National Legislation Implementation Kit for the Chemical Weapons Convention©
National Legislation Implementation Kit – Introduction

States Parties to the Chemical Weapons Convention are obliged to implement its various requirements into their national law and review existing legislation for any incompatibilities with the Convention. The provisions that refer specifically to legislation are as follows:

- **Article VII**: prohibition, penal legislation, enforcement, extraterritorial application of penal measures, cooperation and legal assistance, and informing the OPCW of the legislative and administrative measures taken to implement the Convention

- **Article VI(2)**: regulation of scheduled chemicals

- **Article XI(2)**: reviewing existing legislation

The First Review Conference, which took place during 28 April – 9 May 2003, called upon States Parties to inform the OPCW by October 2003 of the status of their legislation, establish their National Authorities as a matter of priority, enact legislation and adopt enforcement measures, provide the full text of their legislation, raise awareness about the Convention in their armed forces, industry, scientific and technological communities, and provide advice on implementation to other States Parties upon request. States Parties must also implement prohibitions on transfers of Schedule 1 and 2 chemicals to or from States not Party, ensure the requirement of end-user certification for Schedule 3 chemicals by recipient States not Party, and review existing chemical trade regulations to ensure consistency with the object and purpose of the Convention.

At the same time, the Technical Secretariat was tasked with further developing and improving its implementation support program. To this effect, the Office of the Legal Adviser has prepared National Implementing Legislation pages for the OPCW web site to facilitate the implementation process in an interactive and user-friendly way and to ensure that States Parties are receiving the most recent materials available. This includes access to decisions in respect of national implementation, checklists, the legislation database with sample statutes from various States Parties, legislation questionnaires and analyses of the responses, information about workshops and the Network of Legal Experts, and notes by the Director-General. You also have access now to implementation ‘kits’, online or in hard copy, which were designed to assist States Parties in the implementation of the Convention into domestic law. The National Legislation Implementation Kit is organized as follows:

- The Directory of Measures for National Legislation Implementation includes those measures that are required, normally necessary, or that are Article III, IV and V Obligations (of particular importance for States Parties engaged in chemical weapons destruction or chemical weapons production facility destruction/conversion activities or for those States Parties that hold chemicals for riot control purposes)

- The section corresponding to each measure contains with the following information:
  - The corresponding Convention and/or OPCW document reference(s)
  - Model statutory language for that measure
  - Commentary

The kit is organized in such a manner that States Parties need only refer to those measures that they believe are applicable in their particular case. In other words, the kit should not be viewed as a model statute in toto but rather as a toolbox with model statutory language for each measure that can be selected and changed to suit each State Party’s needs. All States Parties, however, should consider the required measures and review the corresponding model statutory language and commentary.
If you would like the Office of the Legal Adviser to **review and comment upon your State’s draft legislation**, or if you should have any other questions or comments about your State’s legislation implementation project, please feel free to contact the Office of the Legal Adviser:

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Directory of Measures for National Legislation Implementation

The list below is of measures that are (1) required, (2) normally necessary, or (3) of particular importance for States Parties engaged in chemical weapons destruction or chemical weapons production facility destruction/conversion activities or for those States Parties that hold chemicals for riot control purposes, which are to be considered by States Parties in order to implement the Convention in their national legislation.

Under each measure you will find the following information:

- The corresponding Convention and/or OPCW document reference(s)
- Model statutory language for that measure
- Commentary

1. Measures required under the Convention, Article VII(1)

- Prohibitions
  1.1 General prohibitions
  - to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone
  - to use chemical weapons
  - to engage in any military preparations to use chemical weapons
  - to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention
  - to use riot control agents as a method of warfare
  1.2 Schedule 1 chemicals prohibitions
  - to produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties or transfer such chemicals outside the State Party’s territory except to another State Party
  - to produce, acquire, retain, transfer or use Schedule 1 chemicals except for the purposes listed in Verification Annex VI (A)(2)(a)-(d)
  - to retransfer Schedule 1 chemicals
  - to transfer Schedule 1 chemicals outside the regime established by Verification Annex VI (B)(5) and VI (B)(5bis)
  - to produce Schedule 1 chemicals outside the regime established by Verification Annex VI(C)
  1.3 Schedule 2 chemicals prohibition
  - to transfer to or receive from States not Party Schedule 2 chemicals
  1.4 Schedule 3 chemicals prohibition
  - to transfer to States not Party Schedule 3 chemicals without first receiving an end-user certificate from the competent government authority of the State not Party
  1.5 Application, including, extraterritorial application to nationals (natural persons)

2. Other measures normally necessary

- 2.1 Definition of ‘chemical weapons’
- 2.2 Definition of ‘toxic chemical’
2.3 Definition of ‘precursor’
2.4 Definition of ‘purposes not prohibited under the Convention’
2.5 Arrangements enabling legal assistance to other States Parties
2.6 Mandatory reporting by natural and legal persons of information to the National Authority
   needed for NA declarations and notifications
   - Declarations of scheduled chemicals and facilities or plant sites
2.7 Regime for scheduled chemicals, including licensing of industry and import/export controls
   - Regulation of Schedule 1 chemicals
   - Regulation of Schedule 2 chemicals, including criteria for licensing (declaration thresholds, mixtures-low concentrations)
   - Regulation of Schedule 3 chemicals, including criteria for licensing (declaration thresholds, mixtures-low concentrations)
   - Regulation of unscheduled discrete organic chemicals
2.8 Access to facilities and enabling inspections, including penalties for interfering with the inspection process or deceiving inspectors
2.9 Respect for privileges and immunities —
   - 2.91 of members of inspection teams
   - 2.92 of the OPCW, its delegates, staff and experts
2.10 Protection of confidential information
   - to National Authorities
   - from the OPCW
2.11 Establishment, mandate and enforcement powers of the National Authority
2.12 Annual submission of information on national protective programmes
2.13 Primacy of the Convention

3. Article III, IV, and V Obligations (of particular importance for States Parties engaged in chemical weapons destruction or chemical weapons production facility destruction/conversion activities or for those States Parties that hold chemicals for riot control purposes)
   - 3.1 Ensuring the safety of people and protecting the environment, including site security (storage and destruction facilities)
   - 3.2 Chemical weapon, chemical weapon production facility and other facility declarations
   - 3.3 Enabling inspections (and penalties for interfering with the inspection process or falsifying info)
   - 3.4 Declaration of riot control agents
1.1 General prohibitions

- to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone
- to use chemical weapons
- to engage in any military preparations to use chemical weapons
- to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention
- to use riot control agents as a method of warfare

**Corresponding CWC references**

- Article I (1)(a)-(d)
- Article I (5)

**Model statutory language**

1) Every person commits an offence who —

   a) develops, produces, otherwise acquires, stockpiles or retains a chemical weapon;
   b) transfers, directly or indirectly, a chemical weapon to any other person;
   c) uses a chemical weapon;
   d) engages in any military preparations to use a chemical weapon;
   e) assists, encourages or induces, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
   f) uses a riot control agent as a method of warfare;
   g) engages in any other activity prohibited to a State Party under the Convention

and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

2) If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of this provision, the weapon—

   a) is forfeit to the State; and
   b) may be seized without warrant by any officer of the State; and
   c) shall be stored pending disposal, and disposed of, as [agent of the State] sees fit.

**Commentary**

The model statutory language for the measure above makes all acts in Article I(1) and I(5) of the Convention punishable under domestic law. It applies to natural and legal persons. The Convention requires States Parties to never undertake the actions in (a)-(f) above and Article VII (1)(a) requires States Parties to prohibit natural and legal persons from doing so.
If the actor commits one of the offences above, he can be punished with imprisonment (in the case of a natural person) and/or a fine (in the case of a natural or legal person). The punishment should be severe enough so as to deter possible violators. A term of imprisonment for less than five years, for example, may be insufficient.

Subparagraph (1)(b) addresses not only transfers of physical objects but also intangible transfers such as ‘know-how’.

Subparagraph (1)(g) is a catch-all provision, which covers any violations of the Convention not included in a State Party’s national legislation.

