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NOTE BY THE DIRECTOR-GENERAL

COMPLIANCE WITH ARTICLE VII: LEGISLATION, COOPERATION AND LEGAL ASSISTANCE

1. Introduction

1.1 The Chemical Weapons Convention is not self-executing. Each State Party's international obligations under the Convention must be given direct internal legal effect. It is a general duty for each State Party to bring its domestic law into conformity with its obligations under international law, and Article VII of the Convention expressly requires States Parties to "prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognised by international law from undertaking any activity prohibited to a State Party under [the] Convention, including enacting penal legislation with respect to such activity".

1.2 Depending upon its legal system and the scope of its already existing law, a State may have to undertake extensive advance preparation to have national implementing legislation in force at the time of the entry into force of the Convention for that State. Recognising this, the Technical Secretariat of the Preparatory Commission, and successively the Technical Secretariat of the OPCW, conducted or participated in workshops and regional seminars concerning this subject and cooperated with States Parties by providing assistance with legislation upon request. Model national implementing legislation was prepared in 1996 and has been widely distributed since then.[1] A number of external publications have also been circulated.[2]

1.3 Nevertheless, more than 18 months after entry into force of the Convention, out of 119 States Parties, only 40, i.e. only 33%, have informed the Technical Secretariat of the legislative and administrative measures they have taken to implement the Convention (as required by Article VII, paragraph 5). Some of the texts are still in translation and perhaps some of the submissions were not complete, but of those texts submitted and reviewed, only 26 appear to be comprehensive enough for the State Party to be able to implement the Convention effectively in its jurisdiction. In only 18

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1 Note by the Executive Secretary on Model National Implementing Legislation, Preparatory Commission document PC-XI/7/Rev.1, dated 31 May 1996.

2 Chiefly, Barry Kellman and Edward Tanzman, Manual for National Implementation of the Chemical Weapons Convention, Second Edition, February 1998 (first edition, December 1993).

of those texts has the penal legislation been extended to nationals extraterritorially, as required by Article VII, subparagraph 1(c).

1.4 The purpose of this Note is to bring this matter to the attention of States Parties.

2. General undertakings under Article VII

2.1 The provisions of Article VII, paragraphs 1 and 2, of the Convention are closely linked to the object and purpose of the Convention, which aim, "for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons" and to pursue "the complete and effective prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons".[3] Article VII provides as follows:

"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."

2.2 Inherent in these provisions is the concept that activities prohibited by the Convention at the international level will be proscribed and enforced by States Parties at the national level through their domestic processes. And, by extraterritorial extension of penal legislation to nationals and the obligation of States Parties to cooperate, the opportunity will at least be provided for international cooperation in pursuit of shared objectives.

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3 Preamble to the Convention, paragraphs 6 and 9.

3. Activities to be prohibited by penal law

3.1 Article VII, paragraph 1, requires States Parties, inter alia, to have enacted penal legislation applicable to natural or legal persons, as appropriate, with respect to prohibited activities. Penal legislation may involve either criminal or administrative sanctions**.**

3.2 The wording "activities prohibited under the Convention" relates first and foremost - but not exclusively - to the activities prohibited by Article I of the Convention. The model national implementation legislation prepared by the Secretariat of the Preparatory Commission for the OPCW suggested the following text for national legislation, part of which is an almost verbatim transcription of the text of Article I:

1. "No person shall

   (a) develop, produce, otherwise acquire, stockpile, own, possess,[4] or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
   (b) use chemical weapons;
   (c) engage in any military preparations to use chemical weapons;
   (d) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention;
   (e) transfer to or receive from any person in a State not Party any of the chemicals listed in Schedule 1 or Schedule 2 of the Annex of Chemicals, except in accordance with the provisions of Sections A and B of Part VI or Section C of Part VII of the Verification Annex;
   (f) transfer any of the chemicals listed in Schedule 3 of the Annex on Chemicals unless the transfer complies with the provisions of Section C of Part VIII of the Verification Annex.

