Sea-dumped CW under the Chemical Weapons Convention

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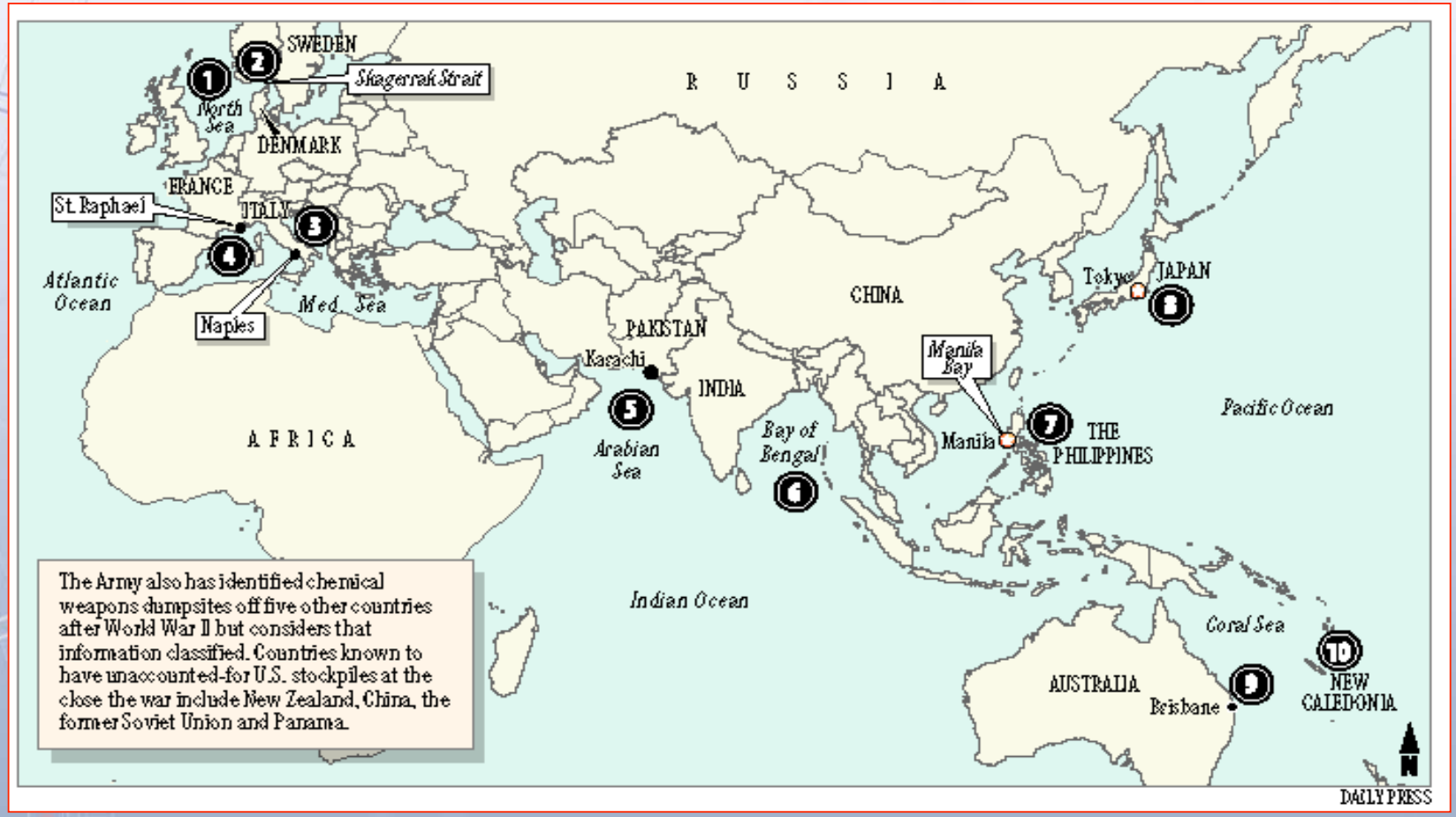
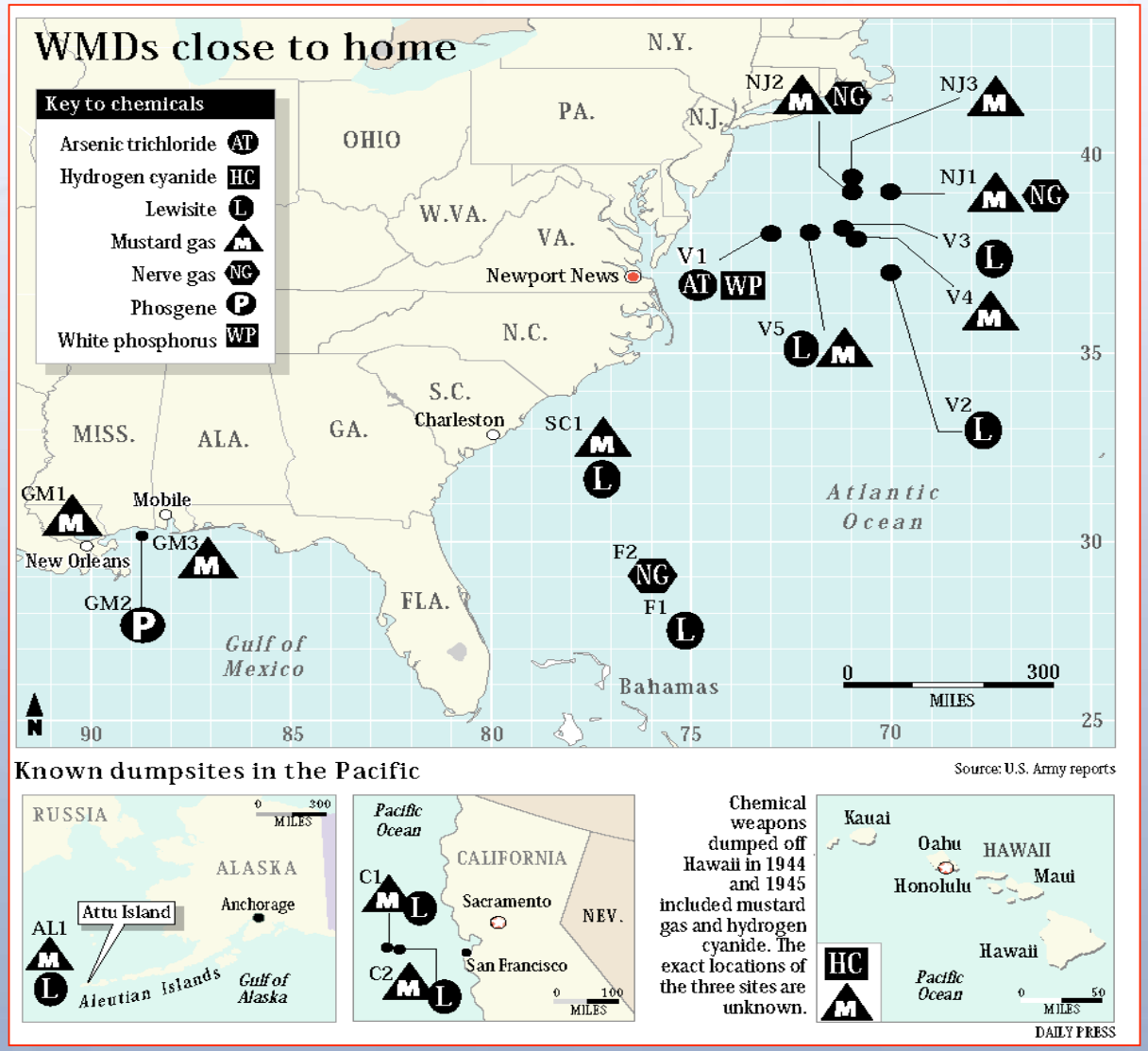


