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1 April 2019

**Observations on the Report of the United Nations Secretary-General (A/73/419):  
Gaps in International Environmental Law and Environment-Related Instruments:  
Towards a Global Pact for the Environment**

**Introduction**

1. In a letter from the Acting Executive Director of the United Nations Environment Programme (UN Environment), dated 17 December 2018, the Organisation for the Prohibition of Chemical Weapons (OPCW) was invited to provide written observations on the Report of the United Nations Secretary-General (A/73/419): Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment (Secretary-General's Report). The OPCW welcomes the opportunity to provide such comments, which are contained below.
2. As the implementing body for the Chemical Weapons Convention (Convention), the Technical Secretariat of the OPCW works in cooperation with States Parties to verify the destruction of chemical weapons in accordance with the environmental law principles of prevention and precaution. The Convention is a cooperative effort towards disarmament without harm to the environment. Preservation of the environment is one of the primary obligations for all States Parties under the Convention.
3. The following response will first address how the principles of prevention and precaution are reinforced in the Convention. Thereafter, the response will outline the OPCW operations that illustrate the cooperation principle. The response will conclude with elaborating upon the OPCW's efforts towards sustainable development and protection of the environment, including the atmosphere, soil, and water.

**Prevention**

4. The customary international law principle of prevention<sup>1</sup> is, as stated in the Secretary General's Report, intrinsic to a preference in international law for preventing

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<sup>1</sup> Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), Principle 21; Rio Declaration on Environment and Development (Rio Declaration), principles 2, 14, 18, and 19; International Union for Conservation of Nature and Natural Resources, *Draft International Covenant on Environment and Development: Implementing Sustainability*, 5th ed. (2015), Article 6.

environmental harm rather than compensating for harm that has already occurred.<sup>2</sup> The prevention principle is present in the Convention, as States Parties are mandated to assign the highest priority to protecting the environment during the transportation, sampling, storage, and destruction of chemical weapons in accordance with national standards for safety and emissions, under paragraph 10 of Article IV of the Convention. Moreover, chemical weapons may only be destroyed at specifically designated and appropriately designed and equipped facilities, pursuant to paragraph 13 of Part IV(A) of the Convention's Annex on Implementation and Verification (Verification Annex); and, the appropriate environmental permits are required for such facilities, pursuant to paragraph 32 of Part IV(A) of the Verification Annex.

5. Paragraph 13 of Part IV(A) of the Verification Annex explicitly prohibits States Parties from destroying chemical weapons by employing destruction processes that have known environmental risks, including destruction by land burial, open-pit burning, or dumping in any body of water.
6. Pursuant to paragraph 6(e) of Part IV(A) of the Verification Annex, a State Party's general plan for destruction of chemical weapons must include the national standards for safety and emissions that the destruction facilities must satisfy;<sup>3</sup> and, such destruction plans are subject to the review of the OPCW Executive Council, pursuant to paragraph 20 of Part IV(A) of the Verification Annex.
7. The foregoing provisions of the Convention embody the principle of prevention, as opposed to post-destruction remediation or compensation, as States Parties are obliged to handle and ultimately destroy their chemical weapons stockpiles in a manner that prevents harm to the environment.

### **Precaution**

8. The Secretary General's Report refers to the precautionary approach towards environmental risk,<sup>4</sup> which aims to provide guidance in the development and application of international environmental law in the face of scientific uncertainty.<sup>5</sup>
9. Precaution is a principle that was included in the Convention in respect of the prohibited destruction methodologies for chemical weapons, namely land burial, open-pit burning, and dumping in any body of water, pursuant to paragraph 13 of Part IV(A) of the Verification Annex. Although there may have been scientific uncertainty at the time of adoption of the Convention about the environmental effects of these destruction

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<sup>2</sup> UNGA, Report of the Secretary-General: Gaps in international environmental law and environment-related instruments: Towards a global pact for the environment (30 November 2018) A/73/419, p. 7 (Secretary General's Report).

