

PRIMARY TASKS TO IMPLEMENT

THE CHEMICAL WEAPONS CONVENTION

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REGIONAL SEMINAR ON THE NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION

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presented by:

Professor Barry Kellman
Director, Center for International
Weapons Control Under Law
DePaul University College of Law
25 E. Jackson Blvd.
Chicago, IL. 60604, USA
011-312-362-5258 (voice)
011-312-362-5448 (fax)
bkellman@wppost.depaul.edu (e-mail)

Edward A. Tanzman
Argonne National Laboratory, DIS-900
9700 S. Cass Ave.
Argonne, IL. 60439-4832, USA
011-630-252-3263 (voice)
011-630-252-5327 (fax)
tanzman@anl.gov (e-mail)

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PRIMARY TASKS TO IMPLEMENT THE CHEMICAL WEAPONS CONVENTION

INTRODUCTION

The Chemical Weapons Convention (CWC) is an unprecedented multilateral effort to eradicate an entire category of weapons of mass destruction and assure their continued absence through international verification. With its comprehensive regulatory regime to verify compliance, the CWC presages a new foundation for international security based neither on fear nor on trust, but on the rule of law.

In that spirit, it is an honor to participate in this important gathering, hosted by the Government of The Slovak Republic and organized by the OPCW staff. This seminar is another excellent opportunity for all of us to learn from each other about how the CWC can become a foundation of weapons control throughout the world.

In 1993, concerns arose that the complexity of integrating the treaty with national law could cause some nations 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 a Committee of Legal Experts on National Implementation of the Chemical Weapons Convention made up of jurists, law professors, legally-trained diplomats, government officials and Parliamentarians from every region of the world. Altogether, over two thousand copies have been distributed.

The **MANUAL** is designed to assist States Parties by increasing understanding of the Convention and identifying its obligations as well as suggesting methods to meet them, duly taking into account the distinctive aspects of their legal systems. It acknowledges areas of ambiguity that States Parties should address, and it analyzes legal initiatives that may be undertaken to strengthen the Convention's enforcement. It is intended to build confidence that the legal issues identified are finite and addressable. States Parties need not be alarmed by a seeming endless array of legal problems.

This **MANUAL** is not a supplement or revision to the CWC itself. The many political, economic, and technical decisions that generated the final treaty are not re-visited nor second-guessed. Nor does it prescribe a uniform approach for all States Parties that would ignore the vast differences among national legal traditions. The composition and dissemination of the **MANUAL** is an effort to promote a valuable exchange of ideas that each State Party may adapt as it deems suitable. The **MANUAL** is, therefore, a tool to increase understanding of the Chemical Weapons Convention, to identify its obligations, and to suggest methods to meet them.

CWC entry into force is an appropriate time to offer States Parties more incisive assistance based on developments since the MANUAL was published in 1993. Imminently, States Parties will have to enact implementing measures that establish national authorities and that prepare government agents and citizens to meet CWC obligations. A second edition of the MANUAL now in preparation responds to that need by: (1) incorporating new information, both national implementing legislation and OPCW guidance documents, and (2) addressing tangible implementation issues.

This paper draws from the MANUAL and briefly addresses the two tasks that every CWC State Party must undertake first in order to effectively fulfill its extensive requirements. First, each State Party must establish a National Authority. Second, each State Party must enact implementing measures to ensure that its government as well as its businesses and citizens comply with the treaty.

As this paper generally discusses how States Parties from different legal backgrounds can accomplish these two tasks, it cannot address every detail of how each State Party should proceed. It is inevitable that the concepts set forward here will need to be adapted by decision makers in each nation with regard to their unique legal and political systems. Furthermore, it should be understood that the comments made here represent only the views of some international lawyers that have had the opportunity to follow these issues for a number of years; this paper is not a product of the government of the United States nor of any other institution.

