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**MODEL NATIONAL IMPLEMENTING LEGISLATION
FOR THE CHEMICAL WEAPONS CONVENTION**

presented to the

Fourth African Regional Seminar on National Implementation of the
Chemical Weapons Convention

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MODEL NATIONAL IMPLEMENTING LEGISLATION FOR THE CHEMICAL WEAPONS CONVENTION

1 INTRODUCTION

Good day. It is an honor to address this distinguished audience. I am grateful to the Federal Democratic Republic of Ethiopia for hosting this important gathering and to the staff of the Provisional Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (PTS) for sponsoring it. I also want to express my gratitude to the DePaul University Human Rights Law Institute, the Merck Foundation, and Argonne National Laboratory for supporting my participation here. This workshop is another excellent opportunity for all of us to learn from each other about how the Chemical Weapons Convention¹ (CWC) can become a foundation of arms control in Africa and around the world. At this meeting I speak only for myself, neither for the government of the United States of America nor for any other institution.

Today, I shall discuss model national implementing legislation under the CWC. Such implementing legislation is likely to be required in every State Party — not only to the few States Parties that will declare and destroy chemical weapons, but also to the many States Parties that have never had a chemical weapons programme.

This new need for national measures to implement multilateral arms control agreements has generated unease due to a perception that implementation may be burdensome and at odds with existing national law. In 1993, concerns arose that the complexity of integrating the treaty with national law would cause each nation to implement the Convention without regard to what other nations were doing, thereby causing inconsistencies among States Parties in how the Convention would be carried out.

As a result, my colleagues and I prepared the *Manual for National Implementation of the Chemical Weapons Convention* and presented it to each national delegation at the December 1993 meeting of the Preparatory Commission in The Hague. During its preparation, the *Manual* was reviewed by the Committee of Legal Experts on National Implementation of the Chemical Weapons Convention, a group of distinguished international jurists, law professors, legally-trained diplomats, government officials, and Parliamentarians from every region of the world, including Africa.

The *Manual* tries to increase understanding of the Convention by identifying its obligations and suggesting methods of meeting them. Education about CWC obligations and available alternatives to comply with these requirements can facilitate national responses that are consistent among States Parties. Thus, the *Manual* offers options that can strengthen international realisation of the Convention's goals if States Parties act compatibly in implementing them. Equally important,

1. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, *opened for signature* Jan. 13, 1993, 32 I.L.M. 800 (1993) [hereinafter CWC].

it is intended to build confidence that the legal issues raised by the Convention are finite and addressable.

At prior African regional meetings on CWC implementation, I have discussed various aspects of national implementation. During the September 1994 regional seminar in Pretoria, Republic of South Africa, I presented an overview of national implementation obligations under the Convention. In Yamoussoukro, République de Côte d'Ivoire in May 1995, my contribution discussed very specific issues of concern in Africa — protection of confidential business information, establishment or designation of a national authority, and transfer of Scheduled chemicals. My three papers at that workshop compared several enacted national CWC implementing statutes available in English in order to show how national implementing measures could approach the Convention's requirements differently. I am glad to provide copies of these earlier papers to any delegates at this meeting who might request them.

Today, I shall take a somewhat different approach. Whereas in the past my colleagues and I have limited our contributions to explaining broad options for national implementation of CWC obligations, this paper is more specific. It collects and organizes provisions from all of the enacted national implementing legislation that is available in English into a single, simple model statute. Our purpose in preparing this text was to meet a need that we understand exists in some States Signatory for specific legislative language that can be used as a starting point for preparing draft measures for their own national legislatures. This model text, which we have entitled the *Model Chemical Weapons Convention Implementing Statute for a State Party with Nil Declarations*, is included as Appendix A to this paper.

