
Dear Ambassador Üzümcü,


Since this paper is specifically meant for the Third Review Conference, it focuses on the results of the Second Review Conference, the preparatory material for the Third Review Conference and suggestions for the future priorities of the OPCW and recent topics.

The Chemical Weapons Convention receives the full, unconditional support of the global chemical industry. ICCA, which represents the global chemical industry, wishes to reaffirm that its membership remains committed to and involved in implementing the Convention at national, regional and international level. Industry support is a natural extension of its globally recognized Responsible Care programme, especially the Global Product Strategy, which requires the responsible stewardship of chemical products throughout the supply chain.

We are looking forward to further constructive cooperation between the OPCW and the chemical industry to demonstrate that our sector is an active stakeholder and a natural partner.

Yours sincerely,

Hubert Mandery

The global chemical industry will be widely valued and supported for its economic, social and environmental contributions to society

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ICCA Position Paper for the Third Review Conference

“...achievements in the field of chemistry should be exclusively for the benefit of mankind...”
(CWC Preamble)

A. Introductory comment
Since this paper is meant specifically for the 3rd Review Conference, it focuses on the results of the 2nd Review Conference, preparatory material for the 3rd Review Conference, suggestions for the future priorities of the OPCW and recent topics in the Industry cluster. Other issues will be addressed separately.

B. Who we are
The International Council of Chemical Associations (ICCA) is the world-wide voice of the Chemical Industry, representing chemical manufacturers and producers all over the world (see Appendix 1 for members). In 2011, ICCA had a turnover of about €3,000 billion and accounts for about 90% of global chemical sales (incl. observers & Responsible Care members).
Homepage: www.icca_chem.org

C. What we stand for
Throughout the negotiations and subsequent entry into force of the CWC, the Convention received the full unconditional support of the global Chemical Industry. ICCA wishes to reaffirm that its membership remains committed to and involved in implementing the CWC at national, regional and international level. Industry’s support of the CWC is a natural extension of its globally recognized and award winning Responsible Care® Global Charter, and especially the Global Product Strategy requiring responsible stewardship of Chemical Industry products throughout the supply/value chain.¹

D. What we propose
The Report of the Advisory Panel on Future Priorities of the Organisation for the Prohibition of Chemical Weapons² (hereafter called “Advisory Panel Report”) gave valuable advice i.a. on how to improve the efficiency of the functioning of the CWC (see also comments by Cefic, the European Chemical Industry Council in Appendix 2).

Specifically, it mentions:
“More efforts should be made by the OPCW to engage with Chemical Industry”³ and “The Director-General may also consider setting up a group of experts from Chemical Industry to advise the OPCW on how to better interact with the Chemical Industry”.⁴ ICCA members have in the past been in constructive and intensive discussions with their respective National or Regional Authorities and with the OPCW bodies. We are ready to do this also in the future.

Discussions with the Technical Secretariat (TS) have shown that one way of institutionalizing this dialogue between the OPCW and Chemical Industry may be the formation of a “Chemical Industry Coordination Group”. As an informal group, it would not run counter to

¹ http://www.icca-chem.org/en/Home/Responsible-care/
³ Advisory Panel Report, par. 119
⁴ Advisory Panel Report, par. 45
other decision-making or advisory bodies, such as the Conference of States Parties (CSP), the Executive Council (EC) or the Scientific Advisory Board (SAB).

Working groups could be established to cover topics such as:

**Education and Outreach**

ICCA and OPCW have a mutual interest that chemical products are only used for legitimate purposes. Both sides have launched a host of projects and activities in this respect. It may be useful to join forces for specific target groups⁵.

**Chemical Safety and Security (CSS)**

This is a core competency of the Chemical Industry. Vast programs already exist to “protect people from chemicals and chemicals from people”. ICCA with OPCW can join hands in developing programs covering the whole value chain and wherever possible should engage national or regional authorities to avoid duplicating efforts and help plug the gaps in existing frameworks and regulations. Due to the widely varying standards and legal frameworks of CSS in States Parties (SPs), such activities should only be provided upon request and not be linked to any verification activities.

