



National Implementation of the CWC

The intrusive nature of the Chemical Weapons Convention's (CWC) verification regime, coupled with the fact that it covers private chemical enterprises as well as government facilities, means that national measures to implement the CWC are of great importance. Article VII of the Convention addresses this topic in two principal ways. First, it requires States Parties to enact, if necessary, national legislation prohibiting individuals and companies from undertaking any activity prohibited by the Convention. Second, it requires each State Party to designate or establish a National Authority 'to serve as the national focal point for effective liaison with the Organisation and other States Parties'. Effective implementation of the CWC has become even more important than before, in view of the new security risks and threats, in particular terrorism.

The National Authority

The National Authority plays a key role in the implementation of the Convention's verification regime. While the OPCW provides mechanisms verifying compliance with the CWC, the National Authority creates mechanisms for achieving and demonstrating compliance. The National Authority must be designated on or before the date of the entry into force of the Convention for the State Party concerned.

Size, Structure and Mandate

States Parties enjoy wide discretion in determining the size, structure, composition and mandate of their National Authorities. As the words 'designate or establish' indicate, a State Party may either assign the task of acting as the National Authority to an existing government department or agency, or it may create an entirely new entity specifically for this purpose. Each State Party's particular circumstances (i.e. the

types of chemical facilities it possesses; the amount of resources it can allocate to implementation, etc.) determine the composition, structure and mandate of its National Authority. The National Authority can be either a centralised entity with responsibilities covering all aspects of national implementation of the Convention, or a decentralised entity acting as a liaison between the OPCW and the multiple government departments or agencies responsible for specific aspects of national implementation. The administrative burden is not necessarily great. For States Parties which possess no chemical weapons and have little or no declarable chemical industry, the National Authority can be a body consisting of just one or two persons within a government department or ministry.

Functions

As the national focal point for liaison with the OPCW and other States Parties, the national data collection point and the facilitator of national implementation, an effective National Authority is of central importance to the effectiveness of the Convention itself. To meet its basic obligations, each State Party must be in a position to carry out the following tasks: (a) submit all the required declarations, (b) communicate with the OPCW, (c) co-operate with other States Parties, (d) facilitate OPCW inspections by cooperating with OPCW inspectors and receiving flight plans for non-scheduled aircraft, (e) respond to the OPCW's requests for assistance, (f) protect the confidentiality of classified information, (g) monitor and enforce national compliance and (h) cooperate with efforts to promote chemical activities for purposes not prohibited by the Convention. States Parties that are declared chemical weapons possessors will also have the major task of destroying their stockpiles and all production facilities (see Fact Sheet 6). All of these functions involve a State Party's National Authority to a greater or lesser extent, and the National Authority's mandate is defined accordingly.



A meeting of National Authorities at the OPCW

Support for National Authorities

The OPCW supports National Authorities through courses and workshops and by providing guidance on the filing of declarations. The Secretariat holds training courses at locations around the world for National Authority personnel. Since 1997 over 13,000 participants from all geographical regions have received support in national implementation of the CWC through OPCW meetings, workshops, training courses and seminars. The focus of training courses has gradually shifted from topics like the preparation of national implementing legislation to other concerns such as development of analytical capabilities and customs-related issues. In addition to regional courses, the Secretariat supports national courses in areas relevant to the Convention. The Secretariat provides support for States Parties preparing declarations, including direct, on-site assistance with the administrative procedures involved. Further assistance from members of the declaration support network, made up of OPCW staff and recognised experts from several States Parties, is also available to States Parties upon request if needed.

National Authorities are supported in other ways, too. The Secretariat provides information about the Convention and the OPCW to National Authorities, prospective States Parties, and others through the OPCW website (www.opcw.org). Some of the tools freely available on the OPCW website include a Scheduled Chemicals Database with over 29,000 of the chemicals listed on the Convention's 3 schedules and the Electronic Declarations Tool for National Authorities (EDNA), a software application to help states parties create and submit Article VI declarations (see Fact Sheet 7).

National Implementing Legislation

Article VII, paragraph 1, sets out the basic measures each State Party must take to implement its obligations under the Convention (see box). An additional requirement with respect to legislation is specified in Article VI, paragraph 2: in the context of the regulation of the chemicals listed in Schedules 1, 2 and 3, each State Party is required to adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred or used within its territory or in any other place under its jurisdiction or control, for purposes not prohibited under the Convention. Finally, States Parties are required to review their existing legislation 'in the field of trade in chemicals in order to render them consistent with the object and purpose of this Convention' (Article XI, paragraph 2). The complex nature of these obligations means that each State Party must assess the steps that are necessary to ensure that the treaty will be implemented effectively and enforced within its jurisdiction. Depending upon the State Party's constitution, its existing laws and the extent of its chemical industry, the steps the State Party has to take may be very few or quite extensive. In all cases, however, a review of existing legislation is in order. The OPCW website also provides a Legislative Assistance Support Tool for Member States to find reference legal documents and produce draft legislation.

Scope of the Legislation

The implementation of the Convention may affect several distinct spheres within a State Party: its military insofar as the Convention deals with means and methods of warfare; its police insofar as it addresses riot control agents and requires the enforcement of national laws and regulations; customs insofar as trade in controlled chemicals is involved; private industry insofar as the

Examples of Topics Covered at National Authority Training Courses

Introductory Topics

- Overview of the CWC
- Structure and role of the OPCW
- Legal rights and obligations under the CWC
- Legislative and administrative measures required for national implementation
- Operational tasks relating to international cooperation, trade and assistance
- Communication with the OPCW
- Data handling and confidentiality

Declarations

- Identification of declarable activities and facilities
- Operational tasks related to declarations
- Collection of declaration data
- Article VI declarations
- Declaration problems

Inspections

- Receiving inspections
- The inspection process
- Industry inspection issues
- Article IX (challenge inspections)
- Investigations of alleged use of chemical weapons

Work of the National Authority

- Setting up and running a National Authority
- Decision-making
- Finding and providing CWC-related information

production, processing and consumption of scheduled chemicals and unscheduled discrete organic chemicals is monitored; and government in general insofar as each State Party is required to designate a National Authority and is granted representation in the OPCW. In addition, the Convention requires ongoing reporting on certain transfers of scheduled chemicals (see Fact Sheet 7).

