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**MEASURES TO IMPLEMENT THE
CHEMICAL WEAPONS CONVENTION**

presented to the

Regional Seminar on the Chemical Weapons Convention

Nairobi, Republic of Kenya
4 November 1999

prepared by

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MEASURES TO IMPLEMENT THE CHEMICAL WEAPONS CONVENTION

1 INTRODUCTION

This seminar is another excellent opportunity for those involved in preventing chemical weapons production and use to learn from each other about how the Chemical Weapons Convention (CWC) can become a foundation of arms control in Africa and around the world. I am grateful to the staff of the Organization for the Prohibition of Chemical Weapons (OPCW) for inviting me to address this distinguished seminar. The views expressed in this paper are those of the authors alone, and do not represent the position of the government of the United States of America nor or of any other institution.

In 1993, as the process of CWC ratification was beginning, 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, the *Manual for National Implementation of the Chemical Weapons Convention* was prepared 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.

In February 1998, the second edition of the *Manual* was published in order to update it in light of developments since the CWC entered into force on 29 April 1997. The second edition 1998 clarified the national implementation options to reflect post-entry-into-force thinking, added extensive references to national implementing measures that had been enacted by various States Parties, and included a prototype national implementing statute developed by the authors to provide a starting point for those whose national implementing measures were still under development.

Last month, we completed the Web Edition of the *Manual*, whose internet address, or URL, is <http://www.cwc.anl.gov/>. The Web Edition of the *Manual* makes it possible for readers to consult the actual text of these implementing measures and of the CWC itself in the context of specific national responsibilities. This new feature offers several advantages. First, it permits readers to read the actual text of many of the original sources referenced in the *Manual*. Second, it permits readers to examine related provisions to those cited in the *Manual* from original source material. Finally, where cited references are themselves web pages, it enables exploration of other related topics accessible on or through those web pages.

In all of its editions, 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, it is intended to build confidence that the legal issues raised by the Convention are finite and addressable.

This paper is divided into three parts. First, it provides an overview of how to use the Web Edition of the *Manual*. Second, it draws from the *Manual* to briefly address some of the national implementation tasks that every CWC State Party must undertake. These key tasks are to designate or establish a National Authority, adopt import/export regulations, obtain information for declarations, and enact penal legislation. These were selected from among all national implementation obligations because they are particularly important in Africa. The *Manual* or the CWC itself should be consulted to understand the full scope of national implementing measures. Finally, this paper presents a prototype CWC national implementation statute that shows how various States Parties have decided these and other implementation issues for themselves.

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. However, it is important to note that the perspective from which the *Manual* and this paper were written is that States Parties should be forward-thinking in their approach to CWC implementation. Those States Parties that may not presently be locations for significant chemical industry facilities should consider approaching their CWC obligations as if future development may bring such facilities under their jurisdiction or control. This will provide certainty about CWC implementation to any chemical firm that may want to develop such a facility, thereby reducing the risk to that firm and making a favorable location decision more likely.

2 USING THE WEB EDITION OF THE *MANUAL*

The Web Edition of the *Manual* can be accessed through any computer that meets certain minimum technical requirements. These requirements include an internet connection, a web browser, and version 3.0 or higher of the Adobe® Acrobat® Reader, which is available for free download to your local computer at Adobe's web page, whose address, or URL, is <http://www.adobe.com/products/acrobat/readstep.html>. Because the Web Edition of the *Manual* is very large, a computer with a Pentium or equivalent chip and at least 32 MEG of memory is recommended to facilitate reasonably quick response. For the same reason, a high-speed internet connection is encouraged. Access to the Web Edition of the *Manual* itself is free, although it may be necessary for users to pay an internet service provider to obtain an internet connection.