Finally, if the object in question is a chemical weapon, paragraph (2) prescribes how it is to be dealt with by the State Party.
1.2 Schedule 1 chemicals prohibitions

- to produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties or transfer such chemicals outside the State Party's territory except to another State Party
- to produce, acquire, retain, transfer or use Schedule 1 chemicals except for the purposes listed in Verification Annex VI (A)(2)(a)-(d)
- to retransfer Schedule 1 chemicals
- to transfer Schedule 1 chemicals outside the regime established by Verification Annex VI (B)(5) and B(5bis)
- to produce Schedule 1 chemicals outside the regime established by Verification Annex VI (C)

Corresponding CWC references

- Article VI(2)
- Verification Annex VI A(1)
- Verification Annex VI (A)(2)
- Verification Annex VI (B)(4)
- Verification Annex VI (B)(5) and VI (B)(5bis)
- Verification Annex VI (C)

Model statutory language

Every person commits an offence who *if applicable, level of intent*—

a) produces, acquires, retains or uses Schedule 1 chemicals outside the territory of [State Party] unless such production, acquisition, retention or use takes place within the territory of another State Party;

b) [produces, acquires, retains, transfers or uses Schedule 1 chemicals unless fully licensed by the [Director/Secretary of the National Authority] under the licensing scheme for Schedule 1 chemicals];

c) transfers Schedule 1 chemicals outside the territory of [State Party] to a State not Party to the Convention;

d) transfers Schedule 1 chemicals to another State Party without notifying the [National Authority] not less than *see commentary re: number of days* before the transfer, except as follows:

i. Notification of the transfer of saxitoxin shall be made not less than *see commentary re: number of days* before the time of transfer, subparagraph (d) notwithstanding, if the transfer is for medical/diagnostic purposes and the quantity is 5 milligrams or less

e) retransfers to a third State Schedule 1 chemicals transferred to [State Party]

and shall be punished upon conviction by imprisonment for a term of *period of time* [and/or] with a fine not exceeding *amount*. 
Commentary

The model statutory language for the measures above accomplishes several goals. First, and perhaps most importantly, if an actor commits one of the prescribed offences and, if applicable, he has the requisite intent, he can be punished with imprisonment (in the case of a natural person) and/or a fine (in the case of a natural or legal person). The punishment should be severe enough so as to deter possible violators. A term of imprisonment for less than five years, for example, may be insufficient. This emphasis on penalizing violations in respect of Schedule 1 chemicals can be a significant contribution to the OPCW’s anti-terrorism efforts within the scope of the Convention.

Subparagraph (a) ensures that Schedule 1 chemicals are never produced, acquired, retained or used in States not Party to the Convention. This strict regime deters violators from undertaking these actions in respect of such chemicals in States not Party while providing these States with the incentive to sign and ratify the Convention. In other words, the statutory language underlines the broader objective of the OPCW and its Member States to make the treaty universal by withholding the advantages of having access to Schedule 1 chemicals until accession to the treaty.

Subparagraph (b) contemplates a licensing scheme in respect of Schedule 1 chemicals. Such a scheme may be desirable for several reasons. First, if a State Party does not produce Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes in accordance with Part VI (2) of the Verification Annex, it will still be able to regulate the acquisition, retention, transfer or use of such chemicals. Second, requiring licenses and compliance therewith ensures that violations of the scheme can be addressed at the criminal or, at the very least, administrative level. Third, the licensing scheme enables States Parties to ensure that they are in compliance—through monitoring and control—with the following requirements under Part VI (A)(2) of the Verification Annex:

- Schedule 1 chemicals can only be produced, acquired, retained, transferred or used for research, medical, pharmaceutical or protective purposes and
- The types and quantities of such chemicals are strictly limited to those which can be justified for such purposes and
- The aggregate amount of such chemicals at any given time for such purposes is equal to or less than 1 tonne and
- The aggregate amount for such purposes acquired by a State Party in any year through production, withdrawal from chemical weapons stocks and transfer is equal to or less than 1 tonne

A licensing scheme also allows a State Party that produces Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes in accordance with Part VI (2) of the Verification Annex to assist the OPCW in monitoring and controlling production of such chemicals pursuant to Part VI (C) of the Verification Annex. Further, a licensing scheme allows a State to monitor and control Schedule 1 chemicals to ensure that they are only being transferred to other State Parties for research, medical, pharmaceutical or protective purposes under Part VI (B)(3) of the Verification Annex. See Regime for scheduled chemicals under the directory for model statutory language concerning the regulatory regime for Schedule 1 chemicals (Measure 2.7).

Subparagraph (c) ensures that Schedule 1 chemicals are not introduced into States not Party to the Convention. In other words, it reflects the tight national export control requirement in Part VI (A)(1) of the Verification Annex. While deterring violators from transferring such chemicals into States not Party, it also provides these States with the incentive to sign and ratify the Convention.

Under Part VI (B)(5) of the Verification Annex, States Parties are required to notify the Technical Secretariat of the OPCW of any Schedule 1 chemical transfers at least 30 days before the transfer takes place. In order to ensure that a State Party is in compliance with its Convention obligations, subparagraph (d) requires the National Authority (or other supervisory body) to be notified of any Schedule 1 transfers originating within the State’s territory. Because the State Party must itself notify the Secretariat at least 30 days before the transfer is to occur, notification to the National Authority (or other supervisory body) must necessarily occur even sooner. For example, a State Party may require Schedule 1
chemical transfers to be notified to the National Authority at least 60 days (or another reasonable period of time) before the transfer. The State Party in turn has 30 days to notify the OPCW Secretariat.

Further, subparagraph (d)(i) carves out an exception to (d) to reflect a recent amendment to the Convention requiring notification of saxitoxin transfers only by the time of transfer under certain circumstances. The National Authority must, of course, be notified sooner, for example, 24 hours before the transfer.

Lastly, subparagraph (e) prevents the Convention’s transfer regime from being undermined by illegitimate retransfers over which the originating State Party may have no control.
1.3 Schedule 2 chemicals prohibition

- to transfer to or receive from States not Party Schedule 2 chemicals

**Corresponding CWC and OPCW document references**

- Verification Annex VII (C)(31)
- C-V/DEC.16

**Model statutory language**

1) Every person commits an offence who [if applicable, level of intent] transfers to or receives from a State not Party to the Convention Schedule 2 chemicals, or products containing such chemicals, except as stipulated below. He shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

2) Paragraph (1) shall not apply to those products containing Schedule 2 chemicals in which:

   (a) the product contains one percent or less of a Schedule 2A or 2A* chemical

   (b) the product contains 10 percent or less of a Schedule 2B chemical

   (c) the product is identified as a consumer good packaged for retail sale for personal use or packaged for individual use.

**Commentary**

The model statutory language above reflects the tight national export/import control requirement in Part VII (C)(31) of the Verification Annex. At the same time, however, it carves out exceptions for the products described in Decision 16 of the Fifth Conference of the States Parties.

This statutory language also underlines the broader objective of the OPCW and its Member States to make the treaty universal by withholding the advantages of having access to some Schedule 2 chemicals until accession to the treaty.

If the actor commits this offence and, if applicable, has the requisite intent, he can be punished with imprisonment (in the case of a natural person) and/or a fine (in the case of a natural or legal person). The punishment should be severe enough so as to deter possible violators but, at the same time, reflect the differences between violations in respect of Schedule 1 and 2 chemicals.

Lastly, this prohibition works well in conjunction with a licensing regime for Schedule 2 chemicals. See Regime for scheduled chemicals under the directory for model statutory language concerning the regulatory regime for Schedule 2 chemicals (Measure 2.7).
1.4 Schedule 3 chemicals prohibition

- to transfer to States not Party Schedule 3 chemicals without first receiving an end-user certificate from the competent government authority of the State not Party

**Corresponding CWC and OPCW document references**

- Verification Annex VIII (C)(26)
- C-III/DEC.6 and 7
- C-VI/DEC.10

**Model statutory language**

1) Every person commits an offence who [if applicable, level of intent] transfers to a State not Party Schedule 3 chemicals without first receiving an end-user certificate from the competent government authority of the State not Party. He shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

2) An end-user certificate shall contain, at a minimum—

   a) a statement that the Schedule 3 chemicals will only be used for purposes not prohibited under the Convention
   b) a statement that the Schedule 3 chemicals will not be re-transferred
   c) the types and quantities of the Schedule 3 chemicals to be transferred
   d) the end-use(s) of the Schedule 3 chemicals to be transferred
   e) the name(s) and address(es) of the Schedule 3 chemical end-user(s).

3) With regard to subparagraphs (2)(d)-(e), in the event that the Schedule 3 chemical transfer is to an importer in a State not Party to the Convention, and such importer is not the actual end-user, the importer shall be obliged to specify the name(s) and address(es) of the end-user(s) for the purposes of paragraphs (1) and (2).

4) Paragraph (1) shall not apply to those products containing Schedule 3 chemicals in which:

   (a) the product contains 30 percent or less of a Schedule 3 chemical; or
   (b) the product is identified as a consumer good packaged for retail sale for personal use, or packaged for individual use.

**Commentary**

The model statutory language above mandates an end-user certificate in the event of a transfer of Schedule 3 chemicals to a State not Party to the Convention. Therefore, it does not prohibit such transfers but creates an administrative barrier to free trade in such chemicals between States Parties and those States who have yet to ratify or accede to the Convention.

This provision also works well in conjunction with a licensing regime for Schedule 3 chemicals. See Regime for scheduled chemicals under the directory for model statutory language concerning the regulatory regime for Schedule 3 chemicals (Measure 2.7).
1.5 Application, including extraterritorial application to nationals (natural persons)

Corresponding CWC reference

- Article VII(1)(c)

Model statutory language

1) This [Act, Statute, Ordinance, etc.] shall extend—

a) to acts or omissions prohibited under the Convention, which are committed by a[n] [State Party] citizen outside [State Party] [and its external territories, whether geographically contiguous or not.]

b) to acts or omissions prohibited by the Convention, which are committed on board [State Party] sea vessels and aircraft.

2) For the purposes of subparagraph (1)(b), “[State Party] sea vessels and aircraft” shall mean sea vessels and aircraft registered in [State Party] or belonging to, or in the possession of, [State Party].