Article VII requires each State Party to adopt measures in three areas: prohibitions, penal provisions and extraterritorial application to its nationals. However, legislation is also generally necessary 1) to compel companies and other relevant entities to submit the information needed by the National Authority in order to compile accurate declarations, and 2) for export/import controls. The experience in implementing the Convention has shown that comprehensive implementing legislation is the key to obtaining reliable, complete information to report to the OPCW. In addition to those areas in which it is explicitly required, some States Parties have included other issues in their legislation, such as legal assistance, the legal definition of chemical weapons, declaration obligations, the control regime for scheduled chemicals, licensing of industry, access to facilities, inspection equipment, application of inspectors' privileges and immunities, confidentiality, liability, the mandate of the National Authority and its enforcement powers, the taking of samples and the primacy of the Convention.

The Technical Secretariat also cooperates with other international organisations to develop an integrated approach to the sound management of chemicals. The integrated approach aims to avoid conflicts between the legislative provisions of the CWC and agreements such as the Rotterdam convention and to streamline their administration. For States Parties with no chemical weapons and little or no declarable chemical industry, the basic National Authority structure needed to liaise with the OPCW can be placed under the umbrella of another regime, reducing considerably the administrative burden and costs, while at the same time satisfying Convention's requirements.

Cooperation and Legal Assistance

Article VII, paragraph 2 provides that 'each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance....' Such cooperation is necessary primarily for the prosecution and punishment of those who violate the requirements of the Convention. Its necessary components include the 'criminalising' of activities prohibited under the Convention; the extraterritorial extension of penal legislation to acts committed by nationals abroad; the harmonising of penalties; and the inclusion of offences against the Convention in extradition treaties as 'extraditable' crimes.

CWC Article VII National Implementation Measures

General undertakings

1. Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention. In particular, it shall:

- (a) Prohibit natural and legal persons anywhere on its 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;
- (b) Not permit in any place under its control any activity prohibited to a State Party under this Convention; and
- (c) Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.

National Authority Mentorship and Partnership Programme

The National Authority Mentorship and Partnership Programme is part of the Technical Secretariat's efforts to enhance the technical support and assistance provided to States Parties in support of their national implementation efforts. It is designed to create a partnership between a National Authority which has proven to be efficient and more successful in the implementation of its obligations under the Convention with another one at a lower level of implementation. This is to enhance the functioning of the latter National Authority.

The Programme entails the facilitation by the Secretariat of the exchange of visits between the two paired National Authorities and the provision of financial support and technical advice in this regard. The visits are designed to complement the work of the Secretariat by making the



Participants during a regional course for National Authorities on receiving OPCW inspections

knowledge, skills, and experience of a more advanced and experienced National Authority available to another National Authority which is at a comparatively lower level of implementation of its obligations under the provisions of the Convention.

The objectives of the National Authority Mentorship and Partnership Programme are to:

- enhance the functioning of the mentored National Authority through the sharing of the knowledge, skills and experience of the mentoring National Authority;
- share best practices relating to how the Chemical Weapons Convention is implemented at the national level;
- familiarise the beneficiary National Authority, through practical support, on the use of the facilities, tools and information provided by the Technical Secretariat of the OPCW in support of national implementation; provide a platform for the exchange of views and sharing of information and experiences regarding the implementation of the Chemical Weapons Convention; and
- develop partnership and strengthen cooperation and collaboration between the participating National Authorities

Internship Programme for Legal Drafters and National Authorities' Representatives

In November 2012, The Technical Secretariat launched the "Internship Programme for Legal Drafters and National Authorities' Representatives". The Programme, which takes place at the OPCW's Headquarters in The Hague, is conducted in English, French and Spanish and is aimed at qualified legal officers and qualified members from National Authorities of States Parties.

It is a one-week drafting programme at the OPCW Headquarters for legal drafters and other relevant National Authority representatives. During the week participants are taught and equipped with the technical capacity

and requisite skills to enable them to complete a draft of national implementing legislation and also to pursue its adoption upon their return.

The objectives of the internship are to provide tailor-made assistance to States Parties that have not yet started developing the initial draft of their national

implementing legislation, or those that have challenges in this regard. By the end of the internship, it is expected that the legal drafters of the participating States Parties would have developed an initial text of draft legislation that is fully in line with the provisions of the Convention, meets the requirements of their respective national legislative bodies, and is suitable for submission to Parliament. The internship also seeks to support States Parties that may already have such a framework in place but require support to draft administrative measures.

Four sessions of the Internship Programme are organised every year, with thirteen taking place by 2016 and 25 different countries participating. Since the programme's inception, there have been a number of success stories: Paraguay, Grenada, Cape Verde, and Panama all adopted legislation shortly after completing the Internship Programme.

Influential Visitors Programme

This is a recent initiative entailing a visit to the OPCW by key decision-makers (parliamentarians, government officials, etc.) from States Parties which have drafted implementing legislation but need assistance in advocating for its adoption. The programme was successfully piloted in 2015 with Uganda, resulting in the passing of its implementing legislation in the same year.

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