<sup>3</sup> Chemical Weapons Convention, Article III (1)(a)(v).

<sup>4</sup> UNGA, Secretary General's Report, p. 25, para. 59.

<sup>5</sup> Sands, P., *et al.*, Principles of International Environmental Law, Cambridge (3<sup>rd</sup> ed. 2012), p. 218; Rio Declaration, principle 15; United Nations Framework Convention on Climate Change, Article 3; World Charter for Nature, principle 11(b).

methodologies, the States that negotiated and signed the Convention nevertheless chose to include them out of precaution.

## Cooperation

10. The principle of cooperation, as stated in the Secretary-General's Report, "entails an obligation upon States to cooperate in good faith and in a spirit of global partnership towards the fulfilment of the conservation, protection, and restoration of the integrity of the Earth's ecosystem".<sup>6</sup>
11. Pursuant to Article IV, paragraph 12 of the Convention, States Parties undertake to cooperate with other States Parties that request information or assistance on a bilateral basis or through the OPCW's Technical Secretariat regarding methods and technologies for the safe and efficient destruction of chemical weapons. Paragraph 3 of Article VII of the Convention requires State Parties, during the implementation of their obligations under the Convention, to assign the highest priority to ensuring the safety of people and to protecting the environment and to cooperate with other States Parties in this regard.
12. From 2013–2014, the OPCW (through the OPCW-United Nations Joint Mission on the elimination of Syrian chemical weapons) coordinated international efforts to remove and destroy the Syrian chemical weapons arsenal during an active armed conflict in order to prevent the further use of chemical weapons.<sup>7</sup> In 2016, the OPCW coordinated a multinational operation to remove the remainder of Libya's chemical weapons stockpile and is currently overseeing an environmental clean-up of the storage facility that housed the chemicals.<sup>8</sup> Both of these operations were conducted in a manner consistent with applicable international environmental standards.
13. The principle of cooperation was also evident in the international cooperation that was provided to the Russian Federation to assist it in the destruction of its stockpile of chemical weapons under the strict international verification regime of the Chemical Weapons Convention.<sup>9</sup> Moreover, the Chemical Weapons Convention's commercial industry verification and transfer control regimes are examples of States Parties cooperating within the context of the OPCW in order to ensure that toxic chemicals are not used for purposes prohibited by the Convention, thus safeguarding against harm to humans, animals, and the environment.

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<sup>6</sup> UNGA, Secretary General's Report, p. 9.

<sup>7</sup> OPCW Executive Council Decision, Destruction of Syrian Chemical Weapons (EC-M-33/DEC.1), dated 27 September 2013; Background of the Organisation for the Prohibition of Chemical Weapons – UN Joint Mission, accessible at <https://opcw.unmissions.org/background>, last access on 13 March 2019.

<sup>8</sup> OPCW news on the destruction of Libya's chemicals, accessible at <https://www.opcw.org/media-centre/news/2016/09/libyas-remaining-chemical-weapon-precursors-arrive-safely-and-securely>, last access on 13 March 2019.

<sup>9</sup> OPCW news on the complete destruction of Russian chemical weapons stockpile, accessible at <https://www.opcw.org/media-centre/news/2017/09/opcw-director-general-commends-major-milestone-russia-completes> and <https://www.opcw.org/media-centre/news/2017/10/opcw-marks-completion-destruction-russian-chemical-weapons-stockpile>, last access on 13 March 2019.