2. In this Article, "Chemical Weapons" means the following, together or separately:

   (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
   (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a) of this paragraph, which would be released as a result of the employment of such munitions and devices;
   (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b) of this paragraph.

3. This Article extends to acts or omissions by a national of [the State Party] outside the territory of [the State Party]."

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[4] The words "own" and "possess" are not part of the text of Article I. They were included in the model legislation in order to provide for effective sanctions against the use of chemical weapons in terrorist attacks.

3.3 The Note transmitting the model legislation adds the following considerations concerning appropriate penalties: "... as these are the most basic violations of the very purpose of the Convention, penalties should be severe enough to deter possible violators. Legislation already drafted in this respect includes the penalty of life imprisonment for the most serious violations."

3.4 In addition to the Article I prohibitions, some States Parties deemed it necessary to sanction other activities related to implementation of the Convention in their penal law:

(a) preventing chemical weapons stockpiles from destruction. This would include false declarations under Articles III and IV, or the removal of chemical weapons after declaration for purposes other than destruction (Article IV, paragraph 4);

(b) continuing activities within chemical weapons production facilities other than those necessary for closure (Article V, paragraph 4);

(c) preventing the destruction of chemical weapons production facilities (Article V, paragraph 8);

(d) developing, producing, acquiring, retaining, transferring or using Schedule 1 chemicals in violation of the regimes established for such chemicals and related facilities under the Convention (Article VI, paragraph 3, together with Part VI of the Verification Annex);

(e) developing, producing, acquiring, retaining, transferring or using Schedules 2 and 3 chemicals in grave[5] violation of the regimes established for such chemicals and related facilities under the Convention, in cases in which the danger of misuse for prohibited purposes is imminent (e.g. a violation of the provisions on transfer in Part VII, paragraphs 31 and 32, or Part VIII, paragraph 26, of the Verification Annex);

(f) grave[6] violations of provisions enacted by States Parties for implementing the Convention, e.g. refusing access to a site subject to inspection, obstructing verification activities, disabling monitoring instruments and systems, damaging seals and markers used by inspection teams, samples or other evidence of an inspection;[7] and

(g) acts seriously compromising the purpose of the OPCW, especially its Secretariat, e.g. wilfully or negligently violating the confidentiality regime (Article VII, paragraph 6).

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5 In some cases, administrative sanctions were attached to minor offences.

6 In some cases, administrative sanctions were attached to minor offences.

7 See, Walter Krutzsch and Ralf Trapp, A Commentary on the Chemical Weapons Convention, Martinus Nijhoff, Dordrecht/Boston/London (1994), page 111.

Inherent in all these are the Article VIII, paragraphs 46 and 47, prohibitions aimed at safeguarding the functioning of the international verification regime.

4. Jurisdiction and extraterritoriality

4.1 The legislative and administrative measures must extend to all natural and legal persons in the territory of the State Party and in other places under its jurisdiction as recognised by international law. In addition, each State Party has to extend its penal legislation to natural persons (as distinct from legal persons) having its nationality**,** when they commit such offences outside the territorial jurisdiction of that State Party. Although the rule that a state may prosecute its nationals for crimes committed anywhere in the world (active nationality principle) is universally accepted, the extent to which states assert jurisdiction over their nationals abroad varies.[8] In some jurisdictions, it is only exercised in respect of a small number of specific crimes. In both cases, the extraterritorial application of its penal provisions to cover activities prohibited under the Convention will have to be explicitly provided for in its implementing legislation. Sweden has taken this a step further, by providing that, "A crime against the Convention will be sentenced by Swedish law and at a Swedish court even if the crime is committed abroad and irrespective of the perpetrator's nationality",[9] thus raising the offence, for Sweden, to the level of an international crime of universal jurisdiction.

4.2 The scope of the Convention and wide adherence to it will reinforce its emerging role as a codification and progressive development of customary international law. As universality of the Convention approaches, its norms become global norms which could be understood as declaratory of customary international law, which is binding even on States not party. Thus in this respect also, action by States Parties in extending their extraterritorial jurisdiction is consistent with international law.

