# **Technical Secretariat**



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# REPORT BY THE NETWORK OF LEGAL EXPERTS FROM LATIN AMERICA AND THE CARIBBEAN ON ITS ROLE IN PROMOTING THE ADOPTION OF NATIONAL IMPLEMENTING LEGISLATION

## 1. Origin and composition of the Network

- 1.1 At the First Regional Meeting of National Authorities of Member States in Latin America and the Caribbean in Lima, Peru, in March 2000, it was proposed that a network of legal experts designated by States Parties to the Chemical Weapons Convention (hereinafter "the Convention") be established in the region.
- 1.2 In accordance with that proposal, and in coordination with the Technical Secretariat (hereinafter "the Secretariat"), the Network of Legal Experts from Latin America and the Caribbean was established, with the following experts, who had been designated by their respective States Parties, as members: Ana María Cerini (Argentina, Chairperson), Luis Gino Poggi Borda (Bolivia), Antonio Cançado Trindade (Brazil), Irene Romero López (Cuba), Pedro Sittón (Panama), and Barbara Pierre (Saint Lucia). Two additional members were subsequently designated: Rodrigo Yepes Enríquez (Ecuador) and Maria Ysabel Valle Martínez (Peru).
- 1.3 The Network has held three meetings. The first took place in February 2001 in The Hague, in conjunction with the OPCW International Symposium on Cooperation and Legal Assistance for the Effective Implementation of International Agreements. The second was held in March 2001 in Viña del Mar, Chile, to coincide with the Second Regional Meeting of National Authorities of States Parties in the Latin American and Caribbean Region; and the third took place in February 2003 in Panama City, Panama, in conjunction with the Fourth Regional Meeting of National Authorities in Latin America and the Caribbean. OPCW budgetary constraints had forced the postponement of the third meeting to 2003; however, when funding did become available, an ambitious programme of work was proposed that included the provision of assistance by a Network member to States Parties in Central America during the Regional Seminar for National Authorities on the Implementation of the Chemical Weapons Convention in Central America, which was held in Costa Rica in July 2003. A Network member also provided legal assistance during the National Authority Training Course for the Colombian National Authority, which was held in July 2003.

1.4 The Network's initiatives and the potential it has shown have also inspired the Secretariat to expand it this year to include the four other OPCW regional groupings. This report has been prepared for submission to the expanded Network at its first meeting in The Hague from 4 to 7 November 2003.

# 2. Role of the Network

- 2.1 Article VII, paragraph 1, of the Convention requires each State Party to "adopt the necessary measures to implement its obligations under this Convention", including the enactment of domestic penal legislation to prohibit any activity prohibited to a State Party under the Convention.
- 2.2 The impetus for creating the Network was the stipulation in Article VII, paragraph 2, of the Convention that 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". This general obligation does not specify the mechanisms through which cooperation and assistance shall be provided, and thus leaves it to regional groups to develop networks such as that created by States Parties in Latin America and the Caribbean.
- 2.3 The Network is a body of legal professionals who serve as contact points in each country in the region on matters related to the implementation of the obligations contained in the Convention. Taking advantage of the similarity in the legal systems, government structures, and languages within the region, the Network also aims to provide assistance and advice to those States Parties in the region that are engaged in implementing the national-legislation and administrative measures required by the Convention.
- 2.4 One of the functions of the Network members is to answer inquiries from other States Parties about the implementing legislation in their own countries. The members also share their experiences in implementing new regulations and identify common problems and obstacles, thus facilitating the harmonisation of regulations within the region so as to ensure the mutual consistency of the ways States Parties in the region implement their obligations under the Convention.
- 2.5 As part of its effort to achieve a better understanding within the region of the controls currently in place on the trade in chemicals, the Network is preparing a questionnaire on the tracking of exports of chemical substances. Responses to the questionnaire will be sought from States Parties in Latin America and the Caribbean, and a report on those responses will be made available in due course.

