in Section C (i.e. the regime for abandoned chemical weapons).

Section B (paragraphs 3 through 7) contains the detailed provisions for declaration and destruction of old chemical weapons. Note that the requirements on destruction differ for the two types of old chemical weapons. A State Party with only pre-1925 chemical weapons is not required to comply with the Article IV verification and destruction requirements (although the chemical weapons are required to be destroyed as toxic waste.) On the other hand, chemical weapons produced after 1925 but before 1946 and which are no longer usable

must be verified and destroyed in accordance with Article IV. The Executive Council, however, under certain circumstances, can approve modifications in the time and order of destruction of these chemical weapons.

Paragraph 3 of Part IV(B) sets forth the declaration requirements for old chemical weapons, i.e. for both pre-1925 and 1925-46 chemical weapons. Specifically, it states that a State Party with pre-1925 chemical weapons on its territory must provide to the Technical Secretariat all available relevant information, to the extent possible, on the location, type, quantity, and the present condition of these old chemical weapons. This information must be provided not later than 30 days after entry into force of the Convention for the State Party. This information is provided pursuant to paragraph 1(b)(i) of Article III.

This paragraph further states that for 1925-46 chemical weapons, the State Party must make a declaration pursuant to paragraph 1(b)(i) of Article III (i.e. whether it has old chemical weapons on its territory), including, to the extent possible, the information specified in paragraphs 1 through 3 of Part IV(A) of this Annex. (The information specified in these paragraphs includes information on the aggregate quantity of the chemical, its chemical name and where it appears on the schedules, as well as information on where the chemical weapons are stored, the precise location of the chemical weapons storage facility and a detailed inventory of such facility.)

Paragraph 4 of Part IV(B) states that if old chemical weapons are subsequently discovered by a State Party after the Convention's entry into force, the above information must be furnished no later than 180 days after the discovery. It is understood that the declaration will be made only after the munition has been positively identified as a chemical weapon, i.e. it has been confirmed to contain a toxic chemical that is considered to be a chemical weapon under the Convention.

Paragraph 5 of Part IV(B) requires verification of claims that chemical weapons are old chemical weapons. Specifically, it states that after a State Party submits its information on pre-1925 chemical weapons, the Technical Secretariat shall conduct an initial inspection, and any necessary subsequent inspections, to verify the information provided and in particular, to confirm that the claimed old chemical weapons in fact meet the definition of old chemical weapons, i.e. confirm that they were produced before 1925, or that they were produced between 1925 and 1946 and are no longer usable.

This paragraph further states that guidelines for determining usability of chemical weapons thought to be 1925-46 chemical weapons will be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Paragraph 6 of Part IV(B) sets forth the destruction requirements for pre-1925 chemical weapons. Specifically, it states that a State Party is to treat verified pre-1925 chemical weapons as toxic waste and therefore is only required to inform the Technical Secretariat of the steps being taken to destroy or otherwise dispose of these weapons in accordance with its national legislation. Note that if the Technical Secretariat cannot verify that they were produced before 1925, the chemical weapons must be declared, verified and destroyed like any other chemical weapons. (The same is true for chemical weapons claimed to be 1925-46 chemical weapons.)

This provision and others pertaining to pre-1925 chemicals weapons recognizes the fact that, with the passage of time, World War I era chemical weapons are now very unlikely to be usable as chemical weapons and that States Parties with such weapons on their territory should not be bound to strict verification and destruction requirements. This provision addresses the needs of some European countries that routinely find chemical weapons from that era on their territory.

Paragraph 7 of Part IV(B) sets forth the destruction requirements for 1925–46 chemical weapons. Subject to paragraphs 3 through 5, a State Party shall destroy verified 1925–46 chemical weapons in accordance with Article IV and Part IV(A) of the Verification Annex, i.e. the verification and destruction provisions for chemical weapons. This paragraph further provides, however, that the time–limits and the order of destruction may be modified by the Executive Council upon the request of a State Party if the Executive Council determines that such modification would not pose a risk to the object and purpose of the Convention. (The order of destruction is set forth in paragraphs 15 through 19 of Part IV(B).) Finally this paragraph states that in making such a request, a State Party must provide specific proposals for any modifications and a detailed justification for them.

This provision recognizes the fact that some World War II era munitions are no longer usable as chemical weapons and therefore need not be subject to the same time frame and order of destruction. This provision addresses the needs of countries that have such chemical weapons left over from World War II but have not maintained them as functional chemical weapons. However, the Convention does not prohibit a State Party from destroying its World War II era chemical weapons at a faster rate than what is required by paragraph 17 of Part IV(A) of the Verification Annex.

Section C (paragraphs 8 through 18) of Part IV(B) sets forth the regime for abandoned chemical weapons. Note that pursuant to Article I, a State Party undertakes an obligation to destroy not only the chemical weapons located on its territory or located in other places under its jurisdiction and control, but also the chemical weapons it has abandoned on the territory of another State Party. As noted above, the definition of "abandoned chemical weapons" limits them to those chemical weapons abandoned by a State: (1) after 1 January 1925; (2) on the territory of another State; and (3) without the consent of the later.

Under Section C, a State Party upon whose territory there are abandoned chemical weapons is referred to as the "Territorial State Party." A State Party who has abandoned chemical weapons on the territory of another State is referred to as the "Abandoning State Party." Note that, under Article III, a State Party must declare all chemical weapons it has abandoned on the territory of any State, irrespective of whether that State is a Party to the Convention, but that under Article I and Part IV(B) of the Verification Annex, it only has an obligation to destroy chemical weapons it has abandoned on the territory of another State Party. Hence, it is possible for a State Party to be an Abandoning State required to declare such weapons, but not obligated to destroy them under the Convention. Note that in such a case, there would be an incentive for a State upon which chemical weapons have been abandoned to become a State Party because, pursuant to paragraph 15, the abandoning State Party shall provide all necessary financial, technical, expert, facility as well as other resources.

Paragraphs 8, 9 and 10 of Part IV(B) require that a State Party submit to the Technical Secretariat all relevant information on abandoned chemical weapons, including to the extent possible, the location, type, quantity and the present condition of the chemical weapons. Territorial States Parties (paragraph 8) and Abandoning States Parties (paragraph 10) must submit this information within 30 days after the Convention enters into force for them, except that information on any abandoned chemical weapons discovered by a Territorial State Party after entry into force for it must be submitted with 180 days after such discovery (paragraph 9).

Paragraph 11 of Part IV(B) states that the Technical Secretariat must conduct an initial inspection, and any subsequent inspections, to verify the information provided and to determine whether systematic verification in accordance with paragraphs 41 through 43 of Part IV(A) of this Annex is required. (Systematic verification uses on-site inspection and monitoring with on-site instruments and is undertaken

to ensure that there is no undetected removal of chemical weapons.) This paragraph further states that the Technical Secretariat shall, if necessary, verify the origin of the abandoned chemical weapons and the identity of the Abandoning State.

Paragraph 12 of Part IV(B) states that after completing its initial inspection, the Technical Secretariat shall submit its report to the Executive Council, to the Territorial State Party, and to the Abandoning State Party or the State Party declared by the Territorial State Party or identified by the Technical Secretariat as having abandoned the chemical weapons. The purpose of the latter part of this provision is primarily to cover cases in which a State Party is unaware that it has abandoned chemical weapons, although it also covers the case of a State Party that knows, but has not declared, that it has abandoned chemical weapons.

This paragraph also states that if one of the States Parties directly concerned, i.e. the Territorial State Party or the Abandoning State Party (however identified), is not satisfied with the report, it has the right to settle the matter in accordance with the provisions of the Convention (e.g. the dispute resolution mechanism contained in Article XIV) or to bring the issue to the Executive Council with a view to settling the matter expeditiously. This provision provides for the possibility that States Parties may dispute being identified as Abandoning States Parties.

Paragraphs 13 and 14 of Part IV(B) provide for consultations between the Abandoning and the Territorial States Parties on a mutually agreed plan for the destruction of abandoned chemical weapons. Paragraph 13 of Part IV(B) states that the Territorial State Party can request the State Party which has been established as the Abandoning State Party pursuant to paragraphs 8 through 12 to enter into consultations for the purpose of destroying the abandoned chemical weapons in cooperation with the Territorial State Party, and shall inform the Technical Secretariat of its request.

Note that "the State Party established as the Abandoning State Party" is understood to mean a State Party that has declared itself an Abandoning State Party, or a State Party, identified by the Technical Secretariat or the Territorial State Party, that has acquiesced in this identification or has been determined to be an Abandoning State Party by the settlement mechanism invoked pursuant to paragraph 12.

Paragraph 14 of Part IV(B) states that the consultations with a view to establishing a mutually agreed plan for destruction shall begin not later than 30 days after the Technical Secretariat has been informed of the request for consultations. This paragraph further states that the agreed plan shall be transmitted to the Technical Secretariat not later than 180 days after the above notification.

This means that the territorial State Party and the Abandoning State Party have 150 days to agree on a plan for destruction of the abandoned chemical weapons. However, this paragraph also states that upon request of both States Parties involved, the time to submit a mutually agreed plan may be extended by the Executive Council.

Paragraph 15 of Part IV(B) elaborates the respective duties for destruction of abandoned chemical weapons by an Abandoning State Party and a Territorial State Party under a mutually agreed plan for destruction. Specifically, it states that the Abandoning State Party shall provide all necessary financial, technical, expert, facility and other resources while Territorial State Party need only provide appropriate cooperation.

This means that, in effect, it is the abandoning State Party that will destroy the chemical weapons. Note, however, it is the understanding of the United States that despite the disproportionate apportioning of responsibilities between an Abandoning State Party and the Territorial State Party under paragraph 15, this paragraph does not relieve a Territorial State Party from the obligation undertaken in paragraph 2 of

Article I to destroy chemical weapons (which includes abandoned chemical weapons) located in any place under its jurisdiction and control (i.e. *inter alia*, anywhere on its territory) if the Abandoning State Party refuses to provide the assistance required in this paragraph.

Paragraph 16 of Part IV(B) states that if an Abandoning State cannot be identified or is not a State Party, in order to ensure the destruction of these abandoned chemical weapons, the Territorial State Party may request the Organization and other States Parties to provide assistance in the destruction of these abandoned chemical weapons. This means that while, pursuant to paragraph 2 of Article I, a Territorial State Party has an obligation to destroy abandoned chemical weapons on its territory, it can seek assistance from the Organization and other States Parties in doing so where there is no party to provide the assistance contemplated in paragraph 15.

Paragraph 17 of Part IV(B) sets forth the requirements for verification and destruction of abandoned chemical weapons. Specifically, it states that, subject to paragraphs 8 through 16 of Part IV(B), Article IV and Part IV(A) of the Verification Annex (i.e. the main provisions for verification and destruction of chemical weapons) shall apply to the destruction of abandoned chemical weapons, but that the time-limits and order of destruction for such chemical weapons may be modified under certain circumstances. In particular, it states that if the abandoned chemical weapons are also 1925–46 chemical weapons, the Executive Council, upon the request of the Territorial State Party, individually or together with the Abandoning State Party, may approve modifications, or in exceptional cases even suspend the application, of the provisions for destruction, if it determines that doing so would not pose a risk to the object and purpose of the Convention.

For abandoned chemical weapons that are post–1946 chemical weapons, this paragraph states that the Executive Council may approve modifications in the time-limit and order of destruction (but not

suspension of the application of the provision for destruction), and then only under exceptional circumstances, if it determines that such modifications would not pose a risk to the object and purpose of the Convention.

It is generally understood that chemical weapons that are pre-1925 chemical weapons are not subject to this Section; rather they are the responsibility of the Territorial State Party alone and are declared and destroyed as toxic waste pursuant to Section B. This is because although the definition of "abandoned chemical weapons" includes all old chemical weapons, the provisions for implementing the abandoned chemical regime (Section C) specifically mention only 1925-46 chemical weapons (paragraph 2 of Part IV(B)). Moreover, paragraph 17 only distinguishes between abandoned 1925-46 chemical weapons and abandoned chemical weapons that are not 1925-46 chemical weapons. Since the provisions for the latter are stricter than for 1925-46 chemical weapons, they clearly are aimed at post-1946 chemical weapons. However, also including pre-1925 chemical weapons in the rules for abandoned post-1946 chemical weapons would lead to the counter-intuitive result that stricter provisions apply to abandoned pre-1925 chemical weapons than to abandoned 1925-46 chemical weapons.

Finally, paragraph 17 states that all requests for modification must contain specific proposals for modifications and a detailed explanation of the reasons for the proposed modification.

Paragraph 18 of Part IV(B) states that States Parties may conclude between themselves agreements or arrangements (i.e. these may be legally or not legally binding) concerning the destruction of abandoned chemical weapons. It further states that the Executive Council may decide, upon the request of the Territorial State Party, individually or together with the Abandoning State Party, that selected provisions in such agreements or arrangements take precedence over provisions of this Section if it determines that the agreement or arrangement ensures

the destruction of abandoned chemical weapons in accordance with paragraph 17.

VERIFICATION ANNEX
PART V
DESTRUCTION OF CHEMICAL WEAPONS PRODUCTION
FACILITIES AND ITS VERIFICATION PURSUANT TO
ARTICLE V

Part V of the Verification Annex consists of eighty–six paragraphs, in four sections: declarations, destruction, verification, and conversion of chemical weapons production facilities to purposes not prohibited under the Convention. This Part sets forth the obligations of States Parties with regard to the treatment of chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control. (The term chemical weapon production facility, as defined in paragraph 8 of Article II, includes both a facility where chemicals were produced and a facility where munitions, devices or containers were filled with chemicals to create chemical weapons as defined by paragraph 1 of Article II. It is understood that chemical weapons production facilities also include mobile filling complexes.) Part V establishes procedures for declaring chemical weapons production facilities, permissible activities within the facilities prior to their storage, their conversion to permitted purposes, their conversions to chemical weapon destruction facilities, and the verification of their status.

Section A (paragraphs 1 through 10) of Part V sets forth the requirements for declarations of chemical weapons facilities, declarations of past transfers and receipts of chemical weapons production equipment, and submission of general and annual plans and reports on destruction.

Paragraph 1 of Part V requires general information on the location and history of chemical weapons production facilities, as required by paragraph 1(c)(iii) of Article III. Subparagraphs (a) through (k) list information required in the initial declaration to the Organization.

Subparagraphs (a) through (f) also apply to facilities that have been destroyed.

Subparagraph 1(a) requires each State Party to declare each facility by name, the owners of the facility and the names of the companies or enterprises which have operated the facility since 1 January 1946. As noted previously, the cutoff date of 1 January 1946 is based on the belief that facilities prior to that date are of less interest in terms of the chemicals produced and threat posed by such facilities. This cutoff date allows countries to exclude declaring chemical weapons production facilities in existence during World War II but not thereafter. Many countries worldwide produced chemical weapons during World War II.

Subparagraph 1(b) requires each State Party to declare the location of each chemical weapons production facility, to include address, location of the complex, location of the production facility within the complex, including the specific building number if such a number exists.

Subparagraph 1(c) requires each State Party to declare whether the declared facility is a chemical weapon manufacturing facility or a chemical weapon filling facility or both. Note that "manufacture" as used here means the same thing as "production."

Subparagraph 1(d) requires each State Party to declare when the facility was completed and when the facility was modified to significantly change its process characteristics, including the installation of new or modified equipment.

Subparagraph 1(e) requires each State Party to declare information on the chemicals, defined as chemical weapons in accordance with paragraph 1 of Article II, manufactured at the facility; the munitions, devices or containers filled at the facility; and the dates when the chemicals were produced or the munitions, devices or containers filled. Parts (i) and (ii) provide guidelines for such declarations.

Subparagraph 1(f) requires each State Party to declare the production capacity of each chemical weapons production facility. (Production capacity is defined in paragraph 10 of Article II.) Parts (i) and (ii) further specify information to be provided on capacity as applied to chemical weapons production and filling facilities.

Subparagraph 1(g) requires each State Party to provide more specific information on production facilities not destroyed. Parts (i) through (iii) specify a site diagram, a process flow diagram, and an inventory of the buildings, specialized equipment and spare parts for such equipment at the facility for each production facility existing at the time of the entry into force of the Convention.

Subparagraph 1(h) requires each State Party to declare the present status of the chemical weapons production facility. Parts (i) through (iii) specify the date that chemical weapons were last produced at the facility, whether the facility has been destroyed, and if so when and how, and whether the facility has been used or modified before entry into force of the Convention for activities not related to the Convention. If the facility has been modified, then information on what modifications have been made, the dates when the non-chemical weapon related activities began there, the nature of such activities, and if applicable, the kind of product. Note that such facilities must nevertheless be destroyed unless their conversion is approved pursuant to Section D of this Part.

Subparagraph 1(i) requires each State Party to specify the measures already taken by the State Party related to the closure (e.g. disconnection of equipment) of the facility. Each State Party must provide a brief description of the procedures that have been or will be taken to inactivate the facility. Closure methods are measures taken to inactivate the facility.

Subparagraph 1(j) requires each State Party to specify the normal pattern of activities conducted at each inactivated facility for safety and security.

Subparagraph 1(k) requires each State Party to declare whether the facility will be converted to a chemical weapons destruction facility, and if so, the dates of such conversion. Note that such conversion is only temporary and must be done in accordance with the requirement set forth in paragraphs 18 through 25 of Part V.

Paragraph 2 of Part V establishes the responsibility of a State Party to make detailed declarations of each chemical weapons production facility on its territory that is, or has been, owned and possessed by another State and that is, or was, located in a place under the jurisdiction or control of another State, at any time since 1 January 1946. It is the responsibility of the territorial State Party to make arrangements with the other State to make such declarations. If for any reason a State Party cannot fulfill its obligation either to declare or to ensure the declaration of such facilities, it must explain why.

Paragraph 3 of Part V requires each State Party to declare any chemical weapons production equipment it has transferred or received from another State since 1 January 1946. The purpose of this paragraph is to provide transparency to past cooperative efforts that may have contributed to an offensive chemical weapons capability. The paragraph recognizes the possibility of information gaps within the period of 1 January 1946 to 1 January 1970 and requires States Parties to declare what they can with an explanation of why a full declaration cannot be provided. However, because all States Parties are obligated to report on all production facilities operated since 1 January 1946, it is understood that such equipment received since 1 January 1946 at any facility must be reported. All States Parties are obligated to provide information on all transfers of chemical weapons production equipment made during the period 1 January 1970 to the time of the declaration.

Paragraph 4 of Part V contains the categories of items that are identified as "chemical weapons production equipment" referred to in paragraph 3. These are: specialized equipment (which is defined in paragraph 5(a) of Part I of this Annex); equipment for the production of equipment specifically designed for use directly in connection with chemical weapons employment (which is understood to mean equipment which produces items or material, e.g. special purpose rocket launchers, that have special features for use of these items for the employment of chemical weapons. The equipment could produce other items, not related to chemical weapons, but the intent of the equipment's capability is to produce the aforementioned items); and equipment designed or used exclusively for producing non-chemical parts for chemical munitions (this equipment differs from that defined in 4(b) in that it relates to the chemical munitions themselves. This equipment includes production equipment designed to produce a non-chemical part that can be used in chemical munitions; however, the intent is to capture equipment designed or used exclusively for manufacturing parts for chemical munitions).

Paragraph 5 of Part V establishes the information required for inclusion in any declaration of past transfer or receipt of chemical weapons production equipment. Subparagraphs (a) through (e) specify the information each declaration must contain.

Subparagraph 5(a) requires giving the name of the State which transferred the equipment to the declaring State Party or which received the transferred equipment from the declaring State Party.

Subparagraph 5(b) requires giving the identity of the declared equipment. This identification is intended to first establish which subparagraph of paragraph 4 defines the equipment transferred and then provide a more specific description of the equipment.

Subparagraph 5(c) requires giving the date of the transfer made by the declaring State Party or the date the declaring State Party received the equipment.

Subparagraph 5(d) requires the State Party to declare whether the equipment was destroyed, if known.

Subparagraph 5(e) requires the State Party to declare the current disposition of the equipment, if known.

Paragraph 6 of Part V specifies the information each State Party is required to submit in the general plan of destruction for each chemical weapons production facility — expected time-frames for destruction measures to be taken and the methods to be used for destruction. The purpose of this paragraph is to provide confidence that all States Parties have begun the planning for destruction of chemical weapons production facilities prior to entry into force of the Convention.

Paragraph 7 of Part V requires each State Party to provide information regarding any chemical weapons production facility it intends to temporarily convert to a chemical weapons destruction facility. The specific information is specified in the following subparagraphs (a) through (f).

Subparagraph 7(a) requires the State Party to provide an envisaged time-frame for the conversion of the production facility into a destruction facility.

Subparagraph 7(b) requires the State Party to provide an envisaged time-frame for the operation of the destruction facility.

Subparagraph 7(c) requires the State Party to describe the new destruction facility. It is understood that this description should be as close as possible to a detailed description of the destruction facility provided in paragraph 31 of Part IV(A) of this Annex.

Subparagraph 7(d) requires the State Party to describe the methods to be used to destroy special equipment. This equipment is intended to mean primarily "specialized equipment."

Subparagraph 7(e) requires the State Party to provide a time-frame for the destruction of the converted facility after it has completed chemical weapons destruction operations.

Subparagraph 7(f) requires the State Party to describe the methods to be used to destroy the converted facility after it has completed chemical weapons destruction operations.

Paragraphs 8 and 9 of Part V requires States Parties to provide: (1) annual plans for destruction of chemical weapons production facilities not later than 90 days prior to the beginning of the upcoming destruction year; and (2) annual reports on the past year's destruction of chemical weapons production facilities not later than 90 days after the conclusion of the previous destruction year. The information that must be provided is: the capacity (i.e. the amount of the production capacity declared pursuant to subparagraph 1(f)) that is planned to be, or was, destroyed; the names and locations of the facilities where destruction is planned to take place or took place; the individual buildings and pieces of equipment that will be, or were, destroyed; and the methods planned to be used or that were used for destruction.

Paragraph 10 states that it is the responsibility of the territorial State Party to make appropriate arrangements to ensure that the information required in paragraphs 6 through 9 of Part V is provided for the facilities of other States declared pursuant to paragraph 3, but if it cannot fulfill its obligation either to declare or to ensure the declaration of such facilities, it must explain why.

Section B (paragraphs 11 through 42) of Part V sets forth the general principles for destruction of chemical weapons production facilities; principles and methods for closure, technical maintenance prior to destruction, temporary conversion to destruction facilities, and for destruction; order of destruction; and detailed plans for destruction and their review.

Paragraph 11 of Part V establishes that each State Party may decide the methods to be used for the destruction of its chemical weapons production facilities. The methods must be in accordance with the principles laid down in Article V and this Part, in particular paragraphs 12 through 42.

Paragraph 12 of Part V establishes that the purpose of the closure of a chemical weapons production facility is to render it inactive. The minimum requirements for rendering a facility inactive are described in paragraph 13.

Paragraph 13 of Part V establishes that the agreed measures to be taken by a State Party to close a facility will take into account the specific characteristics of each facility. A list of such measures to be included is presented in subparagraphs (a) through (e). (Note that it is expected that such measures will be developed by the Preparatory Commission for approval by the Conference and will be specified in more detail in the individual facility agreements.)

Subparagraph 13(a) requires the State Party to prohibit occupation of the specialized and standard buildings (which are defined in subparagraphs 2(a) and 2(b) of Part I of this Annex), except for agreed activities. Agreed activities refer primarily to maintenance activities which are outlined in paragraphs 15 through 17 and are to be specifically listed in individual facility agreements for each production facility.

Subparagraph 13(b) requires the State Party to disconnect equipment directly related to the production of chemical weapons, including, among other things, process control equipment and utilities. It is understood that utilities necessary for safety and on-site monitoring with instruments will remain intact.

Subparagraph 13(c) requires the State Party to decommission protective installations and equipment used exclusively for the safety of operations of the chemical weapons production facility. This is understood to mean safety equipment necessary when the facility is in operation. Safety equipment necessary for safety and on-site verification, such as lighting, toxic vapor detectors, alarms, first aid stations, and fire fighting equipment could remain.

Subparagraph 13(d) requires installation of blind flanges and other devices to prevent the addition of chemicals to, or the removal of chemicals from:

- any specialized process equipment for synthesis, separation, or purification of chemicals defined as chemical weapons;
- any storage tank;
- any machine for filling chemical weapons;

and to prevent the heating, cooling or supply of electrical or other forms of power to such equipment, storage tanks, or machines. Note that this latter provision is modified by paragraphs 14 and 15, which allow safety and maintenance activities, i.e. heating, cooling, etc. necessary for non-production safety or maintenance would be allowed.

The purpose of this paragraph is to preclude clandestine production by moving chemicals to or from containers through existing conduits or applying heat, refrigeration, or power to filling equipment, storage tanks

or containers once used for the synthesis, separation, or purification of chemical weapons.

Subparagraph 13(e) requires the State Party to interrupt rail, road, and other access routes for heavy transportation to the chemical weapons production facility except those required for agreed activities. (Note that agreed activities refer primarily to maintenance activities outlined in paragraphs 15 through 17 and are to be specifically listed in individual facility agreements.) The purpose of this paragraph is to preclude a State Party from easily transporting machinery or bulk chemicals from the site.

Paragraph 14 of Part V allows the State Party to carry out safety and physical security activities at a closed chemical weapons production facility.