CW dumping after World War II – in front of the US coast



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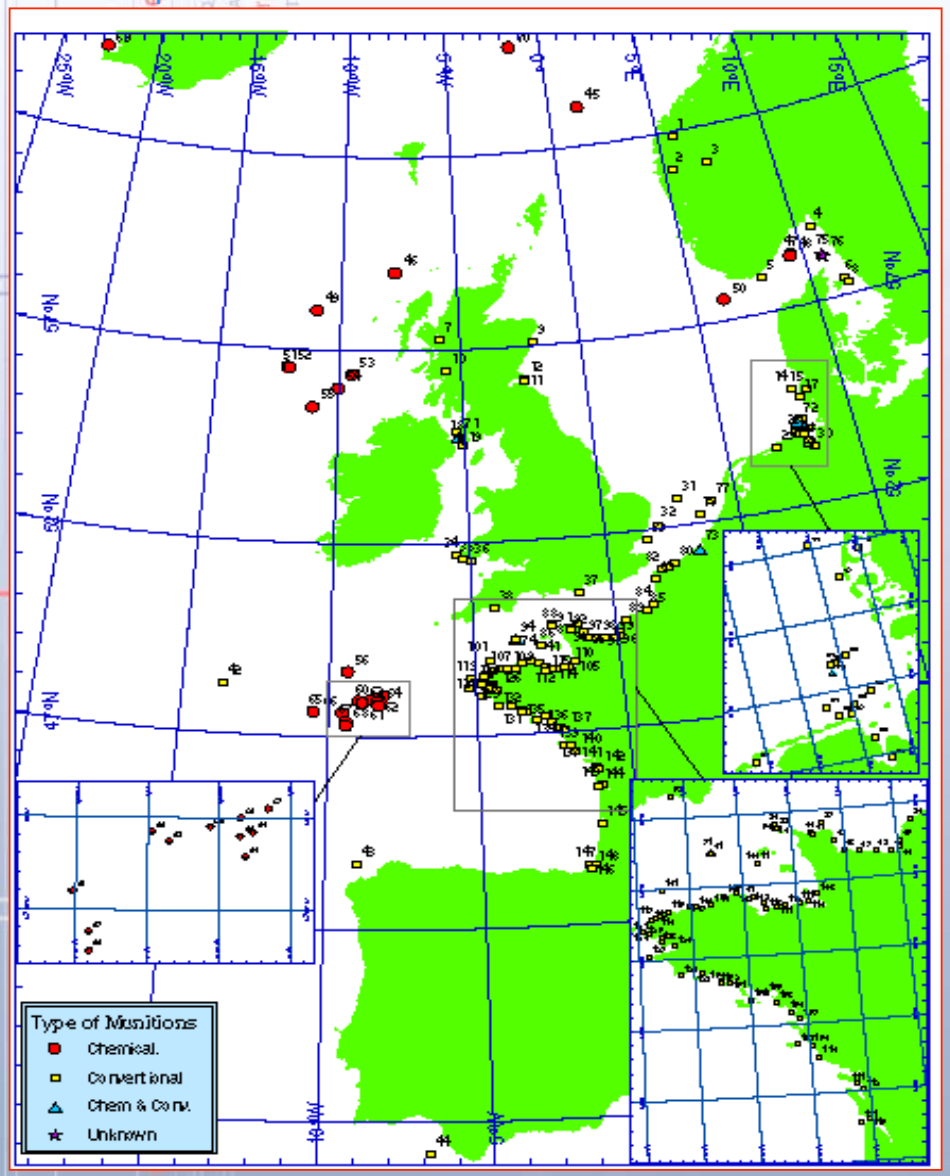
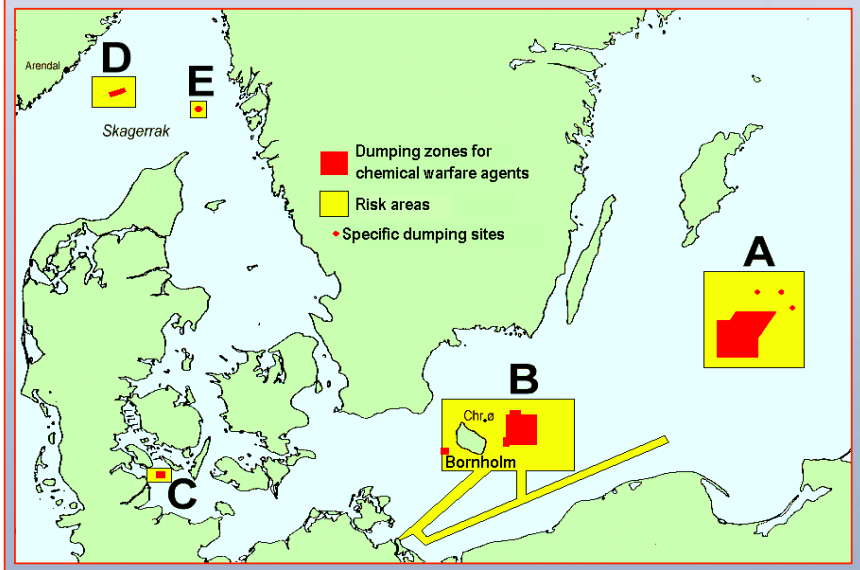
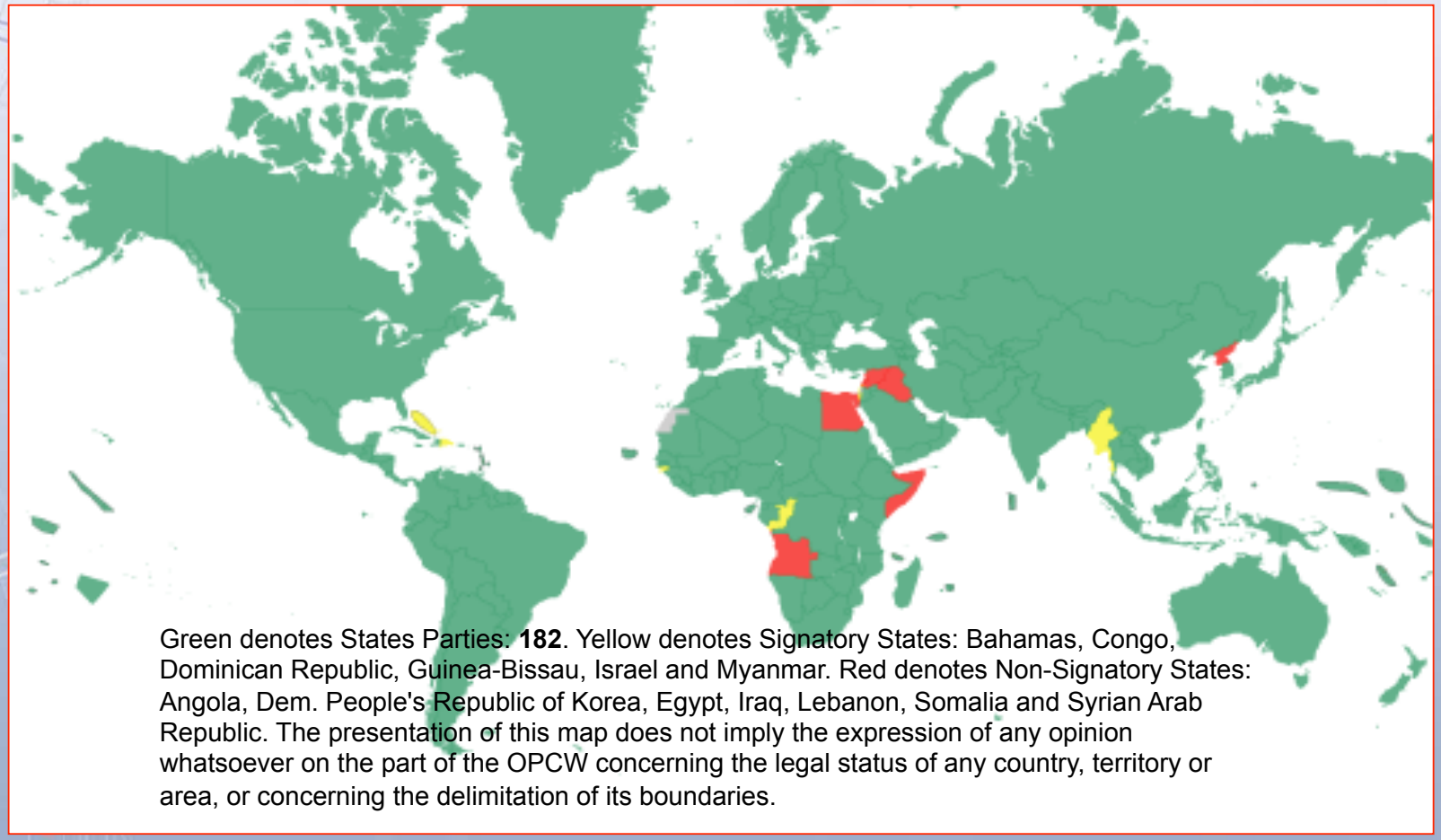
European dumping areas

