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**A COMPARISON OF NATIONAL COMPLIANCE LEGISLATION
UNDER THE CHEMICAL WEAPONS CONVENTION**

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ABSTRACT

The Chemical Weapons Convention (CWC) is unique among multilateral arms control agreements in requiring national compliance legislation. This paper discusses the compliance legislation enacted by Australia, Germany, Norway, South Africa, and Sweden in anticipation of this agreement entering into force. It compares how these five nations addressed the requirement for legislation to penalize violations of the Convention, as well as how they have developed legal mechanisms to acquire the information about dual-use chemicals that must be declared to the Organisation for the Prohibition of Chemical Weapons. This analysis shows that although different options exist to meet these treaty requirements, areas of consistency between nations are emerging that will encourage universal compliance as the regime matures.

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A COMPARISON OF NATIONAL COMPLIANCE LEGISLATION UNDER THE CHEMICAL WEAPONS CONVENTION

1 INTRODUCTION

The Chemical Weapons Convention¹ (CWC) differs from all multilateral arms control treaties that preceded it in its extensive requirements for national compliance legislation. This paper examines the national compliance legislation adopted by several nations that have ratified the CWC and compares the differing approaches they have taken to fulfilling these treaty obligations. At this meeting I speak only for myself, neither for the government of the United States of America nor for any other institution.

National compliance legislation to implement the CWC — by which I mean national laws enacted to compel individual and corporate persons to obey this treaty — is necessitated by the Convention's difficult task of eliminating chemical weapons capabilities. Because so many chemicals can be used either for legitimate industrial purposes or to make illegal chemical weapons, an intrusive system for assuring compliance with its terms was determined by the negotiators to be a necessary component of the treaty regime. This compliance system includes both prohibiting conduct that could result in chemical weapons capacity and a verification scheme to enable independent confirmation of each State Party's continuing obedience to the treaty. Where these dual-use chemicals, or the facilities that produce them, are in the hands of private entities, they must submit to the compliance scheme in addition to the government of the State Party itself. Because most governments enact statutes in order to create new domestic laws, the CWC has the effect of compelling States Parties to legislate whatever new requirements private entities must follow in order to comply with its terms.

This paper discusses progress among several States in actually developing national CWC compliance legislation. CWC legislation from Australia,² Germany,³ Norway,⁴ South

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].

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

3. 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 Organisation for the Prohibition of Chemical Weapons (hereinafter German CWC Implementing Legislation).

4. 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 Organisation for the Prohibition of Chemical Weapons (hereinafter Norwegian CWC Implementing Legislation).

Africa,⁵ and Sweden⁶ were available at this writing in English through the Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons (OPCW). Of course, it is important to note that this brief survey necessarily omitted examination of the existing "background" of other, related domestic laws that these signatories might also have adopted that affect CWC implementation.

Because the Convention mandates domestic adherence both to substantive prohibitions and to its verification scheme, this paper compares a national compliance measure of each type. These requirements, which every State Party will confront immediately upon the Convention's entry into force (if not before), include:

- the obligation under Article VII, paragraph 1 of the Convention, to "[p]rohibit natural and legal persons anywhere on [a State Party's] territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity"; and
- methods of collecting information so that States Parties can make required declarations to the OPCW in accordance with Article VI of the Convention, such as disclosing locations and quantities of so-called "scheduled chemicals," which are selected because they can be used to manufacture chemical weapons.

The perspective this paper presents is that of a lawyer. Its purpose is not to discuss the correctness of the policies embodied in the Convention or the politics of its negotiation, nor to suggest how any State Party should proceed in enacting its national compliance legislation. Neither does it comment on the quality or correctness of the national legislation it discusses. Instead, its intent is to impart a flavour of the choices that exist for national compliance legislation under the CWC.

2 PENAL LEGISLATION

A key choice States Parties will make in their national compliance legislation is to determine the penalties for violating the CWC. The obligation to penalize CWC violations permits each State Party to specify whether its penal legislation will apply only to "activities

5. 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 CWC Implementing Legislation).

6. Summary of proposed legislation in English as presented in PC-IV/A/WP.9 (28 September 1993), *reprinted in* Regional Seminar on National Authority and National Implementing Measures for the Chemical Weapons Convention: Summary of Proceedings, Warsaw, Poland (7-8 December 1993) (Provisional Technical Secretariat Occasional Papers — No. 3) (hereinafter Summary of Swedish CWC Implementing Legislation). Of course, since this document is a summary, it presumably lacks the level of detail included in the implementing legislation itself.

prohibited" by the Convention, or also to other actions that undermine the CWC but which may not be explicitly prohibited by the treaty. For example, acquiring or stockpiling chemical weapons clearly would be prohibited by Article I, paragraph 1(a), but impeding the verification process might also be a "prohibited activity."

As illustrated in Figure 1, review of the Australian, German, Norwegian, South African, and Swedish national compliance legislation indicates that four of the five have chosen explicitly to penalize not only direct violations of the CWC, but also acts that might impede its verification. The Australian legislation specifies fines and/or imprisonment not only for producing prohibited chemical weapons,⁷ but also for interfering with monitoring equipment⁸ and for making false or misleading statements.⁹ The German legislation provides for fines and/or imprisonment for failure to comply with a "statutory order" regarding declarations¹⁰ or government information requests,¹¹ as well as for contravening inspection obligations.¹² The South African legislation is as specific and comprehensive as that of Australia. It penalizes any person who "refuses or fails to comply to the best of his ability with any lawful requirement, request or order of an officer or employee of the Department [of Trade and Industry]"¹³ It, too, punishes interference with an inspector's equipment,¹⁴ as well as making false statements.¹⁵ The Swedish legislation applies similarly.¹⁶ In contrast, the Norwegian legislation is less specific, simply punishing "[a]nyone violating this law or the provisions given with respect to this law. . . ."¹⁷ But even though the Norwegian legislation is not explicit in penalizing interference with verification activities, it is written broadly enough to permit such sanctions. Thus, the penal legislation enacted to date under the CWC appears to be uniformly broad in its reach.