I. THE NATIONAL AUTHORITY

Each CWC State Party must "designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties."¹ Successful implementation of the CWC will depend, in part, on how the National Authority is established (or designated) and the responsibilities assigned to it. Section 1 discusses how much power to delegate to the National Authority and analyzes the costs and benefits of broadly empowering the National Authority. Section 2 examines the suitability of assigning important CWC functions to the National Authority or another governmental agency.

In brief, the CWC affords State Parties considerable latitude as to how it administers tasks. Ultimately, National Authorities will vary among nations depending on the dictates of national law. It is important to note that not all CWC obligations have to be performed by the National Authority. The CWC requires that the National Authority serve as a liaison, but virtually all other CWC obligations may be carried out by any administrative agency. Furthermore, the National Authority may be a newly-established agency, an already existing agency, or a composite of numerous agencies. By providing the alternative "designate or establish," the CWC indicates that a State Party may either make use of an already-existing agency or it can create a new agency specifically for purposes of CWC compliance.

A. ARGUMENTS FOR/AGAINST A CENTRALIZED NATIONAL AUTHORITY

A State Party could decide to empower the National Authority to carry out all or most of its CWC-related functions, or it could choose to establish a National Authority that only acts as a liaison with the OPCW and other States Parties while more substantive CWC functions are delegated to other governmental agencies. Furthermore, the CWC says absolutely nothing about the structure of the National Authority. A State Party's National Authority could be a working group made up of representatives of other agencies or offices. While it might be logical to assign persons having technical expertise in chemistry and related fields to the National Authority, the CWC in no way compels the employment of persons with particular backgrounds nor the naming of particular positions.

This section explores some of the policy considerations that a State Party may wish to consider as it decides how much power to grant to its National Authority. Of course, this discussion does not presume to tell States Parties what choices to make regarding the National Authority.

1. Treaty Language and Background

An argument can be made that the language of Article VII suggests that the National Authority's role in CWC implementation should be significant. The phrasing of the obligation to establish a National Authority implies that it could have a role in carrying out a State Party's other CWC obligations:

¹Art. VII, ¶ 4 states:

[in] order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it.

[in] order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison

This wording appears to link the National Authority's responsibilities with fulfilling the State Party's CWC obligations. The fact that nothing in the CWC limits the National Authority's role to that of a liaison supports this conclusion.

2. Policy Considerations

A strong National Authority that is empowered to conduct virtually all CWC tasks could be the most efficient way to comply with this complex treaty. The CWC's myriad obligations are not disparate, but are part of an integrated effort to eliminate chemical weapons and verify their continued non-production. To coordinate all those obligations in one office clarifies who is responsible for compliance duties. Moreover, CWC enforcement would likely be enhanced because enforcing the CWC would be the National Authority's principal focus and *raison d'être*. If CWC tasks are delegated to a variety of agencies, CWC enforcement may be subordinated to those agencies' primary obligations. Finally, centralizing CWC functions also enables the OPCW and other States Parties to contact only the National Authority for any CWC matter. This arrangement could thus alleviate potential difficulties of inter-state and inter-agency communication.

By contrast, there may be numerous reasons why centralization of all CWC tasks in the National Authority may be inappropriate. First, a State Party's constitution or statutory law might not allow administrative agencies, such as the National Authority, to perform certain tasks or promulgate rules; they may only suggest changes in existing domestic laws or regulations. Moreover, an existing government agency may have expertise and experience in performing CWC-relevant tasks; delegating such tasks to an inexperienced National Authority could needlessly incur duplicative administrative, overhead, and personnel expenses. These expenses might be minimized by delegating certain CWC obligations to existing governmental authorities with competence in the field.

Finally, expanding the role of the National Authority may also have consequences regarding the division of tasks and labor that exist within governments. Creating a National Authority with expanded powers may cause redundancy in some governmental functions if an existing agency already performs the same or similar function. Yet, assigning these tasks among bureaucratic divisions could generate competition and jealousies within the various agencies and hamper the formation of a consensus response to CWC enforcement. Many nations do not allow administrative agencies to conduct criminal investigations, initiate civil or criminal prosecutions, nor impose civil or criminal penalties. Often, administrative agencies can only refer a criminal offense to the appropriate judicial/police authority. Thus, at least in regard to pursuing penal investigations and prosecutions, most States Parties should recognize the need for other government agencies to join in fulfilling CWC obligations.