5. Enforcement of the penal law

5.1 States Parties are required to "not permit in any place under its control any activity prohibited to a State Party under this Convention" (Article VII, subparagraph 1(b)), therefore they should enforce the measures taken to proscribe prohibited activity. This would certainly mean criminal prosecution of an alleged offender in cases of violation of criminal law, and may require international cooperation and legal assistance when more than one State Party can assert jurisdiction.[10] Provision of legal assistance by

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8 Oppenheim's International Law, ninth edition, §§20, 138; Akehurst's Modern Introduction to International Law, seventh revised edition, p. 111.

9 Chapter 2, Section 3 of the amended Criminal Code.

10 So far, the only attention in this area has focused on a single hypothetical scenario: an inspector or other staff member of the Technical Secretariat violates the obligation to preserve the confidentiality of information acquired in the exercise of verification and declaration activities under the Convention. The legal prerequisites for an effective prosecution of such an offence are, at present, incomplete. The penal legislation may exist but in most cases has not been extended extraterritorially to nationals. The Preparatory Commission's Expert Group on Confidentiality considered whether these and other offences might require concurrent jurisdiction of the Host country (i.e. the Netherlands) but the work was inconclusive. See: Chair's Non-paper: Draft Procedures for the Application of National Jurisdiction

another State Party often presupposes that the offence involved must be punishable under the law of the State which institutes the prosecution, as well as that of the State which has been requested to assist (double criminality).

5.2 Penal legislation which is consistent with the Convention with respect to prohibited activities will provide a more solid basis for the purposeful interaction of States Parties in the prosecution of such activities.[11] Otherwise, the principles nullum crimen sine lege and nulla poena sine lege[12] could stand in the way of legal assistance. The same could be the case if the penalties foreseen in the law of one State Party fall outside the range of the penalties in the law of the other States Parties involved.

6. International cooperation and legal assistance in the prosecution of offences

6.1 Throughout 1998, significant steps were taken by the international community towards codifying and criminalising, at the international level, chemical attacks. In January, the International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly[13] to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of acts of terrorism and for the prosecution and punishment of their perpetrators, was opened for signature. In July, the Rome Statute of the International Criminal Court was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court[14] to ensure jurisdiction over the most serious crimes of concern to the international community as a whole, including as war crimes[15] the employment of poison or poisoned weapons and the employment of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices.[16] The adoption of these instruments is an indication of

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and Compensation of Losses in Cases of Breaches of Confidentiality by OPCW Officials or any Natural or Legal Person in Relation to the CWC, Rev. 3. (25 March 1997 version).

11 It may be of interest to note that at a certain point Member States of the World Trade Organisation (WTO) saw the need to review four key areas in trade-related intellectual property rights legislation. The WTO Council on Trade-Related Intellectual Property Rights (TRIPS) recently completed this project, which took two years and was carried out in the form of a "peer group" examination of legislation notified through the WTO Secretariat. The peer group consisted of national legislative experts. It was reported that the benefits have been: countries take greater care when drafting new legislation; misunderstandings were cleared up; deficiencies in existing laws were identified; and countries drafting legislation learned from the reviews (WTO Focus Newsletter, December 1997 issue, p. 6).

12 These principles are that the act of which a person is accused should have been punishable at the time it was committed, and that no heavier penalty shall be imposed than the one which was applicable at the time the offence was committed.

13 UN document A/RES/52/164, dated 9 January 1998. Toxic chemicals are included in the Article 1(3)(b) definition of "explosive or other lethal device". As of 5 November 1998, the Convention had received 36 signatures.

14 Available at http\\:www.un.org/icc. The Statute was adopted by a vote of 120 in favour, 7 against, 21 abstentions. As of 5 November 1998, the Statute had received 54 signatures.

15 Article 8(2)(b), subparagraphs (xvii) and (xviii).

16 In addition, the Harvard–Sussex Program on CBW Armament and Arms Limitation is working on a draft multilateral convention that would make it an international crime of universal jurisdiction for any person anywhere to develop, produce, acquire, stockpile, retain or transfer biological or chemical weapons. The current draft also embodies a framework for the provision of legal assistance in the prosecution of alleged offenders (draft dated 10 April 1998, issued for the Workshop on International

the continuing determination of the international community to ensure that the perpetrators of such acts shall not go unpunished.

