



Office of the Legal Adviser

S/85/98

17 November 1998

ENGLISH only

### SURVEY OF NATIONAL IMPLEMENTING LEGISLATION

#### 1. Compilation prepared by the Technical Secretariat

- 1.1 The Technical Secretariat has prepared a survey of the texts of legislation, or the summaries of legislation, submitted by States Parties under Article VII, paragraph 5, of the Convention. Under the differing legal systems of the 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 have incorporated the text of the Convention in its entirety into national law. 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

- 1.2 In most jurisdictions, it will have been necessary to enact specific legislation to cover topics 1 to 3, and the compilation on these topics is presented in annex 1 to this report. For the remainder of the topics, contained in annex 2, 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.
- 1.3 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 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.

## **2. Summary**

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

### Annexes (English only):

- Annex 1: Survey of national implementing legislation: prohibited acts, penal provisions, extraterritorial application
- Annex 2: Survey of national implementing legislation: other measures
- Annex 3: Survey of mutual legal assistance agreements