²Art. VII, ¶ 4 [emphasis added]. The *travaux préparatoires* reinforces this link. A pre-1989 draft of the CWC's National Authority requirement indicated that the powers of the National Authority should be broad and flexible:

[in] order to implement these [CWC] obligations, each State Party shall, according to its needs and specific conditions, designate or establish a national authority

The wording has changed, but the National Authority's flexibility has been retained to allow States Parties to delegate to it those obligations necessary to implement the CWC effectively.

B. DELINEATION OF CWC FUNCTIONS

It may be useful to consider which specific tasks the National Authority should perform. Despite the fact that the CWC only explicitly mandates that the National Authority act as a liaison, the treaty imposes numerous obligations on States Parties that must be performed by some governmental agency. This section examines the types of functions pertaining to the National Authority according to whether they are: (1) explicitly assigned to the National Authority, (2) although not expressly assigned to the National Authority, may appropriately be performed by it, and (3) functions seemingly better suited to other government agencies with expertise or competence in a particular field.

1. Mandatory Obligations for The National Authority

a. National Authority as Liaison

The National Authority must be the national focal point for effective liaison with the OPCW and other States Parties. But the term "liaison" is not defined in the treaty; it is an open question whether other agencies may communicate directly with the OPCW or other States Parties. Nonetheless, the National Authority should serve as a convenient and definite point of contact for communication between the OPCW and other States Parties. For instance, an explicit component of the liaison role can be found in the requirement that the Executive Council, in promoting the implementation of and compliance with the CWC, cooperate with the National Authority of each State Party.³

b. Handling Confidential Information

Both the OPCW and the National Authority must store confidential data and documents.⁴ The National Authority could also handle all confidential information and data that is received by the State Party in confidence from the OPCW or other States Parties. Receiving and handling confidential information is related to the liaison function, as the OPCW or other States Parties would likely send confidential information to the National Authority as the focal point of communications.

c. Inspection-Related Tasks Expressly Assigned to the National Authority

The few remaining references to the National Authority in the CWC pertain to minor duties in carrying out inspections. First, the National Authority must receive the flight plan when the OPCW uses non-scheduled aircraft in an inspection.⁵ Second, the National Authority must cooperate with OPCW inspectors during the course of an inspection. In its report, the inspection team may indicate if "cooperation between the National Authority and the inspectors [does] not measure up to the standards required."⁶ It should be noted, however, that all of the many other extensive verification

³Art. VIII, ¶ 31.

⁴Confidentiality Annex, (A)(2)(e) provides, in pertinent part: "Confidential information shall be stored securely at the premises of the Organization. Some data or documents may also be stored with the National Authority of a State Party. . . ." The subject of confidential information under the CWC is discussed fully in Chapter 7.

⁵Verification Annex, pt. II, (C)(23).

⁶Verification Annex, pt. II, (G)(64).

activities assigned to each State Party, including the submission of declarations and facilitating inspections, are assigned to the "State Party" and therefore may be delegated to any responsible agency.

2. Possible National Authority Functions

a. Control Scheduled Chemicals

States Parties must take several measures in relation to CWC-regulated chemicals. An administrative agency of the national government will have to be made responsible for: (1) restricting the production of Schedule 1 chemicals; (2) compiling information gathered from private industry about Scheduled chemicals; and (3) submitting declarations to the OPCW concerning Scheduled chemicals. The National Authority may be the agency best able to oversee these tasks. At the very least, the National Authority's critical liaison function implies that it should be responsible for compiling the information needed for CWC declarations into the required format and transmitting those declarations to the OPCW, even if other agencies assist in actually gathering information.

b. Oversee CWC Verification

The National Authority could also coordinate and oversee verification activities. Consistent with its liaison function, CWC verification activities will require interaction with the OPCW. The National Authority would be a natural choice to represent the State Party since another agency is unlikely to be familiar with the issues raised by CWC inspections. However, highly technical issues, such as application of national environmental and safety standards, may be within the competence of another agency that would have to work closely with the National Authority during CWC verification.