Paragraph 15 of Part V establishes that the State Party may carry out standard maintenance activities at a chemical weapons production facility. The paragraph establishes that the purpose of these activities must be for safety reasons, to include visual inspection, preventive maintenance, and routine repairs. The purpose of this paragraph is to ensure that the facility is not an environmental risk and affords a safe working environment for inspectors.

Paragraph 16 of Part V requires the State Party to specify all planned maintenance activities in the general and detailed plans for destruction. It also precludes certain specific activities which could improve or maintain the operability of the facility. Subparagraphs (a) through (c) specify maintenance activities that may not take place in the facility.

Subparagraph 16(a) excludes the replacement of any process equipment. The purpose of this subparagraph is to preclude a State Party from repairing or improving the production line, and to prevent the removal of specialized equipment unless it is to be destroyed.

Subparagraph 16(b) excludes any modification of the characteristics of the chemical process equipment. The purpose of this subparagraph is also to preclude a State Party from maintaining or increasing the capacity of the chemical weapons production facility, or altering the facility in such a way as to preclude an accurate determination at the facility's production capacity, components or specialized equipment.

Subparagraph 16(c) excludes the production of any type of chemical. The purpose of this paragraph is to preclude a State Party from producing chemical weapons and to provide other States Parties with confidence that production is not underway that could mask illicit production.

Paragraph 17 of Part V requires that all maintenance activities shall be subject to monitoring by the Technical Secretariat. The purpose of this paragraph is to give the Technical Secretariat the right, but not the obligation, to monitor all maintenance activities. (Note that the term "monitoring" is understood to mean the same thing as in paragraph 17 of Article V, i.e. the right to check on activities but not to directly oversee them. However, all maintenance activities must be in conformity with paragraph 15, i.e., they must be solely for safety reasons.)

Paragraph 18 of Part V establishes that the measures pertaining to the temporary conversion of chemical weapons production facilities into chemical weapons destruction facilities will be at least as stringent as the regime for chemical weapons production facilities that have not been converted. The purpose of this paragraph is to establish that there are means to ensure that a chemical weapons production facility, before and after its conversion to a destruction facility, is incapable of producing chemical weapons. These means must provide at least the level of confidence that the converted facility is incapable of producing chemical weapons as the means specified in paragraphs 12 through 17 for facilities that will not be converted.

Paragraph 19 of Part V establishes that chemical weapons production facilities that were converted to chemical weapons destruction facilities before the entry into force of the Convention will be declared as chemical weapons production facilities. The purpose of this paragraph is to ensure that all present and former production facilities are identified for appropriate verification and monitoring.

Paragraph 19 also establishes that previously converted chemical weapons production facilities will be subject to an initial visit by inspectors, who shall confirm the correctness of the information about the facility (as provided in accordance with paragraph 1 of Part V). It requires verification that conversion of these facilities was performed in such a manner as to render them inoperable as chemical weapons production facilities. This verification shall fall within the framework of measures provided for facilities that are to be rendered inoperable not later than 90 days after entry into force. The purpose of this requirement is to provide assurance that a previously converted facility was converted in a manner which makes the facility incapable of producing chemical weapons.

Paragraph 20 of Part V requires a State Party, intending to carry out a conversion of a chemical weapons production facility, to submit a general facility conversion plan to the Technical Secretariat not later than 30 days after the Convention enters into force for it, or not later than 30 days after a decision had been taken for temporary conversion. It shall also subsequently submit annual plans.

Paragraph 21 of Part V requires a State Party to inform the Technical Secretariat 150 days before converting a previously closed chemical weapons production facility to a temporary chemical weapons destruction facility. The paragraph also requires the Technical Secretariat, in conjunction with the State Party, to ensure that necessary measures are taken to render the facility inoperable as a chemical weapons production facility after conversion. The purpose of this

paragraph is to allow a State Party to convert a chemical weapons production facility to a chemical weapons destruction facility after the entry into force of the Convention. Without this paragraph these facilities would have to remain closed until destroyed.

Paragraph 22 of Part V establishes that a converted chemical weapons production facility must have no more potential for reconversion than an un-converted closed facility. Specifically, reactivation of such a facility shall require no less time than required for reactivation of a closed facility.

Paragraph 23 of Part V establishes that converted chemical weapons production facilities must be destroyed not later than ten years after entry into force of the Convention. The purpose of this paragraph is to ensure that a converted facility completes operations, and is destroyed in the same period as other non-converted chemical weapons production facilities.

Paragraph 24 of Part V establishes that measures taken for the conversion of chemical weapons production facilities will be tailored for each facility dependent on its individual characteristics. This paragraph recognizes that all facilities differ, and therefore an exact standard method of conversion cannot be developed.

Paragraph 25 of Part V establishes that, to ensure non-chemical weapons production capability, the measures to convert a chemical weapons production facility into a chemical weapons destruction facility will not be less than those performed to disable a chemical weapons production facility. The disabling measures cited here are those to be performed within 90 days after the entry into force of the Convention. The measures are listed in paragraph 13 of Part V.

Paragraph 26 of Part V requires the physical destruction of all specialized and standard equipment (which are defined in subparagraphs 5(a) and (b) of Part I of this Annex), and all specialized and standard

buildings (which are defined by subparagraphs 2(a) and (b) of Part I of this Annex). Note that conversion of such facilities is allowed, however, pursuant to paragraphs 13 through 15 of Article V and Section D of Part V.

Paragraph 27 of Part V requires a State Party to destroy facilities for producing unfilled chemical munitions and equipment for chemical weapons employment in accordance with subparagraphs (a) through (d).

Subparagraph 27(a) requires the declaration and destruction of facilities used exclusively for the production of non-chemical parts for chemical munitions or equipment specifically designed for use directly in connection with chemical weapons employment. The purpose of this subparagraph is to limit the requirement for declaration and destruction to only those facilities which were used exclusively for the production of chemical munitions parts or exclusively for production of specifically designed equipment for chemical weapons employment. Facilities which were not used exclusively to produce these items are not subject to destruction.

Subparagraph 27(b) requires the physical destruction of equipment designed or used exclusively for producing non-chemical parts for chemical munitions. This paragraph establishes that such equipment includes specially designed molds and metal-forming dies. The paragraph also establishes that this equipment may be removed from its location to a special location for destruction. This paragraph recognizes that facilities not included in subparagraph 27(a) may also contain specialized equipment and that equipment must also be physically destroyed under the terms of the Convention. It also recognizes the possible inability to destroy the equipment in its present location.

Subparagraph 27(c) requires that all buildings (defined in paragraph 2 of Part I) and standard equipment (defined in paragraph 5(b) of Part I of this Annex) for the production of unfilled chemical munitions and

equipment for chemical weapons employment be destroyed or converted for purposes not prohibited by the Convention (listed in paragraph 9 of Article II). Confirmation of such destruction or conversion may be done, as necessary, through consultations and inspections as provided under Article IX, i.e. challenge inspections. The purpose of this paragraph is to establish that buildings at these types of facilities and standard equipment may be converted to uses not prohibited by the Convention. It also establishes that such conversion is not subject to the routine verification mechanisms of the Convention which apply to the facilities and equipment specified in subparagraphs 27(a) and (b), but if a concern is raised, it should be handled through the consultative and fact-finding mechanisms of Article IX. The rationale for non-routine monitoring is that these are generic metal-and plastic-forming operations, not chemical weapons specific, and thus pose no special risk.

Subparagraph 27(d) allows activities for purposes not prohibited by the Convention (listed in paragraph 9 of Article II) to continue while destruction and conversion proceeds.

Paragraph 28 of Part V provides the rationale for the order of destruction used in the Convention. Specifically, this paragraph states that the order of destruction of chemical weapons production facilities is based on the obligations specified in Article I (e.g. the prohibition on the production of chemical weapons) and the other Articles, including obligations regarding systematic on-site verification. The order of destruction takes into account interests of States Parties for undiminished security during the destruction period; confidence-building in the early part of the destruction stage; gradual acquisition of experience in the course of destroying chemical weapons production facilities; and applicability irrespective of the actual composition of the facilities and the methods chosen for their destruction. Finally, it states that the order of destruction is based on the principle of leveling out.

Note that this is the same rationale as for chemical weapons. Note also that, as with chemical weapons, the principle of leveling out is understood to mean that States Parties with larger capacities to produce chemical weapons are required to destroy a larger amount of that capacity than States Parties with smaller capacities so that all States Parties finish destruction concurrently, by the end of the tenth year after entry into force. This provides an equitable process and enhanced security for States Parties by requiring destruction of the same proportion of chemical weapons production capability as other States Parties throughout the destruction period.

Paragraph 29 of Part V establishes that each State Party will decide which chemical weapons production facilities will be destroyed during each destruction period. The purpose of this paragraph is to provide the State Party with the right to plan the order in which it destroys production facilities to take into account, *inter alia*, economic or technical considerations. The paragraph establishes that a specific rate of destruction will be followed. That rate is defined in the following two paragraphs. The paragraph also establishes that the State Party is not precluded from destroying its chemical weapons production capability at a rate faster than specified in the Convention.

Paragraph 30 establishes destruction rates for chemical weapons production facilities that produced chemical(s) listed in Schedule 1 of the Annex on Chemicals.

Subparagraph 30(a) requires each State Party to begin destruction of facilities that produced Schedule 1 chemical(s) not later than 1 year after the Convention enters into force for it. It also requires destruction of all such facilities by not later than 10 years after the Convention enters into force. For States which are States Parties at the Convention's entry into force, the overall destruction period will be divided into three separate periods, namely years 2–5, 6–8, and 9–10. For States who become

Parties after the entry into force of the Convention, the destruction periods will be adapted, taking paragraphs 28 and 29 into account.

Note that, unlike for chemical weapons, no specific amounts of capacity are required to be destroyed during these periods.

Subparagraph 30(b) establishes that production capacity will be used as a comparison factor for chemical weapons production facilities. (Production capacity is defined in paragraph 10 of Article II.) A facility's capacity will be determined in accordance with subparagraph 1(f) of Part V of this Annex. The capacity will be expressed in agent tons, taking into account the rules for binary chemical weapons provided in paragraph 18 of Part IV(A) of this Annex.

Subparagraph 30(c) requires that appropriate agreed levels of production capacity will be established for the end of the eighth year after entry into force of the Convention. Note that these levels are expected to be developed by the Preparatory Commission for approval by the Conference.

This subparagraph also states that production capacity in excess of this amount will be required to be destroyed in equal increments during the first two destruction periods. The purpose of this paragraph is to establish a mechanism for leveling out the Schedule 1 chemical weapons production capacity of each State Party. Each State is obligated to destroy in equal amounts in each of the first two destruction periods, any capacity in excess of that which will be established for the end of the eighth year. Note that this subparagraph establishes the parameters for the amount of capacity to be destroyed while the Conference will determine the exact amounts.

Subparagraph 30(d) establishes that a requirement to destroy a given amount of capacity shall entail a requirement to destroy any other chemical weapons production facility that supplied the Schedule 1 facility or filled the Schedule 1 chemical produced there into munitions

and devices. The purpose of this paragraph is to ensure that support facilities are destroyed along with the main chemical weapons production facility. These support facilities are those that supplied the Schedule 1 facility to facilitate its operation or filled into munitions or devices the Schedule 1 chemical produced at the facility.

Subparagraph 30(e) establishes that any chemical weapons production facility that has been converted temporarily for destruction of chemical weapons will continue to be subject to the obligation to destroy capacity according to the provisions of paragraph 30. The purpose of this paragraph is to ensure that converted facilities are included in the total capacity to be destroyed by a State Party, and are destroyed accordingly.

Paragraph 31 of Part V requires a State Party to begin destruction of chemical weapons production facilities not covered in paragraph 30 within one year after entry into force of the Convention, and finish destruction within five years after entry into force. The purpose of this paragraph is to require the destruction of all chemical weapons production facilities that produce or fill chemicals other than those listed on Schedule 1.

Paragraph 32 of Part V requires each State Party to provide to the Technical Secretariat with detailed plans for the destruction of each of its chemical weapons production facilities. The detailed plans must be provided at least 180 days prior to the start of the destruction and include proposed measures for the verification of destruction. The proposed verification measures must include when inspectors should be present to verify destruction and the procedures to be used to verify the destruction of each item to be destroyed.

Paragraph 33 of Part V requires each State Party to include minimum specific information in its detailed plans for destruction of each chemical weapons production facility. This information is listed in subparagraphs (a) through (h) and is intended to facilitate Technical Secretariat preparations for verification.

Subparagraph 33(a) requires a detailed time schedule for the destruction process.

Subparagraph 33(b) requires a layout of the facility. This is understood to mean a drawing showing the arrangement of buildings, equipment and storage containers within the facility, the roads and rail lines in the facility, and any docks, runways, helipads, and gates on the facility. The requirement is intended to provide the Technical Secretariat with information on the size and complexity of the facility.

Subparagraph 33(c) requires the facility's process flow diagram. This is understood to mean a detailed diagram showing configuration of the specialized equipment and major items of standardized equipment, and the flow of chemicals in the production process.

Subparagraph 33(d) requires a detailed inventory of equipment, buildings, and other items to be destroyed.

Subparagraph 33(e) requires the State Party describe the measures to be used to destroy each item listed in subparagraph 33(d).

Subparagraph 33(f) requires the State Party describe the measures proposed to verify the destruction of each item listed in subparagraph 33(d).

Subparagraph 33(g) requires the State Party to list the security and safety measures to be observed during the destruction of the chemical weapons production facility. Note that paragraph 43 of Part II of this Annex requires inspectors to observe the safety regulations established at the inspection site.

Subparagraph 33(h) requires the State Party to list the working and living conditions to be provided to the inspectors during the verification of destruction.

Paragraph 34 of Part V requires a State Party to notify the Technical Secretariat of any conversion of a chemical weapons production facility to a temporary chemical weapons destruction facility 150 days prior to undertaking any activities for conversion. The contents of the notification are specified in subparagraphs (a) through (g).

Subparagraph 34(a) requires the State Party to specify the name, address, and location of the facility to be converted.

Subparagraph 34(b) requires the State Party to provide a site diagram, indicating all structures and areas that will be involved in the destruction of chemical weapons and also identify all structures of the chemical weapons production facility that are to be temporarily converted.

Subparagraph 34(c) requires the State Party to specify the types of chemical weapons and the type and quantity of agent fill to be destroyed at the converted facility.

Subparagraph 34(d) requires the State Party to specify the destruction method to be applied to the converted facility.

Subparagraph 34(e) requires the State Party to provide a process flow diagram, indicating which portions of the production process and specialized equipment will be converted for the destruction of chemical weapons.

Subparagraph 34(f) requires the State Party to specify the seals and inspection equipment potentially affected by the conversion, if applicable. This provision applies if the facility to be converted is already under monitoring provisions as an inactive chemical weapons production facility.

Subparagraph 34(g) requires the State Party to provide a schedule identifying: the time allocated to design of the converted facility, temporary conversion of the facility, installation of equipment, equipment check-out, destruction operations, and closure of the facility once chemical weapons destruction is completed.

Paragraph 35 of Part V requires the State Party to provide information on plans for destruction of a chemical weapons production facility that was temporarily converted for the destruction of chemical weapons in accordance with paragraphs 32 and 33.

Paragraph 36 of Part V requires the Technical Secretariat to prepare a plan for verifying the destruction of the chemical weapons production facility based on the detailed plan for destruction and verification measures submitted by the State Party, Technical Secretariat experience from previous inspections, and consultations with the State Party to be inspected. Any differences between the Technical Secretariat and the State Party concerning appropriate measures should be resolved through consultation. Any unresolved matters will be forwarded to the Executive Council for appropriate action with a view to facilitating the full implementation of the Convention.

Paragraph 37 of Part V requires the combined plans for destruction and verification to be agreed between the State Party and the Executive Council and the agreement to be completed not less than 60 days before the planned initiation of destruction. This is to ensure that the provisions of Article V (destruction of chemical weapons production facilities) and this Part are fulfilled.

Paragraph 38 of Part V establishes that each member of the Executive Council may consult with the Technical Secretariat on any issue regarding the adequacy of the combined plan for destruction and verification of the chemical weapons production facility. If there is no objection by any member of the Executive Council, the plan will be put into action.

Paragraph 39 of Part V requires the Executive Council to enter into consultations with the State Party if there are any difficulties in reaching agreement on the combined plans for destruction and verification of the chemical weapons production facility. Any unresolved issues will be referred to the Conference. The paragraph also establishes that any differences over methods of destruction will not delay the execution of other parts of the destruction plan that are acceptable.

Paragraph 40 of Part V establishes that if agreement is not reached with the Executive Council on aspects of verification, or if the approved verification plan cannot be put into action, verification of destruction will proceed through continuous monitoring with on-site instruments and physical presence of observers. The purpose of this paragraph is to require that if the detailed plan for verification is not agreed, destruction of the facility will proceed under international monitoring, with inspectors continuously present.

Paragraph 41 of Part V establishes that once agreed, destruction and verification of the chemical weapons production facility will proceed under the agreed plan, and that the verification will not unduly interfere with the destruction process and will be conducted through the presence of inspectors on-site to witness the destruction of the chemical weapons production facility.

Paragraph 42 of Part V establishes that if required verification or destruction actions are not taken as planned, all States Parties will be so informed. It is understood that informing all States Parties is the responsibility of the Technical Secretariat.

Section C (paragraphs 43 through 63) of Part V provides for verification of declarations, systematic verification of chemical weapons production facilities, cessation of activities at chemical weapons production facilities, verification of destruction, and verification of temporary conversion of production facilities into destruction facilities.

Paragraph 43 of Part V requires the Technical Secretariat to conduct initial inspections of all declared chemical weapons production facilities within a State Party within the period between 90 and 120 days after the Convention enters into force for the State Party. Note that procedures for initial inspections are expected to be developed by the Preparatory Commission for approval by Conference.

Paragraph 44 of Part V specifies the purposes of the initial inspections.

Subparagraph 44(a) specifies that the initial inspection is to confirm that production of chemical weapons has ceased and that the facility has been inactivated in accordance with the Convention. Requirements for inactivation are specified in paragraphs 12 through 17.

Subparagraph 44(b) specifies that a purpose of the initial inspection is to permit the Technical Secretariat to familiarize itself with the measures that have been taken to cease production of chemical weapons at the facility.

Subparagraph 44(c) specifies that the initial inspection is to permit the inspectors to install temporary seals.

Subparagraph 44(d) specifies that the initial inspection is to permit the inspectors to confirm inventory of buildings and specialized equipment.

Subparagraph 44(e) specifies that a purpose of the initial inspection is to obtain information necessary for planning inspection activities at the facility, including the use of tamper-indicating seals and other agreed equipment, which will be installed pursuant to the detailed facility agreement for the facility.

Subparagraph 44(f) specifies that the initial inspection is to conduct preliminary discussions regarding a detailed agreement on inspection procedures at the facility.

Paragraph 45 of Part V establishes that inspectors have the right, as appropriate, to employ agreed seals, markers or other inventory control procedures to facilitate an accurate inventory of the declared items at each chemical weapons production facility. Note that the types of seals, markers or other inventory control procedures to be used are expected to be determined by the Preparatory Commission for approval by the Conference.

Paragraph 46 of Part V establishes that inspectors have the right to install agreed devices as necessary to indicate if any resumption of production of chemical weapons occurs or if any declared item is removed. Note that the types of such devices are expected to be determined by the Preparatory Commission for approval by the Conference. This paragraph further specifies that inspectors will take precautions so the application of agreed devices will not hinder closure activities by the inspected State Party. This paragraph also establishes that inspectors may return to the facility to maintain and verify the integrity of the devices.

Paragraph 47 of Part V establishes that if, on the basis of the initial inspection, the Director-General believes that additional measures are necessary to inactivate the facility in accordance with the Convention (paragraphs 12 through 17 of Part V), the Director-General may request, not later than 135 days after the Convention enters into force

for the State Party, that such measures be implemented by the inspected State Party not later than 180 days after the Convention enters into force for it. At its discretion, the inspected State Party may satisfy the request. If it does not satisfy the request, the inspected State Party and the Director-General will consult to resolve the matter. Discretion is allowed to deal with measures that may not be practicable, e.g. they may be inconsistent with safety rules at the facility.

Paragraph 48 of Part V establishes that the purpose of systematic verification of a chemical weapons production facility is to ensure that any resumption of production of chemical weapons or removal of declared items at the facility will be detected.

Paragraph 49 of Part V specifies the required elements of a detailed facility agreement. The specific elements are listed in subparagraphs (a) through (c).

Subparagraph 49(a) requires the specification of detailed on-site inspection procedures, which may (illustratively) include: visual examinations; checking and servicing of seals and other agreed devices; and obtaining and analyzing samples.

Subparagraph 49(b) requires the specification of procedures for using tamper-indicating seals and other agreed equipment to prevent the undetected reactivation of the facility, which will further specify: the type, placement, and arrangements for installation; and the maintenance of such seals and equipment.

Subparagraph 49(c) requires other agreed measures to be specified.

Paragraph 50 of Part V requires the placement of seals or other approved equipment provided for in a detailed agreement on inspection measures for that facility not later than 240 days after this Convention enters into force for a State Party. Inspectors shall be permitted to visit

each chemical weapons production facility for the installations of such seals or equipment.

Paragraph 51 of Part V requires the State Party to permit the Technical Secretariat to conduct up to four inspections of each chemical weapons production facility during each calendar year. This provides the Technical Secretariat with flexibility to allocate verification resources as appropriate based on risk assessment.

Paragraph 52 of Part V requires the Director-General to notify the inspected State Party of his decision to inspect or visit a chemical weapons production facility 48 hours before the planned arrival of the inspection team at the facility for systematic inspections or visits. In the case of inspections or visits to resolve urgent problems, this period may be shortened. The Director-General shall specify the purpose of the inspection or visit. Note that paragraph 17 of Part III requires notification of such inspections 24 hours prior to the arrival of the inspection team at the point of entry.

Paragraph 53 of Part V provides inspectors, in accordance with the facility agreements, unimpeded access to all parts of the chemical weapons production facilities. The items on the declared inventory to be inspected shall be chosen by the inspectors.

Paragraph 54 of Part V establishes that the guidelines for determining the frequency of systematic on-site inspections shall be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission. The particular production facility to be inspected is to be chosen by the Technical Secretariat in a manner which precludes the prediction of precisely when the facility is to be inspected.

Paragraph 55 of Part V requires that the purpose of systematic verification of the destruction of chemical weapons production facilities be to confirm that the facility is destroyed in accordance with the obligations under the Convention and that each item on the declared inventory is destroyed in accordance with the agreed detailed plan for destruction.

Paragraph 56 of Part V requires that when all items on the declared inventory have been destroyed, the Technical Secretariat shall confirm the declaration of the State Party to that effect. After confirmation, the Technical Secretariat is required to terminate the systematic verification of the chemical weapons production facility and promptly remove all devices and monitoring instruments installed by the inspectors.

Paragraph 57 of Part V establishes that after the confirmation mentioned in paragraph 56, the State Party shall make the declaration that the facility has been destroyed.

Paragraph 58 of Part V states that not later than 90 days after receiving the initial notification of the State Party's intent to convert temporarily a production facility, the inspectors shall have the right to visit the facility to familiarize themselves with the proposed temporary conversion and to study possible inspection measures that will be required during the conversion.

Paragraph 59 of Part V requires that not later than 60 days after such a visit, the Technical Secretariat and the inspected State Party conclude a transition agreement containing additional inspection measures for the temporary conversion period. The transition agreement shall specify inspection procedures, including the use of seals, monitoring equipment, and inspections, that will provide confidence that no chemical weapons production takes place during the conversion process. This agreement is to remain in force from the beginning of the temporary conversion

activity until the facility begins operation as a chemical weapons destruction facility.

Paragraph 60 of Part V requires the inspected State Party to not remove or convert any portion of the facility, or remove or modify any seal or other agreed inspection equipment that may have been installed pursuant to this Convention until the transition agreement has been concluded. Note that the types of seals or other inspection equipment to be used are expected to be determined by the Preparatory Commission for approval by the Conference.

Paragraph 61 of Part V requires the facility, once it begins operation as a chemical weapons destruction facility, to be subject to the provisions of Part IV(A) of this Annex applicable to chemical weapons destruction facilities. Arrangements for the pre-operation period will be governed by the transition agreement.

Paragraph 62 of Part V establishes the right during destruction operations of inspectors to have access to all portions of the temporarily converted chemical weapons production facilities, including those not directly involved with the destruction of chemical weapons.

Paragraph 63 of Part V requires that both before work commences at the facility to convert it temporarily for chemical weapons destruction purposes and after the facility has ceased its destruction functions, the facility shall be subject to Part V provisions applicable to chemical weapons production facilities.

Section D (paragraphs 64 through 86) of Part V sets forth the provisions for conversion of chemical weapons facilities to purposes not prohibited by the Convention, including procedures for requesting conversion, actions pending a decision, conditions for conversion, decisions by the Executive Council and the Conference, detailed plans for conversion, review of the detailed plans, and inspection procedures.

Paragraph 64 of Part V allows a State Party to request the use of a chemical weapons production facility for purposes not prohibited under the Convention for any facility that the State Party is already using for such purposes before the Convention enters into force for it ("already physically converted facilities"), or that it plans to use for such purposes ("planned physically converted facilities".) Such purposes are listed in paragraph 9 of Article II.