Commentary

The model statutory language above gives extraterritorial effect to obligations arising from Article VII(1) of the Convention. As a general matter, Article VII(1)(a)-(c) obligates States Parties to prohibit any violation of the Convention anywhere under their jurisdiction, to not permit any violation of the Convention anywhere under their control, and to extend penal sanctions to the acts or omissions of their nationals which contravene the Convention wherever those acts or omissions occur.

Paragraph 1 extends the application of a State Party’s penal legislation to the acts or omissions of that State Party’s nationals anywhere as required under Article VII(1)(c) of the Convention. Some States Parties have also extended extraterritorial application of their penal legislation to legal persons.

Paragraph 2 defines ”[State Party] sea vessels and aircraft” for the purposes of the preceding paragraph. The term ‘in the possession of’ refers to sea vessels or aircraft that the State Party does not necessarily own but may, for example, possess through a lease.
2.1 Definition of ‘chemical weapons’

Corresponding CWC reference

- Article II(1)

Model Statutory Language

‘Chemical weapon’ for the purposes of this [Act, Statute, Ordinance, etc.] means the following, together or separately—

a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the 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), 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).

Commentary

The model statutory language above comes directly from the Convention, Article II(1). It is written in such a way that a chemical can effectively become a chemical weapon depending on its intended purpose. In other words, the model language adopts the ‘general purpose criterion’—the intended use of the chemical—that is employed by the Convention. Thus, any toxic or precursor chemical is regarded as a chemical weapon unless it has been developed, produced, stockpiled or used for purposes not prohibited under the Convention and as long as the types and quantities are consistent with such purposes. This definition covers any chemical if intended for chemical weapons purposes regardless of whether such a chemical is listed in one of the Schedules, that is, the definition covers ‘dual use’ scheduled and unscheduled chemicals as contemplated in Article VI, paragraph 2 of the Convention.

Borrowing from the Convention, the model language does not define chemical weapons purposes. Rather, it reverses the presumption that the chemical in question is not intended to be used as a chemical weapon. Accordingly, the model statutory language prescribes purposes not prohibited under the Convention. Under Article II(9), these include:

- Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes
- Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons
- Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare
- Law enforcement including domestic riot control purposes

Like the Convention, the model statutory language not only requires that there is a legitimate intent for the production or stockpiling of a certain chemical, but also that the chemical is in fact of a type consistent with that purported intent, and that its quantity corresponds to the specified purpose.
Finally, equipment and munitions/devices defined as chemical weapons are covered in the model statutory language, as in the Convention, on the basis of *specificity* of their construction or design.
2.2 Definition of ‘toxic chemical’

Corresponding CWC reference

- Article II(2)

Model Statutory Language

1) ‘Toxic chemical’ for the purposes of this [Act, Statute, Ordinance, etc.] means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.

2) The definition in paragraph (1) includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

3) Toxic chemicals which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to this [Act, Statute, Ordinance, etc.].

Commentary

The model statutory language above comes directly from the Convention, Article II(2). It first clarifies that any type of toxicity with respect to humans or animals is covered. Accordingly, it is irrelevant whether the effects are lethal or non-lethal, or last permanently or temporarily. If they are non-lethal, any kind of incapacitation if of a temporary nature and any kind of permanent harming by the toxic action of a chemical is covered by this definition. The degree or nature of incapacitation or harm is irrelevant. Moreover, specified dosages are irrelevant for the purposes of the definition. Any chemical can cause toxic effects in humans and animals at a certain dosage, accordingly, the universal coverage of all chemicals and the general purpose criterion are reinforced here. This avoids the need, for example, to spell out threshold dosages for each chemical in the Annex on Chemicals.

The definition does not cover toxicity against plants. Therefore, herbicides are not chemical weapons if they are used solely with the intent to destroy plants. However, they would be considered chemical weapons if they were directly used to kill or harm humans. Toxins, on the other hand, which are toxic chemicals produced by living organisms, are covered by the definition.

Finally, the definition assures that toxic chemicals are covered regardless of where or how they are manufactured.
2.3 Definition of ‘precursor’

**Corresponding CWC reference**

- Article II(3)

**Model Statutory Language**

Precursor for the purposes of this [Act, Statute, Ordinance, etc.] means—

a) Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

b) Precursors which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to this [Act, Statute, Ordinance, etc.].

**Commentary**

The model statutory language above comes directly from the Convention, Article II(3). This definition of ‘precursor’ ensures that the term ‘chemical weapon’ includes any chemical which takes part in a chemical reaction, at any stage, in the manufacturing of a toxic chemical for chemical weapons purposes. As with the definition of ‘chemical weapon’, the general purpose criterion—i.e., the intended use—informs the definition of precursor. Accordingly, any precursor that has been manufactured in order to be converted into a toxic chemical for chemical weapons purposes must be declared as a chemical weapon and destroyed. If it is produced for non-prohibited purposes, on the other hand, it would not be considered a chemical weapon but if it was listed in the Schedules, the provisions under Article VI and the applicable Part of the Verification Annex would apply.
2.4 Definition of ‘purposes not prohibited under the Convention’

**Corresponding CWC reference**

- Article II(9)

**Model Statutory Language**

Purposes not prohibited under the Convention means—

a) Industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes

b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons

c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare

d) Law enforcement including domestic riot control purposes.

**Commentary**

The model statutory language above comes directly from the Convention, Article II(9). It is intended to delineate the scope of what is not prohibited under the Convention for the purposes of developing, producing, stockpiling and using chemicals, including toxic chemicals.

In subparagraph (a), the phrase “other peaceful purposes” suggests that a chemical is not a chemical weapon if it is used for peaceful purposes. The items in (a) are generally accepted international norms of what would be considered peaceful for the purposes of the Convention, however, the list is not intended to be exhaustive. Note that the purposes for which Schedule 1 chemicals can be used are much more limited and only include research, medical, pharmaceutical, or protective purposes (Part VI, paragraph 2(a)) of the Verification Annex).

The language in subparagraph (b) recognizes that chemicals can be used as a defence against chemical weapons and other emergencies associated with toxic chemicals. Thus, it allows for any protective use of chemicals, including for measures to defend against chemical weapons as well as for protection against industrial or other poisons, occupational poisoning, preparations against catastrophes involving chemical intoxication, etc. Related chemicals, equipment and devices, and administrative or other structures are also permitted.

The language in subparagraph (c) is carefully crafted. Chemicals can be used for military purposes, even as weapons, as long as the predominant effect from use of the weapon is not toxicity vis-à-vis humans or animals. For example, rocket fuels, some of which are toxic chemicals, can be used in weapons because their military use does not depend on the toxic properties of the fuel.

Finally, subparagraph (d) permits tear gas and other similar chemicals to be used for law enforcement purposes, including domestic riot control. They cannot, however, be used as chemical weapons. This does not mean that they cannot be used during wartime: riot control agents can be used in a detention center or prisoner-of-war camp as long as they are only for riot control purposes and not for warfare.
2.5 Arrangements enabling legal assistance to other States Parties

Corresponding CWC reference

- Article VII(2)

Model Statutory Language

1) The [competent authorities of State Party] for crime prevention, criminal proceedings, and implementation of the Convention may collaborate with other competent State authorities and international organisations and entities, and coordinate their actions to the extent required by the implementation of this [Act, Statute, Ordinance, etc.] or of the equivalent foreign statute(s), subject to the other State authorities or international organisations or entities being bound to official secrecy.

2) The [competent authorities of State Party] may request other State authorities and international organisations or entities, under paragraph (1), to provide relevant data or information. The [competent authorities of State Party] are authorized to receive data or information concerning—

   a) the nature, quantity, and utilisation of scheduled chemicals or their precursors and related technologies, and the places of consignment and consignees for such scheduled chemicals, precursors, or related technologies, or

   b) persons taking part in the production, delivery, or brokerage of the scheduled chemicals, precursors or related technologies in subparagraph (a).

3) If a State has entered into the appropriate reciprocity agreement with [State Party], the [competent authorities of State Party] may provide, on their own initiative or on request, the data or information described in paragraph (2) to that State so long as the other competent State authority provides assurances that such data or information shall—

   a) only be utilized for purposes consistent with this [Act, Statute, Ordinance, etc.] and

   b) only be used in criminal proceedings on the condition that they are obtained in accordance with those provisions governing international judicial cooperation.

4) The [competent authorities of State Party] may provide the data or information described in paragraph (2) to international organisations or entities if the conditions set forth in paragraph (3) are fulfilled, in which case the requirement for a reciprocity agreement is waived.

Commentary

The model language above is designed to facilitate the implementation of State Party obligations under Article VII(1) of the Convention. For example, the language in paragraph (1) is broad enough to cover extradition procedures in respect of violations of the legislation implementing the Convention by a national of a State Party in the territory of another. Paragraphs (2) through (4) facilitate data and information transfers among States Parties and between States Parties and international organisations or entities, including the OPCW, that may be pertinent to enforcement of the Convention. Necessary safeguards are built into the statute to the extent that data and information cannot be transferred to a State Party unless it is used for purposes that are consistent with the statute implementing the Convention or with procedures for international judicial cooperation. Finally, paragraph 4 facilitates data and information transfers to international organisations and entities.
including, most importantly, the OPCW. A reciprocity agreement between a State Party and an international organisation or entity is unnecessary and can be waived because an organisation does not have the enforcement powers of a State, with the corresponding potential for abuse, and their relationship will presumably be governed by other bilateral agreements, the organisation’s charter, or a Headquarter Agreement.