3. Functions Within the Field of Competence of Other Governmental Agencies

a. Control of Chemical Weapons and Chemical Weapons Production Facilities

Tasks related to the control of chemical weapons and their production facilities are usually within the province of the armed services or ministries of defense. Destroying chemical weapons and production facilities will, generally, be a military function, with the caveat that highly toxic chemical agents implicate environmental and safety concerns that are best handled by a government agency with relevant skills.

The military already possesses and is responsible for chemical weapons. Because of their expertise in the field of chemical weapons, agencies that control chemical weapons could continue to carry out these functions. However, while other agencies may be responsible for gathering chemical weapons data, the National Authority could still be the appropriate agency to prepare declarations and transmit them to the OPCW.

b. Penal Enforcement/Legal Assistance

In many nations, justice ministries and other judicial authorities have competence to enforce penal laws, particularly criminal laws. Similarly, the CWC-required tasks of interstate cooperation and mutual legal assistance are almost exclusively performed by the ministries of justice and foreign affairs. Vesting powers to conduct penal investigations and prosecutions in the National Authority, which would likely be constituted primarily as an administrative organ, could, therefore, be problematic.

c. Privileges and Immunities

The granting of diplomatic privileges and immunities, as well as the issuing of visas and other documentation, is traditionally a function reserved for ministries of foreign affairs. If the National Authority is a different ministry, then empowering the National Authority to conduct this type of foreign relations activity could be an infringement on the conduct of foreign affairs.

d. Regulating Trade in Chemicals and Exchanges of Technical Information

The CWC has several obligations that touch on the area of international trade in chemicals, import/export regulation, and provision of technical assistance to foreign nations. These fields are typically occupied by agencies with suitable experience and skill such as ministries of commerce or finance.

II. IMPLEMENTING MEASURES

A central feature of the CWC is that each State Party must adopt implementing measures to make the Convention operative. The CWC goes beyond all prior weapons control treaties in this regard. For this approach to succeed, and to inspire global consensus for successful disarmament, coordination and planning are vital to harmonize CWC national implementation among States Parties.

Included in the new MANUAL is the *CHEMICAL WEAPONS CONVENTION PROTOTYPE IMPLEMENTING STATUTE*, a copy of which is attached to this paper. Our purpose in preparing this text was to meet a need that we understand exists in some States Parties for specific legislative language that can be used as a starting point for preparing their own draft measures. This prototype legislation is intended to be a basic, simple text that can be adapted and expanded to meet the needs of individual States now and over time. The prototype statute relies almost entirely on already-enacted legislation in order to take advantage of the prior work that has been devoted to this purpose and to promote consistency among States Parties in their national implementing measures. It was prepared by weaving together the simplest and most universally applicable provisions from the national statutes already enacted.

The statute from which each provision was taken is indicated in the right-hand column. It is important to know that provisions are not always quoted exactly. In some cases, minor changes have been made in order to make provisions grammatically or legally consistent; in other cases, terms that are duplicative or unique to a nation's legal system have been omitted. In one instance (Mutual Assistance, ¶ 20), language was taken from a proposed draft of legislation. Generic names in italics (e.g., "*Name of State Party*") have been substituted in the prototype text for proper names contained in the text of the original source. Selection of particular language for this prototype is intended neither as an endorsement of that particular language nor as disapproval of equivalent provisions in other statutes. Readers are encouraged to consult all of the enacted statutes in their full text to gain a much deeper understanding of available options that can be obtained merely from this prototype.