Use of the Web Edition of the *Manual* to its maximum extent requires readers to understand the different categories of cited sources, as well as how the hypertext links to those sources operate. The sources cited in the *Manual* can be grouped into three categories. First, the CWC itself is linked to the *Manual* from the official web page of the OPCW. The sophisticated technology of the OPCW

web page and the excellent cooperation of its staff permit the *Manual*'s hypertext links to the CWC to refer directly to individual cited sections of the Convention. Second, where the authors were aware of national CWC web pages that include the text of national implementing measures cited in the *Manual*, those citations in the *Manual* contain hypertext links to the corresponding web pages. Most important, this enables readers to consult the official current text of these measures, which may change over time. In addition, these links give readers access to other CWC-related materials and web sites, which are provided on those national web pages. Currently, such links are available to Australia directly and to the Czech Republic and Denmark through the OPCW web site; the Manual also provides links to national CWC web sites maintained by Canada and Finland, which provide useful CWC-related resources. Third, where the authors only had available hard copy of referenced national implementing measures, the hypertext links are to digitized images of the hard copy that the authors used. Because of the nature of such scanned images, it is only possible to link the reference in the *Manual* to the beginning of the corresponding document; unlike the CWC links, these links cannot bring readers directly to a particular referenced section. Instead, it is necessary to scroll down to the particular article, chapter, or section number referenced in the *Manual* to view the original text. Furthermore, while it is possible to block and copy an entire digitized document to one's hard drive, it is not possible to copy only a portion.

Regardless of the type of document referenced, all of the hypertext links work the same way. In each case, pointing a computer cursor at the titles of referenced documents (which can be found in both the *Manual* text and in footnotes) changes the cursor to a hand; often, these titles are also highlighted in blue or (depending on local computer settings) another color. By pointing a computer cursor to the title and clicking once with the left button of a mouse, a reader's internet browser will switch its display to the corresponding referenced document or website. In order to return to the page containing the referenced, readers must point their cursors at the "back" button on their web browser.

In addition to the referenced documents, the Web Edition of the *Manual* also contains extensive internal hypertext links to facilitate its use. Readers can scroll through the entire document, or else can click to any chapter or subchapter using the chapter headings in the Table of Contents, which is located following the Introduction. All footnotes, which are indicated using superscripted, underlined numbers in parentheses, are hypertext links in order to permit readers to switch to the text of any footnote. From within footnotes, readers may either click back to the text where a given footnote is located, or else scroll to preceding or following footnotes. Thus, the Web Edition of the *Manual* allows readers maximum flexibility to best use it to meet their needs. Readers are encouraged to e-mail their questions, comments, or suggestions to the authors by clicking on either of their e-mail address, listed under their names above, and sending a message.

3 SELECTED NATIONAL IMPLEMENTING MEASURES

States Parties must enact legislation to implement a number of CWC functions. While all States Parties must adopt all national implementing measures required by the Convention, some are likely to be of more concern in developing nations. These include: (1) designating or establishing a national authority; (2) adopting import/export regulations; (3) obtaining information for

declarations to OPCW; and (4) enacting penal legislation. This discussion identifies the different ways that State Parties that have enacted implementing measures address these functions, and highlights trends among States.

2.1 NATIONAL AUTHORITY

Each 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." (CWC, Art. VII, Sec. 4). The National Authority may be a newly-established agency, an already-existing agency, or a composite of numerous agencies.

Each State Party must decide how much and what type of power to delegate to the National Authority. Some nations delegate broad power to the National Authority (Australia, Sweden, Romania, Norway, and Malta). Of course, the CWC's many obligations are not disparate, but are part of an integrated effort to eliminate chemical weapons and verify their continued non-production. By coordinating all those obligations in one office, it is to know who is responsible for all compliance duties, and enforcement is enhanced because the National Authority's principal focus is the CWC. A good example of strong centralization is Sweden, which designates its "National Inspectorate of Strategic Products" with authority to "provide all necessary administrative facilities the Convention prescribes."