(Conversion, under the Convention, has both a physical and a legal component. A chemical weapons production facility that has been converted, but not yet certified by the Conference pursuant to paragraph 68, has been physically converted, but not legally converted under the Convention. The facilities referred to in paragraph 64 and elsewhere as "physically converted" are of this type, i.e. physically converted, but not yet legally certified as converted.)

Paragraphs 65 and 66 of Part V provide that for already physically converted facilities, the request must be submitted to the Director-General not later than 30 days after this Convention enters into force for the State Party, and for planned physically converted facilities, the request must be submitted not later than 30 days after the decision to convert, but in no case later than four years after this Convention enters into force for the State Party. The request must contain, in addition to data submitted in accordance with paragraph 1(h)(iii) of Part V (i.e. whether modified, date, product produced, etc.), the following information:

- (a) A detailed justification for the request (including its economic needs in the case of planned physically converted facilities);
- (b) A general facility conversion plan that specifies:
 - (i) The nature of the activity (planned) to be conducted at the facility;

(ii) If the planned activity involves production, processing, or consumption of chemicals: the name of each of the chemicals, the flow diagram of the facility, and the quantities planned to be produced,

(iii) Which buildings or structures are proposed to be used/retained and what modifications are proposed, if any;

(iv) Which buildings or structures have been destroyed or are proposed to be destroyed and the plans for destruction;

(v) What equipment is to be used in the facility (or is proposed to be used in the case of planned physically converted facilities);

(vi) (What equipment has been removed and destroyed and what equipment is proposed to be removed and destroyed and the plans for its destruction;

(vii) The proposed schedule for conversion (if applicable); and

(viii) The nature of the activity of each other facility operating at the site;

(c) A detailed explanation of how measures set forth in subparagraph (b), as well as any other measures proposed by the State Party, will ensure the prevention of standby chemical weapons production capability at the facility.

Paragraph 67 of Part V establishes that the State Party may propose in its request any other measures it deems appropriate to build confidence.

Paragraph 68 of Part V establishes that pending a decision of the Conference, a State Party may continue to use for purposes not prohibited under the Convention an already physically converted facility,

but only if the State Party certifies in its request that no specialized equipment and no specialized buildings are being used and that the specialized equipment and specialized buildings have been rendered inactive using the methods specified in paragraph 13. ("Specialized equipment" and "specialized buildings" are defined in paragraphs 5(a) and 2(a) of Part II of this Annex respectively.)

Paragraph 69 of Part V requires that if the facility is a planned physically converted facility or if the certification required for an already physically converted facility is not made, the State Party will cease immediately all activity pursuant to paragraph 4 of Article V. The State Party is required to close the facility in accordance with paragraph 13 not later than 90 days after this Convention enters into force for it.

Paragraph 70 of Part V requires that as a condition for conversion of a chemical weapons production facility for purposes not prohibited under the Convention, the destruction of all specialized equipment at the facility and elimination of all special features of buildings and structures which distinguish them from buildings and structures normally used for purposes not prohibited under the Convention and not involving Schedule 1 chemicals.

Paragraph 71 of Part V limits the use of converted facilities to activities not closely related to the production of chemical weapons. Specifically, a converted facility can not be used:

(a) For any activity involving production, processing, or consumption of a Schedule 1 chemical or a Schedule 2 chemical;
or

(b) For the production of any highly toxic chemical, including any highly toxic organophosphorus chemical, or for any other activity that would require special equipment for handling highly toxic or highly corrosive chemicals, unless the Executive Council decides that such production or activity would pose no risk to the object

and purpose of this Convention. This decision must take into account criteria for toxicity, corrosiveness and, if applicable, other technical factors, to be considered and approved by the Conference pursuant to subparagraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Paragraph 72 of Part V requires conversion of a chemical weapons production facility to be completed not later than six years after entry into force of the Convention.

Paragraph 73 of Part V requires an initial inspection of the facility to be conducted by the Technical Secretariat not later than 90 days after receipt of the request for conversion by the Director-General. The purpose of this inspection shall be to determine the accuracy of the information provided in the request, to obtain information on the technical characteristics of the proposed converted facility, and to assess the conditions under which use for purposes not prohibited under the Convention may be permitted.

The Director-General is required to submit promptly a report to the Executive Council, the Conference, and all States Parties containing his or her recommendations on the measures necessary to convert the facility to purposes not prohibited under this Convention and to provide assurance that the converted facility will be used only for purposes not prohibited under this Convention.

Paragraph 74 of Part V establishes that if the facility is an already physically converted facility and is continuing to be in operation, but the measures required to be certified under paragraph 68 have not been taken, the Director-General shall immediately inform the Executive Council, which may require implementation of measures it deems appropriate, *inter alia*, shut-down of the facility and removal of specialized equipment and modification of buildings or structures.

The Executive Council must stipulate the deadline for implementation of these measures and suspend consideration of the request pending their satisfactory completion. The facility must be inspected promptly after the expiration of the deadline to determine whether the measures have been implemented. If not, the State Party will be required to shut down completely all facility operations.

Paragraph 75 of Part V requires the Conference as soon as possible after receiving the report of the Director-General, and upon recommendation of the Executive Council, to decide, taking into account the report and any views expressed by States Parties, whether to approve the request for conversion and to establish the conditions upon which approval is contingent. If any State Party objects to approval of the request and the associated conditions, consultations are to be undertaken among interested States Parties for up to 90 days to seek a mutually acceptable solution. A decision on the request and associated conditions, along with any proposed modifications thereto, must be taken, as a matter of substance (i.e. by consensus, or if consensus not possible, by two-thirds majority of members present and voting, pursuant to paragraph 18 of Article VIII), as soon as possible after the end of the consultation period.

Paragraph 76 of Part V requires a facility agreement to be completed not later than 90 days after a decision of approval is taken. The facility agreement must contain the conditions under which the conversion and use of the facility is permitted, including measures for verification. Conversion is not allowed to begin before the facility agreement is concluded.

To assist the Technical Secretariat in preparing for verification, paragraph 77 of Part V requires, not less than 180 days before conversion of a chemical weapons production facility is planned to begin, the State Party to provide the Technical Secretariat with the

detailed plans for conversion of the facility, including proposed measures for verification of conversion, with respect to, *inter alia*:

- (a) Timing of the presence of the inspectors at the facility to be converted; and
- (b) Procedures for verification of measures to be applied to each item on the declared inventory.

Paragraph 78 of Part V further specifies that the detailed plan for conversion of each chemical weapons production facility must contain:

- (a) Detailed time schedule of the conversion process;
- (b) Layout of the facility before and after conversion;
- (c) Process flow diagram of the facility before, and as appropriate, after the conversion;
- (d) Detailed inventory of equipment, buildings and structures and other items to be destroyed and of the buildings and structures to be modified;
- (e) Measures to be applied to each item on the inventory, if any;
- (f) Proposed measures for verification;
- (g) Security/safety measures to be observed during the conversion of the facility; and
- (h) Working and living conditions to be provided for inspectors.

Paragraph 79 of Part V requires the Technical Secretariat, on the basis of the detailed plan for conversion and proposed measures for verification submitted by the State Party, and on experience from previous inspections, to prepare a plan for verifying the conversion of

the facility, consulting closely with the State Party. Any differences between the Technical Secretariat and the State Party concerning appropriate measures are to be resolved through consultations. Any unresolved matters must be forwarded to the Executive Council for appropriate action with a view to facilitating the full implementation of the Convention.

Paragraph 80 of Part V requires that to ensure that the provisions of Article V and this Part are fulfilled, the combined plans for conversion and verification are to be agreed upon between the Executive Council and the State Party. This agreement shall be completed not less than 60 days before conversion is planned to begin.

Paragraph 81 of Part V establishes that each member of the Executive Council may consult with the Technical Secretariat on any issue regarding the adequacy of the combined plan for conversion and verification. If there are no objections by any member of the Executive Council, the plan shall be put into action.

Paragraph 82 of Part V establishes that if there are any difficulties, the Executive Council should enter into consultations with the State Party to reconcile them. If any difficulties remain unresolved, they should be referred to the Conference. The resolution of any differences over methods of conversion should not delay the execution of other parts of the conversion plan that are acceptable. This means that a State Party may be allowed to convert some portions of a facility, but be prohibited from converting or using other parts of the facility.

Paragraph 83 of Part V establishes that if agreement is not reached with the Executive Council on aspects of verification, or if the approved verification plan cannot be put into action, verification of conversion shall proceed through continuous monitoring with on-site instruments and physical presence of inspectors. The purpose of this paragraph is to require that if the detailed plan for verification is not agreed upon,

verification of the conversion of the facility will proceed under international monitoring, with inspectors continuously present.

Paragraph 84 of Part V establishes that conversion and verification shall proceed according to the agreed plan. The verification must not unduly interfere with the conversion process and must be conducted through the presence of inspectors to confirm the conversion.

Paragraph 85 of Part V requires that for the 10 years after the Director-General certifies that conversion is complete, the State Party must provide to inspectors unimpeded access to the facility at any time. The inspectors shall have the right to observe all areas, all activities, and all items of equipment at the facility. The inspectors also have the right to verify that the activities at the facility are consistent with any conditions established under this Section, by the Executive Council and the Conference. The inspectors additionally have the right, in accordance with provisions of Section E of Part II of this Annex (the general provisions on sampling) to receive samples from any area of the facility and to analyze them to verify the absence of Schedule 1 chemicals, their stable by-products and decomposition products; verify the absence of Schedule 2 chemicals; and verify that the activities at the facility are consistent with any other conditions on chemical activities established under this Section, by the Executive Council and the Conference. The inspectors also have the right to managed access, in accordance with Section C of Part X of this Annex, to the entire plant site at which the facility is located. During the 10-year period, the State Party must report annually on the activities at the converted facility. Upon completion of the 10-year period, the Executive Council, taking into account recommendations of the Technical Secretariat, shall decide on the nature of continued verification measures.

Paragraph 86 of Part V requires the costs of verification of the converted facility shall be allocated in accordance with Article V, paragraph 19 (i.e. the inspected State Party pays the costs unless otherwise decided by the Executive Council).

VERIFICATION ANNEX
PART VI
ACTIVITIES NOT PROHIBITED UNDER THE
CONVENTION IN ACCORDANCE WITH ARTICLE VI
REGIME FOR SCHEDULE 1 CHEMICALS AND FACILITIES
RELATED TO SUCH CHEMICALS

Part VI of the Verification Annex contains 32 paragraphs setting forth the regime for Schedule 1 chemicals and facilities related to such chemicals. Specifically, it contains limitations and verification procedures related to the permitted uses, transfers, production, declarations, and verification of Schedule 1 chemicals. Note that these chemical agents include chemicals that have been used or produced for chemical weapons purposes, and therefore the provisions pertaining to them are very restrictive.

Note that the provisions contained in this Part and Parts VII, VIII, and IX of this Annex for declaration and verification of Schedule 1, Schedule 2, Schedule 3 and other chemical production facilities range respectively from more stringent to less stringent, taking into account the decreasing levels of risk posed by the chemicals and facilities to the Convention and the decreasing feasibility of verification due to increasingly larger quantities of commercial production.

Section A (paragraphs 1 and 2) of Part VI sets forth the general limitations regarding production and use of Schedule 1 chemicals by States Parties.

Paragraph 1 of Part VI states that a State Party may not produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties nor transfer such chemicals outside its territory except to another State Party. The purpose of this paragraph is to ensure that

these chemicals of high risk to the Convention do not spread to non–States Parties. Note that the prohibition on the acquisition of Schedule 1 chemicals outside the territories of States Parties means that imports of such chemicals from non–States Parties are banned.

Paragraph 2 of Part VI specifies the conditions that must be met in order for a State Party to engage in activities with regard to Schedule 1 chemicals. Specifically, it states that a State Party may not produce, acquire, retain, transfer or use Schedule 1 chemicals unless:

- (a) The chemicals are applied to research, medical, pharmaceutical or protective purposes (It is understood that the term "protective purposes" here means used for determining the adequacy of defense equipment and measures); and
- (b) The types and quantities of chemicals are strictly limited to those which can be justified for such purposes; and
- (c) The aggregate amount of such chemicals at any given time for such purposes is equal to or less than 1 metric ton; and
- (d) The aggregate amount for such purposes acquired by a State Party in any year through production, withdrawal from chemical weapons stocks and transfer is equal to or less than one metric ton.

Note that subparagraph (d) means a State Party may withdraw up to one metric ton of Schedule 1 chemicals from declared chemical weapons stocks. (Provisions for removing limited quantities of chemicals for permitted purposes are expected to be developed by the Preparatory Commission for approval by the Conference.) Note also that paragraph 2 prohibits a State Party from conducting any of these activities unless all four of these conditions are met.

Section B (paragraphs 3 through 6) of Part VI contains provisions related to transfers of Schedule 1 chemicals among States Parties. Note that pursuant to paragraph 1, transfers to non–States Parties are prohibited.

Paragraph 3 of Part VI states that a State Party may transfer Schedule 1 chemicals outside its territory only to another State Party and only for research, medical, pharmaceutical or protective purposes in accordance with paragraph 2. This repeats the prohibition in paragraph 1 and, for cases in which a State Party acquires Schedule 1 chemicals by transfer, makes the transferring State Party also responsible for the use to which they are put.

Paragraph 4 of Part VI states that chemicals transferred shall not be retransferred to a third State. Note that, while the methods for prohibiting retransfers are not specified, the direct language of the paragraph implicitly requires States Parties to take actions to ensure that such retransfers do not take place.

Paragraph 5 of Part VI specifies that not less than 30 days before any transfer to another State Party both States Parties shall notify the Technical Secretariat of the transfer.

Paragraph 6 of Part VI requires each State Party to make a detailed annual declaration regarding transfers during the previous year, which must be submitted not later than 90 days after the end of that year. This paragraph further states that for each Schedule 1 chemical that has been transferred, the declaration shall contain the chemical name, structural formula and Chemical Abstracts Service registry number, if assigned, and the quantity acquired from other States or transferred to other States Parties, including, for each transfer, the quantity, recipient and purpose.

Section C (paragraphs 7 through 12) of Part VI sets forth the facilities that are permitted to produce Schedule 1 chemicals. The largest one is a single small-scale facility, which can produce the chemicals for any purpose and in any amount (although production capacity is limited) up to the amount allowed under the Convention (1 metric ton per year). One other facility may produce Schedule 1 chemicals in moderate amounts (up to 10 kilograms per year) for protective purposes, while other facilities may also produce up to 10 kilograms per year, but only for research, medical or pharmaceutical purposes. Finally, synthesis of Schedule 1 chemicals in small amounts (up to 100 grams per year) for certain purposes is allowed in laboratories. This section also sets forth the general principles for production.

Paragraph 7 requires each State Party, during production under paragraphs 8 to 12, (in the permitted facilities and laboratories), to assign the highest priority to ensuring the safety of people and to protecting the environment. This paragraph further states that each State Party shall conduct such production in accordance with its national standards for safety and emissions. Note that while this paragraph duplicates paragraph 3 of Article VII, it was included to highlight the concern for protection of the environment and safety of citizens and inspectors with regard to these activities.

Paragraph 8 of Part VI requires each State Party producing Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes to carry out such production at a single small-scale facility approved by the State Party, or at other facilities as set forth in paragraphs 10, 11 and 12. Note that approval is understood to mean either owned or licensed by a State Party in such a way as to ensure government control over the facility.

Paragraph 9 of Part VI sets limits on the production capacity of the single small-scale facility. Specifically, it states that production at a single small-scale facility must be carried out in reaction vessels in production

lines not configured for continuous operation. This paragraph further states that the volume of such a reaction vessel shall not exceed 100 liters, and the total volume of all reaction vessels with a volume exceeding 5 liters shall not be more than 500 liters.

The purpose of these process and volume limits is to restrict the ability of the facility to engage in large-scale and continuous batch production of Schedule 1 chemicals. This enhances confidence that such facilities will be used only for permitted purposes since it may be difficult, as a practical matter, to engage in significant non-permitted purposes at these facilities.

Paragraphs 10 through 12 Part VI allow for the production of Schedule 1 chemicals in very small amounts in other types of facilities.

Paragraph 10 Part VI allows production of Schedule 1 chemicals for protective purposes in small amounts at one additional facility. Specifically, it allows production of Schedule 1 chemicals in aggregate quantities not exceeding 10 kg per year to be carried out for protective purposes at one facility outside a single small-scale facility. This paragraph further states that such a facility shall be approved by the State Party and declared.

Paragraph 11 Part VI allows production of Schedule 1 chemicals in quantities of more than 100 grams per year to be carried out for research, medical or pharmaceutical purposes outside a single small-scale facility in aggregate quantities not exceeding 10 kilograms per year per facility. These facilities shall be approved by the State Party and declared.

Paragraph 12 Part VI allows the synthesis of Schedule 1 chemicals for research, medical or pharmaceutical purposes, but not for protective purposes, to be carried out at laboratories in aggregate quantities less than 100 grams per year per facility. It further states that these facilities shall not be subject to any obligation relating to declaration and

verification as specified in Sections D and E. This paragraph uses the term "synthesis" rather than "production" to emphasize that this is small-scale laboratory use. Routine inspections are not required because of the unfeasibility of routine verification of such levels. However, there are restrictions on quantities and these facilities are subject to challenge inspection if there are concerns about their activities.

Section D (paragraphs 13 through 20) of Part VI sets forth the detailed contents required for declarations of Schedule 1 production facilities.

Paragraph 13 Part VI requires each State Party planning to operate a single small-scale facility to provide the Technical Secretariat with the precise location and a detailed technical description of the facility, including an inventory of equipment and detailed diagrams. This paragraph further states that, for existing facilities, this initial declaration shall be provided not later than 30 days after the Convention enters into force for the State Party, and for new facilities not less than 180 days before operations are to begin.

Paragraphs 14 and 18 Part VI require each State Party to give advance notification to the Technical Secretariat of planned changes related to the initial declaration of the single small-scale facility and the other Schedule 1 production facilities, respectively, which must be submitted not less than 180 days before the changes are to take place.

Paragraphs 15 and 19 Part VI require a State Party producing Schedule 1 chemicals at a single small-scale facility and other Schedule 1 production facilities, respectively, to make a detailed annual declaration regarding the activities of the facility for the previous year, not later than 90 days after the end of that year, including:

- (a) Identification of the facility;

(b) For each Schedule 1 chemical produced, acquired, consumed or stored at the single small-scale facility and for each Schedule 1 chemical of the other Schedule 1 production facilities, the following information:

- (i) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;
- (ii) The methods employed in single small-scale facilities and in other facilities for production for protective purposes, and the quantity produced for all Schedule 1 facilities;
- (iii) The name and quantity of precursors listed in Schedules 1, 2, or 3 used for production of Schedule 1 chemicals;
- (iv) The quantity consumed at the facility and the purpose(s) of the consumption;
- (v) For the single small-scale facilities, the quantity received from or shipped to other facilities in the State Party and for each shipment the quantity, recipient and purpose; for other Schedule 1 production facilities, the quantity transferred to other facilities within the State Party and for each transfer the quantity, recipient and purpose;
- (vi) The maximum quantity stored at any time during the year; and
- (vii) The quantity stored at the end of the year.

(c) Information on any changes at the facility (and for other Schedule 1 production facilities, its relevant parts) during the year compared to previously submitted detailed technical descriptions of the facility. For single small-scale facilities, this includes inventories of equipment and detailed diagrams.

Note that whereas information on the "processing" of Schedule 2 and 3 chemicals is required (in addition to information on production and consumption), this information is not required for Schedule 1 chemicals because such chemicals are not likely to be "processed".

Paragraphs 16 and 20 Part VI require each State Party producing Schedule 1 chemicals at a single small-scale facility and at other Schedule 1 production facilities to make a detailed annual declaration regarding the projected activities and the anticipated production at each facility for the coming year, not less than 90 days before the beginning of that year, including:

- (a) Identification of the facility;
- (b) For each Schedule 1 chemical anticipated to be produced, consumed or stored at the single small-scale facility, and for each Schedule 1 chemical of the other Schedule 1 production facilities, the following information:
 - (i) The chemical name, structural formula and Chemical Abstracts Service registry number, if assigned;
 - (ii) The quantity anticipated to be produced and the purpose of the production. Note that, while not specified, it is expected that the Preparatory Commission and the Organization will address the issue of whether the quantity anticipated to be consumed and the purpose of the consumption should be reported as well.
- (c) Information on any anticipated changes at the facility (and for other Schedule 1 production facilities, its relevant parts) during the year compared to previously submitted detailed technical descriptions of the facility. For single small-scale facilities, this includes inventories of equipment and detailed diagrams.

Paragraph 17 of Part VI requires that for each facility for permitted production for protective, research, medical and pharmaceutical purposes, a State Party shall provide the Technical Secretariat with the name, location and a detailed technical description of the facility or its relevant part(s) as requested by the Technical Secretariat. This paragraph further states that the facility for producing Schedule 1 chemicals solely for protective purposes (i.e. other than the single small-scale facility) shall be specifically identified. Finally this paragraph states that, for existing facilities, this initial declaration must be provided not later than 30 days after the Convention enters into force for the State Party, and for new facilities, not less than 180 days before operations are to begin.

Note that paragraphs 18 through 20 are discussed above in connection with paragraphs 14 through 16.

Section E (paragraphs 21 through 32) of Part VI sets forth the verification provisions for single small-scale facilities and other Schedule 1 production facilities.

Paragraph 21 of Part VI establishes that the aim of verification activities at the single small-scale facility shall be to verify that the quantities of Schedule 1 chemicals produced are correctly declared and, in particular, that their aggregate amount does not exceed 1 metric ton. Note that in order to accomplish this, the inspection team will need to verify the quantities acquired, consumed or stored as well. In addition, the inspection team will have to verify that the facility complies with the restrictions contained in paragraph 9 of Part VI.

Paragraph 22 of Part VI requires the single small-scale facility to be subject to systematic verification through on-site inspection and monitoring with on-site instruments.

Paragraph 23 requires of Part VI the number, intensity, duration, timing and mode of inspections for a particular single small-scale facility to be based on the risk to the object and purpose of the Convention posed by

the relevant chemicals, the characteristics of the facility and the nature of the activities carried out there. Appropriate guidelines are to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on drafts prepared by the Preparatory Commission.

Paragraph 24 of Part VI states that the purpose of the initial inspection is to verify information provided concerning the single small-scale facility, including verification of the limits on reaction vessels set forth in paragraph 9 of Part VI.

Paragraphs 25 and 26 of Part VI require a State Party to conclude a facility agreement with the Organization, based on a model agreement, covering detailed inspection procedures for existing single small-scale facilities, not later than 180 days after the Convention enters into force for it, and for each State Party planning to establish a single small-scale facility after the Convention enters into force for it, before it begins operation or is used.

Paragraph 27 of Part VI provides for a model for agreements to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports developed by the Preparatory Commission.

Paragraph 28 states that the aim of verification activities at any facility referred to in paragraphs 10 and 11 of Part VI (i.e. the facilities producing more than 100 g but not exceeding 10 kg of Schedule 1 chemicals for protective, research, medical and pharmaceutical purposes), shall be to verify that:

- (a) The facility is not used to produce any Schedule 1 chemical, except for the declared chemicals;

(b) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(c) The Schedule 1 chemical is not diverted or used for other purposes.

Paragraph 29 of Part VI requires facilities referred to in paragraphs 10 and 11 of Part VI to be subject to systematic verification through on-site inspection and monitoring with on-site instruments.

Paragraph 30 of Part VI requires the number, intensity, duration, timing and mode of inspections for a particular facility to be based on the risk to the object and purpose of this Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out there. Appropriate guidelines will be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports developed by the Preparatory Commission.

Paragraphs 31 and 32 of Part VI require a State Party to conclude a facility agreement with the Organization, based on a model agreement, covering detailed inspection procedures for existing other Schedule 1 production facilities, not later than 180 days after the Convention enters into force for it, and for each State Party planning to establish such a facility after the Convention enters into force, before it begins operation or is used. Note that, pursuant to paragraph 8 of Part III, the model agreements will be based on draft model agreements developed by the Preparatory Commission.

VERIFICATION ANNEX
PART VII
ACTIVITIES NOT PROHIBITED UNDER THE
CONVENTION IN ACCORDANCE WITH ARTICLE VI
REGIME FOR SCHEDULE 2 CHEMICALS AND FACILITIES
RELATED TO SUCH CHEMICALS

Part VII consists of 32 paragraphs outlining the compliance verification regime for Schedule 2 chemicals and facilities related to them, including declarations, inspections, and special rules for transfers to non States Parties. Generally speaking Schedule 2 chemicals include those produced for peaceful purposes by industry in relatively small amounts that nevertheless pose a significant risk to the objectives of the Convention because of their toxicity or their potential as precursors for production of chemical weapons.

Section A (paragraphs 1 through 11) of Part VII sets forth the contents of declarations of aggregate national data, plant sites producing, processing or consuming Schedule 2 chemicals, and past production of Schedule 2 chemicals for chemical weapons purposes.

Paragraph 1 of Part VII states that initial and annual declarations provided by each State Party pursuant to paragraphs 7 and 8 of Article VI (i.e. the main provisions requiring declarations) shall include aggregate national data for the previous calendar year on the quantities produced, processed, consumed, imported and exported of each Schedule 2 chemical, as well as a quantitative specification of import and export for each country involved. (The Preparatory Commission is expected to develop specific formats for such declarations.)