6.2 In prosecuting offences concerning activities prohibited under the Convention, different States Parties may be involved and may have to cooperate and provide legal assistance:

(a) the State Party on whose territory the offence has occurred;
(b) the State Party on whose territory the accused is residing or in custody;
(c) the State Party of whom the accused holds nationality;
(d) the State Party affected by the offence or whose natural or legal persons suffered damages from the offence; and possibly
(e) the Host country (i.e. the Netherlands) in cases of concurrent jurisdiction. In addition, the OPCW will have a role to play in this regard.[17]

6.3 Initiation of proceedings

(a) Each State Party may, on the basis of Article VII, paragraphs 1 and 2, request another State Party to prosecute an alleged offence prohibited under the Convention. The OPCW is also in the position to lodge such a request. The requested State Party, pursuant to its obligations under Article VII, paragraphs 1 and 2, will have to respond to such request. A State not Party to the Convention, affected by a violation of Article I, might also have incentive to consider requesting the initiation of a case. The State Party prosecuting the case should communicate with the OPCW.[18] The OPCW might assume the duty to inform the other States Parties concerned, as mentioned under paragraph 6.2 above.

(b) The States concerned should, either at their own initiative or upon request, provide legal assistance in subsequent phases of the prosecution.

(c) In the event that a staff member of the Secretariat is accused of having violated the law, a waiver of immunity will be a prerequisite for any further proceedings. The Director-General must be provided with all facts and evidence concerning the case and be granted the possibility to contact the staff member concerned in order to allow a well-considered and independent judgement upon the most appropriate course of action.

Criminalization of Biological and Chemical Weapons, Lauterpacht Research Centre for International Law, University of Cambridge, 1–2 May 1998).

17 Such a function of the Organisation derives from paragraph 2 of Article VII, in conjunction with paragraph 1 of Article VIII. The latter refers to the Organisation's responsibilities in achieving the object and purpose of the Convention, and in providing a forum for consultation and cooperation among States Parties. Furthermore, Article VIII, paragraphs 35 and 36, mandate the Executive Council to consider concerns about compliance and cases of non-compliance and "as appropriate request the State Party concerned to redress the situation within a specified time". Article XII (Measures to Redress a Situation and to Ensure Compliance, Including Sanctions) provide similar and even more far-reaching rights.

18 See footnote 20.

6.4 The guarantee of due process

The strict observance of Article 14 of the International Covenant on Civil and Political Rights guarantees due process. Such a guarantee would normally be conditional for cooperation and legal assistance[19] and would be sought from the outset. Other items to be resolved in connection with legal assistance are: the costs arising from such assistance, the confidentiality of information contained in the request and provided pursuant to a request, and a guarantee for witnesses against self-incrimination in accordance with Article 14, paragraph 3(g), of the International Covenant on Civil and Political Rights.

6.5 Specific types of assistance

Assistance could be requested for the following:

(i) identifying the suspect;
(ii) locating and providing the addresses of those involved;
(iii) taking testimony or statements in the territory of the requested State(s);
(iv) producing or preserving judicial or other documents, records or pieces of evidence;
(v) executing requests for searches and seizures;
(vi) serving judicial and administrative documents;
(vi) authenticating documents;
(vii) transfer of proceedings;
(ix) extradition.

6.6 Extradition of alleged offenders

(a) If the alleged offender is not in the custody of the State Party which initiates the prosecution, extradition of the alleged offender will be required to ensure the presence of the accused at court. The standards of existing extradition treaties will need to be met. Accordingly, a State Party receiving a request for extradition would need to be able to assure itself:[20]

(i) that a punishable offence is involved (double criminality);

(ii) that there are no substantial grounds for believing that the request has been made for the purpose of punishing a person on account of race, religion, nationality, political opinion, sex or social status;

(iii) that the principle of double jeopardy would not be violated by the extradition;

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19 Report of the Working Group on the Question of an International Criminal Jurisdiction, para. 111, contained in Yearbook of the International Law Commission 1992-II, page 72.