Other nations divide authority among specialized administrative agencies working in conjunction with the National Authority (Czech Republic, Latvia, Argentina, Belarus, and South Korea). A State's law might not allow a single agency to perform all necessary tasks, or it may lack expertise in particular areas. Distributing authority to various agencies reduces redundancy. It might be logical to assign penal matters to the Ministry of Justice or granting of visas to the Ministry of Foreign Relations. For example, Belarus has designated the Ministry of Foreign Affairs as the National Authority, responsible for "coordinating" the work of various "central government agencies." Moreover, all decisions must be made "in conjunction with appropriate central agencies," including the Ministry of External Economic Relations, the Ministry of the Interior, Ministry of Defense, Ministry of Finance, State Customs Committee, Committee on State Security, the Commander in Chief of the Frontier Forces, and the Belarussian State Concern for Chemicals and Petroleum Production.

The structure of a National Authority is left for each State Party to decide. It could be a single agency, or it could be a working group of other agencies' representatives (South Africa, Peru, Argentina). For example, in South Africa, the Council for Non-Proliferation of Weapons of Mass Destruction is the National Authority, consisting of representatives from numerous agencies and industries, including: the Department of Foreign Affairs, the Ministry of Defense, the chemical industry, the biological industry; the space industry, the nuclear industry, and the Atomic Energy Corporation. There is a trend to supplement the National Authority with specifically legislated advisory boards. Some States have supported the National Authority's influence over chemical industries by enacting special penal enforcement mechanisms.

2.2 IMPORT/EXPORT REGULATIONS

To stem the trans-national proliferation of chemical weapons, the CWC restricts transfers of dual-use chemicals. Transfers of potential precursors of weapons agents among States Parties must be for purposes not CWC-prohibited. Transfers of Schedule 1 chemicals, and soon Schedule 2 chemicals, to non-States Parties is prohibited: Furthermore, export controls are specified for all Scheduled chemicals.

Schedule 1 chemicals present the greatest risk to the CWC's object and purpose and are subject to severe transfer restrictions. Under no conditions may they transferred to a non-State Party. Transfers to States Parties may not be re-transferred. Both the transferring and receiving States Parties must notify the Technical Secretary of each transfer and make annual aggregate declarations.

Virtually every State Party regulates imports and exports, typically requiring a permit or license for trans-nationals transfers of goods. Accordingly, many CWC obligations can be implemented by adding specific provisions to existing law to reflect the new requirements, or can be implemented separately as part of the large package of CWC implementing measures. If the choice is in favor of the existing system, these regulations may be split between an agency that regulates trade in military items and an agency that regulates trade in dual-use items. For instance, in Finland, Schedule 1 chemicals may be exported only with a license granted by the Ministry of Defense; ricin and saxitoxin and all Schedule 2 chemicals may be exported only if the Ministry of Trade and Industry grants an export license.

Relevant regulations should include: (1) the development of end-use statements as well as a method to process them efficiently prior to permitting exports (see South Africa); (2) a means to verify that imports and exports in fact comply with CWC restrictions, including post-shipment checks and in-transit shipment controls (see Japan); and (3) penalties for violations of import/export control provisions (see Canada).

2.3 OBTAINING INFORMATION FOR DECLARATIONS

Each State Party must make a series of declarations to the OPCW regarding items and activities relevant to chemical weapons. Declarations of relevant chemicals and facilities used for purposes not prohibited will probably make up the bulk of what States Parties declares. The information to be declared varies with the schedule triggering the declaration. More declared information must be provided about Schedule 1 chemicals than about Schedule 2 chemicals, and even less about Schedule 3 chemicals.

The most important issue here is gathering information from the private chemical industry or major consumers. Three issues must be addressed:

- *Responsibility for Collecting Relevant Information.* Some States Parties assign the job of collecting information for declarations to the National Authority (Canada, South Africa, United Kingdom), while others specify the Ministry of Commerce or Industry (Swiss). Where relevant data already is collected by the government for

other reasons, some States also require that a single agency collect relevant information from all agencies as to the facilities for which they are responsible; those agencies must prepare the relevant declarations (Sweden, Finland).