In respect of prosecution or extradition, it should be noted that anyone violating the Convention would be unable to claim that an act involving chemical weapons was a ‘political offence’. It should be recalled that States Parties may never undertake the actions under Article I (1) of the Convention while Article VII (1)(a) requires States Parties to prohibit natural and legal persons from doing so.
2.6 Mandatory reporting by natural and legal persons of information to the National Authority needed for the National Authority’s declarations and notifications to the OPCW

- Declarations of scheduled chemicals and facilities or plant sites

**Corresponding CWC and OPCW document references**

- Article VI(8)
- Verification Annex VI(D)(15)-(16), (19)-(20) [Schedule 1]
- Verification Annex VII(A)(2)(b) & 4(b)-(c) + C-8/DEC.7 [Schedule 2]
- Verification Annex VIII(A)(2)(b) & 4(b)-(c) + C-8/DEC.7 [Schedule 3]
- Verification Annex IX(A)(3) [Other Chemical Production Facilities]

**Model Statutory Language**

1) **Purpose of this section.**

   a) The purpose of this section of this [Act, Statute, Ordinance, etc.] is to ensure that—

   i. toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited under the Convention, and

   ii. the [Director/Secretary of the] National Authority has knowledge of dealings with chemicals that facilitates the making of [State Party’s] annual declarations under the Convention to the OPCW, and

   iii. [State Party] is otherwise able to fulfil its obligations under the Convention.

   b) Any power under this section of this [Act, Statute, Ordinance, etc.] may be exercised only for the purpose in subparagraph (1)(a).

2) **Supply of information.**

   a) Any person who, as the case may be, develops, produces, otherwise acquires, retains, transfers or uses toxic chemicals or their precursors to which any provision in Parts VI through IX of the Verification Annex of the Convention applies must —

   i. Notify the chemicals and, as the case may be, the facility or plant site to the National Authority within [number] days after this section commences to apply to the chemicals or facility or plant site, by giving written notice in a form approved by the National Authority and issued under the regulations further to this [Act, Statute, Ordinance, etc.], containing such information as is required by the form, and

   ii. Keep records in relation to the chemicals and facility or plant site, and the purpose to which the chemicals are put, and

   iii. Prepare, from those records, annual reports relating to the chemicals and the facility or plant site in a form approved by the National Authority and issued under the regulations issued further to this [Act, Statute, Ordinance, etc.], and

   iv. Send those annual reports to the National Authority at intervals specified in the regulations issued further to this [Act, Statute, Ordinance, etc.].

   b) The records and reports under subparagraphs 2(a)(i)-(iv) must be sufficient to satisfy the National Authority that the Convention and the provisions of this [Act, Statute, Ordinance, etc.] and any regulations made under this [Act, Statute, Ordinance, etc.] are being complied with.
c) Every person commits an offence who [level of intent] refuses or fails to comply with subparagraph 2(a), and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

3) Additional information.

a) This paragraph applies if the National Authority has reason to believe that any person is capable of giving information that is relevant to—
   i. a declaration required to be given by [State Party] to the Organisation under the Convention, or
   ii. the implementation of the Convention or enforcement of this [Act, Statute, Ordinance, etc.].

b) Further to subparagraph (3)(a), the National Authority may require the person to give such information to the National Authority —
   i. Within such reasonable period and in such manner as specified in the notice, and
   ii. If the person is a natural person, by writing signed by the person, or
   iii. If the person is a body corporate, by writing signed by an officer authorised to sign on behalf of the body corporate.

c) The National Authority may, by written notice given to a person, require the person to give to the National Authority particular documents, or documents of a particular kind, specified in the notice, within such reasonable period and as is specified in the notice.

d) Every person commits an offence who [level of intent] refuses or fails to comply with a notice under this section to the extent that the person is capable of complying with it, and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

e) The power of the National Authority under this paragraph to require a person to give information or documents to the National Authority is in addition to any obligation to give information or documents that the person may have under paragraph (2) of this section of this [Act, Statute, Ordinance, etc.].

4) False or misleading statements. Every person commits an offence who, in any document prepared pursuant to this section of this [Act, Statute, Ordinance, etc.], makes a statement or omits any matter knowing that the statement or omission makes the document false or misleading in a material particular, and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

Commentary

The model statutory language above facilitates data collection from the chemical industry by a State Party’s National Authority, which in turn must submit annual declarations to the OPCW. Paragraph (1) explains why the data must be collected, namely, to ensure that
the chemical industry is in compliance with the requirements of the Convention and a State Party’s implementing legislation (1(a)(i)) and so that the Director or Secretary of the National Authority can make annual declarations regarding chemicals and facilities as required by the Convention (1(a)(ii)).

States Parties are required to make annual declarations on activities during the previous calendar year as well as on those anticipated for the following year. They are also required to notify the OPCW of any changes that may occur during a year, concerning declarations given on anticipated activities. Paragraph (2)(a) does not go into detail on the specific reporting requirements for Schedules 1, 2, and 3 chemicals and facilities or plant sites or for other chemical plant facilities, rather, it puts the chemical industry on notice that there are regulations further to the statute with which operators must comply. For example, the regulations will require, *inter alia* —

- Concerning **Schedule 1** chemicals and facilities, *if* the State Party has such production —
  - Single small scale facility:
    - Annual declarations regarding activities of the facility for the previous year to be submitted not later than 60 days after the end of that year (giving the NA an additional 30 days to submit its VA VI(15) declaration to the OPCW)
    - Annual declarations regarding projected activities and anticipated production at the facility for the upcoming year to be submitted not less than 120 days before the beginning of that year (giving the NA an additional 30 days to submit its VA VI(16) declaration to the OPCW)
  - Other facilities:
    - Annual declarations regarding activities of the facility for the previous year; to be submitted not later than 60 days after the end of that year (giving the NA an additional 30 days to submit its VA VI(19) declaration to the OPCW)
    - Annual declarations regarding projected activities and anticipated production at the facility for the upcoming year; to be submitted not less than 120 days before the beginning of that year (giving the NA an additional 30 days to submit its VA VI(20) declaration to the OPCW)

- Concerning **Schedule 2** chemicals, *if* the State Party has such an industry:
  - Annual declarations of aggregate data for the previous calendar year not later than 60 days after the end of the previous year (giving the NA an additional 30 days to submit its VA VII(2)(b) declaration to the OPCW)

- Concerning **Schedule 2** plants in plant sites that trigger the thresholds in VA VII(3), *if* the State Party has such an industry —
  - Annual declarations on past activities not later than 60 days after the end of the previous calendar year (giving the NA an additional 30 days to submit its VA VII(4)(b) declaration to the OPCW)
  - Annual declarations on anticipated activities not later than 90 days before the beginning of the following calendar year (giving the NA an additional 30 days to submit its VA VII(4)(c) declaration to the OPCW)

- Concerning **Schedule 3** chemicals, *if* the State Party has such an industry
  - Annual declarations of aggregate data for the previous calendar year not later than 60 days after the end of the previous year (giving the NA an additional 30 days to submit its VA VIII(2)(b) declaration to the OPCW)
• Concerning Schedule 3 plants in plant sites that trigger the threshold in VA VIII(3), if the State Party has such an industry —
  o Annual declarations on past activities not later than 60 days after the end of the previous calendar year (giving the NA an additional 30 days to submit its VA VIII(4)(b) declaration to the OPCW)
  o Annual declarations on anticipated activities not later than 90 days before the beginning of the following calendar year (giving the NA an additional 30 days to submit its VA VIII(4)(c) declaration to the OPCW)

• Concerning Other chemical production facilities, if the State Party has such an industry —
  o Annually update its list of OCPFs not later than 60 days after the beginning of each following calendar year (giving the NA an additional 30 days to provide its VA IX(3) list to the OPCW)

Paragraph 2(c) emphasizes the seriousness of the reporting regime. Offenders will be punished for violations thereof accordingly. Paragraph (3) mandates the submission of additional information if necessary. Paragraph (4) prescribes penalties for false or misleading statements in declarations. Such measures are necessary given that each State Party is required to make declarations to the OPCW, which, along with other States Parties, may rely on this information for its activities under the Convention.
2.7 Regime for scheduled chemicals, including licensing of industry and import/export controls

- Regulation of Schedule 1 chemicals
- Regulation of Schedule 2 chemicals, including criteria for licensing (declaration thresholds, mixtures-low concentrations)
- Regulation of Schedule 3 chemicals, including criteria for licensing (declaration thresholds, mixtures-low concentrations)
- Regulation of unscheduled discrete organic chemicals

Corresponding CWC references

- Article VI(2) [general provision]
- Article VI(3) [Schedule 1 chemicals]
- Article VI(4) [Schedule 2 chemicals]
- Article VI(5) [Schedule 3 chemicals]
- Article VI(6) [unscheduled discrete organic chemicals]
- Verification Annex Part VI [Schedule 1 chemicals]
- Verification Annex Part VII [Schedule 2 chemicals]
- Verification Annex Part VIII [Schedule 3 chemicals]
- Verification Annex Part IX [unscheduled discrete organic chemicals]

Model Statutory Language

1) **Schedule 1 chemicals.** No person shall produce, acquire, retain, transfer or use Schedule 1 chemicals for a permitted purpose except under and in accordance with the conditions of a license granted by the [Director/Secretary of the National Authority] pursuant to paragraph (4).