## **3.** Cooperation and legal assistance in criminal matters

3.1 Article VII, paragraph 2, establishes only a general obligation to cooperate and provide legal assistance. It does not specify the modalities of the legal assistance to be provided; nor does it define a mechanism that would regulate extradition or judicial assistance. Similarly, it does not cover matters related to the exercise of criminal jurisdiction or establish the principle *aut dedere aut judicare*, whereby a State Party that declines a request for extradition prosecutes the alleged offender in its own jurisdiction. Thus, requests for assistance must be carried out in accordance with

the bilateral or multilateral extradition or mutual-legal-assistance treaties to which States Parties are party under international law and their own domestic legislation.

- 3.2 In cases in which an individual has carried out acts prohibited under the Convention, a number of States might be competent to conduct an investigation or to institute criminal proceedings. In the resulting situation of concurrent jurisdiction, States would be obliged to cooperate and, *inter alia*, to extend the legal assistance necessary to fulfil the obligations to prohibit, impede, prosecute, and punish acts prohibited under the Convention, as well as to ensure security and protect persons and the environment.
- 3.3 The obligation of States Parties to take the measures necessary to prohibit and punish acts prohibited by the Convention also entails an obligation to extend mutual legal assistance. The provision of, or requests for, assistance will encounter obstacles if States do not have the necessary internal measures in place covering, for example, dual criminality for requests for extradition, the investigation and prosecution of crimes, the use of search warrants, the arrest of persons, the seizure of assets, the interception of mail, and wire-tapping.

#### 4. Activities proposed by the Network

- 4.1 With the goal of increasing assistance and cooperation in the region, the Network proposes to:
  - (a) expand the Network to include new members designated by other States Parties in the region;
  - (b) compile information on the status of implementation regionally and on internal norms and regulations regarding requests and responses for cooperation and legal assistance;
  - (c) identify and analyse existing laws in the region that would provide the degree of dual criminality necessary for extradition in cases involving violations of the norms of the Convention, so as to stimulate the adoption by States Parties of new penalties as appropriate;
  - (d) identify in each State Party the centralised organ in charge of coordinating requests for cooperation and legal assistance, and the persons responsible in those organs;
  - (e) contact each national customs department in the region to inform it of the existence of the Network;
  - (f) identify relevant agreements on mutual legal assistance to which each State Party is party at the international, regional, and bilateral levels;
  - (g) create a regional-cooperation database that clearly outlines each State Party's needs;

- (h) identify and analyse the best methods of harmonising States Parties' national implementing legislation and of optimising the systematic exchange of information;
- (i) identify and analyse assistance requirements common to States Parties, thus enabling a more efficient response;
- (j) report existing export controls in the region, and analyse the possibility of establishing a harmonised export-control system and developing common levels of controls in order to eliminate commercial disadvantages; and
- (k) explore the possibility of joint action to prevent crimes related to the Convention, as well as to enable immediate action to be taken at national borders to prevent the diversion of toxic chemicals for proliferation purposes.
- 4.2 The Network also proposes to study the following items as they relate to cooperation in the case of a threatened or actual terrorist attack involving chemical weapons:
  - (a) The means each State Party has at its disposal to respond to different threat or attack scenarios, including hospitals, experts who can treat affected persons, and necessary materials;
  - (b) administrative and customs procedures; and
  - (c) export- and import-control measures related particularly to specialised materials, equipment, and vaccinations.

#### 5. Conclusion

The establishment of the Network of Legal Experts in Latin America and the Caribbean opened an avenue for States in the region to work together on themes related to the implementation of the Convention. Whether it is initiated by a legal expert or a National Authority, dialogue helps to facilitate the implementation of national legislation and the fulfilment by States Parties of their obligations under the Convention. The above-mentioned proposals are being presented to the new OPCW Network of Legal Experts for its consideration as it plans out its work. The Secretariat has expressed its appreciation to the Network of Legal Experts of Latin America and the Caribbean for its work and for the inspiration it provided for the expansion and transformation that have resulted in the OPCW Network of Legal Experts, which encompasses all five regional groupings in the OPCW.

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