- *Uniformity of Reports.* Some States explicitly require that reports be prepared uniformly, that they be comprehensive for anyone who deals with relevant chemicals, that information be reported to the government in sufficient time so that declarations may be prepared, and that confidential business information be protected; most nations leave these requirements to be developed by relevant agencies (New Zealand, Canada, Germany, Norway, United Kingdom).
- *Penalties for Mis-Reporting.* Nearly all States Parties provide penal measures for failing to report or for reporting misleading information. Some nations specifically require penalties only for intentional or reckless non-submission (Australia, United Kingdom, New Zealand); others extend penalties for negligent non-submission (Germany).

2,4 ENACTING PENAL LEGISLATION

Each State Party must enact penal legislation to prohibit persons from undertaking prohibited activities. Prohibited activity includes violation of Article I, paragraphs 1 & 5, pertaining to possession and use of chemical weapons. Penal measures also apply to obligations concerning destruction or securing of chemical weapons stockpiles as well, as violation of limits on Schedule 1 chemicals or violations of transfer restrictions of scheduled chemicals. Finally, most States Parties prohibit violations of verification obligations, including refusals or failure to report required information, providing false or misleading information, tampering with on-site monitoring equipment, and obstructing necessary access by CWC inspectors.

In enacting penal measures, a few questions should be considered. First, most nations penalize criminal entities that engage in CWC-prohibited activities if those activities are directed by a senior corporate official (Australia, South Korea, Malta). The reverse question is whether an officer can be held liable for corporate conduct. Most nations uphold liability if the officer has not adequately supervised subordinates (United Kingdom, Romania).

Second, States Parties can decide whether prosecutorial officials should be empowered to use CWC verification activities to initiate unrelated criminal investigations. For example, tax law violations might be discovered by matching production information reported for declarations against what is reported for tax purposes. Closely related is the question of whether evidence gathered during a CWC inspection can be admitted in a legal proceeding without violating domestic legal protections against unreasonable search and seizure and self-incrimination. Some nations have enacted measures to require persons to answer inspectors' questions so long as those answers are not incriminating. For example, the German legislation provides that a person who is obligated to give information may nevertheless refuse to answer certain questions that would make him liable to criminal or administrative proceedings.

A third issue concerns protection of due process of law, including notice of pending proceedings and a right to counsel. Most important, implementing measures should authorize the CWC agency to seize specific items relevant to compliance with the treaty, such as chemical weapons, related equipment, and materials (South Africa, Malta). Moreover, implementing measures should specify rights of judicial review and of notice to interested persons (Australia, South Africa).

Finally, Article VII also requires that States Parties provide to each other "appropriate legal assistance." Most States Parties rely on previously-enacted mutual assistance treaties to fulfill this obligation; notably, Switzerland provides in its CWC legislation that competent Swiss authorities should make information to foreign authorities (if there is reciprocity) as well as to relevant international organizations.

3 PROTOTYPE IMPLEMENTING STATUTE

Included in the *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. It 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, 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. 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 applicable provisions from available national statutes already enacted.

In many cases, it was necessary to select language for the prototype text from among similar provisions in some or all of the source statutes. When faced with this choice, the selected text was chosen for its simplicity, universality, and consistency with other sections of the model. In many cases, the differences between these national laws are small. Thus, 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. On the contrary, the drafters of all of the existing national implementing statutes 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 prototype.

The prototype statute is presented in a tabular format in order to provide a context for the language. The prototype text is contained in the center 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. The left column contains references to the sections of the *Manual* where more information can be found about the topic addressed by each accompanying prototype statute section. Finally, the original source statute from which each prototype provision was taken is indicated in the right-hand column. A more thorough explanation of how to use the prototype can be found in the *Manual*.