2) **Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals.**

   a) No person shall —

      i. produce, process or consume more than 1 kilogram of a Schedule 2A* chemical per year for a permitted purpose, or

      ii. produce, process or consume more than 100 kilograms of any other Schedule 2A chemical per year for a permitted purpose, or

      iii. subject to subparagraph (2)(c), produce, process or consume more than 1 tonne of a Schedule 2B chemical per year for a permitted purpose, or

      iv. subject to subparagraph (2)(c), produce more than 30 tonnes of a Schedule 3 chemical per year for a permitted purpose,

      v. [subject to subparagraph (2)(c), produce by synthesis more than 200 tonnes of unscheduled discrete organic chemicals or more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorous, sulfur or fluorine]

   except under and in accordance with the conditions of a license granted by the [Director/Secretary of the National Authority] pursuant to paragraph (4).

   b) A license, granted by the [Director/Secretary of the National Authority] pursuant to paragraph (4), is required for any person that produced, processed, or consumed a Schedule 2 chemical for a permitted purpose during any of the three calendar years previous to the current year, above the following thresholds per year —
i. 1 kilogram of a Schedule 2A* chemical
ii. 100 kilograms of any other Schedule 2A chemical
iii. 1 tonne of a Schedule 2B chemical.

c) A license is not required for, as the case may be, the production, processing, or consumption of mixtures of chemicals containing 30 percent or less of a Schedule 2B chemical or a Schedule 3 chemical.

3) Imports and exports of Schedules 2 and 3 chemicals. No person shall import or export a Schedule 2 chemical or Schedule 3 chemical except under and in accordance with the conditions of a permit granted by the [Director/Secretary of the National Authority] pursuant to paragraph (4).

4) Licensing and permits.
   a) An application for a license or permit to do any of the acts referred to in paragraphs (1) to (3) shall be made to the [Director/Secretary of the National Authority] in such manner or form as the [Director/Secretary of the National Authority] may determine and shall be accompanied by the prescribed fee.
   b) The [competent government authority] may make regulations to prescribe the manner of application for a license or permit; the form and duration of a license or permit; the terms and conditions upon which and the circumstances in which a license or permit may be granted, held, suspended, cancelled, extended, renewed or replaced; and the fees payable in respect thereof.

5) Registration. No person shall produce, process or consume Schedule 2 or Schedule 3 chemicals or unscheduled discrete organic chemicals below the thresholds stated in subparagraph 2(a) without having first registered with the [National Authority] in such manner or form as the [Director/Secretary of the National Authority] may determine.

6) Penalties.
   a) Every person commits an offence who [level of intent] —
      i. produces, acquires, retains, transfers or uses Schedule 1 chemicals for a purpose other than a permitted purpose, or
      ii. contravenes paragraph (1)

      and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].
   b) Every person commits an offence who [level of intent] —
      i. as the case may be, produces, processes or consumes Schedules 2 or 3 chemicals or unscheduled discrete organic chemicals for a purpose other than a permitted purpose, or
      ii. contravenes paragraphs (2), (3) or (5)

      and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

7) Definition of “permitted purpose”.
A reference in this section to “permitted purpose” means —
   a) in the case of a Schedule 1 chemical, research, medical, pharmaceutical or protective purposes, or
   b) in the case of any other toxic chemical or precursor,
      i. industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes
ii. protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons

iii. military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare, or

iv. law enforcement including domestic riot control purposes.

Commentary

The model statutory language above prescribes a licensing regime for the control of scheduled chemicals. Such a regime is desirable for the following reasons. First, it allows a State Party to ratchet up (or possibly down) its regulations as necessary. For example, a State Party may wish to lower the thresholds triggering the licensing requirements for the chemicals in question. Second, regulations are easier to amend than legislation. Accordingly, new developments in implementing the Convention can be addressed by States Parties without the need to resort to further legislative processes. Third, the language above can be adjusted by each State Party to take into account its particular circumstances including, for example, whether it has a chemical industry and the type thereof. Fourth, the licensing regime ensures that a State Party has the ability to gather required information to report to the OPCW and to monitor and control the chemical industry so that the State Party remains in compliance with the Convention. Lastly, it facilitates cooperation with the OPCW by identifying, for instance, those facilities that are subject to inspection and verification under the Convention.

Paragraph (1) prescribes the licensing regime for Schedule 1 chemicals. Because of their highly lethal and incapacitating toxicity or their suitability as a key component in a binary chemical weapon, they must be the most highly regulated chemicals in a State Party’s implementing legislation. Accordingly, States Parties should regulate all Schedule 1 chemicals activity. Even though synthesis of Schedule 1 chemicals below 100 grams per year for research, medical or pharmaceutical, but not protective purposes, may be carried out at any laboratory without triggering declaration obligations and international verification, such activity should also be regulated because it may be difficult, for instance, for a State Party to ascertain that declarations of small-scale producers below 10 kg yet above 100 grams are complete. On the other hand, if a State Party does not produce Schedule 1 chemicals for research, medical, pharmaceutical or protective purposes in accordance with Part VI (2) of the Verification Annex, this provision may be unnecessary as long as the Schedule 1 chemicals prohibitions described elsewhere in this implementation kit are implemented.

The licensing regimes for Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals (para. (2)) are based on the declarations triggers in Parts VII (3), VIII (3), and IX(3) of the Verification Annex to the Convention. The provision concerning Schedule 2 chemicals also incorporates a licensing requirement for past activities in respect of such chemicals (subpara. (2)(b)). This ensures that a plant site will remain under the licensing regime for three years even if it ceases production, processing or consumption of the Schedule 2 chemical at the particular plant that triggered the licensing regime in the first place. Subparagraph (2)(c) incorporates into the Schedules 2 and 3 chemicals licensing regime a decision by the Fifth Conference of the States Parties regarding low concentration limits for declarations of Schedules 2B and 3 chemicals.

Paragraph (3) requires importers and exporters of Schedules 2 or 3 chemicals to have permits. This ensures, at a minimum, that the prohibitions in respect of these transfers are not undermined (cf transferring to or receiving from States not Party Schedule 2 chemicals and transferring to States not Party Schedule 3 chemicals without first receiving an end-user certificate). It is also a way for States Parties to maintain some control over chemicals entering and leaving their territory, and to collect information for their annual declarations of aggregate national data (AND) to the OPCW.

Paragraph (4) sets out the modalities for the licensing and permitting requirement, including the regulations necessary to implement the regime. Paragraph (5) enables a National Authority to collect information regarding all production, processing or
consumption of Schedules 2 or 3 chemicals to prepare the State Party’s annual declarations of AND on these activities. Paragraph (6) prescribes penalties in respect of violations of the licensing regime. Penalties for violations of the Schedule 1 chemicals regime are necessarily harsher in light of these chemicals’ greater lethality and incapacitating toxicity (subpara. (6)(a)). Subparagraphs (6)(a)(i) and (6)(b)(i) provide for penalties for any use of Schedules 1, 2, or 3 chemicals with a purpose that is not permitted under the Convention. Permitted purposes are carved out in paragraph (7).
2.8 Access to facilities and enabling inspections, including penalties for interfering with the inspection process or deceiving inspectors

Corresponding CWC references

- Article VI(9) [general provision]
- Article IX(8) [challenge inspections]
- Article X(9) [investigations in cases of alleged use of chemical weapons]
- Verification Annex II (and applicable provisions in Parts VI-XI)

Model Statutory Language

1) Purpose of this section.

a) The purpose of this section is to —

i. facilitate inspections by national inspectors for a compliance purpose, and
ii. facilitate inspections by international inspectors in accordance with the Convention and any facility agreement between [State Party] and the OPCW.

b) A reference in this paragraph and in paragraph (2) to a compliance purpose is a reference to the purpose of —

i. determining whether the provisions of this [Act, Statute, Ordinance, etc.] and any regulations made thereunder have been or are being complied with at any premises
ii. determining whether the conditions applicable to a license have been or are being complied with by the holder of a license, or
iii. ensuring the proper functioning at any premises of any monitoring equipment installed in the course of an international compliance inspection or under a facility agreement between [State Party] and the OPCW.

c) A reference in paragraphs (2) and (4) to an inspection power is a reference to a power to —

i. search any premises
ii. inspect or examine a matter or thing
iii. take samples of a matter or thing
iv. measure a matter or thing
v. examine a document, including a record kept in accordance with the requirements of this [Act, Statute, Ordinance, etc.], any regulations made thereunder, or the conditions of a license
vi. take extracts from, or make copies of, a document, including a record of a kind referred to in subparagraph (1)(c)(v)

vii. interview any person working on the premises, including making sound recordings of such interviews
viii. have operated any equipment, including electronic equipment, located at the premises
ix. operate any photographic or video-recording equipment anywhere in or around the premises provided safety regulations in force at the location permit doing so
x. do anything that is necessary or expedient for the carrying out of any of the acts referred to in subparagraphs (1)(c)(i)-(ix), including restricting or prohibiting the access of persons and vehicles to or from the premises.

d) A power referred to in subparagraphs (1)(c)(i), (ii), (iii), (iv), or (ix) may only be exercised in a manner that the facility operator believes, on reasonable grounds, to be in accordance with safety procedures applicable at the premises.
2) National inspections.
   a) All authorised officers shall be national inspectors for the purposes of this [Act, Statute, Ordinance, etc.] and any regulations made thereunder.
   b) The [Secretary/Director of the National Authority] may, from time to time, appoint in writing other persons to be national inspectors.
   c) A national inspector may —
      i. with the consent of the person in control of any premises, or
      ii. under a warrant issued [under paragraph 7] in respect of any premises,
      enter the premises and exercise, on or in the premises, any inspection power for a compliance purpose.

