



Office of the Legal Adviser
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SURVEY OF NATIONAL IMPLEMENTING LEGISLATION

1. Introduction

- 1.1 Depending upon a state's legal system and its existing law, a State Party to the Chemical Weapons Convention may, or may not, need to enact national legislation to implement the Convention. In a monist legal system, national and international law are viewed as a single legal system and, depending upon existing provisions in the penal code and the content of customs regulations, no separate implementing legislation may be needed to enforce the Convention nationally. Under that system, if there is a conflict between the Convention and any constitutional or statutory norm, the Convention will prevail. In a dualist system, international law is viewed as a distinct system which governs conduct only among states. Under such a system, the Convention will have no internal effect until national implementing measures have been put in place by that State, either as parliamentary acts or administrative measures.
- 1.2 In any event, Article VII, paragraph 5, of the Convention requires all States Parties to inform the organisation of the legislative and administrative measures that have been taken to implement the Convention.

2. Compilation prepared by the Secretariat

- 2.1 Based upon the information provided by States Parties under Article VII, paragraph 5, the Secretariat has prepared an updated survey of national implementing legislation. In the course of this review, the Secretariat has seen that national implementing legislation has taken various forms: some States Parties have enacted a single, comprehensive act to implement the Convention; some have integrated it into other weapons or chemicals regulations; others have amended a series of existing laws, while others have incorporated the text of the Convention in its entirety into national law. The survey, annexed to this Note, consists of a compilation of extracts, organised by topic. The list of topics surveyed is as follows:

Measures required under Article VII, paragraph 1:

1. prohibitions
2. penal provisions
3. extraterritorial application

Other measures enacted by States Parties:

4. legal assistance (Article VII, paragraph 2)
5. definition of chemical weapons
6. declaration obligations
7. regime for Schedules 1, 2 and 3 chemicals
 - 7.1 regulation of Schedule 1 production/use
 - 7.2 licensing of industry
 - 7.3 import/export controls
 - 7.4 saxitoxin
 - 7.5 mixtures
8. inspections: access to facilities
9. inspection equipment
10. samples
11. respect for inspectors' privileges and immunities
12. confidentiality
13. liability
14. composition of the National Authority
15. mandate of the National Authority
16. enforcement powers of the National Authority
17. environmental measures
18. primacy of the Convention

2.2 In most jurisdictions, it will be necessary to have specific legislation in force covering topics 1 to 3. For the remainder of the topics, specific legislation may not be required if the State Party's legal system guarantees the effect that specific legislation would achieve. Compliance can be measured only by effect and, under customary international law (as codified by Article 27 of the 1969 Vienna Convention on the Law of Treaties), a State Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

2.3 The Convention does not elaborate the cooperation and legal assistance which may be required of States Parties under Article VII, paragraph 2. As it stands now, States Parties will draw on existing international agreements on legal assistance and related domestic legislation, as well as on ad hoc arrangements to be reached between the States Parties concerned. This relates to the initiation of proceedings, the guarantee of due process, the specific types of assistance, and the extradition of alleged offenders.

3. Summary

The Chemical Weapons Convention requires all States Parties to adopt the measures necessary to implement their obligations under the Conventions, including enacting penal legislation. The obligation for States Parties to cooperate and afford the appropriate form of legal assistance will be facilitated if national legislation is in force and is consistent with the Convention.

Annex: Survey of national implementing legislation: Extracts from national implementing legislation for the Chemical Weapons Convention
Volume 1: Topics 1 – 6
Volume 2: Topics 7 - 18

Annexes provided in hard copy

Annex

**SURVEY OF NATIONAL IMPLEMENTING LEGISLATION:
EXTRACTS FROM NATIONAL IMPLEMENTING LEGISLATION FOR THE
CHEMICAL WEAPONS CONVENTION**

Volume 1:

Topics 1 - 6

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Annex

**SURVEY OF NATIONAL IMPLEMENTING LEGISLATION:
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Volume 2:

Topics 7 - 18

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