Paragraph 2 of Part VII provides deadlines for submitting initial and annual declarations — not later than 30 days after the Convention enters into force for the State Party and thereafter, starting in the

following calendar year, not later than 90 days after the end of the previous calendar year.

Paragraph 3 of Part VII states that initial and annual declarations are required for all plant sites comprising one or more plants that during the previous three calendar years produced, processed, or consumed or are anticipated to produce, process, or consume in the next calendar year more than: 1 kilogram of chemicals identified in Part A of Schedule 2 as of higher risk requiring more stringent verification (currently only BZ, a chemical stockpiled as a chemical weapon but also used in pharmaceutical production); more than 100 kilograms of any other chemical listed in Part A of Schedule 2; or more than 1 metric ton of a precursor chemical listed in Part B of Schedule 2. (The terms "plant" and "plant site" are defined in subparagraphs 6(a) and (b) of Part I of this Annex, respectively.)

Note that these thresholds govern both whether a particular plant site or plant (pursuant to paragraph 7) must be declared as well as, pursuant to paragraph 8, whether particular activities and chemicals must be declared.

Paragraph 4 of Part VII requires that each State Party submit initial declarations for Schedule 2 facilities not later than 30 days after the Convention enters into force for it. It also provides that, starting in the following calendar year, it shall submit:

- annual declarations on past activities not later than 90 days after the end of the previous calendar year;
- annual declarations on anticipated activities not later than 60 days before the beginning of the following calendar year;
- declarations on activities subsequently planned after submission of the annual declaration not later than 5 days before the start of such activity.

(The details of declarations are expected to be determined by the Preparatory Commission for approval by the Conference.)

Paragraph 5 of Part VII states that the initial and annual declarations for Schedule 2 facilities are generally not required for mixtures containing a low concentration of a Schedule 2 chemical. (The precise level is expected to be determined by the Preparatory Commission for approval by the Conference.) It further states that they will only be required, in accordance with guidelines, in cases where the ease of recovery from the mixture of the Schedule 2 chemical and its total weight are deemed to pose a risk to the object and purpose of the Convention. Finally it states that these guidelines will be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports developed by the Preparatory Commission .

Paragraph 6 of Part VII states that declarations of a Schedule 2 plant site shall include: the name of the plant site and the name of the owner, company, or enterprise operating it; its precise location including the address; and the number of plants within the plant site which are declared pursuant to Part VIII of this Annex, i.e. for Schedule 3 purposes. The purpose of this identification of Schedule 3 plants is to facilitate verification and monitoring, e.g. it allows the Technical Secretariat to identify other potentially chemical weapons-related activities on the site.

Paragraph 7 of Part VII requires Schedule 2 plant site declarations to also include, for each plant which is located within the plant site and that meets the criteria set forth in paragraph 3:

- (a) The name of the plant and the name of the owner, company, or enterprise operating it;
- (b) Its precise location within the plant site including the specific building or structure number (if any);

- (c) Its main activities (e.g. type of product being created, such as detergents, synthetic fibers, plastics);
- (d) Whether the plant produces, processes, or consumes the declared Schedule 2 chemical(s); is dedicated to such activities or is multi-purpose; and performs other activities with regard to the declared Schedule 2 chemical(s), including a specification of such other activity, for example, storage; and
- (e) The production capacity of the plant for each declared Schedule 2 chemical. (The term "production capacity" and the terms "produce", "process" and "consume" are defined in paragraphs 10 and 12 of Article II, respectively.)

Paragraph 8 of Part VII requires that declarations of a Schedule 2 plant site include the following information on each Schedule 2 chemical above the declaration threshold:

- (a) The chemical name, common or trade name used by the facility, structural formula, and Chemical Abstracts Service registry number, if assigned;
- (b) In the initial declaration: the total amount produced, processed, consumed, imported or exported by the plant site in each of the three previous calendar years;
- (c) In the annual declarations on past activities: the total amount produced, processed, consumed, imported and exported by the plant site in the previous calendar year;
- (d) In annual on anticipated activities: the total amount anticipated to be produced, processed or consumed by the plant site in the following calendar year, including the anticipated time periods for production, processing or consumption;

(e) The purposes for which the chemical was or will be produced, processed or consumed, specifically:

- (i) processing and consumption on site with a specification of the product types;
- (ii) Sale or transfer within the territory or to any other place under the jurisdiction or control of the State Party, with a specification whether to other industry, trader or other destination and, if possible, of final product types;
- (iii) Whether direct export, with a specification of the States involved;
- (iv) Other, including a specification of these other purposes.

Paragraphs 9 and 10 of Part VII require special declarations for plant sites that have produced Schedule 2 chemicals for chemical weapons purposes.

Paragraph 9 of Part VII requires each State Party to, within 30 days of entry into force of the Convention for it, declare all plant sites comprising plants that produced at any time since 1 January 1946 a Schedule 2 chemical for chemical weapons purposes. Note that this could include plant sites declared pursuant to paragraph 3. Note also that the plant sites are not considered to be chemical weapons production facilities. To qualify as a chemical weapons production facility under paragraph 8 of Article II, the material flow for the facility must contain either a Schedule 1 chemical or any other chemical that has no use, above 1 metric ton per year on the territory of a State Party or in any other place under the jurisdiction or control of a State Party, for purposes not prohibited under the Convention, but which can be used for chemical weapons purposes. Schedule 2 chemicals do have non-chemical weapons related uses above one metric ton.

Paragraph 10 of Part VII states that declarations of such a plant site shall include:

- (a) The name of the plant site and the name of the owner, company, or enterprise operating it;
- (b) Its precise location including the address;
- (c) For each plant site which is located within the plant site, and which falls under the specifications set forth in paragraph 9 (i.e. produced Schedule 2 chemicals for chemical weapons purposes at any time since 1 January 1946), the same information as required under subparagraphs (a) through (e) of paragraph 7; and
- (d) For each Schedule 2 chemical produced for chemical weapons purposes:
 - (i) The chemical name, common or trade name used by the plant site for chemical weapons production purposes, structural formula, and Chemical Abstracts Service registry number, if assigned;
 - (ii) The dates when the chemical was produced and the quantity produced; and
 - (iii) The location to which the chemical was delivered and the final product produced there, if known.

Paragraph 11 of Part VII requires the Technical Secretariat to transmit to States Parties the following information upon request:

— the name of the plant site containing Schedule 2 plants and the name of the owner, company, or enterprise operating it; its precise location including the address; and the number of plants within the plant site declared for Schedule 3 purposes;

- the declared Schedule 2 plants' main activities; and whether the plant produces, processes, or consumes the declared Schedule 2 chemical(s); and performs other activities with regard to the declared Schedule 2 chemical(s), including a specification of that other activity (e.g. storage);
- for each declared Schedule 2 chemical: the chemical name, common or trade name used by the facility, structural formula, and Chemical Abstracts Service registry number, if assigned;
- for plant sites containing plants which produced Schedule 2 chemicals for chemical weapons purposes since January 1, 1946: all the information required under paragraph 10.

Note that the Technical Secretariat is required to transmit to States Parties only some of the information submitted by other States Parties. This provision is intended to protect information sensitive to chemical industry while providing information necessary for confidence building and verification purposes.

Section B (paragraphs 12 through 30) of Part VII sets forth specific provisions for verification of Schedule 2 plant sites, including general rules, inspection aims, initial inspections, regular inspections, inspection procedures, and notification.

Paragraph 12 of Part VII states that verification for Schedule 2 chemicals shall be through on-site inspection at declared plant sites comprising at least one plant which produced, processed, or consumed in any of the three previous calendar years or are anticipated to produce, process, or consume in the next calendar year 10 kilograms of particular chemicals in Part A of Schedule 2 identified as of higher risk requiring more stringent verification (currently only BZ), 1 metric ton of any other chemical in Part A of Schedule 2, or 10 metric tons of a chemical in Part B of Schedule 2. Note that these thresholds for verification are ten times higher in each category than the ones for declaration of Schedule 2 plant sites in paragraph 3. Thus, some plant sites that are

declared are, nevertheless, not subject to routine inspection. The higher limits for verification reflect the recognition that, while as much information about Schedule 2 plants as possible should be provided, it is impractical to attempt to verify small amounts of production and such amounts pose less of a risk to the purposes of the Convention.

Paragraph 13 of Part VII states that the program and budget of the Organization shall contain a program and budget for verification of Schedule 2 chemicals as a separate item. Note that the program and budget for both Schedule 2 and 3 chemicals are separate. This was done to help ensure that sufficient resources are devoted to inspections of Schedule 2 facilities, which are considered to pose a higher risk to the objectives of the Convention.

This paragraph also states that in allocation of resources for chemical industry verification, the Technical Secretariat shall give priority during the first three years after the Convention's entry into force to initial inspections of plant sites declared under Section A (i.e. Schedule 2 plant sites). Finally, this paragraph states that the allocation of resources is thereafter to be reviewed on the basis of the experience gained.

Paragraph 14 of Part VII states that the Technical Secretariat shall conduct initial inspections and subsequent inspections in accordance with paragraphs 15 to 22.

Paragraph 15 of Part VII states that the general aim of inspections shall be to verify that activities are in accordance with obligations under the Convention and consistent with the information to be provided in declarations. It also states that particular aims of inspections at plant sites declared under Section A (i.e. Schedule 2 plant sites and/or Schedule 2 plant sites used for chemical weapons purposes) shall include verification of:

- (a) the absence of any Schedule 1 chemical, especially its production, except if in accordance with Part VI of the Annex, i.e. permitted production at single small-scale facilities and other Schedule 1 production facilities, as well as laboratory synthesis;
- (b) consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and
- (c) non-diversion of Schedule 2 chemicals for activities prohibited under the Convention.

Note that, as discussed in paragraph 12, not all plant sites declared under Section A are subject to routine inspection.

Paragraph 16 of Part VII states that each plant site to be inspected pursuant to paragraph 12 shall receive an initial inspection as soon as possible, preferably not later than three years after entry into force of the Convention. However, there are no mandatory inspection deadlines set for these facilities. It also states that plant sites declared after this three-year period shall receive an initial inspection not later than one year after production, processing or consumption is first declared. Finally, this paragraph states that selection of plant sites for initial inspections shall be made by the Technical Secretariat in such a way as to preclude the prediction of precisely when the plant site is to be inspected.

Paragraph 17 of Part VII states that during the initial inspection, a draft facility agreement for the plant site shall be prepared unless the inspected State Party and the Technical Secretariat agree that a facility agreement is not needed. Note that this means that the inspected State Party may not unilaterally decide that a facility agreement is not needed.

This provision provides flexibility for the Technical Secretariat to take into account varying degrees of risk posed by differing facilities and the desires of the State Party. Some facilities may be judged unlikely to pose

a threat, and therefore unlikely to require further inspections. Note that, by contrast, facility agreements are absolutely required for chemical weapons storage, destruction and production facilities, as well as Schedule 1 production facilities, while they are not required for Schedule 3 and other chemical production facilities unless the State Party requests them.

Paragraph 18 of Part VII establishes that with regard to the frequency and intensity of subsequent inspections, inspectors shall, during the initial inspection, assess the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. It also provides that in doing so they shall, *inter alia*, take into account:

- (a) the toxicity of the scheduled chemicals and of the end-products produced with it, if any;
- (b) the quantity of the scheduled chemicals typically stored at the inspected site;
- (c) the quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;
- (d) the production capacity of the Schedule 2 plants; and
- (e) the capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

Paragraph 19 of Part VII provides that after receiving the initial inspection, each plant site to be inspected pursuant to paragraph 12 shall be subject to subsequent inspections.

Paragraph 20 of Part VII states that the Technical Secretariat, in selecting particular plant sites for inspection and in deciding on the frequency and intensity of inspections, shall take into consideration the

risk to the object and purpose of the Convention posed by the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there, taking into account the respective facility agreement as well as the results of the initial and subsequent inspections.

Paragraph 21 of Part VII requires the Technical Secretariat to choose a particular plant site to be inspected in such a way as to preclude the prediction of exactly when it will be inspected.

Paragraph 22 of Part VII establishes a quota for routine inspections of Schedule 2 facilities. Specifically, it states that a plant site shall not receive more than two routine inspections per year under this Section. It also states that this quota does not, however, limit the number of challenge inspection that might be conducted. Note that a declared plant site may include a number of declared plants within the site. However, since the quota is based on plant sites, the quota could be met by inspection of two different plants, so long as both plants were part of the same declared plant site.

Paragraph 23 of Part VII specifies that paragraphs 24 to 30 shall apply (i.e. shall govern inspections of Schedule 2 facilities), as well as agreed guidelines to other relevant provisions of the Verification Annex, and the Confidentiality Annex.

Paragraph 24 of Part VII states that a facility agreement for the declared plant site should be concluded between the inspected State Party and the Organization within 90 days of completion of the initial inspection unless the inspected State Party and the Technical Secretariat agree that it is not needed, i.e. in accordance with paragraph 17 of Part VII. (Note that the term "declared plant site" refers to only those declared plant sites that are also subject to routine inspection.)

This paragraph further states that the facility agreement shall be based on a model agreement and shall govern the conduct of inspections at the declared plant site. Finally, this paragraph states that the agreement

shall specify the frequency and intensity of inspections as well as detailed inspection procedures, consistent with paragraphs 25 through 29.

Paragraph 25 of Part VII states that the focus of the inspection should be the declared Schedule 2 plant(s) within the declared plant site and that if the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification of ambiguities arising during an inspection (pursuant to paragraph 51 of Part II of this Annex) and in accordance with the facility agreement, or, in the absence of a facility agreement, in accordance with the rules of managed access as specified in Section C of Part X of this Annex.

Note that Section C of Part X of this Annex also contains the general rules of access, including the right to take into account constitutional limitations in providing access pursuant to paragraph 41 of Part X of this Annex. This means that, in the absence of a facility agreement, access to areas within the plant site that are not declared Schedule 2 plants will be negotiated between the inspection team and the inspected State Party.

Paragraph 26 of Part VII states that access to records shall be provided, as appropriate (i.e. as needed and allowed by facility agreements) to provide assurance that there has been no diversion of the declared chemical and that production has been consistent with declarations. This means the inspectors may have access to production records to ensure that the declarations are accurate.

Paragraph 27 of Part VII requires that sampling and analysis be undertaken to check for the absence of undeclared scheduled chemicals. Note that, consistent with the inspection aims set forth in paragraph 15 of Part VII, the focus of this sampling would not be on what chemicals

are being produced, but rather on the detection of the presence of chemicals that are required to be declared but were not.

Paragraph 28 of Part VII specifies that the following areas to be inspected may (i.e. the inspection team has the right to inspect) include:

- (a) areas where feed chemicals (reactants) are delivered and stored;
- (b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;
- (c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with associated valves, flow meters, etc.;
- (d) the external aspect of the reaction vessels and ancillary equipment;
- (e) lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 2 chemicals;
- (f) control equipment associated with any of the items under subparagraphs (a) to (e);
- (g) equipment and areas for waste and effluent handling; and
- (h) equipment and areas for disposition of chemicals not up to specification.

Paragraph 29 of Part VII places a time limit of 96 hours on the period of inspection, with the possibility of extensions as agreed between the inspection team and the inspected State Party.

Paragraph 30 of Part VII requires the Technical Secretariat to notify the inspected State Party not less than 48 hours before the arrival of the inspection team at the plant site to be inspected.

Section C (paragraphs 31 and 32) of Part VII contains special obligations with regard to the transfer and receipt of Schedule 2 chemicals by States Parties.

Paragraph 31 of Part VII mandates that beginning three years after entry into force of the Convention, Schedule 2 chemicals may only be transferred to or received from States Parties, i.e. non States Parties will not be able to export Schedule 2 chemicals to States Parties nor import them from States Parties. The purpose of this provision is both to limit the ability of non States Parties to obtain chemicals that are useful for chemical weapons purposes and to encourage such States to join the Convention in order to preserve their ability to trade in these chemicals.

Paragraph 32 of Part VII states that during the interim three-year period, each State Party must require an end-use certificate for transfers of Schedule 2 chemicals to non States Parties and that for such transfers, each State Party must adopt the necessary measures to ensure that the transferred chemicals will only be used for purposes not prohibited under the Convention. (These purposes are defined in paragraph 9 of Article II.)

This paragraph further states that, included in such measures, the State Party is required to obtain from the recipient State a certificate stating: that the transferred chemicals will only be used for purposes not prohibited under the Convention; the transferred chemicals will not be re-transferred; the types and quantities of such chemicals; their end-use(s); and the name(s) and address(es) of the end-user(s).

The purpose of this three-year delay and these interim measures is to allow for the possibility that not all states will be able to become States Parties immediately, while at the same providing for some controls on such chemicals, i.e. by facilitating the monitoring of their final use by non States Parties, before the total ban with regard to such states goes into effect.

VERIFICATION ANNEX
PART VIII
ACTIVITIES NOT PROHIBITED UNDER THE
CONVENTION IN ACCORDANCE WITH ARTICLE VI
REGIME FOR SCHEDULE 3 CHEMICALS AND FACILITIES
RELATED TO SUCH CHEMICALS

Part VIII consists of 27 paragraphs outlining the compliance verification regime for Schedule 3 chemicals and facilities related to them, including declarations, inspections, and special rules for transfers to non States Parties. Generally speaking Schedule 3 chemicals include those produced for peaceful purposes by industry in commercially significant amounts that pose a risk to the objectives of the Convention because of their potential as precursors for production of chemical weapons or history as a chemical weapon.

Section A (paragraphs 1 through 11) of Part VIII sets forth the contents of declarations of aggregate national data, plant sites producing Schedule 3 chemicals, and past production of Schedule 3 chemicals for chemical weapons purposes.

Paragraph 1 of Part VIII states that initial and annual declarations provided by each State Party pursuant to paragraphs 7 and 8 of Article VI (i.e. the main provisions requiring declarations) shall include aggregate national data for the previous calendar year on the quantities produced, imported and exported of each Schedule 3 chemical, as well as a quantitative specification of import and export for each country involved.

Note that in contrast to Schedule 1 and 2 chemicals, only the production of Schedule 3 chemicals is subject to routine verification. The processing and consumption of Schedule 3 chemicals are not

subject to routine verification because of the lesser degree of risk posed by these activities, the increased verification effort that would be needed, and the numerous uses these chemicals have. Note also that, as with Schedule 2 chemicals, the purpose of this aggregate national data is to enhance monitoring of such chemicals.

Paragraph 2 of Part VIII provides deadlines for submitting initial and annual declarations — not later than 30 days after the Convention enters into force for the State Party and thereafter, starting in the following calendar year, not later than 90 days after the end of the previous calendar year. Note that this is the same as for Schedule 2 chemicals.

Paragraph 3 of Part VIII establishes that initial and annual declarations are 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 metric tons of a Schedule 3 chemical. (The terms "plant" and "plant site" are defined in subparagraphs 6(a) and (b) of Part I of this Annex, respectively.) Note that, as with Schedule 2 chemicals, these thresholds govern both the facilities that must be declared as well as the particular activities and chemicals.

Paragraph 4 of Part VIII requires that each State Party submit initial declarations for Schedule 3 facilities not later than 30 days after the Convention enters into force for it. It also states that, starting in the following calendar year, it shall submit:

— annual declarations on past activities not later than 90 days after the end of the previous calendar year;

— annual declarations on anticipated activities not later than 60 days before the beginning of the following calendar year; and

— declarations on activities subsequently planned after submission of the annual declaration no more than 5 days before the start of such activity.

Note that these provisions are the same as for Schedule 2 facilities.

Paragraph 5 of Part VIII states that the initial and annual declarations for Schedule 3 facilities are generally not required for mixtures containing a low concentration of a Schedule 3 chemical. It further states that they will only be required, in accordance with guidelines, in cases where the ease of recovery from the mixture of the Schedule 3 chemical and its total weight are deemed to pose a risk to the object and purpose of the Convention. Finally it states that these guidelines will be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports developed by the Preparatory Commission. Note that these provisions are the same as for Schedule 2 facilities.

Paragraph 6 of Part VIII states that declarations of a Schedule 3 plant site shall include: the name of the plant site and the name of the owner, company, or enterprise operating it; its precise location including the address; and the number of plants within the plant site which are declared pursuant to Part VII of this Annex, i.e. for Schedule 2 purposes. As with the identical provision for Schedule 2, the purpose of this is to facilitate verification and monitoring by, e.g., identifying other potentially chemical weapons–related activities on the site.

Paragraph 7 of Part VIII requires Schedule 3 plant site declarations to also include, for each plant which is located within the plant site and that meets the criteria set forth in paragraph 3:

- (a) The name of the plant and the name of the owner, company, or enterprise operating it;

(b) Its precise location within the plant site including the specific building or structure number (if any);

(c) Its main activities (e.g. type of product being created, such as detergents, synthetic fibers, plastics);

Note that, unlike Schedule 2 plant sites, neither activities other than production nor production capacity have to be reported.

Paragraph 8 of Part VIII requires that declarations of a Schedule 3 plant site shall also include the following information on each Schedule 3 chemical above the declaration threshold:

(a) the chemical name, common or trade name used by the facility, structural formula, and Chemical Abstracts Service registry number, if assigned;

(b) the approximate amount of production of the chemical in the previous calendar year, or, in case of declarations on anticipated activities, anticipated for the next calendar year, expressed in the ranges: 30 to 200 metric tons, 200 to 1,000 metric tons, 1,000 to 10,000 metric tons, 10,000 to 100,000 metric tons, and above 100,000 metric tons;

(c) the purposes for which the chemical was or will be produced.

Note that production amounts are reported in ranges because of the large amounts used and the sensitivity of industry to specified amounts and the determination that the reporting requirements do not need to be as extensive as for Schedule 2 chemicals.

As with Schedule 2 chemicals, paragraphs 9 and 10 of Part VIII require special declarations for plant sites that have produced Schedule 3 chemicals for chemical weapons purposes.

Paragraph 9 of Part VIII requires each State Party to, within 30 days of entry into force of the Convention for it, declare all plant sites comprising plants that produced at any time since 1 January 1946 a Schedule 3 chemical for chemical weapons purposes. Note that this could include plant sites declared pursuant to paragraph 3. Note also that, as with similar Schedule 2 facilities, these plant sites are not considered to be chemical weapons production facilities.

Paragraph 10 of Part VIII states that declarations of such a plant site shall include:

- (a) The name of the plant site and the name of the owner, company, or enterprise operating it;
- (b) Its precise location including the address;
- (c) For each plant which is located within the plant site, and which falls under the specifications set forth in paragraph 9 (i.e. produced Schedule 3 chemicals for chemical weapons purposes at any time since 1 January 1946), the same information as required under subparagraphs (a) through (c) of paragraph 7; and
- (d) For each Schedule 3 chemical produced for chemical weapons purposes:
 - (i) The chemical name, common or trade name used by the plant site for chemical weapons production purposes, structural formula, and Chemical Abstracts Service registry number, if assigned;
 - (ii) The dates when the chemical was produced and the quantity produced; and
 - (iii) The location to which the chemical was delivered and the final product produced there, if known.

Note that these provisions are the same as for Schedule 2 facilities.

Note that, as with Schedule 2 chemicals, the Technical Secretariat is required to transmit to States Parties only some of the information submitted by other States Parties. This is intended to protect information sensitive to the chemical industry while releasing information necessary for confidence building and verification purposes.

Paragraph 11 of Part VIII requires the Technical Secretariat to transmit to States Parties the following information upon request:

- the name of the plant site containing Schedule 3 plants and the name of the owner, company, or enterprise operating it; its precise location including the address; and the number of plants within the plant site declared for Schedule 2 purposes;
- the declared Schedule 3 plants' main activities;
- for each declared Schedule 3 chemical: the chemical name, common or trade name used by the facility, structural formula and Chemical Abstracts Service registry number, if assigned;
- for plant sites containing plants which produced schedule 3 chemicals for chemical weapons purposes since January 1, 1946: all the information required under paragraph 10.

Section B (paragraphs 12 through 25) of Part VIII set forth specific provisions for verification of Schedule 3 facilities, including general rules, inspection aims, inspection procedures, and notification.

Paragraph 12 of Part VIII states that verification for Schedule 3 chemicals shall be through on-site inspection at declared plant sites which produced during the previous calendar year or are anticipated to produce in the next calendar year in excess of 200 metric tons aggregate

of any Schedule 3 chemical above the declaration threshold of 30 metric tons.

Note that, as with Schedule 2 chemicals, the verification thresholds are higher than the declaration thresholds, and thus some plant sites that qualify for declaration are, nevertheless, not subject to routine inspection. Note also that the verification threshold is 200 metric tons, not 200 tons "above... 30 metric tons" (230 metric tons). The phrase "above the declaration threshold of 30 metric tons" refers to which Schedule 3 chemicals must be present to trigger the verification threshold, i.e., those that are present in quantities greater than 30 metric tons.

Paragraph 13 of Part VIII states that the program and budget of the Organization shall contain a program and budget for verification of Schedule 3 chemicals as a separate item, taking into account paragraph 13 of Part VII of this Annex., i.e. the priority given inspections of Schedule 2 facilities during the first three years of the Convention.

Paragraph 14 of Part VIII establishes that under this Section, the Technical Secretariat shall randomly select plant sites for inspection through appropriate mechanisms, such as the use of specially designed computer software, on the basis of the following weighting factors: equitable geographical distribution of inspections; and the information on the declared plant sites available to the Technical Secretariat, related to the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there.