3) International inspections.
   a) An international inspector may —
      i. with the consent of the person in control of any premises—
         a. in respect of which any provision of Parts VI to IX of the Verification Annex to the Convention applies, or
         b. that is subject to an on-site challenge inspection referred to in Article IX(8) of the Convention, or
         c. in respect of which an investigation under Article X(9) of the Convention has been initiated, or
      ii. under a warrant issued [under paragraph 8] in respect of the premises,
   b) do the following —
      i. enter the premises, and
      ii. inspect the premises pursuant to—
         a. Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence, and
         b. in the case of any facility, any applicable facility agreement between [State Party] and the OPCW, and
      iii. exercise, in connection with any inspection, any function contemplated, and power provided for in —
         a. Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence, and
         b. in the case of any facility, any applicable facility agreement between [State Party] and the OPCW.

4) Persons who may accompany international inspectors.
   a) In order to facilitate an inspection, an international inspector may be accompanied by one or more of the following persons —
      i. a national inspector
      ii. an observer.
b) A national inspector may exercise any inspection power for the purposes of facilitating an inspection referred to in paragraph (3).

c) For the purposes of subparagraph (4)(a)(i), “observer” means an observer referred to in Article IX(12) of the Convention, and includes any person authorised by the [Director/Secretary of the National Authority] to observe the inspection.

5) Written directions.

a) The [Director/Secretary of the National Authority] may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under this section.

b) Every person commits an offence who [level of intent] fails to comply with any direction given by the [Director/Secretary of the National Authority] and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

6) Identification certificates.

The [Director/Secretary of the National Authority] shall issue to every international inspector and national inspector a certificate identifying him as such international inspector or national inspector, as the case may be.

[Optional language (paras. 7-8):

7) Warrant for national inspection.

a) A national inspector may apply for a warrant where the consent of the person in control of any premises to enter the premises to exercise any inspection powers for a compliance purpose cannot be obtained or where the person refuses to give such consent.

b) Subject to subparagraph (7)(c), a [Magistrate] who is satisfied that there are reasonable grounds for believing that—

i. entry to the premises is necessary to exercise any inspection power for a compliance purpose, and

ii. the consent of the person who is in control of the premises cannot be obtained or such consent is refused,

may issue, unconditionally or subject to conditions, a warrant authorising the entry of the premises, at any time within [number of days] of the issue of such warrant, or within such further time as may be specified in the warrant, by the national inspector for the purpose of exercising any inspection power for a compliance purpose.

c) The national inspector applying for a warrant shall—

i. first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the premises concerned, and, if so, as to the following matters—

a. the offence or offences, if any, alleged in respect of each application, and

b. the results of each application, and

ii. disclose on the application for the warrant the results of the inquiries.

8) Warrant for international inspection.

a) The [Director/Secretary of the National Authority] may apply for a warrant on behalf of an international inspector or national inspector where the consent of the
person in control of any premises to enter the premises for the purposes referred
to in subparagraphs (3)(b)(ii)-(iii) cannot be obtained or where the person refuses
to give such consent.

b) Subject to subparagraph (8)(c), a [Magistrate] who is satisfied that there are
reasonable grounds for believing that —

i. The premises meets the conditions for entry described in paragraph (3)
ii. entry to the premises is necessary for the purposes referred to in
subparagraphs (3)(b)(ii)-(iii), and
iii. the consent of the person who is in control of the premises cannot be
obtained or such consent is refused,

may issue, unconditionally or subject to conditions, a warrant authorising the entry
of the premises, at any time within [number of days] of the issue of the warrant,
or within such further time as may be specified in the warrant, by the international
inspector or national inspector for the purposes referred to in subparagraph
(8)(b)(ii).

c) The [Director/Secretary of the National Authority] shall —

i. before applying for a warrant, make reasonable inquiries as to whether any
other applications for such a warrant have been made in respect of the
premises concerned, and, if so, as to the following matters—

a. the offence or offences, if any, alleged in respect of each application, and
b. the results of each application, and

ii. disclose on the application for the warrant the results of the inquiries.]

7) [9] Obligations of persons carrying out inspections.

a) Every national inspector shall —

i. carry his identification certificate, and
ii. produce it to any person appearing to be in control of the premises entered—

a. on entering the premises, if such a person is then present, and
b. at any reasonable time thereafter, if asked to do so by the person.

b) Every national inspector shall —

i. as soon as is practicable after completing the inspection, give the occupier or
person in control of the premises a written notice stating that the premises
has been entered, if, at any time between the time of entry of any premises
to be inspected and the time the inspection is completed, there is no person
appearing to be in control of the premises, and specify the following
matters—

a. the time and date of entry
b. the circumstances and purpose of entry, and
c. the name of every person entering

ii. where applicable, have a warrant with him and produce it if required to do so,
and
iii. where any thing is seized, give the occupier or person in control of the
premises a written inventory of all things so seized.

8) [10] Obstruction of national or international inspectors, etc.

a) Every person commits an offence who [level of intent] obstructs, hinders, resists, or
deceives any national inspector or international inspector who is exercising any
function contemplated, or any power provided for, in this section or in the Convention
or in any applicable facility agreement, and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

[b) Nothing in this section shall apply to a refusal to give consent to entry by a national inspector who is not acting pursuant to a warrant referred to in paragraphs 7 or 8.

c) Nothing in this section shall apply to a refusal to give consent to entry by an international inspector who is not acting pursuant to a warrant referred to in paragraph 8.]

Commentary

As an initial matter, the model statutory language above facilitates access to and inspection of facilities related to Schedules 1, 2, and 3 chemicals, or other chemical production facilities, for verification purposes under the Convention. It facilitates challenge inspections and investigations of alleged chemical weapons use. The statutory language also prescribes penalties for failure to permit national or international inspectors to perform their duties under a State Party's national implementing legislation, the Convention or an applicable facility agreement. On the other hand, this model statutory language does not cover the verification of destruction of chemical weapons — including old and abandoned chemical weapons — or destruction of chemical weapons production facilities. Verification under Parts IV and V of theVerification Annex is included under Article III, IV, and V Obligations (of particular importance for States Parties engaged in chemical weapons destruction or chemical weapons production facility destruction/conversion activities).

The model statutory language includes provisions regarding national inspectors, which are permitted under Part II (41) of the Verification Annex to the Convention and which a State Party might find useful in its implementing legislation for the following reasons. First, national inspectors can help ensure that the chemical industry is in compliance with a State Party’s national implementing legislation or any regulations thereunder, or under a related licensing scheme (subparas. (1)(b)(i)-(ii), (2)(c)). National inspectors may complement the role of the international inspector and ensure that the State Party's obligations under the Convention are not being undermined or ignored (subparas. (1)(b)(iii), (2)(c)). National inspectors may also accompany international inspectors in the course of an inspection to ensure that the latter can properly perform their duties under the Convention and/or pursuant to a facility agreement (subpara. (4)(b)).

Under Article VI(9) of the Convention, States Parties are required to grant international inspectors access to facilities for verification purposes. At the same time, the verification process is based on the fundamental principle in Part II (40) of the Verification Annex that an inspection team is to conduct timely and effective inspections that cause the least possible inconvenience and disturbance to the inspected facility and State Party. Here, the inspection requirement is reflected in subparagraphs (3)(a) and (3)(b)(i), whereby an international inspector may enter a regulated facility with consent or under a warrant. Under subparagraph (3)(b)(ii), the international inspector is permitted to inspect the facility pursuant to Part II of the Verification Annex and/or a facility agreement, as the case may be. He may also exercise those powers described in Part II or under a facility agreement under subparagraph (3)(b)(iii). The model statutory language does not go into great detail as to how the international inspector is to conduct inspections or what he is permitted to do or not do, rather, States Parties are advised to issue regulations under their national implementing legislation that mirror the requirements in the Convention based on their particular circumstances, including, for example, the types of chemical industry located within their territory.