**Improvement of Verification**

More than 15 years after entry into force of the CWC and after far more than 2000 inspections in Chemical Industry, there should be enough experience on the sides of the TS and on the Inspected States Parties as well as Chemical Industry Representatives to conduct declaration and inspection activities with progressively lower effort and time (“continuous improvement process⁶”, “learning curve⁷”). However, the opposite seems to be the case in part. There are concepts to complicate declarations, and inspections are stretching resources on Inspectors, Escort Teams and Facility Representatives to a point where the inspection mandate may be exceeded and violations of labour laws on maximum working hours cannot be ruled out. Chemical Industry is ready to provide input into this discussion; see especially the following section “What our positions are”. OPCW and Chemical Industry should find a working mode for Industry Cluster discussions to move away from talking about industry to talking with industry.

**What our positions are**

Art. 1

We fully support the concept that the first and foremost goal of the CWC is to destroy all stockpiles of chemical weapons and destroy or convert all related facilities, as exemplified in the *Report of the Second Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (Second Review Conference) 7-18 April 2008*⁸ (hereinafter called “2nd RC Report”) and the *Review of the Operation of the Chemical Weapons Convention Since the Second Review Conference*⁹ (hereinafter called “Review”).

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⁵ 2nd RC Report, par. 9.77; Review, par. 3.67
⁶ http://en.wikipedia.org/wiki/Continuous_Improvement_Process
⁷ http://en.wikipedia.org/wiki/Learning_curve
⁹ WGRC-3/1, 5 October 2012
We also support the concept of Universality\textsuperscript{10} in order to create a level playing field in global chemical production as well as trans-boundary shipments. The progress made (188 SPs) and the efforts by all bodies of the CWC are highly valued and appreciated by us.

\textbf{Art. III and VI}

In line with OPCW demands\textsuperscript{11}, we encourage the complete and timely submission of all declarations in order to create a level playing field for all States Parties and thus all chemical companies\textsuperscript{12}. There are still significant gaps\textsuperscript{13}. Status Reports are useful\textsuperscript{14}, but OPCW should consider mechanisms to enforce compliance, e.g. by increasing the frequency of inspections in countries which fail to submit completely and timely.

\textbf{Art. VI}

We agree with the conclusions of the 2\textsuperscript{nd} RC Report, that an effective verification system has been established\textsuperscript{15}. Any changes should only be implemented if they reduce complexity, time or effort. As outlined under the comments for the Verification Annex, this seems not always to be the case.

\textbf{Art. VII}

As was repeatedly pointed out\textsuperscript{16}, there is substantial progress, but still huge compliance deficits in implementation by some States Parties. This must remain a priority for the OPCW, since it puts chemical companies of complying States Parties at a competitive disadvantage with its counterparts of non-complying States Parties. We therefore welcome the very important implementation-support programmes of the Technical Secretariat\textsuperscript{17}.

\textbf{Art. VIII.}

We agree with the conclusions of the 2\textsuperscript{nd} RC Report, that the Scientific Advisory Board (SAB, Par. 21(h), 45) “should continue to play an objective and balanced role in advising the Director-General”\textsuperscript{18} and on proposals how to enhance its capabilities\textsuperscript{19}. Since the focus of the SAB topics is more and more on Chemical Industry-related issues, we encourage the Director-General and SPs to nominate more representatives from this industry.