2 METHOD OF DEVELOPING MODEL STATUTE

The *Model Chemical Weapons Convention Implementing Statute for a State Party with Nil Declarations* is written from the perspective of a State Party that possesses neither chemical weapons nor their production facilities. Although it is primarily intended for use by a nation that will not need to declare Scheduled chemicals or related facilities at the time the Convention enters into force, it includes provisions that would meet the Convention's national implementation obligations in this regard if a State Party later becomes responsible under the Convention for such chemicals or facilities. In other words, this model legislation is intended to be a basic, simple text that can be adapted to the needs of individual States Signatory both at present and over time.

Recognizing the value of the prior work that has been devoted to developing national implementing legislation, as well as the importance of consistency between States Parties in their national implementing measures, this model statute relies almost entirely on already-enacted legislation. It was prepared by weaving together the simplest and most universally applicable

individual provisions from the national statutes enacted by Australia,² Canada,³ Germany,⁴ Norway,⁵ and the Republic of South Africa.⁶ These five were the only enacted laws available in a full English translation at this writing.

Readers of the *Model Chemical Weapons Convention Implementing Statute for a State Party with Nil Declarations* need to be aware of several rules that were followed as it was written. First, the statute from which each provision was taken is indicated in the right-hand column entitled "Sources." Second, where applicable, the "Sources" column also includes reference to appropriate sections of the *Manual for National Implementation of the Chemical Weapons Convention* (referred to in the model statute as the "*Manual*") in order to assist readers who may wish to know more about the specific CWC obligation that the provision meets or elaborates. Third, generic names in italics (e.g., "*Name of State Party*") have been substituted in the model text for proper names contained in the text of the original source. Finally, while the model provisions are as nearly identical to the original source as possible, it was necessary for grammatical and legal consistency to change some wording. In such instances, any new material not contained in the cited statute is bracketed, and the location of material in the original that was omitted from the model is indicated with ellipses (i.e., "... " or "...").

The model should be employed with caution because it was not developed for any specific national legal system. Before any nation uses this language to develop its own CWC national implementing legislation, our model must be thoroughly reviewed in light of that nation's constitution and laws, as well as against existing national policies. Careful attention must be paid both to ensuring that such national legislation is prepared in accordance with accepted national formats and to confirming that it meshes with existing governmental and legal structures.

In many cases, it was necessary to select language for the model text from among similar provisions in some or all of the five source statutes. When faced with this choice, the selected text

2. Chemical Weapons (Prohibition) Act 1994 (No. 26 of 1994) (assented to 25 February 1994) (hereinafter Australian Implementing Legislation).

3. Chemical Weapons Convention Implementation Act, Bill C-87 (1st Session, 35th Parliament, 42-43-44 Elizabeth II, 1994-95) (published under the authority of the Speaker of the House of Commons by the Queen's Printer for Canada) (hereinafter Canadian Implementing Legislation).

4. Implementation Act on the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (2 August 1994), unofficial English translation provided to Edward A. Tanzman on 27 January 1995 by the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons (hereinafter German Implementing Legislation).

5. Law on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, undated unofficial English translation provided to Anthony R. Zeuli on 16 November 1994 by the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons (hereinafter Norwegian Implementing Legislation).

6. Non-Proliferation of Weapons of Mass Destruction Act of 1993 (No. 87 of 1993), 337 *Government Gazette* No. 14919 (2 July 1993) (hereinafter South African Implementing Legislation).

was chosen for its simplicity, universality, and consistency with other sections of the model. For example, all five laws contain penal provisions, but only the Canadian language is brief, comprehensive, and written largely to stand alone, without extensive cross-referencing to other national laws that are not available. In many cases, the differences between these national laws are small. Thus, selection of particular language for this model is intended neither as an endorsement of that particular language, nor as disapproval of equivalent provisions of other statutes. On the contrary, any of these five laws, as well as the model legislation developed by the PTS, could serve as an excellent model on its own, and all of their drafters should be congratulated for their outstanding work. Readers are encouraged to consult all of these enacted statutes in their full text to gain a much better understanding of available options than can be obtained merely from this model.

3 CONCLUSIONS

National implementing legislation is a CWC obligation that can be met with relative ease. The *Model Chemical Weapons Convention Implementing Statute for a State Party with Nil Declarations* is intended to show how such a law can be written by combining provisions of already-enacted statutes from fellow States Signatory. International cross-fertilization in this endeavor will result in more coherent CWC implementation.