Optional paragraphs 7 and 8 prescribe the issuing of warrants in the event that consent from a facility operator cannot be obtained or is refused. A State Party may have its own statutory regime in respect of warrants that would be more appropriate in light of its particular circumstances. At a minimum, however, all State Parties have a treaty obligation
to facilitate entry by international inspectors into facilities that fall under the Convention for verification. Accordingly, there must be some warrant process in place, whether it is the one in the model statutory language above or another, in order to ensure that the State Party remains in compliance with the Convention.

Finally, an important component of the Convention is the maintenance of good relations among the chemical industry, States Parties and the OPCW. Thus, the model statutory language requires international and national inspectors to carry identification certificates (para. 6). It provides for a fair and transparent warrant process for entry into facilities when there is a lack of consent, as described above. Further, under paragraph 7 (paragraph 9 with the optional warrant provisions), national inspectors are required to produce their identification certificate when asked and provide written notice about an inspection. On the other hand, any failure by a facility operator to assist national or international inspectors is punishable under paragraph 8 (paragraph 10 with the optional warrant provisions). This reflects the seriousness of the verification process under the Convention.
2.91 Respect for privileges and immunities of members of OPCW inspection teams

Corresponding CWC references

- Verification Annex II(B)

Model Statutory Language

1) Members of inspection teams and observers shall enjoy the following privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the Articles of the Vienna Convention on Diplomatic Relations of 1961, namely —

   a) Article 29
   b) Article 30, paragraph 1
   c) Article 31, paragraphs 1, 2, and 3, and
   d) Article 34.

2) In addition to those privileges and immunities granted in paragraph (1), members of inspection teams and observers shall —

   a) have the right to use codes for their communications with the Technical Secretariat of the OPCW, in addition to the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 2 of Article 30 of the 1961 Articles
   b) be permitted to bring into the territory of [State Party], without payment of any customs duties or related charges, articles for personal use, with the exception of articles the importing or exporting of which is prohibited by law or controlled by quarantine regulations, and
   c) be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions in [State Party].

3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time —

   a) when they are in [State Party] —
      i. in connection with the carrying out of a routine inspection, a challenge inspection or an assistance inspection, or
      ii. while in transit to or from the territory of another State Party in connection with the carrying out of such an inspection there, or
   b) after an inspection under subparagraph (4)(a)(i), with respect to acts previously performed in the exercise of their official capacity.

5) If —

   a) immunity from jurisdiction of a member of an inspection team is expressly waived in accordance with Part II(B)(14) of the Verification Annex to the Convention, and
b) a notice made by [competent government authority] and informing the member of the waiver is delivered to him or her in person,

then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.

6) If in any proceedings any question arises whether a person is entitled or not to any privilege or immunity by virtue of this section, a certificate issued by or under the [competent government authority] stating any fact relating to that question shall be conclusive evidence of that fact.

7) Members of inspection teams and observers are hereby prohibited from engaging in any professional or commercial activity for personal profit in [State Party].

Commentary

The model statutory language above maps that of Part II(B) of the Verification Annex to the Convention. Most importantly, and as reflected in this model section, members of inspection teams are accorded the relevant privileges and immunities enjoyed by diplomatic agents (paras. 1-4). This principle extends to their working and living premises; their papers and correspondence, including any records; their equipment; and any samples that they might take. They are also entitled to use code to communicate with the Technical Secretariat of the OPCW.

The model statutory language strikes a balance between the necessary privileges, immunities, inviolability, and protection of inspection teams and the principle that such privileges and immunities are only to be accorded in relation to their official conduct. It must be emphasized that these privileges and immunities are not for personal benefit but for the effective carrying out of an inspection team member’s duties under the Convention. For example, an inspection team member cannot engage in profit-making activities while in a Host State Party (para. 7). Moreover, if a Host State Party suspects that an inspection team member is abusing his or her privileges and immunities or ignoring its laws and regulations, the Host State Party may initiate consultations with the Director-General. If the Director-General confirms that such abuses have taken place, he must act to prevent such cases in future. The Director-General can also waive an inspection team member’s immunity from Host State Party jurisdiction (para. 5) if such immunity would impede the course of justice and if it can be waived without prejudice to implementation of the Convention. However, the Director-General must prevent a Host State Party from attempting to prevent an inspection team member from carrying out certain activities under the Convention by declaring him in violation of their law. The waiver must be express.

Finally, because observers are not mentioned in paragraph 3, it is clear that their equipment and any samples that they may take are not inviolable.
2.92 Respect for privileges and immunities of the OPCW, its delegates, staff and experts

**Corresponding CWC references**

- Article VIII(E)(48)-(50)

**Model Statutory Language**

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**Commentary**

The OPCW, delegates of States Parties (as well as their alternates and advisers, and representatives appointed to the Executive Council together with their alternates and advisers), the Director-General and the staff of the Organisation enjoy those privileges and immunities necessary in the independent exercise of their functions in connection with the Organisation.

States Parties are encouraged, and, indeed, required under Article VIII(50) of the Convention, to enter into a Privileges and Immunities Agreement with the OPCW that clearly delineates the scope of the privileges and immunities of the Organisation and its officials and experts.
2.10 Protection of confidential information

- to National Authorities
- from the OPCW

Corresponding CWC references

- Article VII(6)
- Confidentiality Annex (A)(4)

Model Statutory Language

1) Every person shall keep confidential any information that is given pursuant to this [Act, Statute, Ordinance, etc.] or the Convention concerning the affairs of another person.

2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of—

   a) enabling [State Party] to fulfil its obligations under the Convention
   b) the enforcement of this [Act, Statute, Ordinance, etc.], or
   c) dealing with an emergency involving public safety.

3) Every person who fails to comply with this section commits an offence and shall be punished upon conviction by imprisonment for a term of [period of time] [and/or] with a fine not exceeding [amount].

Commentary

The model statutory language above effectively ensures that any information given to a National Authority by the chemical industry or the OPCW is, by default, kept confidential. Nevertheless, it gives a State Party the necessary flexibility to receive and impart information so as to enable it to carry out its obligations under the Convention, enforce its national implementing legislation, and handle emergencies. At the same time, it ensures that legitimate industry interests as well as those of the OPCW are not harmed. To emphasize the seriousness of the confidentiality regime, breaches are penalized with fines or imprisonment.
2.11 Establishment, mandate and enforcement powers of the National Authority

Corresponding CWC reference

- Article VII(4)

Model Statutory Language

1) **Establishment.** There is established for the purposes of this [Act, Statute, Ordinance, etc.] the [State Party] National Authority for the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

2) **Composition.**

   a) The National Authority shall consist of—

   [the following list is only illustrative and should be tailored according to the State Party’s constitutional and statutory regimes, circumstances, needs, etc.]

   i. a representative from the Prime Minister’s office, who shall also serve as the Chairperson of the National Authority

   ii. a representative from the Office of the Attorney-General

   iii. a representative from the Ministry of Foreign Affairs

   iv. a representative from the Ministry of Industry

   v. a representative from the Ministry of Environment

   vi. a representative from the Ministry of Health

   vii. a representative from the Ministry of Economy

   viii. a representative from the Ministry of Labour

   ix. a representative from the [national police force]

   x. a representative from the [national forensic science laboratory]

   xi. a representative from the Customs Authority

   xii. a representative from the Ports Authority

   xiii. a representative from the [State Party] Chamber of Commerce

   xiv. a representative from the [State Party] Chemical Industry Association

   b) The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and the members shall be set forth in the regulations issued further to this [Act, Statute, Ordinance, etc.].

[Optional language (para. 3):]

3) **Meetings.**
a) The attendance of at least \( \text{number} \) members at a National Authority meeting shall constitute a quorum.

b) The Chairperson, or in his or her absence, [the representative from the Ministry of Foreign Affairs], shall preside over all meetings of the National Authority. In the event that neither the Chairperson nor [the representative from the Ministry of Foreign Affairs] is available, the other members of the National Authority shall choose an acting chairperson from among themselves, who shall have all of the powers of the Chairperson for that meeting.

c) Actions and decisions shall be taken by a simple majority of the members present and voting.

d) Each member shall have one vote at any meeting of the National Authority and, in the event of a tie, the Chairperson or acting chairperson shall have a casting vote.

e) The National Authority shall meet at such times as it considers necessary or expedient for the transaction of business and such meetings shall be held at a place to be determined by the National Authority.

f) The National Authority may seek the assistance of any person for the purposes of its deliberations, but that person shall not be entitled to a vote.

g) Subject to this section and this [\( \text{Act, Statute, Ordinance, etc.} \)], the National Authority shall regulate its meetings and proceedings in such a manner as it thinks fit, including applicable procedures.