\textbf{Art. IX}

We view verification provisions under Art. VI largely as confidence-building measures: facilities that are not declared will not be verified. We therefore assume that no declarable and inspectable facility will violate the core principles of the CWC. Still, Art. VI in conjunction with Art. IX could be the most powerful deterrent to would-be violators: Any facility which

\textsuperscript{10} 2nd RC Report, par. 9.12-9.18; Review, par. 3.11-3.52
\textsuperscript{11} 2nd RC Report, par. 9.23, 9.44, 9.45 and 9.60; Review, par. 3.182
\textsuperscript{12} Review, par. 3.186, 3.188
\textsuperscript{13} Summary of Verification Activities in 2011; S/1042/2012/Rev.1, 2 November 2012, par. 7.5-10
\textsuperscript{14} Review, par. 3.187
\textsuperscript{15} 2nd RC Report, par. 9.5
\textsuperscript{16} 2nd RC Report, par. 9.72-9.80; Review, par. 3.251
\textsuperscript{17} Review, par. 3.254-3.260
\textsuperscript{18} 2nd RC Report, par. 9.11
\textsuperscript{19} 2nd RC Report, par. 9.129-9.134 ; Review, par. 3.417
potentially should have declared, but does not, deserves special attention. Therefore, Art. IX with its escalating mechanism of consultation and clarification before challenge, must be upheld. This includes a high standard of readiness to conduct a challenge inspection or an investigation of alleged use, which is also what 2nd RC Report demands and the Review reemphasizes. Chemical Industry does not support the notion that a Challenge Inspection is too confrontational; rather it is ready to accept it — and prove the opposite — rather than giving this instrument up, and certainly not in exchange for “challenge light” with routine verification.

Art. X

We support, that “...the OPCW as well as the States Parties...achieve an effective capability...against the use, or threat of use, of chemical weapons...” As recent events have shown, the danger of the use of chemical weapons either by states or non-state actors is still there. It is therefore premature to concentrate efforts on confidence-building/non-proliferation.

Art. X and XI

We welcome the findings of the 2nd RC report, that “...OPCW coordinates its activities with ...other...organisations...to build on existing competencies, develop synergies, and avoid duplication of efforts...including the active engagement of Chemical Industry.” This holds e.g. for Chemical Industry participation in the Associate Program, and in the future in the area of Chemical Safety and Security, see also “What we propose.”

Annex on Implementation and Verification (“Verification Annex”)

General

1. We would like to recall that any verification measures “shall avoid undue intrusion into the SP’s chemical activities for purposes not prohibited under the CWC.” Any new/modified proposals need to be challenged by this provision.

2. Inspection activities must be restricted to normal working hours (usually around 8 hours per day). Requesting extensions may violate local labor laws and may make the management and the employees of plant sites liable to fines. In case of an accident, be it on the plant site or on the way to or from work, it may even result in criminal charges. Generally, the provisions of the CWC do not specify that every inspection aim needs to be achieved with every inspection, and definitely not that all tools need to be utilized within one inspection (e.g. sampling and analysis plus physical inspection plus record review). Inspectors should be given flexibility as to scope and intrusiveness, depending on plant site conditions.

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20 2nd RC Report, par. 9.87-9.90
21 Review, par. 3.295
22 2nd RC Report, par. 9.9, 9.91-109
23 Review, par. 3.380
24 2nd RC Report, par. 9.116(g) and (h); Review, par. 3.496
25 Review, par. 3.340-344
26 Review, par. 3.330, 3.364-369, 4.16-4.18
27 2nd RC Report, par. 9.57
28 CWC, Confidentiality Annex, C.14
29 Review, par. 3.168, 3.175a
In this connection, it should be noted that industry on a voluntary basis at times provides support, to which it is not legally obliged (rooms, laboratory space, utilities, etc.), but without which the inspection would not be complete or could not be finished in time.

3. Production by synthesis, including biologically mediated processes\textsuperscript{30}: There are both arguments for and against inclusion\textsuperscript{31}. Since inclusion could potentially increase the number of declarable and inspectable plant sites dramatically (e.g. all facilities producing bioethanol), which would run counter to the spirit of the CWC, this issue needs to be considered cautiously, and thus should be taken up by the SAB and the proposed Working Group on Improvement of Verification.

4. With respect to declaration of cessation of activities\textsuperscript{32}, we see a need to address this issue and offer to work on a declaration format to accommodate this type of change.