The Prototype 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 Prototype should be thoroughly reviewed in light of that nation's constitution and laws, as well as with existing national policies. Careful attention should be paid both to ensure that such national legislation is prepared in accordance with accepted national formats and to confirm that it meshes with existing governmental and legal structures.

National implementing legislation is a CWC obligation that can be met with relative ease. International cross-fertilization in this endeavor can result in more coherent CWC implementation.

**CHEMICAL WEAPONS CONVENTION
PROTOTYPE IMPLEMENTING STATUTE**

PROTOTYPE LEGISLATIVE TEXT	SOURCES
BE IT ENACTED by the <i>Head of State</i> and the <i>National Legislature</i> of <i>State Party Name</i> , as follows:	South Africa
<p>1. Purpose of Act. The purpose of this Act is to implement <i>Name of State Party</i>'s obligations under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction. [the Convention]</p>	New Zealand sec. 4
<p>2. Interpretation. Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.</p>	Canada sec. 2
<p>3. Jurisdiction. This Act extends to acts done or omitted to be done by a <i>State Party</i> citizen outside <i>State Party Name</i> or to acts done on board <i>State Party</i> ships and aircraft. or A crime against the Convention will be sentenced by <i>Name of State Party</i> law and at a <i>Name of State Party</i> court even if the crime is committed abroad and irrespective of the perpetrator's nationality.</p>	Australia sec. 5(1) Sweden
<p>4. National Authority. The highest implementing authority of the Convention, bearing the supreme responsibility for the management of its application and supervision, is the Ministry for Foreign Affairs. The Ministry for Foreign Affairs may assign tasks related to the inspections under the Convention to the Finnish Institute for Verification of the Chemical Weapons Convention. The Ministry of Trade and Industry is responsible for the export supervision required under the Convention. National Agency for Medicines functions as the licensing authority (for activities related to Schedule 1 chemicals. or The Agency for Development of Trade and Industry is the National Authority under the Convention. or The "National Council for the Prohibition of Chemical Weapons" acting as "National Authority," shall be composed of representatives of ministries.</p>	Finland sec. 2 Denmark sec. 1 Peru art. 2
<p>5. Regulatory Authority. 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: (a) respecting the procedures to be followed by representatives of the National Authority in exercising their functions under this Act; and (b) prescribing anything that by this Act is to be prescribed.</p>	Canada sec. 18

<p>6. Prohibited Activities re Chemical Weapons.</p> <p>No person shall:</p> <ul style="list-style-type: none"> (a) undertake any activity which is prohibited to a state party under Articles IV and V of the Convention; (b) assist, finance or otherwise take part in any activity which leads to the production, development, acquisition, stockpiling, retaining, direct or indirect transferring of chemical weapons; (c) use chemical weapons; (d) engage in military preparations to use chemical weapons; (e) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a state party under the Convention; (f) use, transfer or receive any chemical product listed in the schedules to the Convention for purposes other than those specified in Articles IV and V of the Convention or in a manner other than that specified in the Convention; (g) be responsible for a chemical production facility which produces any part or the whole of any type of chemical weapon or chemical agent listed in the schedule to the Convention; or (h) knowingly conceal any knowledge or information on any type of chemical weapons, including old chemical weapons, production facilities or any activities related thereto from the competent authorities. 	<p>Malta sec. 4</p>
<p>7. Restrictions of Schedule 1 Chemicals.</p> <ul style="list-style-type: none"> (a) The production, acquisition, retention or use of the chemicals and their precursors included in Schedule 1 of the Annex on Chemicals of the Convention is allowed only for research, medical, pharmaceutical or protective purposes with a license. (b) Granting a license to a legal entity shall be conditional upon that entity: <ul style="list-style-type: none"> (1) having its seat on the territory of the <i>Name of the State Party</i>, (2) having established a responsible representative. . . . The responsible representative shall have a clean criminal record. (c) Except as authorized, no person shall produce, use, acquire, or possess a toxic chemical or precursor listed in Schedule 1 of the Schedule of Chemicals set out in the Annex on Chemicals in the Convention; 	<p>Finland sec. 4</p> <p>Czech Republic sec. 9</p> <p>Canada sec. 8</p>
<p>8. Restrictions on Chemical Transfers.</p> <ul style="list-style-type: none"> (a) The <i>Head of State</i> may, <ul style="list-style-type: none"> (1) prohibit the import, export, re-export or transit of controlled goods; (2) limit or control the import, export, re-export or transit of controlled goods, and determine that the import, export, re-export or transit of such goods may only take place under a permit; (3) make the import, export, re-export or transit of controlled goods subject to end-use requirements. (b) Except as authorized, no person export or import a toxic chemical or precursor listed in Schedule 1, 2, or 3 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention. 	<p>South Africa sec. 13(2)</p> <p>Canada sec. 9</p>