compiled by the OSPAR Commission or by the Governments of Contracting Parties to the OSPAR Convention 2005





Chemical Weapons Convention – Entry into Force 27 April 1997



Green denotes States Parties: **182**. Yellow denotes Signatory States: Bahamas, Congo, Dominican Republic, Guinea-Bissau, Israel and Myanmar. Red denotes Non-Signatory States: Angola, Dem. People's Republic of Korea, Egypt, Iraq, Lebanon, Somalia and Syrian Arab Republic. The presentation of this map does not imply the expression of any opinion whatsoever on the part of the OPCW concerning the legal status of any country, territory or area, or concerning the delimitation of its boundaries.

CWC: CW destruction and verification

- CWC mainly focuses on:
  - to assure that States Parties having declared chemical weapons are destroying these weapons regarding the treaty related time-schedule
  - and that now and in the future a general prohibition of chemical weapons is secured.
- CWC had also to cope with aspects of CW remaining from the past.
- Certain provisions under Article II (Definitions), Article III (Declarations) and Article IV (Chemical Weapons) define clearly the exceptions from the general definition of Chemical Weapons and the resulting destruction regime

Chemical Weapons under CWC

Chemical Weapons as defined under the CWC Article II 'Definitions and Criteria':

(a) *Toxic chemicals and their precursors* (except where intended for purposes not prohibited under this 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).

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CWC – 10 years after entry into force

CWC's main disarmament component:

- Each State Party undertakes to 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 this Convention. (Article I, paragraph 2)

Chemical agent and munitions/containers declared and destroyed; CWPFs declared and destroyed end of July 2007:

	Chemical agent (tonnes)	Munitions/containers (million items)	Chemical Weapons Production Facilities (CWPFs)
Declared	71,330	8.67	65
Destroyed	23,912	2.78	42
Converted for peaceful purposes	n.A.	n.A.	19

Article II is defining two categories of CW related items from the past:

- **"Old Chemical Weapons"** means:

  (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.

- **"Abandoned Chemical Weapons"** means:

  "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."

- For these two categories under Articles III and IV clear provisions for declaration and destruction are defined. In addition, Verification Annex Part IV (A) and IV (B) details the verification measures to be applied.

Questions to be solved under CWC:

How to cope with sea-dumped CW and land-buried CW?

- It was clear that past dumping activities during and after World War II in particular had to be treated in such a way under the CWC, which **would not make the former possessor States responsible for their recovery and destruction**.

- Who, if anyone, should be responsible for former CW possessed by a state during World War II that was **subsequently captured by the Allies and dumped after the war into international waters**?