7. Australian CWC Implementing Legislation, *supra* note 2, Part 6, § 77.

8. *Id.* § 78.

9. *Id.* § 80.

10. German CWC Implementing Legislation, *supra* note 3, ¶ 15(1)(1)(b).

11. *Id.* ¶ 15(1)(3).

12. *Id.* ¶ 15(1)(4).

13. South African CWC Implementing Legislation, *supra* note 5, § 26(1)(h). Among such orders presumably would be a declaration that procurement or stockpiling of chemical weapons are prohibited pursuant to § 13(2)(e).

14. *Id.* § 26(1)(b) (referring to § 12(7)(a)).

15. *Id.* § 26(1)(e).

16. Summary of Swedish CWC Implementing Legislation, *supra* note 6, at 74-75, 78.

17. Norwegian CWC Implementing Legislation, *supra* note 4, ¶ 5.

Nation	Punish Acquisition of Chemical Weapons	Punish Interference with Verification
Australia	X	X
Germany	X	X
Norway	X	
South Africa	X	X
Sweden	X	X

Figure 1: Comparison of Key Provisions of Chemical Weapons Convention Penal Legislation

3 DECLARATIONS

Regardless of whether a State Party possesses chemical weapons or even a chemical industry, it must gather information for accurate and timely declarations under the Convention. An important policy question is how to create a legal mechanism to ensure that private firms have an appropriate incentive to report relevant information, such as their possession of scheduled chemicals, to the national government for declaration to the OPCW. For example, filing such reports could become a prerequisite to carrying on a business involving scheduled chemicals; alternatively, the obligation to report could be imposed on private firms without affecting their ability to conduct business.

As summarized in Figure 2, the five pieces of national compliance legislation that were analyzed vary in their approach to implementing this CWC obligation. In order to "ensure that the Director [of the Chemical Weapons Convention Office] has knowledge of dealings with chemicals that facilitate the making of Australia's periodic declarations under the Convention,"¹⁸ the Australian implementing legislation creates an entirely new requirement for each firm "producing or otherwise dealing with scheduled chemicals in quantities such that the production or dealing needs to be part of the declaration process" to obtain an annual operating permit to continue its business.¹⁹ The Swedish system is analogous.²⁰ The

18. Australian CWC Implementing Legislation, *supra* note 2, § 15(1).

19. *Id.* § 15(2). Those involved with declarable unscheduled discrete organic chemicals are required to notify the Director, but not to acquire a permit. *Id.* § 15(3).

20. Summary of Swedish CWC Implementing Legislation, *supra* note 6, at 77-78.

German legislation appears to permit, without requiring, the government to establish a licensing scheme that conditions possession of scheduled chemicals on compliance with declaration-related reporting requirements.²¹

Nation	Reporting Obligation	Permits Required
Australia	X	X
Germany	X	possible
Norway	unspecific	unspecific
South Africa	X	
Sweden	X	X

Figure 2: Comparison of National Mechanisms for Acquiring Information to be Declared under the Chemical Weapons Convention

In contrast, the South African legislation does not require firms for which the Republic must make declarations under the CWC to obtain permits as a way of gathering the information it must declare; rather, it imposes on such firms the duty, independently of their authorization to carry on business, to declare their involvement²² and to report relevant information to its Non-Proliferation Council.²³ Failure to report could result in a fine or imprisonment.²⁴ The burdens and costs of the South African reporting obligation are eased to some extent by an active Communication Plan to reach out and elicit cooperation from the chemical industry.²⁵ A third approach is taken in the Norwegian legislation, which omits explicit mention of any reporting obligation and presumably intends that regulations will be issued to gather the necessary

21. German CWC Implementing Legislation, *supra* note 3, ¶ 2(3)(2). A separate provision simply empowers the government, independent of any licensing requirements, to "promulgate statutory orders . . . concerning declaration obligations. . . ." *Id.* ¶ 3.

22. South African CWC Implementing Legislation, *supra* note 5, § 13(3)(a).

23. *Id.* §§ 13(3)(b), 14(1).

24. *Compare id.* §§ 26(1)(b), 26(1)(c) *with* §§ 26(ii), 26(iii).

25. Dr. Koos Welgemoed, *The Implementation of the Chemical Weapons Convention in a Country with a Declarable Chemical Industry* (presented to the African Regional Seminar on the National Implementation of the Chemical Weapons Convention, Pretoria, Republic of South Africa) (Doc. No. PC08-001) (5 September 1994), at 4-5.

information.²⁶ Thus, legislation to date shows that a State Party may impose the necessary legal obligations to report information for declaration to the OPCW either by making such reporting a condition of continuing in business or by punishing failures to comply.

4 CONCLUSIONS

National compliance with CWC obligations is one of the Convention's unique and challenging features. This brief analysis demonstrates not only that different options exist to carry out key provisions of this treaty, but that some areas of consistency between signatories are emerging even at this early stage before entry into force. More study of these diverse approaches will promote greater understanding and encourage universality in CWC implementation.

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26. Norwegian CWC Implementing Legislation, *supra* note 4, ¶¶ 1, 3.