20 Report of the Working Group on the Question of an International Criminal Jurisdiction, para. 130, contained in Yearbook of the International Law Commission 1992-II, page 74.

(iv) that the person has not become immune from prosecution for any reason (expiration of the statute of limitations, amnesty, international immunity); and

(v) that the person will only be charged with the offence in respect of which the extradition is granted (specificity).

(b) There is no generally accepted obligation to extradite.[21] If a State Party refuses an extradition request, it will be expected to bring the alleged offender before its own courts.[22] States Parties are encouraged to check whether their domestic law and the treaties concerning legal assistance concluded with other states would allow for cooperation in this regard.

6.7 Cooperation and legal assistance under the Convention

The Convention requires cooperation and "the appropriate form of legal assistance", but does not spell out the forms of legal assistance or the specific procedures by which such assistance will be given.[23] The Rome Statute for an International Criminal Court (Part 9 on "International Cooperation and Judicial Assistance") gives an indication of what States could envisage to be necessary for the effective prosecution of an alleged offender.

6.8 The Technical Secretariat has compiled a survey of existing mutual legal assistance agreements, the Parties to them, and their scope (annex 3 to S/85/98). The principle of international cooperation has not yet been consolidated by the adoption of a universal multilateral treaty with uniform rules facilitating legal assistance. The development of an approach integrating the various modes of inter-State penal cooperation is beginning at the national[24] and regional[25] level, but the pace is slow. Existing bilateral and multilateral agreements are not comprehensive in scope and, in the case of multilateral agreements, reservations have been made to them. Mutual assistance in administrative matters is less developed than in civil or criminal matters. The Hague Conventions on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters[26] and on the Taking of Evidence Abroad in Civil or Commercial Matters[27] are inapplicable in administrative matters.

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21 Bassiouni, M. Cherif and Edward M. Wise, Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law, Martinus Nijhoff, Dordrecht/Boston/London (1995), p. 37.

22 Id. at 52.

23 In contrast, the 1998 International Convention for the Suppression of Terrorist Bombings elaborates the procedures for providing several forms of legal assistance (Articles 7 - 15) and even provides in Article 9(2): "When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition …"

24 Austria, Germany and Switzerland have adopted a national legislative approach to integrate the modalities of inter-state penal cooperation. See Bassiouni, "Policy Considerations on Inter-State Cooperation in Criminal Matters," Pace Yearbook of International Law, 4:123 at 134.

25 The Council of Europe and the Council of Arab Ministers. Id. at 135.

26 United Nations Treaty Series, vol. 658, p. 164.

27 United Nations Treaty Series, vol. 847, p. 240.

Furthermore, the Hague Convention on the Taking of Evidence only admits requests for judicial assistance emanating from a judicial authority for the purpose of judicial proceedings, and not from an administrative agency or for non-judicial administrative proceedings.[28]

6.9 In the absence of a treaty obligation, assistance is granted ad hoc, on the basis of reciprocity, requested through diplomatic channels. The diplomatic channels may not meet the demand of expediency which is especially important in criminal investigations or proceedings[29] and will not be in a position to compel testimony or the production of evidence. Furthermore, ad hoc assistance in criminal matters is furnished by some States only in cases where: (a) the offence motivating the request is an extraditable offence in the requested State; and/or (b) the offence motivating the request is punishable under both the law of the requesting State and the law of the requested State.