This complicated formula represents a compromise between developing states, which wanted purely random "non-political" selection (which, given the relatively large number of Western facilities, would result in most inspections being conducted of those facilities) and the Western Group in the Conference of Disarmament, including the United States, which wanted selection to be based on information provided by States

Parties on particular facilities of potential concern. By contrast, for Schedule 2 facilities, the Technical Secretariat will select the facilities to be inspected on the basis of the risk to the object and purpose of the Convention posed by the relevant chemical, the characteristics of the plant site and the nature of the activities carried out there, taking into account the respective facility agreement as well as the results of the initial and subsequent inspections.

Paragraph 15 of Part VIII establishes a quota for routine inspections of Schedule 3 facilities. Specifically, it states that a plant site shall not receive more than two routine inspections per year under this Section. It also states that this provision does not limit the number of challenge inspections, however, that might be conducted. Note that this facility quota is the same quota as for Schedule 2 facilities. However, as discussed below, there is an additional overall quota for Schedule 3 inspections within a State Party.

Paragraph 16 of Part VIII establishes an additional overall quota relating to the total number of inspections of Schedule 3 facilities and other chemical production facilities that a State Party must receive. Specifically, it provides in selecting plant sites for inspection under this Section, the Technical Secretariat shall observe the following limitation for the combined number of inspections to be received by a State Party per calendar year under this Part and Part IX of this Annex (inspections of other chemical production facilities): the combined number of inspections shall not exceed three plus five per cent of the total number of plant sites declared by a State Party under both this Part and Part IX of this Annex, or 20 inspections, whichever of these two figures is lower.

The purpose of this provision is to provide equity and balance of inspections of Western and developing countries chemical industries by requiring acceptance of a least three inspections by all States Parties (unless they only have one Schedule 3 facility or one other chemical production facility, in which case the limit is two pursuant to the facility quotas) while at the same time requiring additional inspection based on the size of the industry, but with a ceiling of 20 inspections.

Paragraph 17 of Part VIII establishes that at plant sites declared under Section A (i.e. Schedule 3 plant sites and/or Schedule 3 plant sites used for chemical weapons purposes), the general aim of inspections shall be to verify that activities are consistent with the information to be provided in declarations; however, the particular aim is to verify the absence of any Schedule 1 chemical, especially its production, except if its presence is in accordance with Part VI of this Annex. The purpose of this paragraph is to focus verification activities toward the plant site's capabilities to produce Schedule 1 chemicals. The exception is necessary to recognize that some Schedule 1 chemical production is permitted, in accordance with Part VI. Note that taking into account the lesser degree of risk posed by such facilities, this aim is narrower than that for inspections of Schedule 2 facilities (which focus on Schedule 2 chemicals, as well as Schedule 1 chemicals). Note that the verification aim focuses more on whether the facility is being used for Schedule 1 production than on the production of undeclared Schedule 3 chemicals.

Paragraph 18 of Part VIII specifies that paragraphs 19 to 25 shall apply, i.e. shall govern inspections of Schedule 3 facilities, as well as agreed guidelines, other relevant provisions of the Verification Annex, and the Confidentiality Annex.

Paragraph 19 of Part VIII states that there shall be no facility agreement, unless requested by the inspected State Party. Note that this differs from the requirements for facility agreements at Schedule 1 production facilities (mandatory) and Schedule 2 facilities (mandatory unless both the Technical Secretariat and the State Party agree otherwise).

Paragraph 20 of Part VIII states that the focus of the inspection shall be the declared Schedule 3 plant(s) within the declared plant site and that if the inspection team requests access to other parts of the plant site for clarification of ambiguities, access to these areas shall be agreed between the inspection team and the inspected State Party. Note that, by contrast, pursuant to paragraph 25 of Part VII of this Annex, access to identical areas in Schedule 2 plant sites is governed by facility agreement, or in its absence, the rules of managed access, which require negotiation of access. While in both cases, agreement on the extent of access will be needed, more access is expected under the rules of managed access than under agreed access. The lesser degree of access required for Schedule 3 facilities is based on the perceived lower risk to the objectives of the Convention, together with the desire to require no greater intrusiveness to industry than necessary.

Paragraph 21 of Part VIII allows the inspection team access to records in situations in which the inspection team and the inspected State Party agree that such access will assist in achieving the objectives of the inspection. Note that, pursuant to paragraph 26 of Part VII of this Annex, access to records at Schedule 2 facilities must be provided as appropriate.

Paragraph 22 of Part VIII states that sampling and on-site analysis may be undertaken to check for the absence of undeclared scheduled chemicals. This means that the inspection team has the right to take samples, but is not required to do so as is the case for Schedule 2 chemicals. This paragraph further states that in case of unresolved ambiguities, and subject to the inspected State Party's agreement,

samples may be analyzed in a designated off-site laboratory. Note that, as with Schedule 2 chemicals, the focus of this sampling would not be on what chemicals are being produced, but on the presence of chemicals that are required to be declared but were not. (Detailed procedures for sampling are contained in paragraphs 52 through 58 of Part II of this Annex.)

Paragraph 23 of Part VIII specifies that the following areas to be inspected may (i.e. the inspection team has the right to inspect) include:

- (a) Areas where feed chemicals (reactants) are delivered or stored;
- (b) Areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessel;
- (c) Feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessel together with any associated valves, flow meters, etc.;
- (d) The external aspect of the reaction vessels and ancillary equipment;
- (e) Lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 3 chemicals;
- (f) Control equipment associated with any of the items under subparagraphs (a) to (e);
- (g) Equipment and areas for waste and effluent handling; and
- (h) Equipment and areas for disposition of chemicals not up to specification.

Note that these areas are identical to those for inspections of Schedule 2 facilities.

Paragraph 24 of Part VIII places a limit of 24 hours on the period of inspection with the possibility for extensions as agreed between the inspection team and the inspected State Party. Note that this is shorter than the 96 hours provided for Schedule 2 inspections. The differences with Schedule 2 facilities in both this paragraph and paragraph 25 reflect the lower risk posed by Schedule 3 facilities, together with the desire to minimize the impact on industry.

Paragraph 25 of Part VIII requires the Technical Secretariat to notify a State Party not less than 120 hours before the arrival of the inspection team at the plant site to be inspected. Note that this is longer than the 48 hours notice provided for Schedule 2 inspections.

Section C (paragraphs 26 and 27) of Part VIII contains special obligations with regard to the transfer of Schedule 3 chemicals by States Parties.

Paragraph 26 of Part VIII requires a State Party, when transferring Schedule 3 chemicals to States not Party to the Convention, to adopt the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited under the Convention. (These purposes are defined in paragraph 9 of Article II.)

This paragraph further states that, included in such measures, the State Party is required to obtain from the recipient State a certificate stating: that the transferred chemicals will only be used for purposes not prohibited under the Convention; the transferred chemicals will not be re-transferred; the types and quantities of such chemicals; their end-use(s); and the name(s) and address(es) of the end-user(s).

Paragraph 27 of Part VIII requires that five years after entry into force of the Convention, the Conference shall consider the need to establish other measures regarding transfers of Schedule 3 chemicals to States not Party to the Convention. The intent of this paragraph is to provide for the possibility of, *inter alia*, prohibiting transfer of such chemicals to

non States Parties after the Convention has entered into force. The provisions of this section and the corresponding section C in Part VII of this represent a compromise between the negotiating states, including the U.S., that wanted prohibitions related to non States Parties on the transfer and receipt of both Schedule 2 and 3 chemicals, and those that wanted no restrictions on such trade.

VERIFICATION ANNEX
PART IX
ACTIVITIES NOT PROHIBITED UNDER THE
CONVENTION IN ACCORDANCE WITH ARTICLE VI
REGIME FOR OTHER CHEMICAL PRODUCTION
FACILITIES

Part IX consists of 26 paragraphs outlining the compliance verification regime for other chemical production facilities, including declarations of unscheduled chemicals and their production facilities and inspections of such facilities. This regime focuses on facilities that do not currently produce Scheduled chemicals but are capable of doing so because they produce chemicals similar to Scheduled chemicals.

The purpose of this Part is to balance the desire of some negotiating countries to subject all facilities that have the capability to produce chemicals that could be used for chemical weapons purposes to routine verification to enhance deterrence of clandestine activities with the desire of other negotiating countries to exclude such facilities from routine verification (because of a concern that the inclusion of such facilities would adversely impact their chemical industry and identification of such facilities would be difficult).

The compromise was declaration of the most significant of such facilities upon entry into force of the Convention (which facilitates identification for challenge inspection purposes) with application of routine inspection procedures to begin the fourth year after entry into force, unless the Conference decides otherwise. This allows time for the completion of lists of such facilities and puts the initial focus on facilities that pose greater potential risk.

Section A (paragraphs 1 through 8) of Part IX sets forth the provisions for declaring other chemical production facilities and certain unscheduled chemicals produced by them, assistance by the Technical Secretariat in compiling data, and providing the lists of facilities to other States Parties.

Paragraph 1 of Part IX requires the initial declaration to be provided by each State Party, pursuant to paragraph 7 of Article VI, to include a list of all plant sites that:

- (a) Produced by synthesis during the previous calendar year more than 200 metric tons of unscheduled discrete organic chemicals (i.e. the aggregate production of all plants on a plant site); or
- (b) Comprise one or more plants which produced by synthesis during the previous calendar year more than 30 metric tons of an unscheduled discrete organic chemical containing the elements phosphorus, sulfur or fluorine ("PSF-plants" and "PSF-chemical"). The emphasis placed on PSF facilities is to ensure focus on the types of elements found in chemical weapons agents. Note that this declaration is triggered if a plant site contains one plant producing more than 30 metric tons of a PSF-chemical containing certain elements, regardless of the aggregate production of all plants on the plant site.

("Discrete organic chemical" is defined in paragraph 4 of Part I of this Annex.)

Paragraph 2 of Part IX states that the list of other chemical production facilities to be submitted pursuant to paragraph 1 shall not include plant sites that exclusively produced explosives or hydrocarbons (i.e. chemicals containing only carbon and hydrogen). The exclusion of such facilities is due to their unlikely suitability for chemical weapons-related activities. In particular, the exceptions are meant to exclude non-

relevant petro–chemical industry and non–relevant conventional munitions and rocket fuel plants.

Paragraph 3 of Part IX requires each State Party to submit its list of other chemical production facilities as part of its initial declaration not later than 30 days after the Convention enters into force for it, and to update it annually, not later than 90 days after the beginning of each following calendar year.

Paragraph 4 of Part IX requires that the list of other chemical production facilities include the following information on each plant site:

- (a) The name of the plant site and the name of the owner, company, or enterprise operating it;
- (b) The precise location of the plant site including its address;
- (c) Its main activities (meaning, in general terms, the type of product line generated at the plant site, such as detergents and polymers); and
- (d) The approximate number of plants producing the chemicals specified in paragraph 1, i.e. unscheduled discrete organic chemicals, particularly PSF–chemicals in the plant site.

Paragraph 5 requires that with regard to plant sites that produced by synthesis during the previous calendar year more than 200 metric tons of unscheduled discrete organic chemicals, the list shall also include information on the approximate aggregate amount of production of the unscheduled discrete organic chemicals in the previous calendar year expressed in the ranges: under 1,000 metric tons, 1,000 to 10,000 metric tons and above 10,000 metric tons.

Paragraph 6 of Part IX requires that with regard to plant sites that comprise one or more PSF-plants, the list shall also specify the number of PSF-plants within the plant site and the approximate aggregate amount of production of PSF-chemicals produced by each PSF-plant in the previous calendar year expressed in the ranges: under 200 metric tons, 200 to 1,000 metric tons, 1,000 to 10,000 metric tons and above 10,000 metric tons. The greater degree of specificity required for PSF facilities is because they pose a greater degree of risk than the other facilities.

Paragraph 7 of Part IX recognizes the possible difficulties expressed by many countries with regard to the compilation of a list of facilities and concerns about being in violation of the Convention if lists are incomplete. Thus, Paragraph 7 states that if a State Party, for administrative reasons, deems it necessary to ask for assistance in compiling its list of other chemical production facilities, it may request the Technical Secretariat to provide such assistance.

This paragraph further states that questions as to the completeness of the list shall then be resolved through consultations between the State Party and the Technical Secretariat. This provision, however, does not restrict any State Party's right to request a challenge inspection to resolve questions of completeness.

Paragraph 8 of Part IX requires that the lists of other chemical production facilities, including the information provided under paragraph 4 on each plant site (e.g. its address), shall be transmitted by the Technical Secretariat to States Parties upon request.

Section B (paragraphs 9 through 21) of Part IX sets forth specific provisions for verification of other chemical production facilities, including general rules, inspection aims, inspection procedures, and notification.

Paragraph 9 of Part IX sets forth the facilities that are to be subject to inspection. Specifically, it establishes that, subject to the provisions of Section C (which delay application of verification procedures until the fourth year after the Convention enters into force, or indefinitely if the Conference so decides), verification as provided for in paragraph 6 of Article VI (the basic obligation with regard to these facilities) shall be carried out through on-site inspection at:

- (a) Plant sites listed pursuant to subparagraph 1(a) (i.e. those that produced by synthesis during the previous calendar year more than 200 metric tons of unscheduled discrete organic chemicals);
or
- (b) Plant sites listed pursuant to subparagraph 1(b) that comprise one or more PSF-plants that produced during the previous calendar year more than 200 metric tons of a PSF-chemical.

Subparagraphs 9(a) and (b) are redundant in that there are no plants in subparagraph 9(b) that are not listed in subparagraph 9(a). A plant producing more than 200 metric tons of a discrete organic chemical will be listed in subparagraph 1(a) whether the chemical contains PSF or not. (The reason for apparent redundancy is to make clear that, whereas the declaration of such facilities is required based on production of 30 metric tons, inspection is only required at plants producing more than 200 metric tons. The low level of declaration is intended as a confidence-building measure.)

Paragraph 10 of Part IX states that the program and budget of the Organization shall contain a program and budget for verification of other chemical production facilities as a separate item, after its implementation has started.

Paragraph 11 of Part IX establishes that under this Section, the Technical Secretariat shall randomly select plant sites for inspection through appropriate mechanisms, such as the use of specially designed computer software, on the basis of the following weighting factors: equitable geographical distribution of inspections; the information on the listed plant sites available to the Technical Secretariat, related to the characteristics of the plant site and the nature of the activities carried out there; and proposals by States Parties on a basis to be agreed upon in accordance with paragraph 25 of Part IX, i.e. a subsequent decision by the Conference.

The purpose of the addition of the last factor in this paragraph is to establish that, unlike for scheduled chemical plant sites, selection of other chemical production facilities for inspection must take into account States Parties' proposals. Note that the entire formula represents a compromise between the same interests as in the case of Schedule 3 inspections (paragraph 14 of Part VIII of this Annex), i.e. the desire of developing states for purely random "non-political" selection and the desire of the Western Group for selection to be based on information provided by States Parties on particular facilities of potential concern. However, the balance struck here is more towards the Western position since, for these inspections, the selection will be based not only on equitable geographic criteria and the Technical Secretariat's views on risks posed by particular facilities, but also information provided directly by States Parties.

Paragraph 12 of Part IX establishes a quota for inspections. Specifically, it states that no plant site shall receive more than two inspections per year under the provisions of this Section, but that this paragraph does not limit challenge inspections pursuant to Article IX. Note that this is the same quota as for Schedule 2 and 3 facilities.

Paragraph 13 of Part IX establishes an additional overall quota relating to the total number of inspections of Schedule 3 facilities and other chemical production facilities that a State Party must receive. Specifically, it provides in selecting plant sites for inspection under this Section, the Technical Secretariat shall observe the following limitation for the combined number of inspections to be received by a State Party per calendar year under this Part and Part VIII of this Annex (inspections of Schedule 3 facilities): the combined number of inspections shall not exceed three plus 5 per cent of the total number of plant sites declared by a State Party under both this Part and Part VIII of this Annex, or 20 inspections, whichever of these two figures is lower. As discussed in paragraph 16 of Part VIII of this Annex, the purpose of this provision is to provide equity and balance of inspections of States Parties with small and large numbers of such plant sites.

Paragraph 14 of Part IX establishes that at plant sites declared under Section A (i.e. other chemical production facilities), the general aim of inspections shall be to verify that activities are consistent with the information to be provided in declarations; however, the particular aim is to verify the absence of any Schedule 1 chemical, especially its production, except if its presence is in accordance with Part VI of this Annex, i.e. production in small amounts for certain permitted purposes. Note that this is the same as for Schedule 3 facilities.

The purpose of this paragraph is to focus verification activities towards the plant site's capabilities to produce Schedule 1 chemicals rather than the production of organic chemicals.

Paragraph 15 of Part IX specifies that paragraphs 16 to 20 shall apply, i.e. shall govern inspections of other chemical production facilities, as well as agreed guidelines, other relevant provisions of the Verification Annex, and the Confidentiality Annex.

Paragraph 16 of Part IX states that, as with Schedule 3 facilities, there shall be no facility agreement, unless requested by the inspected State Party.

Paragraph 17 of Part IX states that the focus of inspection at a plant site selected for inspection is to be the plant(s) producing the chemicals specified in paragraph 1, in particular the PSF—plants listed pursuant to paragraph 1 (b). This paragraph further states that the inspected State Party shall have the right to manage access to these plants in accordance with the rules of managed access as specified in Section C of Part X of this Annex, i.e. challenge inspections. Note that Section C of Part X also contains the general rules of access, including the right to take into account constitutional limitations in providing access pursuant to paragraph 41 of Part X of this Annex. Finally, this paragraph states that if the inspection team requests access to other parts of the plant site for clarification of ambiguities (pursuant to paragraph 51 of Part II of this Annex), the extent of such access shall be agreed between the inspection team and the inspected State Party.

Note that, unlike for Schedule 2 and 3 inspections, there are no specific areas within the particular plants of interest for which access is guaranteed. Instead, within the entire area of these plants, the inspected State Party is allowed to manage access, i.e. access is negotiated between the inspection team and the inspected State Party. For undeclared plants and other areas of the plant site access will be the same as for Schedule 3 plant sites, i.e. as agreed, which places less obligation for access than required under the rules of managed access. These relatively greater protections for other chemical production facilities reflect the judgment that the risk they pose to the Convention is lower.

Paragraph 18 of Part IX allows the inspection team to have access to records in situations in which the inspection team and the inspected State Party agree that such access will assist in achieving the objectives of the inspection. Note that this is the same as for Schedule 3 facilities.

Paragraph 19 of Part IX states that sampling and on-site analysis may be undertaken to check for the absence of undeclared scheduled chemicals. This means that the inspection team has the right to take samples, but is not required to do so as is the case for Schedule 2 chemicals. This paragraph further states that in case of unresolved ambiguities, and subject to the inspected State Party's agreement, samples may be analyzed in a designated off-site laboratory.

Note that this provision is the same as for inspections of Schedule 3 facilities (paragraph 22 of Part VIII of this Annex). Note also that, as with inspections Schedule 2 and 3 facilities, the focus of this sampling would not be on what chemicals are being produced, but on the presence of chemicals that are required to be declared but were not.

Paragraph 20 of Part IX limits the period of inspection to no more than 24 hours; however, extensions may be agreed between the inspection team and the inspected State Party. Note that this is the same time-frame as for inspections of Schedule 3 facilities.

Paragraph 21 of Part IX requires the Technical Secretariat to notify a State Party of the inspection not less than 120 hours before the arrival of the inspection team at the plant site to be inspected. Note that this is the same time-frame as for inspections of Schedule 3 facilities.

Section C (paragraphs 22 through 26) sets forth the rules for Conference review of whether the inspection provisions should be implemented, the distribution of inspection resources among the different types of other chemical production facilities, and the way in which State Party information will be factored into the selection of the facilities to be inspected. Note, however, that, as regards the first point, not implementing the inspections will require a Conference decision to that effect.

Paragraph 22 of Part IX establishes that the implementation of Section B, i.e. verification of other chemical production facilities, shall start at

the beginning of the fourth year after entry into force of the Convention unless the Conference, at its regular session in the third year after entry into force of this Convention, decides otherwise.

Paragraph 23 of Part IX requires the Director–General, for the regular session of the Conference in the third year after entry into force of the Convention, to prepare a report which outlines the experience of the Technical Secretariat in implementing the provisions of Parts VII (Regime for Schedule 2 Chemicals and Facilities Related to such Chemicals) and VIII (Regime for Schedule 3 Chemicals and Facilities Related to such Chemicals) of this Annex as well as of Section A of Part IX (Declarations of other chemical production facilities). The purpose of this information is to facilitate the decision on the implementation of verification measures in the fourth year.

Paragraph 24 of Part IX establishes that at its regular session in the third year after entry into force of the Convention, the Conference, on the basis of a report of the Director–General, may also decide on the distribution of resources available for verification under Section B between "PSF–plants" and other chemical production facilities.

This paragraph further states that otherwise, this distribution shall be left to the expertise of the Technical Secretariat and be added to the weighting factors in paragraph 11 of Part IX, i.e. geographical distribution, Technical Secretariat information, and information from States Parties.

Paragraph 25 of Part IX establishes that at its regular session in the third year after entry into force of this Convention, the Conference, upon advice of the Executive Council, shall decide on which basis (e.g. regional) proposals by States Parties for inspections should be presented to be taken into account as a weighting factor in the selection process specified in paragraph 11 of Part IX. The example of proposals made by

"region" was given; however, other approaches, such as individual State Party proposals, can be considered.

Paragraph 26 of Part IX establishes that at the special session of the Conference convened not later than the end of the sixth year after the Convention enters into force (pursuant to paragraph 22 of Article VIII), the provisions pertaining to other chemical production facilities, i.e. declarations and verification, shall be re-examined in the light of a comprehensive review of the overall verification regime for the chemical industry (Article VI and Parts VII through IX of this Annex) on the basis of the experience gained. This paragraph further states that the Conference shall then make recommendations so as to improve the effectiveness of the verification regime.

The purpose of this paragraph is to ensure that an assessment of Part IX in conjunction with an assessment of the whole regime for monitoring chemical industry is on the agenda of the first special session convened for the Conference.

VERIFICATION ANNEX
PART X
CHALLENGE INSPECTIONS PURSUANT TO ARTICLE IX

Part X of the Verification Annex establishes special rules for conducting challenge inspections. Specifically, Part X contains special provisions on the designation and selection of inspectors and inspection assistants, pre-inspection activities, conduct of inspections, and post-inspection activities.

Section A (paragraphs 1 and 2) of Part X of this Annex provides for establishing the composition of inspection teams conducting challenge inspections.

Paragraph 1 of Part X establishes the requirements for selecting those inspectors and inspection assistants eligible to conduct challenge inspections. Specifically, this paragraph states that challenge inspections pursuant to Article IX (i.e. the main article establishing the right to request and conduct a challenge inspection) shall be performed by inspectors and inspection assistants specially designated for this function.

This paragraph further states that in order to designate inspectors and inspection assistants for challenge inspections pursuant to Article IX, the Director-General shall, by selecting inspectors and inspection assistants from among the inspectors and inspection assistants for routine inspection activities, establish a list of proposed inspectors and inspection assistants. This list must comprise a sufficiently large number of inspectors and inspection assistants having the necessary qualifications, experience, skill and training, to allow for flexibility in the selection of the inspectors, taking into account their availability, and the need for rotation. Note that routine inspections are the systematic inspections of chemical weapons storage, destruction and production

facilities, conducted pursuant to Articles IV and V, and the inspections of chemical industry facilities conducted pursuant to Article VI.

This paragraph further states that due regard shall also be paid also to the importance of selecting inspectors and inspection assistants on as wide a geographical basis as possible. Note that this expectation of wide geographical representation applies to the selection of inspectors and inspection assistants for the list of those eligible to conduct challenge inspections, not to the selection of the members of a specific inspection team.

Finally, this paragraph states that the designation of inspectors and inspection assistants shall follow the procedures provided for under Section A of Part II of this Annex. Section A of Part II provides for the designation by the Technical Secretariat of inspectors and inspection assistants and for their acceptance or rejection by a State Party. This means that a State Party will be informed of which inspectors are eligible to conduct challenge inspections and may reject undesirable inspectors at that time. This also makes clear that the Part II, paragraph 5 prohibition on rejecting inspectors and inspection assistants already designated for a specific inspection applies to challenge inspection. Thus, once a State Party has been informed of a challenge inspection, it cannot request the removal of specific members of the inspection team.

Paragraph 2 of Part X establishes the procedures for selecting the members of an inspection team for a challenge inspection. Specifically, this paragraph states that the Director-General shall determine the size of the inspection team and select its members taking into account the circumstances of a particular request. This paragraph further states that the size of the inspection team shall be kept to a minimum necessary for the proper fulfillment of the inspection mandate. Finally, this paragraph states that no national of the requesting State Party or the inspected State Party shall be a member of the inspection team.

Section B (paragraphs 3 through 37) of Part X of this Annex sets forth specific provisions for pre-inspection activities related to challenge inspections. Specifically, Section B provides for information on the availability of challenge inspection teams, notification of the inspection, entry of the inspection team into the territory of the inspected State Party or Host State, alternative determination of the final perimeter of the inspection site, verification of the location of the inspection site, securing the inspection site and exit monitoring, pre-inspection briefing of the inspection team and creation of an inspection plan, and perimeter activities by the inspection team.