<p>9. Information and Documents.</p> <p>(a) Any person who produces, acquires, retains, transfers, or uses toxic chemicals or their precursors to which any provision of Parts VI to IX of the Verification Annex applies must --</p> <p>(1) Notify the chemicals and the facility to the <i>Designated Agency</i> as soon as practicable by giving written notice in an approved form, containing such information as is required by the form;</p> <p>(2) Keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put;</p> <p>(3) Prepare, from those records, periodic reports relating to the chemicals and the facility in an approved form; and</p> <p>(4) Send those periodic reports at intervals specified by the <i>Designated Agency</i> or by regulation.</p> <p>(b) The records and reports must be sufficient to satisfy the <i>Designated Agency</i> that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.</p> <p>(c) Court orders or a fine shall be imposed on anyone who deliberately refuses to provide information or documents or who makes false declarations.</p>	New Zealand sec. 13
<p>10. Authorization for Declarations.</p> <p>(a) The <i>Designated Agency</i> shall arrange for the submission of declarations as required by the Convention as well as with regard to facilities specified in Article VI of the Convention to the extent necessary to implement the obligations under the Convention. Such arrangement shall provide for the frequency, periods, contents and format of such declarations, the manner of their transmission and transmission deadlines.</p> <p>(b) Authorities charged with supervision under this Act shall have the right to obtain from other authorities the information necessary for supervision carried out in accordance with the Convention or this Act.</p> <p>(c) The <i>Designated Agency</i> shall be entitled to transmit the data collected during the implementation of this Act to the OPCW, provided this is necessary to implement the obligations under the Convention.</p>	Germany art. 6 (2) Finland sec. 3 Germany art. 6 (3)
<p>11. Facility Agreements.</p> <p>(a) The <i>Designated Agency</i> shall conclude a facility agreement necessary for facilities subject to international inspection (including certain areas referred to in the Convention) pursuant to the Verification Annex to the Convention with the Organization.</p> <p>(b) When the <i>Designated Agency</i> intends to conclude a facility agreement, it may, if deemed necessary, have a person who owns or operates facilities subject to inspection express his opinion or submit relevant facility specifications, design diagrams, etc.</p>	Korea art. 14