A brief illustration of how the Prototype works may be helpful. As discussed in section 2 of this paper, different options exist for designating or establishing a national authority. In section 4 of the prototype text (which can be found in the center column on page A-1 of this paper), two different approaches to fulfilling this responsibility are presented: (1) Language drawn from section 2 of the Finnish national implementing legislation (which is referenced in the right column next to the prototype text) shows how a national authority can be designated that places primary responsibility on one existing ministry (the Ministry of Foreign Affairs) and also assigns specific implementation tasks to two other ministries. (2) Language drawn from article 2 of the Peruvian national implementing legislation (also referenced in the right column) exemplifies the establishment of a new CWC-specific agency comprised of representatives from appropriate ministries. For those who wish to know where to find out more about this subject from within the *Manual*, a reference to the appropriate part (Chapter 2) can be found in the left column.

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.

5 CONCLUSIONS

The Web Edition of the *Manual for National Implementation of the Chemical Weapons Convention* offers a new tool for States Parties to understand and identify options for meeting their CWC obligations. National implementing legislation is one CWC obligation that can be met with relative ease. A variety of policy choices exist for States Parties to make regarding CWC national implementing measures, as exemplified by the obligations to designate or establish a national authority, adopt import/export controls, obtain information for declarations, and enact penal legislation. The *Chemical Weapons Convention Prototype Implementing Statute* is intended to show how such a law can be written by combining provisions of already-enacted statutes from fellow States Party. International cross-fertilization in this endeavor will result in more coherent CWC implementation.

APPENDIX A:

CHEMICAL WEAPONS CONVENTION PROTOTYPE IMPLEMENTING STATUTE

Manual	Prototype Text	Source
	The Parliament of <i>State Party Name</i> adopts this Act:	Romania
1.2	<p>1. Purpose of Act. This Act is to implement <i>State Party Name</i>'s obligations under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.</p>	New Zealand sec. 4
1.2.1	<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
1.3	<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.</p> <p>or</p> <p>A crime against the Convention will be sentenced by <i>State Party Name</i> law and at a <i>State Party Name</i> court even if the crime is committed abroad and irrespective of the perpetrator's nationality.</p>	Australia sec. 5(1) Sweden sec. 3
Ch. 2	<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 is the licensing authority (for activities related to Schedule 1 chemicals).</p> <p>or</p> <p>The "National Council for the Prohibition of Chemical Weapons" acting as "National Authority," shall be composed of representatives of ministries.</p>	Finland sec. 2 Peru art. 2

Manual	Prototype Text	Source
Ch. 2	<p>5. Regulatory Authority.</p> <p>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> <ul style="list-style-type: none"> (a) prescribing conditions under which restrictions on chemicals may be carried on and prescribing the fees or the manner of calculating fees to be paid in respect of any license; (b) respecting the procedures to be followed by representatives of the National Authority in exercising their functions under this Act; and (c) prescribing anything that by this Act is to be prescribed. 	Canada sec. 18
3.2.1 5.2.1	<p>6. Prohibited Activities Concerning 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 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 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. 	Malta sec. 4
4.1 5.2.3	<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 in 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 <i>State Party Name</i>'s territory, (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. 	Finland sec. 4 Czech sec. 9 Canada sec. 8

Manual	Prototype Text	Source
4.2	8. Restrictions on Chemical Transfers. (a) The <i>Head of State</i> may, (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; or (3) make the import, export, re-export or transit of controlled goods subject to end-use requirements.	South Africa sec. 13(2)
5.2.4	(b) Except as authorized, no person shall 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.	Canada sec. 9
7.2	9. Information and Documents. (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 -- (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; (2) Keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put; (3) Prepare, from those records, periodic reports relating to the chemicals and the facility in an approved form; and (4) Send those periodic reports at intervals specified by the <i>Designated Agency</i> or by regulation. (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. (c) Court orders or a fine shall be imposed on anyone who deliberately refuses to provide information or documents or who makes false declarations.	New Zealand sec. 13