Paragraph 3 of Part X requires the Director-General to provide information on the availability of challenge inspection teams and to consult with the Executive Council if timely action on challenge inspection requests becomes a problem. Specifically, this paragraph states that before submitting the inspection request for a challenge inspection, the State Party may seek confirmation from the Director-General that the Technical Secretariat is in a position to take immediate action on the request.

This paragraph further states that if the Director-General cannot provide such confirmation immediately, he shall do so at the earliest opportunity, in keeping with the order of requests for confirmation from States Parties and shall also keep the State Party informed of when it is likely that immediate action can be taken. Finally, this paragraph states that should the Director-General reach the conclusion that timely action on requests can no longer be taken, he may ask the Executive Council to take appropriate action to improve the situation in the future.

The purpose of this paragraph is to provide procedures for avoiding the situation where the Director-General receives more requests for challenge inspections than the Technical Secretariat has the resources to conduct within a reasonable time, as well as to assist a requesting State Party in avoiding delays in having a challenge inspection conducted once

a challenge inspection has been requested. The principal procedure for avoiding saturation of the challenge inspection regime is to allow a requesting State Party to delay filing a formal request for a challenge inspection when quick action is not possible. Because at this stage in the inspection process, the State Party is not required to provide any information concerning the request, the State Party desiring a challenge inspection may chose to delay its formal request rather than take its place in line and risk premature disclosure of information regarding the inspection. In addition, if the Director–General believes that the challenge inspection regime is being saturated, the Executive Council may intervene to correct the situation.

Paragraph 4 of Part X sets forth the information required to be provided in a request for challenge inspection. Specifically, this paragraph states that the inspection request for a challenge inspection to be submitted to the Executive Council and the Director–General shall contain at least the following information: the State Party to be inspected and, if applicable, the Host State; the point of entry to be used; the size and type of the inspection site; the concern regarding possible non–compliance with the Convention including a specification of the relevant provisions of the Convention about which the concern has arisen, and of the nature and circumstances of the possible non–compliance as well as all appropriate information on the basis of which the concern has arisen; and the name of the (proposed) observer of the requesting State Party. This paragraph further states that the requesting State Party may submit any additional information it deems necessary.

Note that the requesting State Party is not required to reveal the location of the inspection site at the time it makes its initial request for a challenge inspection.

Paragraph 5 of Part X states that the Director–General shall within one hour acknowledge to the requesting State Party receipt of its request.

Paragraph 6 of Part X provides for notification of the location of the inspection site to the Technical Secretariat. Specifically, this paragraph states that the requesting State Party shall notify the Director-General of the location of the inspection site in due time for the Director-General to be able to provide this information to the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry.

The purpose of this paragraph is to reduce the possibility of the inspected State Party receiving advance knowledge of the specific site to be inspected. This is accomplished by permitting the requesting State Party to retain such information until absolutely required by the Technical Secretariat, i.e. until the point at which the Technical Secretariat must have the information in order to fulfill its obligation to inform the inspected State Party of the location of the inspection site.

Paragraph 7 of Part X provides for a description of the inspection site. Specifically, this paragraph states that the inspection site shall be designated by the requesting State Party as specifically as possible by providing a site diagram related to a reference point with geographic coordinates, specified to the nearest second if possible. This paragraph further states that, if possible, the requesting State Party shall also provide a map with a general indication of the inspection site and a diagram specifying as precisely as possible the requested perimeter of the site to be inspected.

Note that there are three different perimeters with regard to inspection sites for challenge inspections. Pursuant to this part, a requesting State Party initiates the process by designating a requested perimeter for the inspection site. The inspected State Party may either accept the perimeter, in which case it becomes the final perimeter, or propose an alternative perimeter. In the latter case, depending on the outcome of negotiations between the inspection team and the inspected State Party, the final perimeter may be the alternative perimeter or some other

perimeter as agreed by the inspection team and the inspected State Party.

Paragraph 8 of Part X sets forth the parameters for the perimeter of the inspection site requested by the requesting State Party. Specifically, this paragraph states that the requested perimeter shall: run at least a 10 meter distance outside any buildings or other structures; not cut through existing security enclosures; and run at least a 10 meter distance outside any existing security enclosures that the requesting State Party intends to include within the requested perimeter.

The purpose of this paragraph is to insure that a requesting State Party cannot require entry into buildings, other structures and security enclosures by how it draws its requested perimeter. Pursuant to paragraph 38 of Part X, an inspected State Party is required to provide access within the requested perimeter (consistent with the provisions of paragraph 41 of Part X regarding constitutional provisions,) but, pursuant to paragraphs 47 and 48 of Part X, can deny access to buildings within the requested perimeter. However, without the mandatory boundary required by paragraph 8 of Part X, a requesting State Party might be able to force access within a building by making the requested perimeter equal to the exterior of the building.

Note that if the inspection site contains a security enclosure that surrounds the site, the requested perimeter may nevertheless be drawn within the site so long as the requested perimeter is drawn entirely within the security enclosure.

Paragraph 9 of Part X states that if the requested perimeter does not conform with the specifications of paragraph 8, it shall be redrawn by the inspection team so as to conform with that provision. This means that where, for lack of information or any other reason, a State Party incorrectly draws its requested perimeter, the inspection team will correct it based on on-site information.

Paragraph 10 of Part X states that the Director–General shall, not less than 12 hours before the planned arrival of the inspection team at the point of entry, inform the Executive Council about the location of the inspection site as specified in paragraph 7, i.e. the site diagram and, if possible, a map of the inspection site.

Paragraph 11 of Part X states that contemporaneously with informing the Executive Council according to paragraph 10, the Director–General shall transmit the inspection request to the inspected State Party including the location of the inspection site as specified in paragraph 7.

Paragraph 11 further states that in addition to the location of the inspection site, the notification of inspection to the inspected State Party shall include the information specified in paragraph 32 of Part II of this Annex. Paragraph 32 of Part II requires notifications of inspection to include the type of inspection, the point of entry, the date and estimated time of arrival at the point of entry, the means of arrival at the point of entry, the site to be inspected, the names of inspectors and inspection assistants, and, if appropriate, aircraft clearance for special flights.

Paragraph 12 of Part X states that upon arrival of the inspection team at the point of entry, the inspected State Party shall be informed by the inspection team of the inspection mandate. (Pursuant to paragraph 14 of Part I of this Annex, "inspection mandate" means the instructions issued by the Director–General to the inspection team for the conduct of a particular inspection.) Note that, pursuant to paragraph 18 of Article IX, the inspection mandate is the inspection request put into operational terms by the Director–General.

Paragraph 13 of Part X provides for the dispatch and arrival of inspection teams. Specifically, this paragraph states that the Director–General shall, in accordance with paragraphs 13 through 18 of Article IX, dispatch an inspection team as soon as possible after an inspection request has been received. Paragraphs 13 through 18 of Article IX

provide for presentation, evaluation, and transmittal of the inspection request, Executive Council review of the request, and issuance of the inspection mandate.

Paragraph 13 further states that the inspection team shall arrive at the point of entry specified in the request in the minimum time possible, consistent with the provisions of paragraphs 10 and 11, i.e. no sooner than 12 hours after the Executive Council has been informed of the location of the inspection site and notice of the inspection has been provided to the inspected State Party.

Paragraphs 14 through 21 of Part X set forth four different methods for determining the final perimeter of the inspection site. For all facilities that are not declared pursuant to the Convention, as well as for other chemical production facilities declared pursuant to Part IX of this Annex, the inspected State Party is given 24 hours to either: (1) accept the requested perimeter as the final perimeter (paragraph 14); (2) propose an alternative perimeter acceptable to the inspection team as the final perimeter (paragraphs 16 through 18); or (3) negotiate a final perimeter based on a proposed alternative perimeter (paragraphs 19 through 21). (In the last case, if no agreement is reached within 72 hours after arrival of the inspection team at the inspection site, the alternative perimeter is designated the final perimeter.) Fourth, for all facilities that are declared pursuant to the Convention, except as noted above, the declared perimeter is normally designated the final perimeter (paragraph 15).

Paragraph 14 of Part X sets forth the requirements regarding designation of the final perimeter and transport of the inspection team from the point of entry to the inspection site in the case where the requested perimeter is accepted by the inspected State Party. Specifically, paragraph 14 states that if the requested perimeter is acceptable to the inspected State Party, it shall be designated as the final perimeter as early

as possible, but in no case later than 24 hours after the arrival of the inspection team at the point of entry.

The purpose of this provision is to allow an inspected State Party the opportunity to study the requested perimeter while insuring that the inspection will proceed within a reasonable time.

Paragraph 14 further states that the inspected State Party shall transport the inspection team to the final perimeter of the inspection site. Note that this places a greater obligation on the inspected State Party than the general rule regarding transportation (paragraph 36 of Part II of this Annex), which requires only assistance in transportation.

Paragraph 14 also states that if the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in this paragraph for the designation of the final perimeter. Finally, this paragraph states that transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

This means that the inspected State Party has 12 hours from the latest time at the point of entry at which it can accept the requested perimeter as the final perimeter to transport the inspection team to the inspection site. However, for those cases which may require more than 12 hours for transport, the inspected State Party may begin transport before accepting the requested perimeter as the final perimeter. Thus, an inspected State Party may use up to 24 hours to transport an inspection team from the point of entry to the inspection site. This provision recognizes the possible difficulties with regard to transportation to remote undeclared inspection sites and provides flexibility to the inspected State Party in arranging transportation while still retaining the fixed time periods for when such transportation must be concluded. In any case, the inspection team is given at least 12 hours at the point of

entry for such things as rest and equipment checks before transportation can begin.

Paragraph 15 of Part X sets forth, in two subparagraphs, the requirements regarding designation of the final perimeter and transport of the inspection team from the point of entry to the inspection site for inspections of most declared facilities. Specifically, this paragraph states that for all declared facilities, the procedures in subparagraphs (a) and (b) shall apply. This paragraph further states that for the purposes of Part X, "declared facility" means all facilities declared pursuant to Articles III, IV, and V and with regard to Article VI, only facilities declared pursuant to Part VI of this Annex, as well as declared plants specified by declarations pursuant to paragraphs 7 and 10(c) of Part VII, and paragraphs 7 and 10(c) of Part VIII of this Annex.

This means that for challenge inspections the special provisions below apply to chemical weapons development, storage, destruction and production facilities; Schedule 1 production facilities; plants that produce, process or consume Schedule 2 chemicals or produced Schedule 2 chemicals for chemical weapons production purposes; and plants that produce Schedule 3 chemicals or produced Schedule 3 chemicals for chemical weapons purposes. These provisions do not apply to one category of declared facilities — other chemical production facilities declared pursuant to Part IX of this Annex. Therefore, challenge inspections of these facilities are conducted pursuant to the rules for undeclared facilities. Note also that only declared plants, not their surrounding plant sites, are declared facilities for the purpose of challenge inspections.

Subparagraph 15(a) states that if the requested perimeter is contained within or conforms with the declared perimeter, the declared perimeter shall be considered the final perimeter. (Pursuant to paragraph 21(d) of Part I of this Annex, the "declared perimeter" means the external boundary of the facility declared pursuant to Articles III, IV, V and VI.)

This subparagraph further states that the final perimeter may, however, if agreed by the inspected State Party, be made smaller in order to conform with the perimeter requested by the requesting State Party.

Note that this subparagraph does not address the case of a requested perimeter significantly larger than the declared perimeter. This means that in this case the provisions of paragraphs 14 and 16 through 21 would apply with regard to determination of the final perimeter.

Subparagraph 15(b) states that the inspected State Party shall transport the inspection team to the final perimeter as soon as practicable, but in any case shall ensure their arrival at the perimeter not later than 24 hours after the arrival of the inspection team at the point of entry. Note that the time allowed for transportation is 12 hours less than in the case of undeclared facilities.

Paragraph 16 of Part X allows an inspected State Party to propose an alternative perimeter if it cannot accept the requested perimeter. Specifically, this paragraph states that at the point of entry, if the inspected State Party cannot accept the requested perimeter, it shall propose an alternative perimeter as soon as possible, but in any case not later than 24 hours after the arrival of the inspection team at the point of entry. Paragraph 16 further states that in case of differences of opinion, the inspected State Party and the inspection team shall engage in negotiations with the aim of reaching agreement on a final perimeter. This means that an inspection team is not required to accept the alternative perimeter as the final perimeter, although as discussed below after a certain time, if negotiations are inconclusive, the alternative perimeter will be designated the final perimeter.

Paragraph 17 of Part X sets forth the parameters for designating an alternative perimeter. Specifically, this paragraph states that the alternative perimeter should be designated as specifically as possible in accordance with paragraph 8, i.e. it must run at least 10 meters outside

any buildings, other structures, or security enclosures within the requested perimeter and not cut through any existing security enclosures.

This paragraph further states that the alternative perimeter shall include the whole of the requested perimeter and should, as a rule, bear a close relationship to the requested perimeter, taking into account natural terrain features and man-made boundaries. This paragraph also states that the alternative perimeter should normally run close to the surrounding security barrier if such a barrier exists. Finally, this paragraph states that the inspected State Party should seek to establish such a relationship between the perimeters by a combination of at least two of the following means: an alternative perimeter that does not extend to an area significantly greater than that of the requested perimeter; an alternative perimeter that is a short, uniform distance from the requested perimeter; or at least part of the requested perimeter is visible from the alternative perimeter.

The purpose of this paragraph is to qualify the right of an inspected State Party to propose an alternative perimeter without requiring fixed quantitative limits which would inhibit flexibility. To this end, the paragraph contains three qualitative provisions designed to create an expectation that in almost all cases the alternative perimeter will be drawn close to the requested perimeter. The first is a general rule that the alternative perimeter should run close to that of the requested perimeter and shall include the requested perimeter. The purpose of the latter provision is to prohibit attempts to exclude requested areas of inspection through the alternative perimeter proposal.

The second is a complementary rule that, since surrounding security barriers are a logical boundary of an inspection site, the alternative perimeter should normally run close to any such existing barriers. Finally, the third provision provides a standard which an inspected State Party is encouraged to use to demonstrate that its proposed alternative

perimeter does bear a close relationship to the requested perimeter. In other words, if an inspected State Party shows that its alternative perimeter meets at least two of the criteria listed, i.e. a short distance between the perimeters, roughly similar areas or part of the requested perimeter is visible from the alternative perimeter, it will, ipso facto, meet its obligations under this paragraph. Nonetheless, the use of less restrictive term "should" throughout this paragraph means that the inspected State Party ultimately retains the right to draw the alternative perimeter wherever it wishes as long as it includes the requested perimeter. This allows the United States to take into account Constitutional considerations related to the presence and activities of inspection teams at the final perimeter.

Paragraph 18 of Part X sets forth the requirements regarding designation of the final perimeter and transport of the inspection team from the point of entry to the inspection site in the case where an alternative perimeter is accepted by the inspection team. Specifically, this paragraph states that if the alternative perimeter is acceptable to the inspection team, it shall become the final perimeter and the inspection team shall be transported from the point of entry to that perimeter.

This paragraph further states that if the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. The time period specified in paragraph 16 is 24 hours after the arrival of the inspection team at the point of entry. Finally, this paragraph states that transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

Paragraph 19 of Part X sets forth the requirements regarding negotiation of a final perimeter and transport of the inspection team from the point of entry to the inspection site in the case where an alternative perimeter is not accepted by the inspection team. Specifically,

this paragraph states that if a final perimeter is not agreed, the perimeter negotiations shall be concluded as early as possible, but in no case shall they continue more than 24 hours after the arrival of the inspection team at the point of entry.

Note that there may be no time for negotiations at the point of entry if the inspected State Party does not propose an alternative perimeter until 24 hours after the arrival of the inspection team at the point of entry. However, as provided for in paragraph 20, negotiations may be conducted at the proposed alternative perimeter.

Paragraph 19 also states that if no agreement is reached, the inspected State Party shall transport the inspection team to a location at the alternative perimeter. This paragraph further states that if the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. The time period specified in paragraph 16 is 24 hours after the arrival of the inspection team at the point of entry. Finally, this paragraph states that transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry. The purpose of these provisions requiring transportation within 36 hours to ensure the arrival of the inspection team at or near the inspection site within a reasonable time and to facilitate negotiation and agreement by prompt access to the proposed alternative perimeter.

Paragraph 20 of Part X states that once at the location, the inspected State Party shall provide the inspection team with prompt access to the alternative perimeter to facilitate negotiations and agreement on the final perimeter and access within the final perimeter.

Paragraph 21 of Part X states that if no agreement is reached within 72 hours after the arrival of the inspection team at the location, the alternative perimeter shall be designated the final perimeter. The

purpose of this provision is to ensure that at some point a final perimeter is designated so that the inspection may begin. Note that there may be up to 108 hours for negotiation of the final perimeter, i.e. 36 hours at the point of entry and in transport to the alternative perimeter plus 72 hours at the alternative perimeter.

Paragraph 22 of Part X provides for verification of the location of the inspection site. Specifically, this paragraph states that to help establish that the inspection site to which the inspection team has been transported corresponds to the inspection site specified by the requesting State Party, the inspection team shall have the right to use approved location-finding equipment and have such equipment installed according to its directions. This paragraph further states that the inspection team may verify its location by reference to local landmarks identified from maps. Finally, this paragraph requires the inspected State Party to assist the inspection team in this task.

Paragraphs 23 through 31 of Part X set forth procedures for securing an inspection site and exit monitoring. Self-monitoring of exit activity by the inspected State Party must begin within 12 hours of the arrival of the inspection team at the point of entry and monitoring of exit activity by the inspection team must be allowed within 36 hours for undeclared facilities and 24 hours for declared facilities.

Paragraph 23 of Part X requires the inspected State Party to begin self-monitoring of an inspection site within 12 hours of the arrival of the inspection team at the point of entry. Specifically, this paragraph states that not later than 12 hours after the arrival of the inspection team at the point of entry, the inspected State Party shall begin collecting factual information of all vehicular exit activity from all exit points for all land, air, and water vehicles of the requested perimeter.

This paragraph further states that the inspected State Party shall provide this information to the inspection team upon its arrival at the alternative or final perimeter, whichever occurs first.

The purpose of paragraph 23 is to record, and possibly discourage, possible attempts to evade detection of a violation by transporting evidence from an inspection site before an inspection team arrives. To this end, this paragraph places an affirmative obligation on the inspected State Party to monitor activities at inspection sites as soon as practicable, in particular those sites it may not control such as private chemical production plants.

Note that Fourth Amendment rights are preserved because the inspected State Party is only required to monitor, not stop or search, exiting traffic.

Paragraph 24 of Part X describes the means by which the inspected State Party may meet its obligation to collect information on vehicular exit activity. Specifically, this paragraph states that the obligation to collect factual information of all vehicular exit activity may be met by collecting factual information in the form of traffic logs, photographs, video recordings, or data from chemical evidence equipment provided by the inspection team to monitor such exit activity.

Note that the inspected State Party is allowed to use its own equipment if it chooses merely to record traffic in some way. However, if the inspected State Party chooses to develop more tangible evidence that no illegal chemicals are being taken from the inspection site, it could use equipment provided by the inspection team. Thus, the inspected State Party is inhibited from making false claims regarding removal of chemical evidence.

Paragraph 24 also states that, alternatively, the inspected State Party may also meet this obligation by allowing one or more members of the inspection team independently to maintain traffic logs, take

photographs, make video recordings of exit traffic, or use chemical evidence equipment, and conduct other activities as may be agreed between the inspected State Party and the inspection team.

This means that an inspected State Party may either collect the information on vehicular exit activity itself or transport members of the inspection team to the site and allow them to collect the information. The latter option allows the inspected State Party to strengthen its case that, pursuant to paragraph 11(a) of Article IX, it made every reasonable effort to demonstrate its compliance with the Convention.

Paragraph 25 of Part X states that upon the inspection team's arrival at the alternative perimeter or final perimeter, whichever occurs first, securing the site, which means exit monitoring procedures by the inspection team, shall begin. This means that at this point the inspected State Party's monitoring obligation ends. This means that the inspection team must be permitted to begin this activity within 36 hours after arrival at the point on entry (within 24 hours for declared facilities) because, pursuant to paragraphs 14, 15, 18, and 19, the inspection team must be transported to the alternative or final perimeter within that time.

Paragraph 26 of Part X sets forth the exit monitoring procedures that the inspection team has the absolute right to conduct. Specifically, this paragraph states that exit monitoring procedures shall include: the identification of vehicular exits, the making of traffic logs, the taking of photographs, and the making of video recordings by the inspection team of exits and exit traffic. Note that these activities are the same as those conducted by inspected State Party, except for chemical monitoring which is allowed separately as an inspection procedure permitted at the alternative or final perimeter pursuant to paragraph 36(a) of Part X.

Paragraph 26 also states that the inspection team has the right to go, under escort, to any other part of the perimeter to check that there is no other exit activity. Note that any Fourth Amendment concerns this might raise can be addressed by, inter alia, where the perimeter is drawn, including drawing part or all of it on public property.

Paragraph 27 of Part X sets forth additional exit monitoring procedures that the inspection team may conduct with the permission of the inspected State Party. Specifically, this paragraph states that additional procedures for exit monitoring activities as agreed upon by the inspection team and the inspected State Party may include, inter alia, use of sensors; random selective access; and sample analysis. Note that "use of sensors" means sensors other than the monitoring instruments permitted pursuant to paragraph 36(a) of Part X.

Paragraph 28 of Part X requires that all activities for securing the site and exit monitoring take place within a band around the outside of the perimeter, not exceeding 50 meters in width, measured outward. The purpose of this paragraph is to limit the inspection team's access to areas that do not lie within the inspection site.

Paragraph 29 of Part X sets forth the procedures for inspecting vehicles exiting the inspection site. Specifically, this paragraph states that the inspection team has the right to inspect on a managed access basis vehicular traffic exiting the site.

The use of the term "on a managed access basis" means that nature and extent of access to vehicles must be negotiated between the inspection team and the inspected State Party and the inspected State Party has the right to take measures to protect sensitive installations and prevent disclosure of confidential information. The use of the term "vehicular traffic" rather than "vehicles" was insisted upon by U.S. negotiators to indicate that the inspection team does not have a right to inspect each vehicle. This term was chosen so as to address Fourth amendment and

national security concerns. Note that the right of inspection pertains only to exiting vehicular traffic (which, pursuant to paragraph 30, specifically does not include personal passenger vehicles). Inspection of entering personnel and vehicles is not permitted pursuant to paragraph 30.

Paragraph 29 further states that the inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any vehicle, subject to inspection, to which the inspection team is not granted full access, is not being used for purposes related to the possible non-compliance concerns raised in the inspection request. The purpose of this provision is to balance the possibility that access to certain vehicles may be limited or denied completely with an obligation to make best efforts to demonstrate that such vehicles are not being used to violate the Convention.

Paragraph 30 of Part X states that personnel and vehicles entering and personnel and personal passenger vehicles exiting the site are not subject to inspection. The term "personal passenger vehicles" is understood as including such things as automobiles, small trucks and recreational vehicles owned by individuals but excluding government, military or commercial vehicles of any type. Note that this paragraph additionally addresses Fourth Amendment concerns by prohibiting inspections of both entering and exiting individuals and their vehicles.

Paragraph 31 of Part X states that the application of the above procedures, i.e. exit monitoring procedures, may continue for the duration of the inspection, but may not unreasonably hamper or delay the normal operation of the facility.

Paragraphs 32 through 34 of Part X set forth procedures for the pre-inspection briefing of the inspection team and the creation of an inspection plan.

Paragraph 32 of Part X states that to facilitate development of an inspection plan, the inspected State Party shall provide a safety and logistical briefing to the inspection team prior to access.

Paragraph 33 of Part X sets forth the contents of the pre-inspection briefing. Specifically, this paragraph states that the pre-inspection briefing shall be held in accordance with paragraph 37 of Part II of this Annex. Paragraph 37 of Part II states that upon arrival at the inspection site and before the commencement of the inspection, the inspection team shall be briefed, for a maximum of three hours, by facility representatives, with the aid of maps and other documentation as appropriate, on the facility, the activities carried out there, safety measures and administrative and logistic arrangements necessary for the inspection.

Paragraph 33 further states that in the course of the pre-inspection briefing, the inspected State Party may indicate to the inspection team the equipment, documentation, or areas it considers sensitive and not related to the purpose of the challenge inspection. (Note that a similar requirement is contained in paragraph 13 of the Confidentiality Annex.) Finally, this paragraph states that, in addition, personnel responsible for the site shall brief the inspection team on the physical layout and other relevant characteristics of the site.

Finally, paragraph 33 states that the inspection team shall be provided with a map or sketch drawn to scale showing all structures and significant geographic features at the site and shall also be briefed on the availability of facility personnel and records.

Paragraph 34 of Part X provides for the creation of an inspection plan by the inspection team. Specifically, this paragraph states that after the pre-inspection briefing, the inspection team shall prepare, on the basis of the information available and appropriate to it, an initial inspection plan which specifies the activities to be carried out by the inspection

team, including the specific areas of the site to which access is desired. This paragraph further states that the inspection plan shall also specify whether the inspection team will be divided into subgroups and shall be made available to the representatives of the inspected State Party and the inspection site.