APPENDIX A:

**MODEL CHEMICAL WEAPONS CONVENTION IMPLEMENTING STATUTE
FOR A STATE PARTY WITH NIL DECLARATIONS**

APPENDIX A:

MODEL CHEMICAL WEAPONS CONVENTION IMPLEMENTING STATUTE FOR A STATE PARTY WITH NIL DECLARATIONS

Model Legislative Text	Sources
BE IT ENACTED by the <i>Head of State</i> and the <i>National Legislature</i> of the <i>Name of State Party</i> , as follows:	South African National Implementing Legislation, enacting clause.
1. Object of Act. The object of this Act is to give effect to certain obligations that <i>Name of State Party</i> has as a party to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.	Australian National Implementing Legislation, § 3; <i>Manual</i> , § 1.2.
2. Interpretation. (a) In this Act, “Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, signed in Paris, France on January 13, 1993, as amended from time to time pursuant to Article XV of the Convention. . . . (b) Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.	Canadian National Implementing Legislation, § 2.
3. Extra-Territorial Operation of Act. This Act extends to acts done or omitted to be done by a <i>Name of State Party</i> citizen outside <i>Name of State Party</i> or to acts done on board <i>Name of State Party</i> ships and aircraft.	Australian National Implementing Legislation, § 5; <i>Manual</i> , § 1.3.
4. National Authority. For the purpose of implementing <i>Name of State Party</i> ’s obligations under the Convention and of giving effect to paragraph 4 of Article VII of the Convention, the <i>Head of State</i> may designate any portion of the public service of <i>Name of State Party</i> to be the National Authority of <i>Name of State Party</i> .	Canadian National Implementing Legislation, § 3(1); <i>Manual</i> , § 2.

Model Legislative Text	Sources
<p>5. Chemical Weapons and Riot Control Agents. No person shall:</p> <ul style="list-style-type: none"> (a) develop, produce, otherwise acquire, stockpile, or retain a chemical weapon, or transfer, directly or indirectly, a chemical weapon to anyone; (b) use a chemical weapon; (c) engage in any military preparations to use a chemical weapon; (d) assist, encourage, or induce, in any way, anyone or engage in any activity prohibited to a State Party under the Convention; or (e) . . . use a riot control agent as a method of warfare. 	<p>Canadian National Implementing Legislation, § 6-7; <i>Manual</i>, § 4.1.</p>
<p>6. Toxic Chemicals and Precursors. Except as authorized by or pursuant to section 13 of this Act, no person shall:</p> <ul style="list-style-type: none"> (a) produce, use, acquire, or possess a toxic chemical or precursor listed in Schedule 1 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention; (b) export or import a toxic chemical or precursor listed in Schedule 1 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention; (c) export or import a toxic chemical or precursor listed in Schedule 2 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention; or (d) export or import a toxic chemical or precursor listed in Schedule 3 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention. 	<p>Canadian National Implementing Legislation, § 8-10; <i>Manual</i>, § 3.</p>

Model Legislative Text	Sources
<p>7. Information and Documents. Every person who does anything under an authorization referred to [in section 13 of this Act] or who produces, possesses, consumes, exports, or imports a toxic chemical or precursor listed in Schedule 2 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention or who produces, exports, or imports a toxic chemical or precursor listed in Schedule 3 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention or who produces a discrete organic chemical or who holds a riot control agent for riot control purposes shall:</p> <p>(a) provide the prescribed information, at the prescribed time and in the prescribed form, to the National Authority or to such other portion of the public service of <i>Name of State Party</i> as the <i>Head of State</i> may by order authorize to collect the information; and</p> <p>(b) keep and maintain the prescribed documents in <i>Name of State Party</i>, at the person's place of business or at such other place as may be designated by the <i>Head of State</i>, in the prescribed manner and for the prescribed period and, on request by the <i>Head of State</i> or the National Authority, provide the documents to the National Authority.</p>	<p>Canadian National Implementing Legislation, § 11; <i>Manual</i>, § 5.</p>