Manual	Prototype Text	Source
7.2	<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>	<p>Germany art. 6 (2)</p> <p>Finland sec. 3</p> <p>Germany art. 6 (3)</p>
9.2.2.1	<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>	<p>Korea art. 14</p>

Manual	Prototype Text	Source
Ch. 9	<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>	<p>Denmark art. 14</p> <p>Denmark art. 15</p> <p>Germany art. 4</p>

Manual	Prototype Text	Source
8.2	13. Role of the <i>Designated Agency</i> Concerning Inspections.	
9.2	<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. 	<p>Korea art. 15</p> <p>Argen. sec. 7(d)</p> <p>sec. 7(g)</p> <p>sec. 8(e)</p> <p>sec. 10(f)</p> <p>sec. 10(j)</p> <p>Belarus art. 12(5)</p> <p>UK sec. 25(4)(a)</p> <p>sec. 25(4)(b)</p>

Manual	Prototype Text	Source
9.2.1	<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</u> application, a justice is satisfied by information on oath that</p> <p>(1) a place meets the conditions for entry to inspect,</p> <p>(2) entry to a place is necessary for any purpose relating to the administration of this Act or the regulations, and</p> <p>(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> <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 affecting the carrying out of the inspection.</p>	Canada sec. 15
10.3	<p>15. Conduct of Challenge Inspections and Investigations of Alleged Use of Chemical Weapons</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> <p>(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;</p> <p>(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;</p> <p>(3) receive data from the in-country escort team on all vehicular exit activities at the inspection site; and</p> <p>(4) monitor and inspect vehicles leaving the inspection site, with the exception of personal passenger vehicles.</p> <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>	UK sec. 25(9)

Manual	Prototype Text	Source
5.2.5	<p>16. Prohibited Activities Concerning 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. 79</p> <p>Australia sec. 80</p> <p>Italy art. 12</p>
5.3.2.2	<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>	<p>New Zealand sec. 28</p>
11.3	<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>State Party Name</i> under the Convention.</p>	<p>Canada sec. 17</p>

Manual	Prototype Text	Source
5.3.1.2 3.2.1.2	<p>19. Confiscations and Forfeitures.</p> <p>(a) A <i>Designated Agency</i> official may seize or cause to be seized--</p> <p>(1) controlled goods for which a permit is needed, but for which no application for a permit has been received;</p> <p>(2) controlled goods which do not comply with the conditions of a permit;</p> <p>(3) controlled goods prohibited under this Act;</p> <p>(4) 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 involved in the commission of the offence.</p> <p>(c) Where the court proposes to order anything 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 forfeited unless he has been given an opportunity to show cause why the order should not be made.</p>	<p>South Africa sec. 16(1)</p> <p>Australia sec. 81</p> <p>UK sec. 30(3)</p>
6.3	<p>20. Mutual Legal Cooperation</p> <p>(a) The competent authorities for implementation, control, crime prevention and criminal proceedings may collaborate with 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 use, and the 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 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. 15

Manual	Prototype Text	Source
5.3	<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 purporting to act in any such capacity, shall, as well as the body corporate, be guilty of that offence and be liable to be prosecuted and punished accordingly.</p>	Canada sec. 20
5.3.1.3		UK sec. 31(3)
12.2	<p>22. State Party Liability.</p> <p>Nothing in this Act makes <i>State Party Name</i> liable for any act or omission on the OPCW's part, or of any inspector, in implementing the Convention in <i>State Party Name</i>.</p> <p>or</p> <p>If anyone suffers damage caused by a member of the inspection team, the <i>State Party Name</i> shall be liable for such damage in accordance with the provisions and principles of <i>State Party Name</i> law which would be applicable if the damage was caused by an official of the <i>State Party Name</i> or by an act or omission for which the <i>State Party Name</i> bears responsibility.</p>	Australia sec. 103 Germany art. 14