Finally, this paragraph states that the inspection plan's implementation shall be consistent with the provisions of Section C, including those related to access and activities. Section C of Part X contains provisions regarding the conduct of challenge inspections, specifically, general rules, specific managed access provisions, and provisions regarding observers and the duration of the inspection.

This provision makes clear that the implementation of the inspection plan is subject to, *inter alia*, the results of the negotiations between the inspected State Party and the inspection team regarding the nature and extent of access (paragraphs 38 and 47 of Part X), constitutional considerations regarding searches and seizures (paragraph 41 of Part X) and measures taken by the inspected State Party to protect sensitive installations and confidential information not related to chemical weapons (paragraph 48 of Part X).

Paragraphs 35 through 37 of Part X set forth procedures for conducting inspection activities at the final or alternative perimeter, which are in addition to exit monitoring procedures.

Paragraph 35 of Part X states that upon the inspection team's arrival at the final or alternative perimeter, whichever occurs first, the team shall have the right to commence immediately perimeter activities in accordance with the procedures set forth under this Section (i.e. paragraphs 3 through 37, in particular paragraphs 36 and 37) and to continue these activities until the completion of the challenge inspection, (i.e. 84 hours after the inspection team begins access within the inspection site, pursuant to paragraph 57 Part X).

Note that the inspection team must be permitted to begin this activity within 36 hours after arrival at the point of entry (within 24 hours for declared facilities) because, pursuant to paragraphs 14, 15, 18, and 19 of Part X, the inspection team must be transported to the alternative or final perimeter within that time. Thus, an inspection team may begin exit monitoring procedures and perimeter activities at the final or alternative perimeter at the same time.

Paragraph 36 of Part X sets forth the perimeter activities at the alternative or final perimeter that the inspection team has the absolute right to conduct. Specifically, this paragraph states that in conducting the perimeter activities, the inspection team shall have the right to: use monitoring instruments in accordance with paragraphs 27 to 30 of Part II of this Annex; take wipes, air, soil or effluent samples; and conduct any additional activities which may be agreed between the inspection team and the inspected State Party. (Paragraphs 27 through 30 of Part II provide for the establishment of a list of approved equipment for use by inspection teams on inspections, the sole control of approved equipment by the Technical Secretariat and the tailoring of equipment used to the specific type of inspection to be conducted, the limited right of the inspected State Party to inspect and exclude equipment, and the use by the inspection team of other than approved equipment.)

Paragraph 37 of Part X sets forth procedures for conducting permitted and agreed perimeter activities at the final or alternative perimeter. Specifically, this paragraph states that the perimeter activities of the inspection team may be conducted within a band around the outside of the perimeter up to 50 meters in width measured outward from the perimeter, i.e. the same area as exit monitoring procedures. This paragraph further states that if the inspected State Party agrees, the inspection team may also have access to any building or structure within the perimeter band.

This paragraph also states that all directional monitoring shall be oriented inward. As with the paragraph 28 limitation of exit monitoring activities to a 50-meter band, the purpose of this and the first provision of this paragraph is to limit the inspection team's ability to inspect areas that do not lie within the inspection site. Finally, this paragraph states that for declared facilities, at the discretion of the inspected State Party, the band could run inside, outside, or on both sides of the declared perimeter. This provision represents the judgment that such facilities normally require less protection of information not related to chemical weapons. (As noted above, pursuant to paragraph 15 of this Part X, "declared facilities" means chemical weapons development, storage, destruction and production facilities, Schedule 1 production facilities, and Schedule 2 and 3 plants).

Section C (paragraphs 38 through 57) of Part X of this Annex sets forth the rules for the conduct of challenge inspections, specifically, general rules, managed access provisions and provisions regarding the observer of the requested State Party and the duration of the inspection.

Paragraph 38 of Part X establishes the general rule regarding the provision of access by the inspected State Party. Specifically, this paragraph states that the inspected State Party shall provide access within the requested perimeter as well as, if different, the final perimeter. This paragraph further states that the extent and nature of access to a particular place or places within these perimeters shall be negotiated between the inspection team and the inspected State Party on a managed access basis.

The use of the term "on a managed access basis" means that the inspected State Party has the right to take measures to protect sensitive installations and prevent disclosure of confidential information. Note that, pursuant to paragraph 41, the extent of access is subject to any constitutional obligations regarding searches and seizures or proprietary

rights and the State Party has the right, under managed access, to take such measures as are necessary to protect national security.

Paragraph 39 of Part X sets forth the time limit for granting access to the inspection site. Specifically, this paragraph states that the inspected State Party shall provide access within the requested perimeter as soon as possible, but in any case not later than 108 hours after the arrival of the inspection team at the point of entry in order to clarify the concern regarding possible non-compliance with this Convention raised in the inspection request. Note that if the final perimeter differs from the requested perimeter access will have to be granted within the final perimeter within time to permit access within the requested perimeter within 108 hours.

Paragraph 40 of Part X states that upon the request of the inspection team, the inspected State Party may provide aerial access to the inspection site. The purpose of this paragraph is to make clear that inspection team may choose aerial access as an alternative or additional option to access on the ground. Note, however, that this does not relieve the inspected State Party of its obligation to provide access on the ground within the final and requested perimeters in accordance with paragraphs 38 and 41 if requested by the inspection team.

Paragraph 41 of Part X creates a constitutional qualifier on the extent of access that must be provided and establishes the right to take measures to protect national security, so long as neither provision is invoked to conceal evidence of non-compliance. Specifically, this paragraph states that in meeting the requirement to provide access as specified in paragraph 38, the inspected State Party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures.

This means that an inspected State Party has an affirmative obligation to provide the greatest degree of access it can provide within the fundamental domestic laws of the State Party. The purpose of this provision is to provide as much access as possible to the inspection team while recognizing that some States Parties, in particular the United States, have constitutional constraints on searches of non-government property and persons that may, in some cases, delay or restrict access.

Therefore, under this provision the United States is permitted to use its constitutional procedures for obtaining access and would not be in violation of the Convention if this process resulted in the United States being required to limit access by the inspection team on the basis of the Fourth Amendment's prohibition of unreasonable searches and seizures or the Constitution's protection of proprietary rights.

This paragraph also states that the inspected State Party has the right under managed access to take such measures as are necessary to protect national security. The term "under managed access" refers to the right of the inspected State Party to take measures to protect sensitive installations and prevent disclosure of confidential information, as elaborated in paragraphs 47 and 48. Finally, this paragraph states that the provisions in this paragraph may not be invoked by the inspected State Party to conceal evasion of its obligations not to engage in activities prohibited under the Convention. This makes clear that a State Party must have a legitimate reason for invoking the protections granted in this paragraph, although the State Party is not required to provide this reason.

Paragraph 42 of Part X requires States Parties to make every reasonable effort to demonstrate compliance where access is restricted. Specifically, this paragraph states that if the inspected State Party provides less than full access to places, activities, or information, it shall be under the obligation to make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the

challenge inspection. The purpose of this paragraph is to create a counter-weight to the protections given States Parties in paragraph 41 regarding access. This means that if a State Party restricts the access of an inspection team in any way, then the State Party incurs an additional obligation to use its best efforts to provide other means for demonstrating that it is in compliance with the Convention.

Paragraph 43 of Part X sets forth special rules regarding the time at which access is granted for declared facilities. Specifically, this paragraph states that upon arrival at the final perimeter of facilities declared pursuant to Articles IV, V, and VI, access shall be granted following the pre-inspection briefing and discussion of the inspection plan which shall be limited to the minimum necessary and in any event shall not exceed three hours.

Therefore, for these facilities access for challenge inspections must be granted within 27 hours of the arrival of the inspection team at the point of entry, i.e. no later than 39 hours after notice of inspection is given pursuant to paragraph 15 of Article IX, since, pursuant to paragraph 15 of Part X, the inspected State Party has 24 hours to transport the inspection team to the final perimeter, i.e. declared perimeter. (As noted above, pursuant to paragraph 15 of this Part X, these facilities are chemical weapons storage, destruction and production facilities, Schedule 1 production facilities, and Schedule 2 and 3 plants.)

The purpose of this provision is to ensure that the amount of notice before access must be granted for challenge inspections of these facilities is equal to or less than that for routine inspections of these facilities, i.e. inspections conducted pursuant to Article IV, V, or VI. As noted above, for challenge inspections the time period between notice of the inspection and provision of access is no more than 39 hours. For routine inspections of these facilities the time period ranges from 39 to 123 hours. (The total notice time for routine inspections is 51 hours for chemical weapons storage facilities and Schedule 2 facilities, 123 hours

for Schedule 3 facilities, and 39 hours for chemical weapons production and destruction facilities and for single small-scale production and other Schedule 1 facilities.)

This paragraph also states that for facilities declared pursuant to paragraph 1(d) of Article III, (i.e. chemical weapons development facilities) negotiations shall be conducted and managed access commenced within 12 hours of arrival at the final perimeter. This means that for these facilities access must be granted within 36 hours of the arrival of the inspection team at the point of entry. (The inspected State Party has, pursuant to paragraph 15 of Part X, 24 hours to transport the inspection team to the final perimeter and 12 hours to negotiate the terms of access before granting entry to the inspection site.) The addition of 12 hours for negotiation of managed access takes into account the fact that there are no guaranteed areas of access since these facilities are not subject to routine inspections. However, given that these facilities are declared and of relevance to chemical weapons, they are subject to shortened time frames for notice.

Paragraph 44 of Part X links the inspection methods used and the facts that can be collected and documented to the inspection mandate. Specifically, this paragraph states that in carrying out the challenge inspection in accordance with the inspection request, the inspection team shall use only those methods necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance with the provisions of this Convention, and shall refrain from activities not relevant thereto.

This paragraph further states that the inspection team shall collect and document such facts as are related to the possible non-compliance with this Convention by the inspected State Party, but shall neither seek nor document information which is clearly not related thereto, unless the inspected State Party expressly requests it to do so. Finally, this paragraph states that any material collected and subsequently found not

to be relevant shall not be retained. Note that, in this regard, pursuant to paragraph 1(c) of the Confidentiality Annex, the Organization, may require only the minimum amount of information and data necessary for the timely and efficient carrying out of its responsibilities.

Paragraph 45 of Part X requires the inspection team to seek to minimize, within the requirements of the inspection, the effect on the inspected State Party of its inspection activities. Specifically, this paragraph states that the inspection team shall be guided by the principle of conducting the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. This paragraph further states that, wherever possible, the inspection team shall begin with the least intrusive procedures it deems acceptable and proceed to more intrusive procedures only as it deems necessary. Note that a similar requirement is contained in paragraph 14 of the Confidentiality Annex.

Paragraph 46 of Part X requires the inspection team to consider suggested changes to its inspection plan. Specifically, this paragraph states that the inspection team shall take into consideration suggested modifications of the inspection plan and proposals which may be made by the inspected State Party, at whatever stage of the inspection including the pre-inspection briefing, to ensure that sensitive equipment, information or areas, not related to chemical weapons, are protected. Note that while the inspection team only has to "take into consideration" suggested modifications to the inspection plan, the inspection plan itself does not control activities within the final and requested perimeters, they are negotiated pursuant to paragraph 47.

Paragraph 47 of Part X provides for perimeter exit/entry points and, within the final and requested perimeters, makes subject to negotiation the extent of access given to the inspection team, the activities of the inspection team, and the assistance and information provided by the inspected State Party. Specifically, this paragraph requires the inspected

State Party to designate the perimeter entry/exit points to be used for access. This means that the inspection team is limited to entering and exiting the inspection site at these points.

Paragraph 47 further states that the inspection team and the inspected State Party shall negotiate: the extent of access to any particular place or places within the final and requested perimeters as provided in paragraph 48, i.e. the right of the inspected State Party to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons; the particular inspection activities, including sampling, to be conducted by the inspection team; the performance of particular activities by the inspected State Party; and the provision of particular information by the inspected State Party.

This means that all activities by the inspection team must therefore be agreed to by the inspected State Party. Accordingly, the general right of the inspection team, pursuant to Part II of this Annex, to engage in the following activities is replaced by an obligation to negotiate, and agree on, such activities in the case of challenge inspections: use of equipment (paragraphs 27 and 30 of Part II); requests for specific operations of a facility to be carried out by the inspected State Party (paragraph 40 of Part II); unimpeded access (paragraph 45 of Part II); interviewing personnel (paragraph 46 of Part II); inspecting documentation (paragraph 47 of Part II); making photographs, including retention and transfer (paragraph 51 of Part II); and sampling, including retention and transfer (paragraphs 52 through 58 of Part II).

Note that the term "including sampling" was added to paragraph 47 to make clear that all sampling within the final and requested perimeters is subject to negotiation.

Paragraph 48 of Part X sets forth the general right of the inspected State Party, subject to its obligations regarding demonstrating compliance, to

take those measures it determines are necessary to protect sensitive installations and confidential information and provides a non-exclusive list of illustrative measures that a State Party may take. Specifically, this paragraph states that, in conformity with the relevant provisions in the Confidentiality Annex the inspected State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons. The relevant provisions of the Confidentiality Annex are contained in Section C of that Annex, in particular, paragraph 13. Paragraph 13 permits States Parties to take such measures as they deem necessary to protect confidentiality, provided that they fulfill their obligations to demonstrate compliance in accordance with the relevant Articles and this Annex, i.e. for challenge inspections, Article IX and Part X of the Verification Annex. Note that since the term "sensitive installation" is not defined, it can be broadly interpreted by an inspected State Party.

Paragraph 48 further states that such measures may include, inter alia:

- (a) Removal of sensitive papers from office spaces;
- (b) Shrouding of sensitive displays, stores, and equipment;
- (c) Shrouding of sensitive pieces of equipment, such as computer or electronic systems;
- (d) Logging off of computer systems and turning off of data indicating devices;
- (e) Restriction of sample analysis to presence or absence of chemicals listed in Schedules 1, 2 and 3 or appropriate degradation products;
- (f) Using random selective access techniques whereby the inspectors are requested to select a given percentage or number of

buildings of their choice to inspect; the same principle can apply to the interior and content of sensitive buildings; and

(g) In exceptional cases, giving only individual inspectors access to certain parts of the inspection site.

Note that the measures that a State Party may take are not limited to the specific measures on the list, although these represent measures that the negotiating states considered normal and reasonable. Note also that paragraph 15 of the Confidentiality Annex requires the inspection team to "fully respect" these procedures.

Paragraph 49 of Part X sets forth the responsibilities of the inspected State Party where it has not granted full access for the inspection team. Specifically, this paragraph states that the inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any object, building, structure, container or vehicle to which the inspection team has not had full access, or which has been protected in accordance with paragraph 48, is not used for purposes related to the possible non-compliance concerns raised in the inspection request. Paragraph 48 provides for the right of the inspected State Party to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons. Note that this is not an absolute requirement to demonstrate compliance, but rather an obligation to make "every reasonable effort". Note also that this obligation is similar to, but more specific than that in paragraph 42, which obliges the inspected State Party to use best efforts to provide alternative means for demonstrating compliance.

Paragraph 50 of Part X sets forth examples by which an inspected State Party might meet its paragraph 49 obligation. Specifically, this paragraph states that the obligation contained in paragraph 49 may be accomplished by means of, inter alia, the partial removal of a shroud or environmental protection cover, at the discretion of the inspected State

Party, by means of a visual inspection of the interior of an enclosed space from its entrance, or by other methods.

Paragraph 51 of Part X sets forth, in three subparagraphs, special rules regarding access for declared facilities that are subject to routine inspections, i.e. all declared facilities except for chemical weapons development facilities. Specifically, this paragraph states that in the case of facilities declared pursuant to Articles IV, V, and VI, the provisions of subparagraphs (a) through (c) shall apply. (As noted above, pursuant to paragraph 15 of Part X, these facilities are chemical weapons storage, destruction and production facilities, Schedule 1 production facilities, and Schedule 2 and 3 plants.)

Subparagraph 51(a) states that for facilities with facility agreements, access and activities within the final perimeter shall be unimpeded within the boundaries established by the agreements. This means that access for challenge inspections essentially is the same as for routine inspections, i.e. instead of negotiating access and activities, for these facilities the inspection team's access is limited only by its specific obligations, such as the obligation pursuant to paragraph 45 to conduct the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. Note that the term "boundaries" is understood by the United States to refer to the legal and other non-physical limits, e.g. safety procedures, as well as the physical limits established by the facility agreements.

Subparagraph 51(b) states that for facilities without facility agreements, negotiation of access and activities shall be governed by the applicable general inspection guidelines established under the Convention, i.e. the general rules set forth in Part II of this Annex and the applicable specific rules established for routine inspections of these facilities in Parts III through VIII of this Annex.

Subparagraph 51(c) states that access beyond that granted for inspections under Articles IV, V and VI shall be managed in accordance with procedures of this section. This means, inter alia, that access outside the final, i.e. declared perimeter, such as in the surrounding plant site, will be conducted pursuant to the regime for undeclared sites. This includes the constitutional qualifier (paragraph 41), negotiated access (paragraph 47) and measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons (paragraph 48).

Paragraph 52 of Part X repeats the paragraph 49 obligation to make every reasonable efforts to demonstrate compliance as it applies to challenge inspections of chemical weapons development facilities. Specifically, this paragraph states that in the case of facilities declared pursuant to paragraph 1(d) of Article III (i.e. chemical weapons development facilities), the following shall apply: if the inspected State Party, using procedures of paragraphs 47 and 48, i.e. negotiated access and measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons, has not granted full access to areas or structures not related to chemical weapons, it shall make every reasonable effort to demonstrate to the inspection team that such areas or structures are not used for purposes related to the possible non-compliance concerns raised in the inspection request. The intent of this language is to implicitly emphasize the expectation that full access to areas that are related to chemical weapons would normally be granted.

Paragraph 53 of Part X provides for coordination of the arrival of the observer and the inspection team at the point of entry. Specifically, this paragraph states that in accordance with the provisions of paragraph 12 of Article IX, on the participation of an observer in the challenge inspection, the requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry as the inspection team within a reasonable period of the inspection

team's arrival. Paragraph 12 of Article IX, *inter alia*, requires the agreement of the inspected State Party for the participation of an observer, although the inspected State Party is expected as a rule to accept an observer.

Paragraph 54 of Part X provides the observer with the right to communicate with the requesting State Party and requires the inspected State Party to provide communications equipment. Specifically, this paragraph states that the observer shall have the right throughout the period of inspection to be in communication with the embassy of the requesting State Party located in the inspected State Party or in the Host State or, in the case of absence of an embassy, with the requesting State Party itself.

Paragraph 54 also states that the inspected State Party shall provide means of communication to the observer.

Paragraph 55 of Part X sets forth the rules for access by the observer. Specifically, this paragraph states that the observer shall have the right to arrive at the alternative or final perimeter of the inspection site, wherever the inspection team arrives first, and to have access to the inspection site as granted by the inspected State Party. This paragraph further states that the observer shall have the right to make recommendations to the inspection team, which the team shall take into account to the extent it deems appropriate. Finally, this paragraph states that throughout the inspection, the inspection team shall keep the observer informed about the conduct of the inspection and the findings.

Paragraph 56 of Part X requires the inspected State Party to provide the amenities necessary for the observer, but the requesting State Party must bear their costs. Specifically, this paragraph states that throughout the in-country period, the inspected State Party shall provide or arrange for the amenities necessary for the observer such as communication means,

interpretation services, transportation, working space, lodging, meals and medical care.

(Pursuant to paragraph 10 of Part I of this Annex, the term "in-country period" means the period from the arrival of the inspection team at a point of entry until its departure from the State at a point of entry.)

Paragraph 56 also states that all the costs in connection with the stay of the observer on the territory of the inspected State Party or the Host State shall be borne by the requesting State Party.

Paragraph 57 of Part X states that the period of inspection shall not exceed 84 hours, unless extended by agreement with the inspected State Party. (Pursuant to paragraph 22 of Part I of this Annex, the term "period of inspection" means the period of time from provision of access to the inspection team to the inspection site until its departure from the inspection site, exclusive of time spent on briefings before and after the verification activities.)

Section D (paragraphs 58 through 61) of Part X of this Annex provides for post-challenge inspection activities, specifically, the departure of the inspection team and its final report.

Paragraph 58 of Part X states that upon completion of the post-inspection procedures at the inspection site, the inspection team and the observer of the requesting State Party shall proceed promptly to a point of entry and shall then leave the territory of the inspected State party in the minimum time possible. Note that the language of this provision is deliberately more emphatic than the language "as soon as possible" used in the general rules (paragraph 61 of Part II of this Annex). This represents a balance between the desire to ensure immediate action in response to the results of the inspection team's activities and the difficulty in meeting specific time frames for departure.

Paragraph 59 of Part X sets forth the contents of the final report of the inspection team. Specifically, this paragraph states that the inspection report shall summarize in a general way the activities conducted by the inspection team and the factual findings of the inspection team, particularly with regard to the concerns regarding possible non-compliance with the Convention cited in the request for the challenge inspection, and shall be limited to information directly related to the Convention. This paragraph further states that the final report shall also include an assessment by the inspection team of the degree and nature of access and cooperation granted to the inspectors and the extent to which this enabled them to fulfill the inspection mandate.

Finally, this paragraph states that detailed information relating to the concerns regarding possible non-compliance with the Convention cited in the request for the challenge inspection shall be submitted as an Appendix to the final report and be retained within the Technical Secretariat under appropriate safeguards to protect sensitive information.

Paragraph 60 of Part X provides for the submission of a preliminary inspection report prior to the final report. Specifically, this paragraph states that the inspection team shall, not later than 72 hours after its return to its primary work location, submit a preliminary inspection report, having taken into account, *inter alia*, paragraph 17 of the Confidentiality Annex, to the Director-General. Paragraph 17 of the Confidentiality Annex provides, in pertinent part, that the final inspection report shall be handled in accordance with the regulations established by the Organization governing the handling of confidential information and if necessary, the information contained in the report shall be processed into less sensitive forms before it is transmitted outside the Technical Secretariat and the inspected State Party. The purpose of this reference is to make clear that the Technical Secretariat is required to protect sensitive and confidential information in the preliminary report because this report will be made available to the

requesting State Party and the Executive Council before the inspected State Party has had the opportunity, pursuant to paragraph 61, to review it for such information.

Paragraph 61 of Part X sets forth procedures for review of the final report by the inspected State Party prior to release to all States Parties. Specifically, this paragraph states that a draft final inspection report shall be made available to the inspected State Party not later than 20 days after the completion of the challenge inspection. This paragraph further states that the inspected State Party has the right to identify any information and data not related to chemical weapons which should, in its view, due to its confidential character, not be circulated outside the Technical Secretariat. This paragraph also requires the Technical Secretariat to consider proposals for changes to the draft final inspection report made by the inspected State Party and, using its own discretion, wherever possible, adopt them. Finally, this paragraph states that the final report shall then be submitted not later than 30 days after the completion of the challenge inspection to the Director-General for further distribution and consideration in accordance with paragraphs 21 through 25 of Article IX.

Paragraphs 21 through 25 of Article IX provide for the contents of the final report of the inspection team and its transmittal along with comments by involved and other parties to all States Parties. They also provide for: Executive Council review of the final report and addressal of any concerns related to non-compliance, the scope of the request, or abuse of the right to request a challenge inspection; the taking of certain steps by the Executive Council if it concludes that further action is necessary to respond to the results of a challenge inspection; the right of the requesting State Party and the inspected State Party to participate in the review process; the requirement that the Executive Council inform the States Parties and the next session of the Conference of the outcome of the process; and, if the Executive Council has made specific

recommendations to the Conference, consideration of action by the Conference in accordance with Article XII.

VERIFICATION ANNEX
PART XI
INVESTIGATIONS IN CASES OF ALLEGED USE OF
CHEMICAL WEAPONS

Part XI of the Verification Annex consists of 27 paragraphs, divided into five sections. This Part sets forth the procedures for conducting investigations of alleged use of chemical weapons. Specifically, it contains general provisions, pre-inspection activities, provisions on the conduct of inspections, reports, and special rules for non-States Parties.

Section A (paragraphs 1 and 2) of Part XI determines which procedures are applicable to investigations of alleged use of chemical weapons and to investigations of alleged use of riot control agents as a method of warfare.

Paragraph 1 of Part XI states that investigations of alleged use of chemical weapons, or of alleged use of riot control agents as a method of warfare, initiated pursuant to Articles IX (challenge inspections) or X (assistance and protection against chemical weapons), shall be conducted in accordance with this Annex and detailed procedures to be established by the Director-General.

Note that this means that different rules may apply depending on the basis on which the request for an investigation is made. If made as a challenge inspection, i.e. under paragraph 8 of Article IX, the investigation would be conducted pursuant to the general rules of inspection, the special challenge inspection rules, these special procedures, and the detailed procedures. If made as part of a request for assistance against chemical weapons, i.e. under paragraph 8 of Article X, the investigation would follow the rules of paragraphs 9 and 10 of Article X, the general rules of inspection, these special procedures and the detailed procedures.

Note also that draft detailed procedures for these investigations are expected to be developed by the Preparatory Commission for approval by the Conference and then provided to the Director-General.

Paragraph 2 of Part XI states that the following additional provisions of Part XI (i.e. the remainder of Part XI) address specific procedures required in cases of alleged use of chemical weapons. Note that the Preparatory Commission is expected, as part of its development of detailed procedures, to make clear that these specific procedures also apply to investigations of use of riot control agents as a method of warfare.