<p>12. Powers To Carry Out Routine Inspections.</p> <p>(a) The international inspection team and the escort team shall --</p> <ul style="list-style-type: none"> (1) inspect any property, any building or any area within a building; (2) see relevant data bases, documents and records; (3) interview facility personnel; (4) take photographs; (5) have goods traffic from the enterprise halted and checked; (6) collect and analyse samples at the enterprise; (7) leave measuring instruments and other material on site for the inspection; (8) collect all other particulars of significance for the inspection. <p>(b) The enterprise is required to make all relevant facilities available to the inspection team such as communications, office premises, equipment and provide assistance in the use of this to the extent desired by the inspection team.</p> <p>(c) The enterprise personnel are required to provide assistance in the conduct of the inspection to the extent desired by the inspection team.</p> <p>(d) Anyone performing activities subject to restrictions or declarations in accordance with this act shall take measures necessary to prevent the loss or unauthorized use of chemicals.</p>	Denmark art. 14 Denmark art. 15 Germany art. 4
<p>13. Role of the <i>Designated Agency</i> Re Inspections.</p> <p>When the <i>Designated Agency</i> has been notified of the inspection plan by the OPCW, it shall notify the competent authorities without delay. The <i>Designated Agency</i> shall:</p> <ul style="list-style-type: none"> (a) cooperate with and accompany those inspections ordered by the OPCW to comply with the commitments stated in the Convention through arranged visits to the facilities located in the national territory; (b) give the OPCW inspectors an identification certificate with name, rank and functions so they may carry out the assigned mission in the national territory; (c) grant the visas, privileges and immunities to inspectors and representatives of the OPCW and States Parties so that they may develop their specific functions in the national territory; (d) deal with all the technical aspects during the inspections within the national territory; (e) control the equipment the OPCW inspectors have taken to carry out inspections within the national territory complies with the description laid down in the documents provided by the OPCW; (f) in conjunction with the State Aviation Committee, issue a permanent diplomatic clearance number for the non-scheduled aircraft which transports the inspection team and the equipment required for the inspection and shall notify the Organisation of the permanent diplomatic clearance number for that aircraft; (g) authorise an in-country escort to accompany the inspection team in accordance with the provisions of the verification annex; and (h) authorise any constable to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the Verification Annex. 	Korea art. 15 Argentina sec. 7(d) sec. 7(g) sec. 8(e) sec. 10(f) sec. 10(j) Belarus art. 12(5) United Kingdom sec. 25(3) sec. 25(4)

<p>14. Warrant Requirement</p> <p>(a) A representative of the <i>Designated Agency</i> or an international inspector may not enter an inspection site without the consent of the person who is in control of the place except under the authority of a warrant.</p> <p>Where on <u>ex parte application</u>, a justice is satisfied by information on oath that</p> <ol style="list-style-type: none"> (1) a place meets the conditions for entry to inspect, (2) entry to the place is necessary for any purpose relating to the administration of this Act or the regulations, and (3) entry to the place has been refused or there are reasonable ground to believe that entry will be refused, the justice may issue a warrant authorizing the representative of the National Authority and the international inspector to enter the place for the purposes of the inspection, subject to such conditions as may be specified in the warrant. <p>(b) 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>(c) Where a warrant purports to be issued under this section in respect of any inspection, no proceedings shall be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying, or otherwise affect the carrying out of the inspection.</p>	<p>Canada sec. 15</p>
<p>15. Conduct of Challenge Inspections</p> <p>(a) As far as is necessary for the conduct of inspections pursuant to Article IX of the Convention and of investigations pursuant to Article X of the Convention, the inspection team shall, in addition to the rights pertaining to routine inspections, have the right to:</p> <ol style="list-style-type: none"> (1) enter and inspect, following instructions by the leader of the escort team, locations and premises also outside regular business and working hours as well as living quarters in order to prevent imminent danger to law and order; (2) search locations, premises or living quarters upon court order or in case of imminent danger, following instructions by the leader of the escort team, if facts justify the assumption that the search will result in the discovery of evidence establishing a violation of Article I, V or VI of the Convention; (3) receive data from the in-country escort team on all vehicular exit activities at the inspection site; and (4) monitor and inspect vehicles leaving the inspection site, with the exception of personal passenger vehicles. <p>(b) An observer is not entitled to enter a challenge inspection site if the occupier of the site has informed the Director, in writing, that the observer is to be excluded from the site.</p>	<p>United Kingdom sec. 25(9)</p> <p>Germany art. 10(2)</p>
<p>16. Prohibited Activities re Inspections.</p> <p>(a) If monitoring equipment has been installed at a declared facility, a person who interferes with the equipment or its operation with the intention of adversely affecting the operation of the equipment is guilty of an offense.</p> <p>(b) A person who intentionally or recklessly makes a statement to an inspector or another person exercising a power or performing a function or duty in relation to this Act that is false or misleading in a material particular, is guilty of an offense.</p> <p>(c) All those who hamper the conduct of the inspection or however hinder its being carried out shall be punished with a prison sentence.</p> <p>(d) Under these circumstances, the officers or members of the criminal police of the in-country escort of the inspection team shall promptly provide a report to the District Attorney who shall order the coercive implementation of the inspection.</p>	<p>Australia sec. 48(5)</p> <p>Australia sec. 79</p> <p>Australia sec. 80</p> <p>Italy art. 12</p>