5. Sequential inspections\textsuperscript{33} may reduce the cost of inspections\textsuperscript{34}. Chemical Industry is open to this concept; however this must not lead to any extensions of the individual inspection time for each inspection (see point 2), just in order to squeeze e.g. two inspections into a Monday to Friday schedule. This issue should be taken up by the proposed Working Group on Improvement of Verification.

6. Combined inspections\textsuperscript{35} of mixed plant sites may also reduce the cost of inspections and the total inspection time for one company. Chemical Industry welcomes this concept; This issue should also be taken up by the proposed Working Group on Improvement of Verification.

We support the recent idea voiced by one States Party that OCPF facilities also registered under a Schedule 2 or 3 regime may be excluded under the OCPF regime since declaration and verification requirements are already basically covered. This could be further operationalized by the proposed Working Group on Improvement of Verification.

Of course, all selection procedures should strictly follow the stipulations of the VA Part VII to IX.

7. Voluntary measures are at times proposed in the Verification context\textsuperscript{36}. While voluntary measures in other contexts are useful and welcome (e.g. support of the Associate Program by Chemical Industry), care should be taken regarding voluntary measures in a verification context because:

a. They may suggest standards which may then be considered legal requirements.

b. They create uncertainty for industry (for example, what happens if voluntary measures are not applied or are violated?).

c. They may create non-uniform compliance norms for companies in different States Parties (no level playing field).

\textsuperscript{30} Review, par. 3.157
\textsuperscript{31} e.g. Definition in Art. II, par. 12a and C-II/Dec.6 of 5 December, 1997; “production” vs. “production by synthesis”
\textsuperscript{32} 2nd RC Report, par. 9.62
\textsuperscript{33} Review, par. 3.143
\textsuperscript{34} Review, par. 3.154-3.156
\textsuperscript{35} Review, par. 3.159b
\textsuperscript{36} e.g. Review, par. 3.159c, 2nd Report, par. 9.62
8. We agree that there is no need for States Parties to provide additional information in declarations.\(^{37}\)

9. We disagree that there are plant sites with high or low relevance to the object and purpose of the Convention\(^ {38}\). What it takes to produce Chemical Weapons is (political) will, know-how and resources, to retrofit any existing plant or build a new one. There are no objective criteria for “flexibility” or “convertibility”. Therefore, no plant site is inherently more relevant than another, even though from a purely chemical engineering and economic point of view some plant sites might be better suited than others\(^ {39}\). Trying to define criteria by additional reporting requirements would only further complicate the already difficult situation of OCPF declarations.\(^ {40}\)

VA, Part VII, C.31 and Part VIII, C.26

As the 2nd RC Report urged\(^ {41}\), we also request that all States Parties implement the provisions on transfers of Schedule 2 and 3 chemicals.

VA, Part VIII and IX

Sampling and Analysis (S&A) at Schedule 3 and other chemical production facilities is viewed very critically by us. We do not currently see, that “…collection, preparation and analysis of the samples take place within the inspection period, which is shorter for Schedule 3 and OCPF inspections than for Schedule 2 inspections.”\(^ {42}\) As outlined under Nr. 2, we are already worried about the inspection time, and this additional activity would seriously aggravate the situation. To define certain S&A activities as being outside of the inspection time is not a solution\(^ {43}\). It is therefore too early to discuss “Guidelines to select inspections”\(^ {44}\) before the basics are clarified.

VA, Part IX

Product Group Codes are used to describe the main activities of a plant which produces scheduled chemicals\(^ {45}\) or of a plant site producing unscheduled discrete organic chemicals\(^ {46}\). They follow the UN Statistics Division’s “Standard International Trade Classification” (SITC) codes\(^ {47}\). Therefore, they should not be modified (with subcodes) or amended in order to avoid further confusion, and certainly not to introduce arbitrary additional risk categories. Since there now already exists a confusion of some States Parties using subcodes, while others don’t (see also our comments to “Voluntary Measures” under General, Nr. 7), we suggest to the Technical Secretariat to:

1. inform National Authorities that they should only use CWC-relevant SITC codes,

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\(^{37}\) Review, par. 3.238

\(^{38}\) Review, par. 3.243


\(^{40}\) Review, par. 3.148

\(^{41}\) 2nd RC Report, par. 9.69

\(^{42}\) Review, par. 3.174

\(^{43}\) Technical Secretariat Non-Paper, July 2012

\(^{44}\) Technical Secretariat Briefing Materials, 21 November 2012

\(^{45}\) e.g. VA, Part VIII, par. 7c,

\(^{46}\) VA, Part IX, par. 4c

b. allow them to continue using all SITC codes (because it might otherwise mean change of national implementation legislation which would be overdoing it), and
c. attach a factor of 0 to non-relevant SITC codes (such as 579: waste, parings and scrap, of plastics) for the plant site-selection process.

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

Thanks to the good cooperation between the Technical Secretariat, the National Authorities and the inspected plant sites, we have so far not seen any breaches of confidentiality. However, we would request to keep this issue a priority, as it was expressed in the 2nd Review Conference Report\(^{48}\) and the Review\(^{49}\).

Final comments

1. The OPCW website has been significantly improved. It is up to date and provides a lot of information, including extensive posting of documents\(^{50}\). This creates transparency and enables interested persons to follow developments. We support further efforts in this direction\(^{51}\).
2. In order to improve the data monitoring on chemicals and therefore the implementation of the CWC obligations on plant site level, a more user-friendly access to the Scheduled Chemicals Database would be highly welcomed by ICCA. The current format does allow only a manual, time-consuming and inefficient screening of the relevant chemicals.
3. We support the accreditation of the quality management system of the OPCW by an internationally recognized body\(^{52}\). This is standard practice in most chemical companies and thus eases the alignment of declaration and inspection processes.
4. We agree with the finding of the 2nd Review Conference Report, that "...the OPCW has matured...and developed into a well-established multilateral organisation for achieving the object and purpose of the Convention."\(^{53}\) We further agree to the "importance of the involvement...of Chemical Industry...in the promotion of the Convention’s goals..."\(^{54}\) and other activities\(^{55}\). One possibility is the proposed "Chemical Industry Coordination Group"\(^{56}\). We are ready and looking forward to a further constructive cooperation between OPCW and the Chemical Industry.

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\(^{48}\) 2nd RC Report, par. 9.46, 9.120-9.125
\(^{49}\) Review, par. 3.384-3.396, 3.418
\(^{50}\) e.g. Summary of Verification Activities, Programme Performance, Implementation
\(^{51}\) Review, par. 3.484
\(^{52}\) Review, par. 3.428
\(^{53}\) 2nd RC Report, par. 9.126
\(^{54}\) 2nd RC Report, par. 9.136
\(^{55}\) Review, par. 3.503-505
\(^{56}\) Review, par. 3.505
### Appendix 1

**ICCA member countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Association name</th>
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<tbody>
<tr>
<td>Argentina</td>
<td>Camara de la Industria Quimica y Petroquimica (CIQyP)</td>
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<td>Australia</td>
<td>The Plastics and Chemical Industries Association (PACIA)</td>
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<td>Austria</td>
<td>FCIO - Fachverband der Chemischen Industrie Österreichs</td>
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<td>Belgium</td>
<td>Essenscia</td>
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<td>Brazil</td>
<td>Associacao Brasileira da Industria Quimica (Abiquim)</td>
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<td>Bulgaria</td>
<td>Bulgarian Chamber of Chemical Industry</td>
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<td>Canada</td>
<td>Chemistry Industry Association of Canada</td>
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<td>Chile</td>
<td>Asociacion Gremial de Industriales Quimicos de Chile (ASIQUIM)</td>
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<td>Croatia</td>
<td>UKI Association of Chemical Industry/Udruzenje Kemijske Industrie</td>
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<td>Czech Republic</td>
<td>SCHIP - Association of Chemical Industry of the Czech Republic</td>
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<td>Denmark</td>
<td>PIBF - Procesindustriens Brancheforening</td>
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<td>Federation of Estonian Chemical Industries / Eesti Keemiatocstuue Liit</td>
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<td>France</td>
<td>UIC - Union des Industries Chimiques</td>
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<td>Germany</td>
<td>VCI - Verband der Chemischen Industrie e. V.</td>
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<td>United States of America</td>
<td>American Chemistry Council (ACC)</td>
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<td>United Arab Emirates, Kuwait, Oman, Bahrain, Qatar, Saudi Arabia</td>
<td>Gulf Petrochemical and Chemical Associations (GPCA)</td>
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**ICCA Observers**