## Sustainable Development

14. There is a direct link between the work of the OPCW and the essential tenets of sustainable development, a salient principle stated in the Secretary-General's Report.<sup>10</sup> The Brundtland Report, which was published in 1987 by the World Commission on Environment and Development, addressed the environmentally unpredictable consequences of biological and chemical weapons.<sup>11</sup> OPCW, as the implementing body of the Chemical Weapons Convention, establishes a robust multilateral regime that prohibits the production and stockpiling of chemical weapons,<sup>12</sup> thereby contributing to securitisation and the creation of beneficial conditions for the pursuit of development goals in various spheres, including the social, political, economic, humanitarian, and ecological. The OPCW has verified the destruction of almost 97% of the world's declared chemical weapons stockpile, and the last possessor State Party is due to complete the destruction of its arsenal before the projected deadline in 2023. The comprehensive ban on the development, storage, and use of chemical weapons—along with the achievement of complete disarmament in the near future—unlocks resources that had in the past been used for militarisation, thus delivering a “peace dividend” that alternatively can be used for sustainable development projects.
15. Armed conflict and arms competition are recognised barriers to sustainable development as the material resources and expenditure diverted to conflict and destructive activities—instead of social and economic development—inhibit the potential for future generations to meet their own needs.<sup>13</sup> The Chemical Weapons Convention is a cooperative effort towards disarmament and UN Sustainable Development Goal 16 (Peace, Justice, and Strong Institutions), which aims to strengthen relevant national institutions (including through international cooperation), prevent violence, and combat crime.<sup>14</sup>
16. The Convention promotes, under Article XI, economic and technological development and international cooperation in the field of chemical activities not prohibited under the Convention. In this way, the Convention contributes to UN Sustainable Development Goal 17 (particularly Goal 17.6 in relation to international cooperation on, and access to, science, technology, and innovation).<sup>15</sup> The OPCW has positively acknowledged the need to cooperate closely with chemical industry, think tanks, academia, the scientific and technological community, and civil society in order to empower broader participation in the Organisation's mission and leverage the capabilities of others to

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<sup>10</sup> UNGA, Secretary General's Report, pp. 11-12.

<sup>11</sup> World Commission on Environment and Development, *Our Common Future* (Oxford University Press, Oxford; New York, 1987) (Brundtland Report), Chapter 2, paras 1, 15, 22.

<sup>12</sup> Chemical Weapons Convention, Article V, para. 3; Verification Annex, Part IV (A).

<sup>13</sup> UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (25 September 2015) A/RES/70/1, paras 35, 42.

<sup>14</sup> UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (25 September 2015) A/RES/70/1 (Goal 16: Promote just, peaceful, and inclusive societies).

<sup>15</sup> UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (25 September 2015) A/RES/70/1 (Goal 17: Global Partnership for Sustainable Development).

achieve common goals.<sup>16</sup> The Advisory Board on Education and Outreach, a subsidiary body of the Organisation made up of fifteen independent experts, ensures that the Organisation's education and outreach activities, and those of States Parties, are effective, sustainable, cost-effective, and benefit from the latest advances in education and outreach theory or practice, thereby maintaining the Convention's role as a bulwark against chemical weapons through outreach, capacity building, education, and public diplomacy.<sup>17</sup>

## **Protection of the Atmosphere, Soil, and Water**

### *Atmosphere*

17. The Secretary General's Report addresses environmental law gaps pertaining to climate change, mercury pollution, and stratospheric ozone layer depletion.<sup>18</sup> In this regard, the OPCW has encouraged the safe handling and disposal of mercury wastes through sulphur-impregnated charcoal filters and pollution abatement systems, thereby contributing to the mitigation of climate change.<sup>19</sup>
18. The Secretary General's Report also refers to the "Convention on Long-Range Transboundary Air Pollution" as an important instrument regulating air pollution.<sup>20</sup> In this context, the Chemical Weapons Convention is consistent with efforts to regulate air pollution in the context of chemical weapons destruction by requiring States Parties to obtain environmental permits and comply with the national standards for safety and emissions during the destruction process.<sup>21</sup>
19. The Convention's prohibition of the destruction of chemical weapons by open-pit burning is another means by which pollution to the atmosphere is avoided, including the release of greenhouse gases and depletion of the ozone layer.<sup>22</sup>

### *Soil*

20. The Secretary General's Report addresses environmental law gaps pertaining to soil degradation.<sup>23</sup> The Convention's prohibition of land burial as a methodology for destroying chemical weapons is consistent with efforts to combat small and large-scale land degradation.<sup>24</sup>

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<sup>16</sup> Annex to Note by the Technical Secretariat entitled "The OPCW in 2025: Ensuring a World Free of Chemical Weapons" (S/1252/2015, dated 6 March 2015), paras 4, 31.