<p>17. Protection Against Self-Incrimination.</p> <p>(a) A person is not excused from answering or giving any information or document under this Act or the Convention on the ground that to do so may incriminate or tend to incriminate that person.</p> <p>(b) A self-incriminating statement made or given under this Act or the Convention is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that statement.</p>	New Zealand sec. 28
<p>18. 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>(1) for the purpose of the enforcement of this Act or to give effect to the Convention;</p> <p>(2) pursuant to an obligation of <i>Name of State Party</i> under the Convention.</p>	Canada sec. 17
<p>19. Confiscations and Forfeitures.</p> <p>(a) An official of the <i>Designated Agency</i> may seize or cause to be seized--</p> <p>(1) all controlled goods for which a permit is needed, but in respect of which no application for a permit has been received;</p> <p>(2) all controlled goods which do not comply with the conditions of a permit;</p> <p>(3) all controlled goods prohibited under this Act;</p> <p>o (4) all controlled goods limited under this act or the quantity thereof that exceeds the set limit;</p> <p>(5) any book, document, data or thing which may afford evidence of any offence under this Act.</p> <p>(b) If a court convicts a person of an offense against this Act, the court may order the forfeiture of any substance or article used or otherwise involved in the commission of the offence.</p> <p>(c) Where the court proposes to order anything to be forfeited under this section and a person claiming to have an interest in it applies to be heard by the court, the court must not order it to be forfeited unless he has been given an opportunity to show cause why the order should not be made.</p>	South Africa sec. 16(1) Australia sec. 81 United Kingdom sec. 30(3)

<p>20. Mutual Cooperation</p> <p>(a) The competent authorities for implementation, control, crime prevention and criminal proceedings may collaborate with the competent foreign authorities and with international organisations and entities, and coordinate their enquiries to the extent required. They may also request the foreign authorities and international organisations or entities to make available relevant data. To that end, they shall be authorised to provide them with data concerning:</p> <p>(1) the nature, quantity, places of consignment and utilisation, and the use and consignees of goods and technologies;</p> <p>(2) persons taking part in the production, delivery or brokerage of goods or technologies.</p> <p>(b) If the foreign State or the international organisation grants reciprocity, they may make available the above-mentioned data.</p> <p>(c) If the foreign State grants reciprocity, they (competent authorities) may make available, on their own initiative or on request, data . . . where the foreign authority provides an assurance that such data: shall be processed only for purposes consistent with this order, and will be used in criminal proceedings only on condition that they are subsequently obtained in accordance with the provisions governing international judicial cooperation.</p>	Swiss art. 16(3)
<p>21. 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 _____ or to imprisonment for a term not exceeding _____ months, or to both; or</p> <p>(2) on conviction on indictment, to a fine not exceeding _____ or to imprisonment for a term not exceeding _____ years, or to both.</p> <p>(b) Where an offense under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of --</p> <p>(1) a director, manager, secretary or other similar officer of the body corporate, or</p> <p>(2) any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p>	Canada sec. 20 United Kingdom sec. 31(3)
<p>22. No State Party Liability.</p> <p>Nothing in this Act makes <i>Name of State Party</i> liable for any act or omission on the part of the OPCW, or of any OPCW inspector, in implementing the Convention in <i>Name of State Party</i>.</p>	Australia sec. 103