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## LEGAL ASPECTS OF NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION NATIONAL AUTHORITY PROVISIONS

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Chemical Weapons Convention

Workshop I: The National Authority

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## LEGAL ASPECTS OF NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION NATIONAL AUTHORITY PROVISIONS

### 1 INTRODUCTION

Good day. It is an honor to address such a distinguished audience. I am grateful to the Government of Cote D'Ivoire for hosting this important gathering and to Mr. Ian Kenyon and the staff of the Provisional Technical Secretariat (PTS) of the Organisation for the Prohibition of Chemical Weapons (OPCW) for sponsoring it. This seminar is an excellent opportunity for all of us to learn from each other about how the Chemical Weapons Convention<sup>1</sup> (CWC) can become a foundation of arms control in Africa and around the world. At this meeting I speak only for myself, neither for the government of the United States of America nor for any other institution.

Today, I shall discuss legal aspects of implementing the CWC's national authority provisions. These implementing measures are universal, applying not only to the few States Parties that will declare and destroy chemical weapons, but also to the many States Parties that have never had a chemical weapons programme.

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

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

The *Manual* tries to increase understanding of the Convention by identifying its obligations and suggesting methods of meeting them. Education about CWC obligations and available alternatives to comply with these requirements can facilitate national responses that are consistent among States Parties. Thus, while the *Manual* avoids prescribing model statutory language, it offers options that can strengthen international realization of the Convention's goals

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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].

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.

At the September 1994 African seminar on CWC implementation, held in Pretoria, Republic of South Africa, I explained the eleven major categories of national implementing tasks that each State Party must address in order to comply with the CWC. It is not my purpose today to repeat that explanation, although I have brought a copy of our *Manual for National Implementation of the Chemical Weapons Convention* for each delegation.

Today, I want to discuss progress among several States in actually developing implementing measures for the Convention's national authority requirements. CWC legislation from Australia,<sup>2</sup> Germany,<sup>3</sup> Norway,<sup>4</sup> South Africa,<sup>5</sup> and Sweden<sup>6</sup> were available at this writing in English through the PTS. 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.

The perspective from which I present my remarks is that of a lawyer. It is not my purpose to discuss the correctness of the policies embodied in the Convention, the politics of its negotiation, or to suggest to any States Parties how they should proceed. Neither will I comment on the quality or correctness of the national legislation I discuss here today. Instead, I hope that my brief review will give delegations a flavour of the choices that exist for national implementation of the CWC.

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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).

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.

## 2 COMPARISON OF NATIONAL AUTHORITY LEGISLATION

Article VII, paragraph 4 of the Convention requires States Parties to "designate or establish" a national authority. As explained in chapter 2 of the *Manual*, each State Party must decide how to constitute its "national focal point" for liaison with the OPCW and other States Parties. Among the choices are to designate an existing agency to serve this purpose or to establish a new one. Implicit in this decision is the question of whether a State Party's national authority is to be a centralised agency that addresses all CWC issues, or whether it will serve solely as a liaison. For example, a centralised national authority would not only be responsible for making declarations to the OPCW, but also would gather information about scheduled chemicals, as well as other treaty-required data with which to make the declarations. In contrast, a State Party that adopts a decentralised system might assign to its Ministry of Commerce or Economic Development the function of obtaining information for declarations, giving to the National Authority the smaller job of transmitting those declarations to the OPCW.

A review of the implementing measures for a national authority illustrates the range of options available to States Parties. The Australian and South African legislation both create a highly centralised national authority. The Australian legislation establishes the Chemical Weapons Convention Office whose Director is required, among other things, to "carry out, on behalf of Australia, the obligations that Australia has under the Convention."<sup>7</sup> The South African Council for Non-Proliferation of Weapons of Mass Destruction has somewhat broader responsibilities, assigned the function not only of CWC compliance in all of its aspects,<sup>8</sup> but also for control of biological and nuclear weapons.<sup>9</sup>

The Swedish and German legislation take an opposite approach to that of Australia and South Africa. The Swedish implementing legislation designates its Ministry for Foreign Affairs as its national authority and specifically notes that the only function it will serve "is that of coordinator rather than executor"<sup>10</sup>; presumably, existing government agencies will fulfill the other compliance tasks. The German legislation specifically identifies which CWC obligations are assigned to the various existing government agencies that share overall CWC implementation responsibility. For example, under the German legislation:

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7. Australian CWC Implementing Legislation, *supra* note 2, Part 7, § 87(b).

8. See 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 2-3.

9. See South African CWC Implementing Legislation, *supra* note 5, §§ 1(vi), 1(xxxvi), 5, and 13. The Atomic Energy Corporation is designated as the National Authority for implementing the Safeguards Agreement between the Republic of South Africa and the International Atomic Energy Agency. *Id.* § 5.

10. Summary of Swedish CWC Implementing Legislation, *supra* note 6, at 81.

- the Foreign Office is assigned liaison responsibility with the OPCW;<sup>11</sup>
- the Federal Ministry of Finance is to provide for monitoring chemical exports and imports;<sup>12</sup>
- the Federal Export Office is made responsible for collecting data for declaration (by the Foreign Office) to the OPCW,<sup>13</sup> for negotiating facility agreements with the OPCW in cooperation with other agencies,<sup>14</sup> and for escorting inspectors who visit non-military locations or facilities;<sup>15</sup> and
- the Centre for Verification of the Federal Armed Forces is assigned the task of escorting inspectors to military locations or facilities.<sup>16</sup>

The Norwegian law takes yet a third path to fulfilling its CWC national authority obligations. This implementing legislation omits specific mention of the Norwegian national authority altogether, apparently authorizing regulations to be issued to constitute this body.<sup>17</sup>

### 3 CONCLUSIONS

Thus, a variety of ways to empower national authorities can be seen to exist, which are summarised in Table 1. Those legislated to date range from quite specific and comprehensive to very general; from centralized to decentralized. Numerous approaches can satisfy the Convention's requirements.

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11. *See* German CWC Implementing Legislation, *supra* note 3, ¶ (6)3.

12. *See id.* ¶ 5(2).

13. *See id.* ¶ 5(1).

14. *See id.* ¶ 13(1).

15. *See id.* ¶ 9(1).

16. *See id.*

17. *See* Norwegian CWC Implementing Legislation, *supra* note 4, ¶ 1, which simply empowers the King "to issue detailed regulations to fulfill the Norwegian obligations according to the Convention, including provisions on the destruction of chemical weapons and means of production and so forth."

**Table 1: Comparison of National Authority Implementing Legislation**

	CENTRALISED	DECENTRALISED
GENERAL	Norway?	Norway? Sweden
SPECIFIC	Australia South Africa	Germany

#### **4 QUESTIONS FOR CONSIDERATION**

The following questions are intended to suggest various matters that States may want to consider in developing national implementing measures to comply with the Convention's national authority requirements:

1. How many of the functions that the CWC national authority will be required to perform are already assigned to existing government agencies?
2. Will a centralised or a decentralised national authority operate less expensively?
3. Will a centralised or a decentralised national authority provide better access to government experts whose assistance is necessary to CWC implementation?
4. Will a centralised or a decentralised national authority promote better intra-governmental communication regarding CWC implementation?
5. Does the national constitution require certain CWC implementation functions to be separated from others?