3) [4]) Functions and duties of the National Authority.

   a) The National Authority shall perform its functions so as to most effectively attain the objectives of this [\( \text{Act, Statute, Ordinance, etc.} \)], in particular—

   [the following list is only illustrative and should be altered as necessary, however, the National Authority must, at a minimum, have the power to serve as the national focal point for effective liaison with the OPCW and other States Parties (subparagraph (i))].

   i. To be the National Authority for [State Party] and serve as the national focal point for effective liaison with the OPCW and other States Parties

   ii. To supervise and monitor the enforcement of this [\( \text{Act, Statute, Ordinance, etc.} \)] through the regime established by this [\( \text{Act, Statute, Ordinance, etc.} \)] and the regulations issued thereto

   iii. To gather the data to be reported in the initial and annual declarations to the OPCW and to report such data to the OPCW

   iv. To supervise the implementation and enforcement of the Convention

   v. To provide the OPCW and other States Parties with relevant data and information in fulfilment of [State Party’s] obligations under the Convention

   vi. To facilitate and cooperate with inspections under the Convention, including accompanying OPCW inspectors on international routine inspections and challenge inspections
vii. To approve facility agreements further to this [Act, Statute, Ordinance, etc.]

viii. To perform any other tasks assigned to it by appropriate authorities

ix. To advise the Prime Minister on matters relevant to this [Act, Statute, Ordinance, etc.] and the Convention and to provide any information, which the Prime Minister or other appropriate authorities may require.

b) The National Authority may appoint a task force to advise it on any matter relating to this [Act, Statute, Ordinance, etc.] or the Convention.

Commentary

The model statutory language above is only suggestive because each State Party must first assess whether legislation is required to designate or establish a National Authority and it must then decide for itself whether it will establish a new government organ or assign an existing one to be the National Authority. Alternatively, different duties could be carried out by several government organs with a National Authority coordinating their work as well as the State Party’s relations with the OPCW and other States Parties. Though the tasks of a National Authority will differ in each State Party, there must nevertheless be, at a minimum, some office to coordinate a State Party’s activities under the Convention. This may be a small office attached to a Ministry or department therein. Or it could be a much larger body attached to several bodies such as those listed in paragraph (2)(a). This body would, in turn, be responsible for liaising with the OPCW and the National Authorities of other State Parties as well as for coordinating with other national institutions which assume responsibility for implementation in the fields of chemical production, the environment, research, foreign affairs, defence and justice.

Paragraph (3) is optional as it could be implemented through regulations instead of through legislation.

Other factors that should be considered when creating a National Authority are the following:

- Establishing a legal unit to review legislation and the administrative structures needed for the implementation of the Convention vis-à-vis existing legal structures and administrative organs and to coordinate any necessary follow-up action
  - For example, a national control and enforcement mechanism will be necessary at the national and local levels
- If necessary, a unit to oversee and destroy chemical weapons stockpiles or assist in the destruction or conversion of chemical weapons production facilities
- The creation of a national database to assess, verify and process data submitted to the National Authority from the chemical industry and for submission to the OPCW
- A unit to facilitate and coordinate industry and challenge inspections as well as to evaluate inspection reports and conclusions for follow-up measures to inspections
  - This unit could also be responsible for reviewing OPCW reports on the results of verification activities

For more information about National Authorities, please refer to the OPCW’s National Authorities web module.
2.12 Annual submission of information on national protective programmes

Corresponding CWC and OPCW document references

- Article X(4)
- C-8/DEC.16

Model Statutory Language

See commentary.

Commentary

States Parties are encouraged to implement legislation covering the annual submission of information on their national protective programmes in accordance with Article X(4) of the Convention and further to the Plan Of Action Regarding The Implementation Of Article VII Obligations adopted by the Conference of States Parties at its eighth session (C-8/DEC.16). Such a requirement promotes transparency by, first, keeping Member States informed about projects and activities in the field of protection against chemical weapons. This information is essential to exchange and cooperation in the field of protective programmes, which is contemplated in Article X(3) of the Convention. Second, the requirement informs Article I(1)(c) of the Convention, which prohibits States Parties from engaging in any military preparations to use chemical weapons.

This requirement may easily fall under the duties of a State Party’s National Authority. For instance, in the model statutory language for the establishment of a National Authority, the following competence could be included: “To provide the OPCW and other States Parties with relevant data and information in fulfilment of [State Party’s] obligations under the Convention.” (See Measure 2.11: Establishment, mandate and enforcement powers of the National Authority > Model statutory language >> Functions and duties of the National Authority: (a)(v))
2.13 Primacy of the Convention

Corresponding CWC reference

Model Statutory Language

Where there is any inconsistency between any other [State Party] law and this [Act, Statute, Ordinance, etc.] or the Convention, this [Act, Statute, Ordinance, etc.] and the Convention shall prevail.

Commentary

There are two main theories regarding the application of international law in national jurisdictions: monism and dualism. Generally speaking, in monist States, international law will prevail in the event of a conflict between international law and domestic legislation. In dualist States, on the other hand, international law is applied within a State only if it has been incorporated into domestic legislation. The model statutory language above ensures that no statute, act, ordinance, etc. within the jurisdiction of a State Party conflicts with the requirements of the Convention or a State Party’s implementing legislation. For example, Article I of the Convention specifies the fundamental, general obligations that are primary to meeting the object and purpose of the Convention. The words “never under any circumstances” are unequivocal. When international obligations assumed by a State Party under a treaty encounter conflicts with national law, performance of the treaty obligations is not excused. Article 27 of the 1969 Vienna Convention on the Law of Treaties provides:

“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [...]

Thus, though the model statutory language above is not obligatory under the Convention, it is highly recommended that States Parties incorporate it into their national implementing legislation to ensure the primacy of such legislation as well as of the Convention.
3.1 Ensuring the safety of people and protecting the environment, including site security (storage and destruction facilities)

Corresponding CWC references

- Regarding chemical weapons —
  - Article IV(10)
  - Verification Annex IV (A)(A)6(e) [safety and emissions standards]
  - Verification Annex IV(A)(B) [site security]

- Regarding chemical weapon production facilities —
  - Article V(11)
  - Verification Annex V(B)(33)(g) [destruction]
  - Verification Annex V(D)(78)(g) [conversion]

Model statutory language

See commentary.

Commentary

Drafting national legislation to implement obligations under Articles IV and V of the Convention is a complex task that a State Party may wish to coordinate with the Technical Secretariat at the OPCW. Such legislation is normally tailored to meet the requirements and needs of a State Party engaged in chemical weapons destruction, or chemical weapon production facility destruction or conversion activities. Please contact the Office of the Legal Adviser for more information on this topic.
3.2 Chemical weapons, chemical weapon production facility and other facility declarations

**Corresponding CWC references**

- Article III
- Verification Annex IV(A)(A) [chemical weapons]
- Verification Annex IV(B) [old and abandoned chemical weapons]
- Verification Annex V(A) [chemical weapon production facilities]

**Model statutory language**

*See commentary.*

**Commentary**

Drafting national legislation to implement obligations under Articles IV and V of the Convention is a complex task that a State Party may wish to coordinate with the Technical Secretariat at the OPCW. Such legislation is normally tailored to meet the requirements and needs of a State Party engaged in chemical weapons destruction, or chemical weapon production facility destruction or conversion activities. Please contact the Office of the Legal Adviser for more information on this topic.
3.3 Enabling inspections (and penalties for interfering with the inspection process or falsifying information)

**Corresponding CWC references**

- Regarding chemical weapons —
  - Article IV(4)
  - Verification Annex II(E)
  - Verification Annex IV(A)(D)(44)-(49)

- Regarding chemical weapon destruction and storage facilities —
  - Article IV (5)
  - Verification Annex II(E)
  - Verification Annex IV(A)(D)(65)

- Regarding chemical weapon production facilities [destruction] —
  - Article V(6), 7(b)
  - Verification Annex II(E)
  - Verification Annex V(C)

- Regarding chemical weapon production facilities [conversion] —
  - Article V(15)
  - Verification Annex II(E)
  - Verification Annex V(D)(85)

**Model statutory language**

*See commentary.*

**Commentary**

Drafting national legislation to implement obligations under Articles IV and V of the Convention is a complex task that a State Party may wish to coordinate with the Technical Secretariat at the OPCW. Such legislation is normally tailored to meet the requirements and needs of a State Party engaged in chemical weapons destruction, or chemical weapon production facility destruction or conversion activities. Please contact the Office of the Legal Adviser for more information on this topic.
3.4 Declaration of any riot control agents held

**Corresponding CWC references**

- Article III(1)(e)

**Model statutory language**

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**Commentary**

Article III(1)(e) of the Convention requires States Parties to declare all chemicals that they hold for riot control purposes and to update this declaration within 30 days of any changes to the stocks, that is, the addition of new types of riot control agents. In order to prepare the initial declaration and any necessary updates, a State Party may wish to amend its regulations governing law enforcement agencies so as to require the agencies to report the following information to the National Authority:

- The names of any chemicals held for riot control purposes
- The structural formulas
- The Chemical Abstracts Service (CAS) registry numbers for the chemicals, if assigned.

Quantities or means of delivery do not need to be declared by the law enforcement agencies.

The regulations should also specify that scheduled chemicals may not be held for riot control purposes and the riot control agents must conform with the corresponding definition in Article II(7): "Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure". Finally, the regulations should reiterate that riot control agents may not be used in warfare. Of course, this requirement must also be included in the State Party's general prohibitions regarding chemical weapons (see Measure 1.1).