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<tr>
<td>China</td>
<td>China Associations (CPCIF, AICM, TRCA, PIAT, TCIA)</td>
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<td>Russia</td>
<td>Russian Chemist Union (RCU)</td>
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<td>India</td>
<td>Indian Chemical Council (ICC)</td>
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**ICCA Responsible Care countries**

*All countries mentioned above

and including:

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<th>Country</th>
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<td>Colombia</td>
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Cefic welcomes the report of the Advisory Panel chaired by H. E. Mr Rolf Ekeus which overall is a very balanced assessment of the future priorities of the OPCW and the changed external environment in which the organisation operates. The following text provides industry’s initial analysis of the report.

We like:

- References that recognise responsible behaviour within industry as the primary defence to stop commercially available toxic chemicals getting into the wrong hands. Industry supports the General Purpose Criterion (para 38).
- The report rightly points at the effects of globalisation and the need for ever more advanced chemical technology to achieve sustainable development. Cefic endorses the statement that the OPCW should support the authorities of newly emerging chemical producing countries to implement the Convention. Effective national controls over transfers of relevant chemicals and technologies are key for the success of the Convention. We welcome the suggestion that the OPCW should provide assistance to national authorities (paras 18, 42, 92 - 104) to better understand and meet their responsibilities, e.g. with voluntary guidelines.
- We fully endorse the statement that the completion of the elimination of the declared stockpiles remains the primary task of the OPCW, that striving for universal adherence to the Convention remains a central objective (paras 23-31) and that the Advisory Panel does not propose inventing new tasks for the OPCW (para 8).
- We welcome the explicit recognition of the contribution of the chemical industry to the prevention of proliferation through its Responsible Care Initiative (para 41). We particularly welcome the suggestion to improve the dialogue with the chemical industry by the setting up of a group of experts from the chemical industry to advise the OPCW on how to better interact with the industry (paras 45, 119).
- We endorse the suggestions that the OPCW should study the matter of using open source information for verification purposes (para 49).
- We agree that the non-use of challenge inspections might erode its deterrent effect (para 65).
- We support the suggestions made in order to improve the evaluation of advances in science and technology and that chemical industry is an important partner in these conversations (paras 74-80).

We dislike:

- The suggestion to regularly review the Schedules of the Convention (paras 51-52). We consider that this should only be undertaken when better implementation of declaration obligations has been achieved. Schedules may then be reviewed in light of demonstrated
existence of new risks in so far not adequately covered by the OCPF verification regime. Updating the schedules with chemicals that could theoretically pose a risk will deviate from the focused approach followed until now while creating additional burden for industry.

- We are concerned with regards to the suggestion that the OPCW should direct inspections more consistently towards facilities of so-called high relevance, taking account of the provisions with regards to equitable geographical distribution and the overall ceiling of OCPF inspections per year and additional State Party declaration data (paras 53-55). Disparities in declaration practice by States Parties already result in a wrong distribution of inspections. Collecting more information is likely to increase such disparities. The report does not mention the suggestion put forward by industry to combine inspections under different Schedules.

- The wording (in paras 64-66) on challenge inspections remains very diplomatic. Industry considers that routine and challenge inspections are not substitutable. We regard routine inspections of industrial sites to be a confidence-building measure rather than for detecting violations of the CWC.

16 August 2011