Model Legislative Text	Sources
<p>8. Inspections.</p> <p>(a) Subject to this Act, an international inspector may, at any reasonable time and consistent with the provisions of the Convention:</p> <p style="padding-left: 40px;">(1) enter any place in <i>Name of State Party</i> —</p> <p style="padding-left: 80px;">(A) in respect of which information has been provided under section [7 of this Act];</p> <p style="padding-left: 80px;">(B) that is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention; or</p> <p style="padding-left: 80px;">(C) in respect of which an investigation under paragraph 9 of Article X of the Convention has been initiated;</p> <p style="padding-left: 40px;">(2) inspect the place in a manner consistent with the provision of the Convention and any facility applicable to the place; and</p> <p style="padding-left: 40px;">(3) where appropriate, install, use, and maintain in respect of any such place monitoring instruments, systems, and seals in a manner consistent with the provisions of the Convention and any facility agreement applicable to the place.</p> <p>(b) While carrying out a challenge inspection, an international inspector may be accompanied by an observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention.</p>	<p>Canadian National Implementing Legislation, § 13; <i>Manual</i>, §§ 6.1-6.2.</p>

Model Legislative Text	Sources
<p>(c) A representative of the National Authority or an international inspector may not enter a place referred to [in subsection (a) of this section] without the consent of the [proprietor] except under the authority of a warrant issued under subsection (d) [of this section].</p> <p>(d) Where, on <i>ex parte</i> application, a justice is satisfied by information on oath that —</p> <p style="padding-left: 40px;">(1) a place referred to in [subsection (a) of this section] meets the conditions for entry described in [this] section;</p> <p style="padding-left: 40px;">(2) entry to the place is necessary for any purpose relating to the administration of this Act or the regulations; and</p> <p style="padding-left: 40px;">(3) entry to the place has been refused or there are reasonable grounds to believe that entry will be refused,</p> <p>the justice may issue a warrant authorizing the representative of the National Authority and the international inspector named in it to enter the place for the purposes of the inspection . . . , subject to such conditions as may be specified in the warrant.</p> <p>(e) A warrant authorizing entry into a place . . . is not required if the conditions for obtaining the warrant exist but, by reason of exigent circumstances, it would not be practicable to obtain the warrant.</p> <p>(f) In executing a warrant issued under subsection (d) [of this section], a representative of the National Authority or an international inspector shall not use force unless the representative or inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant.</p>	<p>Canadian National Implementing Legislation, § 15; <i>Manual</i>, § 6.4.</p>

Model Legislative Text	Sources
<p>10. [Confidentiality].</p> <p>(a) Information and documents obtained pursuant to this Act or the Convention are privileged.</p> <p>(b) Information and documents are not privileged to the extent that they are required to be disclosed or communicated for the purposes of an emergency involving public safety.</p> <p>(c) No person in possession of privileged information or documents shall knowingly, without the written consent of the person from whom they were obtained, communicate them or allow them to be communicated to any person, or allow any person to have access to them, except —</p> <p style="padding-left: 40px;">(1) for the purpose of the enforcement of this Act or of giving effect to the Convention; or</p> <p style="padding-left: 40px;">(2) pursuant to an obligation of the <i>Name of State Party</i> under the Convention.</p> <p>(d) Notwithstanding any other Act or law, no person shall be required, in connection with any legal proceeding, to produce any statement or other record containing privileged information or documents, or to give evidence relating to them, unless the proceedings relate to the enforcement of this Act.</p>	<p>Canadian National Implementing Legislation, § 17; <i>Manual</i>, § 7.</p>
<p>11. [Privileges and Immunities]. The persons which according to the Convention . . . shall receive immunity and privileges, will without hindrance of <i>Name of State Party</i>'s law receive immunity and privileges according to the provisions of this Convention.</p>	<p>Norwegian National Implementing Legislation, ¶ 2; <i>Manual</i>, § 11.</p>
<p>12. <i>Name of State Party</i> Not Liable for Acts, Omissions of Organization, Etc. Nothing in this Act makes <i>Name of State Party</i> or the <i>Head of the National Authority</i> liable for any act or omission on the part of the Organization, or of any Organization inspector, in implementing the Convention in <i>Name of State Party</i>.</p>	<p>Australian National Implementing Legislation, § 103; <i>Manual</i>, § 9.</p>