6.10 One solution developed by at least two States Parties is the inclusion of a provision in implementing legislation expressly authorising cooperation by domestic courts with foreign courts concerning acts prohibited by the Convention.[30] Enactment of such a legislative authorisation may be particularly helpful in legal systems in which the discretion given to judges to operate outside areas of express statutory authorisation is limited. However, even in jurisdictions in which there is a tradition of wider judicial latitude, enactment of a legislative empowerment and framework for cooperation could prove to be useful.[31]

6.11 Another eventual solution which might be considered would be the elaboration of a protocol, binding upon States Parties, enumerating the forms of legal assistance which a State Party will provide and detailing the procedures for provision of legal assistance under the Convention. This would be more difficult to draft but might be the most expedient option, certainly in the longer term. The utility of such a protocol would be primarily that it would define the parameters of assistance, and in particular that it would limit the possible excuses for refusing to give assistance.[32] For example, there is usually a provision in mutual assistance treaties on their non-applicability to

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28 Encyclopedia of Public International Law, "Legal assistance between States in administrative matters," p. 187.

29 Encyclopedia of Public International Law, "Legal assistance between States in criminal matters", p. 205.

30 Switzerland and (to a limited extent) the United Kingdom of Great Britain and Northern Ireland have included such a provision in their respective implementing legislation (see annex 2 to S/85/98).

31 The UNCITRAL Model Legislative Provisions on Cross-Border Insolvency has taken this one step further by recommending that courts be authorised to request information and assistance "directly" from foreign courts or foreign representatives in order to avoid the use of time-consuming procedures traditionally in use, such as letters rogatory (paragraph 91 of UN doc. A/CN.9/436, dated 16 April 1997). The UN General Assembly Sixth Committee has recommended that it be transmitted to Governments (UN doc. A/52/659).

32 A discussion of the issues to be dealt with in such a protocol can be found in the Report of the Working Group on the Question of an International Criminal Jurisdiction (Annex to the 1992 Yearbook of the International Law Commission, Vol. 2, Part 2, paragraphs 146–153, UN doc. A/CN.4/SER.A/1992/Add.1 (Part 2)). Also, the United Nations 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances incorporated a good framework for mutual legal assistance in its Article 7.

military offences and, sometimes, political offences. Such a provision would obviously be inappropriate in the context of prohibitions under the Convention.

7. Compilation prepared by the Secretariat

7.1 The Secretariat has prepared a survey of the texts of legislation, or the summaries of legislation, submitted by States Parties under Article VII, paragraph 5. Under the differing legal systems of States Parties, national implementing legislation has taken various forms: some States Parties have enacted a comprehensive act to implement the Convention, others have amended a series of existing laws, while others incorporated the text of the Convention in its entirety. The survey consists of a compilation of extracts, on various topics, of the legislation under which States Parties are implementing the Chemical Weapons Convention at the national level. The list of topics, which is not comprehensive, 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
5. definition of chemical weapons
6. declaration obligations
7. regime for scheduled chemicals
   - 7a. regulation of Schedule 1 production/use
   - 7b. criteria for Schedule 2 and 3 declarations
   - 7c. import/export controls
8. licensing of industry
9. access to facilities
10. inspection equipment
11. respect for inspectors' privileges and immunities
12. confidentiality
13. liability
14. mandate of the National Authority
15. enforcement powers of the National Authority
16. samples
17. primacy of the Convention

7.2 In most jurisdictions, it will be necessary to enact specific legislation to cover topics 1 to 3, and the compilation on these topics appears in annex 1 to S/85/98. For the remainder of the topics, contained in annex 2 to S/85/98, specific legislation may not be required if the State Party's legal system guarantees the effect that specific legislation would achieve. Compliance can only be measured by effect and under customary international law (as codified by Article 27 of the 1969 Vienna Convention on the Law of Treaties), a State may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

8. Summary

8.1 The Chemical Weapons Convention requires its States Parties to adopt the necessary measures to implement their obligations under the Convention, including enacting penal legislation. The obligation for States Parties to cooperate and to afford appropriate legal assistance will be facilitated if national legislation is in force and is consistent with the Convention. States Parties are urged (a) to complete, where necessary, the legislative and administrative measures to implement the Convention in their jurisdictions; and (b) to inform the Technical Secretariat of such measures taken.

8.2 The Convention does not elaborate the cooperation and legal assistance which may be required of States Parties. As it stands now, States Parties will draw on existing international agreements on legal assistance and related domestic legislation as well as 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.

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