<sup>17</sup> OPCW Conference of the States Parties, Decision on Establishment of an Advisory Board on Education and Outreach (C-20/DEC.9, dated 3 December 2015).

<sup>18</sup> UNGA, Secretary General's Report, pp. 14-17.

<sup>19</sup> Note by the Director-General: Status Report on the Progress Made by Those States Parties That Have Been Granted Extensions of Deadlines for the Destruction of their Chemical Weapons (EC-58/DG.11\*, dated 7 October 2009).

<sup>20</sup> UNGA, Secretary General's Report, pp. 17-18.

<sup>21</sup> Chemical Weapons Convention, Articles IV (10), V (11); Verification Annex, Part IV(A), para. 32.

<sup>22</sup> Verification Annex, Part IV(A), para. 13.

<sup>23</sup> UNGA, Secretary General's Report, pp. 21-22.

<sup>24</sup> Verification Annex, Part IV(A), para. 13.

## ***Water***

21. The Secretary-General's Report identifies threats to the marine ecosystem, including increased water pollution and depletion and endangerment of species.<sup>25</sup> The OPCW, in cooperation with the State Parties, seeks to prevent the pollution of the marine environment by prohibiting the destruction of chemical weapons by dumping them in any body of water.
22. The OPCW has conducted contingency operations in Syria and Libya in compliance with applicable environmental norms aimed at protecting the marine environment,<sup>26</sup> thereby contributed to UN Sustainable Development Goal 14 (conservation and sustainability of marine resources).<sup>27</sup>

## **Conclusion**

23. In all the foregoing ways, the Convention, its States Parties, and the OPCW have contributed to principles of international environmental law. The United Nations General Assembly has emphasised the importance of the observance of environmental norms in the preparation and implementation of disarmament agreements.<sup>28</sup> As stated during the negotiation of the Convention in the United Nations Conference on Disarmament, “[t]he destruction of chemical weapons is not just a political and security objective; it is also an environmental objective.”<sup>29</sup>

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<sup>25</sup> UNGA, Secretary General's Report, pp. 23-24.

<sup>26</sup> OPCW news on the destruction of Libya's chemicals, accessible at <https://www.opcw.org/media-centre/news/2016/09/libyas-remaining-chemical-weapon-precursors-arrive-safely-and-securely>, last access on 13 March 2019; <https://www.opcw.org/media-centre/news/2018/01/opcw-director-general-praises-complete-destruction-libyas-chemical-weapon>, last access on 13 March 2019; infographics on the destruction of Syria's chemicals accessible at [https://www.opcw.org/sites/default/files/documents/files/Syria\\_Infographic.pdf](https://www.opcw.org/sites/default/files/documents/files/Syria_Infographic.pdf), last access on 13 March 2019.

<sup>27</sup> UNGA, Transforming Our World: The 2030 Agenda for Sustainable Development (25 September 2015) A/RES/70/1 (Goal 14: Conserve and sustainably use the oceans, seas, and marine resources for sustainable development).

<sup>28</sup> UNGA, Resolution on the Observance of Environmental Norms in the Drafting and Implementation of Agreements on Disarmament and Arms Control (2 December 2008) A/RES/63/51.

<sup>29</sup> Final record of the Five-Hundred and Eighty-Sixth Plenary Meeting (7 March 1991) CV/PV.586 (Book 41).