- Is a **State Party recovering sea-dumped CW to be regarded as a CW possessor**?

CWC approach for sea-dumped and land-buried CW

- Besides that special regime for CW from the past, Articles III and IV contain two exemptions which are related to past "**disposal**" activities:

  (a) land disposed CW,
  (b) sea-disposed CW.

- The CWC uses in Article III and IV the following phrase for the exemptions:

  "The provisions of this Article 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*."

- Certain aspects to be important:
  - "*remain buried*" **?**
  - at the *discretion* of a State Party **?**
  - *cut-off* date of 1 January 1985 **?**
  - *no* destruction obligations **?**
  - what about *internal* water dumping **?**

The exemption from declarations under Article III for sea-dumped CW **cannot be easily explained**, however, certain historical aspects might have led to that compromise, such as:

(1) General history of CW disposal operations and circumstances;

(2) common understanding that after World War II the situation for munitions disposal and especially chemical munitions, was one which doesn't comply with nowadays understanding of munitions disposal;

(3) the understanding that the States Parties, having conducted disposal operation after World War II, couldn't made responsible after 60 years to recover these munitions;

(4) some of the possessors of the after World War II dumped CW don't exist any longer in terms of the definition of a State Party.

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Hope for illumination the CW dumping history after 1946?

Information on former dumping (before 1 January 1985) may be contained in the information provided to OPCW under paragraph 5 of Part IV (A) of the Verification Annex which requires States parties to declare any CW which it has " transferred or received " since 1 January 1946 as long as the total transferred exceeds "1 tonnes per chemical per year in bulk/and or munitions form".

Reality

- **Ten years of CWC in force have shown no declarations relevant to dumping.**

Present Situation

- The **knowledge and the understanding about the long-term behaviour of sea-dumped CW and possible threats** resulting these munitions have been increasing over the last 10 years.
- Quite intensive **examinations on corrosion of munitions and degradation of chemical agents in aquatic media** have led to better perceptions on the possible threats.
- On the other side, the understanding that any kind of **economical activities in territorial/international waters "polluted" with dumped CW should be minimized to the extent possible**, before not having a practicable solution for possible required recoveries of these dangerous munitions material, is growing.

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The following basic principles for dumped CW should be applied:

(1) Any recovered sea-dumped CW should remain under the responsibility of the State Party having recovered it;

(2) Based upon the exemption from the declaration requirement under CWC, there should be no way to transfer recovered sea-dumped CW under the strict destruction and verification obligations, as of Verification Annex IV (A) or Annex IV (B);

(3) A State Party recovering dumped CW should report to OPCW on the recovery on quantities, type of material as far as possible. This reporting should be voluntary and not result in any follow-up destruction and verification obligations.

(4) With recovering sea-dumped CW a State Party cannot be regarded as a possessor State Party, as per definition under the CWC.

(5) The disposal of recovered sea-dumped chemical weapons material should be performed under the same principles as applied for “toxic wastes”, if this material meets the “non-usability criterion”, as applied under Verification Annex IV (B), Paragraph 6.

(6) In case the recovered sea-dumped chemical weapons material is meeting the “usability criterion”, the material is to be destroyed under the same regime as for chemical weapons.

Final remarks instead of Conclusions

- Since the EIF of the CWC no recovery of CW sea-dumped (dumped after 1985) has been performed;
- CWC provides no tool to solve the problems related to CW sea-dumped;
- Sea-dumped CW are already down at the bottom of the sea for many decades; bringing these munitions up will increase the potential dangers and threats these remnants from war might still pose;
- The more years the dumped material will stay at the bottom of the sea the more time will be added to the deterioration process on-going;
- If recovery on sea-dumped CW in the future should be performed, the concerned states should have clarified all necessary aspects: technically, cost-wise and legally, before starting the recovery and destruction operation;
- Only publicly demanding a solution for clearing areas from former sea-dumped CW, without having the practical tools available, doesn't contribute to the process.

Thank you for your attention

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