Model Legislative Text	Sources
<p>13. Regulations. The <i>Head of State</i> may make regulations for carrying out and giving effect to the provisions of the Convention and, without limiting the generality of the foregoing, may make regulations:</p> <p>(a) prescribing conditions under which activities referred to in [section 6 of this Act] may be carried on, providing for the issue, suspension, and cancellation of licenses governing the carrying on of any such activity and prescribing the fees or the manner of calculating the fees to be paid in respect of any such license;</p> <p>(b) respecting the procedures to be followed by representatives of the National Authority in exercising their functions under this Act; and</p> <p>(c) prescribing anything that by this Act is to be prescribed.</p>	<p>Canadian National Implementing Legislation, § 18; <i>Manual</i>, § 3.1.3.</p>
<p>14. Enforcement.</p> <p>(a) Every person who contravenes any provision of this Act is guilty of an offense and liable —</p> <p>(1) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding eighteen months, or to both; or</p> <p>(2) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding five years, or to both.</p> <p>(b) Where an offense under this Act is committed or continued on more than one day, the person who committed the offense is liable to be convicted for a separate offense for each day on which the offense is committed or continued.</p>	<p>Canadian National Implementing Legislation, §§ 20, 25; <i>Manual</i>, § 4.</p>

Model Legislative Text	Sources
<p>15. Seizure [and Forfeiture].</p> <p>(a) The <i>Head of State</i> may seize or cause to be seized —</p> <p>(1) all controlled goods for which a [license pursuant to regulations issued under section 13 of this Act] is needed, but in respect of which no application for a [license] has been received by the National Authority;</p> <p>(2) all controlled goods which do not comply with the conditions of a [license pursuant to regulations issued under section 13 of this Act];</p> <p>(3) all controlled goods prohibited under [section 5 or section 6 of this Act]; or . . .</p> <p>(4) any book, document, data, or thing which may afford evidence of any offense in terms of this Act,</p> <p>and to remove from the premises concerned any such controlled goods, book, document, data, or thing, or any quantity thereof, or if he considers it necessary to leave it there, to affix any identification mark or seal which is considered necessary on such goods, book, document, data, or thing or the container thereof.</p> <p>(b) pending a decision regarding the disposal of any controlled goods under [this section, the <i>Head of State</i>] may remove or cause to be removed such goods, book, document, data, or thing seized under [subsection (a) of this section] to a place of safekeeping. . . .</p> <p>(c) The <i>Head of State</i> shall furnish the owner or person in control of, or who has in his custody anything seized in terms of [subsection (a) of this section], with a receipt.</p>	<p>South African National Implementing Legislation, § 16; <i>Manual</i>, §§ 4.3.1.2, 10.2.3.</p>

Model Legislative Text	Sources
<p>(d) Where a person has been convicted or an offense under this Act, anything seized by means of which or in respect of which the offense was committed is forfeited to <i>Name of State Party</i> and shall be disposed of as the <i>Head of State</i> directs.</p> <p>(e) Where any thing has been seized by means of which or in respect of which an offense has been committed under this Act and the owner of the thing, or the person in whose possession the thing was at the time of seizure, consents in writing to its forfeiture, the thing is forfeited to <i>Name of State Party</i> and shall be disposed of as the <i>Head of State</i> directs.</p>	<p>Canadian National Implementing Legislation, § 23; <i>Manual</i>, §§ 4.3.1.2, 10.2.3, 12.</p>
<p>16. Coming Into Force. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the <i>Head of State</i>.</p>	<p>Canadian National Implementing Legislation, § 27.</p>