Note further that these procedures take into account the different circumstances involved in allegations of chemical weapons use as compared with allegations of other prohibited activities. In particular, they take into account the possibility that such allegations of use may be associated with armed conflict, with corresponding implications for inspections (e.g. safety of the inspection team, limits on availability of information, and the request of a State Party for investigation on its own territory).

Section B (paragraphs 3 through 14) of Part XI sets forth provisions for pre-inspection activities, including requests for an investigation, notification, assignment and dispatch of the inspection team, and briefings.

Paragraph 3 of Part XI requires that the following information, to the extent possible, should be provided to the Director-General with the request for an investigation of alleged use of chemical weapons:

- (a) The State Party on whose territory use of chemical weapons is alleged to have taken place;
- (b) The point of entry or other suggested safe routes of access;

- (c) Location and characteristics of the areas where chemical weapons are alleged to have been used;
- (d) When chemical weapons are alleged to have been used;
- (e) Types of chemical weapons believed to have been used;
- (f) Extent of alleged use;
- (g) Characteristics of the possible toxic chemicals;
- (h) Effects on humans, animals and vegetation; and
- (i) Request for specific assistance, if applicable.

Note that this information is significantly more extensive than that required for requests for challenge inspections, and is based on the special need to protect and assist the inspection team.

Paragraph 4 of Part XI states that the requesting State Party may submit any additional information it deems necessary at any time.

Paragraph 5 of Part XI requires that the Director–General shall immediately acknowledge receipt of the request to the requesting State Party of its request and inform the Executive Council and all other States Parties.

Paragraph 6 of Part XI states that, if applicable, the Director–General shall notify a State Party that an investigation of alleged chemical weapons use on its territory has been requested. This provides for the possibility of a situation where a State Party alleges use on another State Party's territory instead of its own territory. This paragraph also requires the Director–General to notify other States Parties if access to their territories might be required during the investigation.

Paragraph 7 of Part XI requires the Director–General, not later than 30 days after entry into force of the Convention, to:

— prepare a list of qualified experts whose particular field of expertise could be required in an investigation of alleged use of chemical weapons and constantly keep it updated;

— communicate this list and any revised lists, in writing, to each State Party; and

— regard any qualified expert included in this list as designated, unless a State Party, not later than 30 days after its receipt of the list, declares its non–acceptance in writing.

Paragraph 8 of Part XI states that the Director–General shall select the leader and members of an inspection team from the inspectors and inspection assistants already designated for challenge inspections, i.e. pursuant to paragraph 1(a) of Part X of this Annex, taking into account the circumstances and specific nature of a particular request. This paragraph states that, in addition, members of the inspection team may be selected from the list of qualified experts (referred to in paragraph 7 above), when in the view of the Director–General, the expertise required for the proper conduct of a particular investigation is not available among the inspectors already designated.

Paragraph 9 of Part XI requires that when briefing the inspection team, the Director–General must include information provided by the requesting State Party subsequent to the initial information, as well as any information received from any other sources. This paragraph further states that the purpose of this requirement is to ensure that the inspection can be carried out in the most effective and expedient manner.

Paragraph 10 of Part XI requires that, immediately upon the receipt of a request for an investigation of alleged use of chemical weapons, the

Director–General shall contact the relevant States Parties to request and confirm arrangements for the safe reception of the inspection team.

Paragraph 11 of Part XI states that the Director–General shall dispatch the inspection team at the earliest opportunity, taking into account the safety of the inspection team. Note that in most, if not all cases, this means, once the safety of the team is assured.

Paragraph 12 of Part XI requires that if the inspection team has not been dispatched within 24 hours after receipt of the request, the Director–General shall inform the Executive Council and the States Parties concerned of the reason for delay. (The concerned States Parties are the requesting State Party and the States Parties on whose territory access might be required, including the State Party on whose territory use was alleged.)

Paragraph 13 of Part XI states that the inspection team shall have the right to be briefed by representatives of the inspected State Party when they arrive and at any time during the inspection.

Paragraph 14 of Part XI requires that the inspection team shall prepare an inspection plan to serve as a basis for, among other things, logistic and safety arrangements, which be done before commencement of the inspection. This paragraph further states that, as needed, the plan shall be updated any time during the inspection.

Section C (paragraphs 15 through 21) sets forth the rules for the conduct of inspections, including access, sampling, extension of the inspection site and inspection duration, and interviews.

Paragraph 15 of Part XI states that the inspection team shall have the right of access to any and all areas which could be affected by the alleged use of chemical weapons, as well as access to hospitals, refugee camps and other locations it deems relevant to the effective investigation of the alleged use of chemical weapons. This paragraph

also states that for such access, the inspection team shall consult with the inspected State Party

Paragraph 16 of Part XI provides the inspection team with the right to collect samples in types and quantities it considers necessary. This paragraph further states that the inspected State Party shall:

— if deemed necessary and requested by the inspection team, assist in the collection of samples under the supervision of inspectors or inspection assistants; and

— permit and cooperate in the collection of appropriate control samples from areas neighboring the site of the alleged use and from other areas as requested by the inspection team.

Note that this differs from the general rules for sampling, which require the inspection team to allow the inspected State Party to take the samples (paragraph 52 of Part II of this Annex) and the challenge inspection rules, which make sampling subject to negotiation (paragraph 47 of Part X of this Annex). The difference reflects the judgment that protection of sensitive non-chemical weapons related information is less needed in cases of investigations of use of chemical weapons.

Paragraph 17 of Part XI describes the following as important collectible samples in the investigation of alleged use: toxic chemicals; munitions and devices; remnants of munitions and devices; environmental samples (air, soil, vegetation, water, snow, etc.); and biomedical samples from human or animal sources (blood, urine, excreta, tissue, etc.)

Paragraph 18 of Part XI states that if duplicate samples cannot be taken, and the analysis is performed at an off-site laboratory, the inspected States Party shall have the right to have any sample remaining, after analysis is completed, returned to it, upon request.

Paragraph 19 of Part XI states that if the inspection team deems it necessary to extend the investigation into a neighboring State Party to complete its inspection, the Director-General shall notify that State Party about the need for access to its territory and request and confirm arrangements for the safe reception of the team.

Paragraph 20 of Part XI provides for extension of the period of inspection in cases where the inspection team deems that safe access to a specific area relevant to the investigation is not immediately possible. This paragraph further states that the requesting State Party shall be informed immediately and the period of inspection shall be extended until safe access can be provided and the inspection team will have concluded its mission. Note that the initial period of inspection, if the request is made pursuant to Article IX, would be 84 hours (paragraph 57 of Part X of this Annex).

Paragraph 21 of Part XI states that the inspection team, in its investigation of the alleged use of chemical weapons, shall have the right to:

- interview and examine persons who may have been affected by the alleged use of chemical weapons;
- interview eyewitnesses of the alleged use of chemical weapons;
- interview medical personnel, and other persons who have treated or have come into contact with persons who may have been affected by the alleged use of chemical weapons; and
- access medical histories, if available, and be permitted to participate in autopsies, as appropriate, of persons who may have been affected by the alleged use of chemical weapons.

Section D (paragraphs 22 through 26) of Part XI sets forth the procedures for reports of investigations of alleged use of chemical weapons, including the schedule for reporting and the contents of such reports.

Paragraph 22 requires the inspection team to:

- submit a situation report to the Director–General not later than 24 hours after its arrival on the territory of the inspected State Party; and
- send progress reports as necessary, throughout the investigation.

Paragraph 23 of Part XI requires the inspection team to submit to the Director–General a preliminary report not later than 72 hours after its return to its primary work location and a final report not later than 30 days after its return to its primary work location, i.e. the headquarters of the Technical Secretariat or the place at which the team is normally stationed. This paragraph further requires the Director–General to promptly transmit the preliminary and final reports to the Executive Council and to all States Parties.

Note that if the investigation is conducted pursuant to paragraph 8 of Article X, the Director–General also must make reports to Executive Council beginning 72 hours after the investigation begins and continuing every 72 hours until the investigation is complete (paragraph 9 of Article X).

Paragraph 24 of Part XI states that any urgent need for assistance and any other relevant information required by the inspection team shall be indicated in the situation report. This paragraph also states that any further need for assistance that might be identified during the course of the investigation shall be indicated in the progress reports.

Paragraph 25 of Part XI states that the final report shall summarize the factual findings of the inspection, particularly with regard to the alleged

use cited in the request. This paragraph also states that a report of an investigation of an alleged use, i.e. essentially a summary of all of the progress reports, shall include a description of the investigation process, tracing its various stages, with special reference to:

- (a) The locations and time of sampling and on-site analyses; and
- (b) Supporting evidence, such as the records of interviews, the results of medical examinations and scientific analyses, and the documents examined by the inspection team.

Paragraph 26 of Part XI states that if the inspection team collects any information in the course of its investigation through, *inter alia*, identification of any impurities or other substances during laboratory analysis of samples taken, that might serve to identify the origin of any chemical weapons used, that information shall be included in the report, i.e. the report referred to in paragraph 25.

Section E (paragraph 27) states that in the case of alleged use of chemical weapons involving a State not Party to the Convention or in territory not controlled by a State Party, the Organization shall:

- closely cooperate with the Secretary-General of the United Nations; and
- if requested, put its resources at the disposal of the Secretary-General.

Note that the purpose of this provision is to encourage investigations by the UN of the alleged use of chemical weapons in places where the Organization does not have the legal authority to conduct them.

ARTICLE-BY-ARTICLE ANALYSIS OF THE ANNEX ON THE PROTECTION OF CONFIDENTIAL INFORMATION

The Confidentiality Annex consists of 23 paragraphs. It was developed to provide, in a manner consistent with the objectives of the Convention, protection for information obtained during inspection activities at both civilian and military facilities. The Confidentiality Annex builds on the fundamental obligation, stated in paragraph 5 of Article VIII of the Convention, that the Organization "shall take every precaution to protect the confidentiality of information on civil and military activities and facilities coming to its knowledge in the implementation of [the] Convention and, in particular, shall abide by the provisions set forth in the Confidentiality Annex."

The Confidentiality Annex has four sections. They address general principles for the handling of confidential information; employment and conduct of personnel in the Technical Secretariat; measures to protect sensitive installations and prevent disclosure of confidential data in the course of on-site verification activities; and procedures in case of breaches or alleged breaches of confidentiality. Thus, States Parties' information is protected by rules governing the collection, treatment and release of information by the Technical Secretariat, limitations on access and disclosure by individual employees of the Technical Secretariat, specific measures that States Parties may take to protect information, and procedures for punishment and redress when information is released without authorization.

Section A (paragraphs 1 through 4) of the Confidentiality Annex sets forth general principles for the handling of confidential information.

Paragraph 1 of this Annex states that the obligation to protect confidential information shall pertain to the verification of both civil

and military activities and facilities. (What information is considered confidential is discussed in paragraph 2(a).) It also sets forth, in three subparagraphs, the principles that apply to the Organization pursuant to the general obligations in Article VIII (principally, paragraph 5 of Article VIII discussed above.) Note that these subparagraphs contain the principal rules governing the collection of confidential information — the minimum amount necessary, high standards of integrity for inspectors, and agreements and regulations specifying precisely the information to which a State Party must allow access.

Subparagraph 1(a) states that the Organization shall require only the minimum amount of information and data necessary for the timely and efficient carrying out of its responsibilities under the Convention. This principle means that information that is not necessary shall not be requested, collected or retained.

Subparagraph 1(b) states that the Organization shall take the necessary measures to ensure that inspectors and other staff members of the Technical Secretariat meet the highest standards of efficiency, competence and integrity.

Subparagraph 1(c) states that the Organization shall develop agreements and regulations to implement the provisions of the Convention and shall specify as precisely as possible the information to which the Organization shall be given access by a State Party. Note that, in this regard, the Preparatory Commission will draft, *inter alia*, criteria for determining classification, guidelines for the release of information, and procedures to be followed in the event of breaches of confidentiality.

Paragraph 2 of this Annex sets forth the responsibilities of the Director-General with regard to protecting confidential information once it is collected or submitted by States Parties. Paragraph 2 is complex, consisting of eight subparagraphs, some of which are further divided into several parts. Basically, it sets forth the criteria for

determining confidentiality, the information that must be released to States Parties, criteria for release (including release of confidential information), classification levels, and rules for storing, handling, collecting and accessing confidential information.

The chapeau of paragraph 2 specifies that the Director-General have shall primary responsibility for ensuring the protection of confidential information, and is required to establish a stringent regime governing the handling of such information by the Technical Secretariat. The remainder of paragraph 2 sets forth the guidelines for the Director-General to follow in the establishment of a regime for the protection of confidential information.

Subparagraph 2(a) states that information shall be considered confidential if it is so designated by the State Party from which the information was obtained and to which the information refers or if, in the judgment of the Director-General, its unauthorized disclosure could reasonably be expected to cause damage to the State Party to which it refers or to the mechanisms for implementation of the Convention. Thus, a State Party may designate which specific information obtained from it is to be considered confidential, provided that the information refers to the State Party. Moreover, even if the State Party does not make such a designation, the Director-General has the independent authority to consider the information to be confidential.

Subparagraph 2(b) sets forth the specific information that the Technical Secretariat must share with States Parties. However, the subparagraph first states that all data and documents obtained by the Technical Secretariat shall be evaluated by the appropriate unit of the Technical Secretariat in order to establish whether they contain confidential information. Note that, while this creates a strong presumption that the information released should not include confidential information, pursuant to subparagraph 2(c), such information could be released in

limited circumstances in accordance with agreed procedures to be developed.

The remainder of subparagraph 2(b) addresses the sharing of information with States Parties. Specifically, it states that data required by States Parties to be assured of the continued compliance with the Convention by other States Parties shall be routinely provided to them. Such data shall encompass: the initial and annual reports and declarations provided by States Parties under Articles III, IV, V and VI, in accordance with the provisions set forth in the Verification Annex; general reports on the results and effectiveness of verification activities; and information to be supplied to all States Parties in accordance with the provisions of the Convention.

Subparagraph 2(c), in turn, addresses the broader publication or release of information by the Organization. Specifically, this subparagraph states that no information obtained by the Organization in connection with the implementation of the Convention shall be published or otherwise released, except in three cases. The three exceptions are, first, that general information on the implementation of the Convention may be compiled and released publicly in accordance with the decisions of the Conference or the Executive Council. The second exception is that any information may be released with the express consent of the State Party to which the information refers. The third exception is that information that is classified as confidential shall be released by the Organization only through agreed procedures which ensure that the release of information only occurs in strict conformity with the needs of the Convention. Such procedures are to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission. Note that, as discussed above, this part of subparagraph 2(c) applies to release of information to States Parties pursuant to subparagraph 2(b).

Subparagraph 2(d) addresses the level of sensitivity of confidential data of documents. Specifically, this subparagraph requires that the level of sensitivity of confidential data or documents be established, based on criteria to be applied uniformly in order to ensure their appropriate handling and protection. It further states that, for this purpose, a classification system shall be introduced, which, by taking account of relevant work undertaken in the preparation of the Convention, shall provide for clear criteria ensuring the inclusion of information into appropriate categories of confidentiality and the justified durability of the confidential nature of information. (The work referred to is material developed by the Conference on Disarmament during the negotiations of the Convention that was not ultimately included in the Convention, but was transferred to the Preparatory Commission.)

This subparagraph also states that while providing for the necessary flexibility in its implementation, the classification system shall protect the rights of States Parties providing confidential information. Such a classification system is to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Subparagraph 2(e) sets forth principles for the storage of confidential information. This subparagraph states that confidential information shall be stored securely at the premises of the Organization. It further states that some data or documents may also be stored with the National Authority of a State Party. Finally, it states that sensitive information, including, *inter alia*, photographs, plans and other documents required only for the inspection of a specific facility may be kept under lock and key at this facility.

Subparagraph 2(f) sets forth the principle that, to the greatest extent consistent with the effective implementation of the verification provisions of the Convention, information shall be handled and stored

by the Technical Secretariat in a form that precludes direct identification of the facility to which it pertains.

Subparagraph 2(g) sets forth the principle that the amount of confidential information removed from a facility shall be kept to the minimum necessary for the timely and effective implementation of the verification provisions of the Convention.

Subparagraph 2(h) sets forth the principles that access to confidential information shall be regulated in accordance with its classification and that the dissemination of confidential information within the Organization shall be strictly on a need-to-know basis.

Paragraph 3 of this Annex requires the Director-General to report annually to the Conference on the implementation of the regime governing the handling of confidential information by the Technical Secretariat.

Paragraph 4 of this Annex sets forth corresponding rules for treatment by States Parties of information that they receive from the Organization. Specifically, it requires each State Party to treat information which it receives from the Organization in accordance with the level of confidentiality established for that information. This paragraph also states that, upon request, a State Party shall provide details of the handling of information provided to it by the Organization.

Section B (paragraphs 5 through 12) of the Confidentiality Annex addresses employment and conduct of personnel in the Technical Secretariat. This represents the second basis for protecting the information of States Parties — restrictions on inspectors and other personnel of the Technical Secretariat. Specifically, it provides such security measures as formal limitations on access by position, secrecy agreements, and notification to a State Party of which individuals will have access to that State Party's information.

Paragraphs 5 and 6 of this Annex require certain conditions for employment in the Technical Secretariat. Paragraph 5 sets forth the requirement that conditions of staff employment must be such as to ensure that access to and handling of confidential information shall be in conformity with the procedures established by the Director–General in accordance with Section A of this Annex, i.e. the general principles for handling of confidential information. Paragraph 6 requires that each position in the Technical Secretariat must be governed by a formal position description that specifies the scope of access to confidential information, if any, needed in that position.

Paragraph 7 of this Annex concerns restrictions on the employees of the Technical Secretariat with regard to the disclosure of confidential information. Specifically, this paragraph states that the Director–General, the inspectors and the other members of the staff of the Technical Secretariat shall not disclose, even after termination of their functions, to any unauthorized persons any confidential information coming to their knowledge in the performance of their official duties. It also states that they shall not communicate to any State, organization or person outside the Technical Secretariat any information to which they have access in connection with their activities in relation to any State Party.

Paragraph 8 of this Annex makes clear that the general limitation on the collection of information, as set forth in paragraph 46 of Part II of the Verification Annex, applies to inspectors personally. Specifically, this paragraph states that in the discharge of their functions, inspectors shall only request the information and data that are necessary to fulfill their mandate. In addition, inspectors are prohibited from making any records of information collected incidentally and not related to verification of compliance with the Convention. These provisions thus work to limit the possibility that extraneous information collected during inspections will be retained.

Paragraph 9 of this Annex requires that the staff of the Technical Secretariat to enter into individual secrecy agreements with the Technical Secretariat covering their period of employment and a period of five years after their employment is terminated. Note that the specific provisions of these secrecy agreements remain to be developed. Note also that although, pursuant to paragraph 7 , the ban on release of confidential information continues indefinitely after termination of employment, secrecy agreements are limited to 5 years. This reflects the judgment that by the end of that time period, the value of the information to entities outside the Convention will be significantly reduced.

Paragraph 10 of this Annex requires the Technical Secretariat to take additional steps to avoid improper disclosures by mandating that inspectors and staff members be appropriately advised and reminded about security considerations and of the possible penalties that they would incur in the event of improper disclosure. (Specific penalties are discussed in paragraph 20 of this Annex.)

Paragraph 11 of this Annex sets forth the requirement that not less than 30 days before an employee is given clearance for access to confidential information that refers to activities on the territory or in any other place under the jurisdiction or control of the State Party, the State Party concerned shall be notified of the clearance. This paragraph further states that if the employee is an inspector, then the notification of a proposed designation shall fulfill this requirement, i.e. notification pursuant to paragraph 1 of Part II of the Verification Annex. Note that while a State Party has the explicit right, pursuant to paragraph 2 of Part II of the Verification Annex, to bar certain inspectors from inspections of its territory, a State Party does not have an explicit right to bar access of such an employee to information about it.

Paragraph 12 of this Annex sets forth the requirement that specific attention shall be given to an employee's record regarding protection of confidential information in evaluating the performance of inspectors and any other employees of the Technical Secretariat.

Section C (paragraphs 13 through 17) of the Confidentiality Annex sets forth the third basis for protecting information — measures that States Parties may take to protect sensitive installations and prevent disclosure of confidential data in the course of on-site verification activities, and additional requirements for inspection teams with regard to collection and reporting of information.

Paragraph 13 of this Annex sets forth the general right of States Parties to take such measures as they deem necessary to protect confidentiality, provided that they fulfill their obligations to demonstrate compliance in accordance with the relevant Articles and the Verification Annex. This paragraph further states that, when receiving an inspection, the State Party may indicate to the inspection team the equipment, documentation or areas that it considers sensitive and not related to the purpose of the inspection. Note that although these provisions are similar to those in the challenge inspection provisions (paragraphs 33 and 48 of Part X of the Verification Annex), they apply to all inspections.

Paragraph 14 of this Annex sets forth a critical principle to guide inspection teams conducting on-site inspections so that they will protect sensitive installations and prevent disclosure of confidential data. The principle is that inspection teams shall conduct on-site inspections in the least intrusive manner possible that is consistent with the effective and timely accomplishment of their mission. Moreover, inspection teams shall take into consideration proposals that may be made by the State Party receiving the inspection, at whatever stage of the inspection, to ensure that sensitive equipment or information, not related to chemical weapons, is protected. Note that although these provisions are

similar to those in the challenge inspection provisions (paragraphs 45 and 46 of Part X of the Verification Annex), they apply to all inspections.

Paragraph 15 of this Annex requires that inspection teams strictly abide by the provisions set forth in the relevant Articles and Annexes governing the conduct of inspections. This paragraph further states that inspection teams shall fully respect the procedures designed to protect sensitive installations and to prevent the disclosure of confidential data. Note that these procedures include, but are not limited to, those related to challenge inspections (Part X of the Verification Annex).

Paragraph 16 of this Annex makes clear that the requirement to protect confidential information includes verification arrangements and facility agreements and elaborates the elements to be included in facility agreements. Specifically, this paragraph states that in the elaboration of arrangements and facility agreements, due regard shall be paid to the requirement of protecting confidential information. It also states that the agreements on inspection procedures for individual facilities shall include specific and detailed arrangements with regard to the determination of those areas of the facility to which inspectors are granted access, the storage of confidential information on-site, the scope of the inspection effort in agreed areas, the taking of samples and their analysis, the access to records and the use of instruments and continuous monitoring equipment.

Paragraph 17 of this Annex sets forth principles to be followed in preparing reports after inspections so that the reports will protect confidential information. The general principle is that the report shall contain only facts relevant to compliance with the Convention. This paragraph also states that each report shall be handled in accordance with the regulations established by the Organization governing the handling of confidential information. Finally, this paragraph states that, if necessary, the information contained in the report shall be processed

into less sensitive forms before it is transmitted outside the Technical Secretariat and the inspected State Party.

Section D (paragraphs 18 through 23) of the Confidentiality Annex sets forth procedures to be followed in case of breaches or alleged breaches of confidentiality. Thus these procedures act as a deterrent to the unauthorized release of information, thereby providing additional protection for the information provided by or obtained from a State Party.

Paragraph 18 of this Annex states that the Director-General shall establish necessary procedures to be followed in the case of breaches or alleged breaches of confidentiality. Such procedures are to be considered and approved by the Conference pursuant to paragraph 21(i) of Article VIII, i.e. based on reports prepared by the Preparatory Commission.

Paragraph 19 of this Annex concerns the Director-General's responsibilities with regard to secrecy agreements. Specifically, this paragraph requires the Director-General to oversee the implementation of individual secrecy agreements and to promptly initiate an investigation if, in his or her judgment, there is sufficient indication that obligations concerning the protection of confidential information have been violated. This paragraph further states that the Director-General shall also promptly initiate an investigation if an allegation concerning a breach of confidentiality is made by a State Party.

Paragraph 20 of this Annex requires the Director-General to impose appropriate punitive and disciplinary measures on staff members who have violated their obligations to protect confidential information. This paragraph further states that, in cases of serious breaches, the immunity from jurisdiction may be waived by the Director-General. This means that if immunity is waived, the State Party suffering an injury from the violation could sue the employee for damages or even criminally prosecute the employee.

Paragraph 21 of this Annex sets forth the requirement for States Parties, to the extent possible, to cooperate and support the Director-General in investigating any breach or alleged breach of confidentiality and in taking appropriate action in case a breach has been established. The addition of the term "and support" to the general obligation to cooperate means that the State Party should actively assist the Director-General in such cases.

Paragraph 22 of this Annex states that the Organization itself is not liable for any breach of confidentiality committed by members of the Technical Secretariat. Note that this represents a judgment that, on balance, States Parties' interests are best served by creation of a variety of safeguards designed to avoid breaches of confidentiality and procedures to address breaches, rather than by financial redress for breaches, which could subject the Organization, and ultimately the States Parties funding it, to potentially large judgments for damages.

Paragraph 23 of this Annex addresses breaches that involve both a State Party and the Organization. This paragraph states that in such cases, a "Commission for the settlement of disputes related to confidentiality," is to be set up as a subsidiary organ of the Conference, and shall consider the case. This paragraph further states that the Commission shall be appointed by the Conference and rules governing its composition and operating procedures shall be adopted by the Conference at its first session. The purpose of this paragraph is to provide a guaranteed forum for addressing complaints by States Parties regarding unauthorized release of information by the Organization and other States Parties.