

Country Profiles
regarding the National Implementation
of the Chemical Weapons Convention

by

the SIPRI-Saskatchewan-Frankfurt Project
on 'Effective Implementation of the Chemical Weapons
Convention'

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Introduction

With 35 ratifications by end of August 1995 50% of the necessary ratifications for the entry into the force of the Chemical Weapons Convention (CWC) have been achieved 2 1/2 years after the Convention was open for signature. The assumption from 1993 that it would be possible to obtain 65 ratifications within 18 months of opening the CWC for signature was probably based on unrealistic estimates of the actual time needed for individual states to prepare for national implementation. For example, it took at least 16 months after signing the CWC for Australia to ratify it,¹ although ratification preparation was well advanced before Australia signed.

There are a number of reasons for the slowness of the ratification process. The major reason seems to be that States Parties discovered that implementing the CWC is not easy and involves many organizational, legal and technical problems.

The CWC, as a multilateral treaty, contains for the first time in arms control history the request to the individual treaty participant for institutionalized national implementation. In general, Article VII, demands that: 'Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention'.

The same article requires that every State Party shall: 'In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it'.

Based upon this general framework of Article VII the following key provisions have to be observed in the implementation process by any State Party:²

Each State Party shall:

Prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity;

Not permit in any place under its control any activity prohibited to a State Party under this Convention; and

Extend its penal legislation enacted under subparagraph (a) to any activity prohibited to a State Party under this Convention undertaken anywhere by natural persons, possessing its nationality, in conformity with international law.

In addition each State Party shall:³

-cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

¹ Mathews, R.J., and McComack, T. L. H., 'Entry into force of the Chemical Weapons Convention activities and prospective timetable', *Chemical Weapons Convention Bulletin*, no. 25 (Sep. 1994), pp. 1/6.

² CWC, Article VII, paragraph s 1 (a), (b) and (c).

³CWC, Article VII, paragraphs 2, 3, 5 and 6.

-during the implementation of its obligations under this Convention, ... assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard.

-inform the Organization of the legislative and administrative measures taken to implement this Convention.

-treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Convention.

-treat such information and data exclusively in connection with its rights and obligations under this Convention and in accordance with the provisions set forth in the Confidentiality Annex.

-[undertake] to cooperate with the Organization in the exercise of all its functions and in particular to provide assistance to the Technical Secretariat.

Taking these obligations as a point of departure it was clear from the beginning that every individual state will have enough freedom to choose its own approach regarding national implementation. The only pre-condition was that the main provisions under Article VII have to be observed. No special legislative or administrative approach is required and no particular institutional set-up demanded. It is up to the individual state to decide upon the most effective and country specific solution. The reasons for this approach under the CWC are quite obvious. The convention will handle in depth with the chemical industry, an industry which is large, internationalized, developed and, in many countries highly regulated. The destruction obligations under the CWC, the main disarmament component under the treaty, will require for certain countries, the CW possessors, special activities in the area of destruction. Here the Convention has the approach that besides the demand for the highest priority in ensuring the safety of people and in protecting the environment, it will be up to the individual state to decide upon the legislative and administrative framework in which destruction will take place.

The acquiring and submission of declarable data to the Organization for the Prohibition of Chemical Weapons (OPCW) as requested under Article VI (Activities not prohibited under the CWC), Article III (General declarations), Article IV (Chemical Weapons) and Article V (Chemical Weapons Production Facilities) will be the pre-condition for any routine inspection activity of the Inspectorate of the OPCW. The way how these data will be acquired and collected by the individual State Party is entirely under its own responsibility. Different legal systems, already existing regulations and data reporting systems under different ministries as well as different political systems would make any general model approach to legislation not particularly useful.

As expected, states are taking individual approaches to implement the CWC. In addition to the organizational set-up for a state's National Authority, there are several other obligations which have to be met in implementing the Convention. A state without CW, the 'normal case' has to: (a) make sure that its domestic legislation ensures the discharge of its responsibilities, (b) fulfil declaration obligations under Articles III and VI, (c) be prepared to receive inspections (routine and challenge inspections), (d) contribute to Article X obligations with respect to Assistance and

Protection, (e) make sure that requirements with respect to confidential information received are observed, and (f) ensure that its National Authority personnel are well trained with respect to its rights and obligations,⁴ and (g) enact penal legislation.

Two models for the National Authority have won general acceptance: (a) designating an existing agency as the National Authority; or (b) establishing a new agency to serve as the National Authority. In light of the responsibilities of a National Authority two options appear preferable: (a) a centralized National Authority with responsibility for all CWC-related issues, or (b) in the decentralized approach, a National Authority which serves only as a liaison point⁵ and delegates the real functional aspects to already existing agencies or ministerial bodies.

Keeping in mind that after 2 1/2 years 35 countries have ratified the CWC one can assume that quite a bit of experience in national implementation must be available. However, the practice looks different. Not every ratifier is willing to speak openly about national implementation experience. Some countries ratified, without having finalized the internal legislative and administrative processes. Some smaller countries without real chemical industry have not even started these processes. This situation is mostly related to the fact, that for most of these ratifiers it was obvious that the entry into force of the CWC will not happen in the near future or their implementation burden, with respect to administrative and legislative measures would be a minimal one, so that with activating the legislation act by entry into force all necessary measures could be performed smoothly.

However, some ratifiers, mostly with more or less highly developed chemical industry, have gone through a deep implementation process. They have completed the legislative process and the National Authority has been designated. The measures to acquire and to collect the information and data necessary from industry have been introduced or are prepared to be introduced.

Because of this situation it was natural that a NGO, such as the SIPRI-Saskatchewan-Frankfurt Project on 'Effective Implementation of the Chemical Weapons Convention', would analyze the available national implementation legislation. We are grateful to the ratifiers who have made available their national legislation and other important information in this respect. We are also grateful to the experts in these countries who have advised us in the understanding of certain special aspects of their countries legislation and who have provided useful commentaries on the country profiles developed by us.

The countries chosen for our country analysis were the following: Australia, Finland, Germany, Romania and Sweden. Germany is the most developed country in this group with respect to the size of chemical industry. Its industry is already quite heavily regulated. Australia, with a medium-size chemical industry is probably the only country which had started its preparation for implementation in the eighties, before the CWC was completed in Geneva. Sweden and Finland, two Nordic

⁴ 'Structure and Functions of the National Authority as well as important initial aspects', paper by PTS presented to the Regional Seminar on the National Implementation of the Chemical Weapons Convention, Jakarta, Indonesia, 28-30 Nov. 1994; R. Sutherland, T. Kurzidem and T. Stock, 'The Role and Function of a National Inspector in the National Authority under the CWC', paper presented to the Regional Seminar on National Implementation of the Chemical Weapons Convention, Pretoria, South Africa, 12-14 September 1994.

⁵ Tanzman, E., Zeuli, A. R. and Kellman, B., 'Legal aspects of National Implementation of the Chemical Weapons Convention', paper presented to the Regional Seminar on the National Implementation of the Chemical Weapons Convention, Jakarta, Indonesia, 28-30 Nov. 1994.

countries, have a medium-size chemical industry, however, already heavily regulated. Romania, a country in transition from a former centralized economy into market economy, was chosen as an example on how these countries are able to cope with the obligations under the CWC. All countries have chosen a country specific approach to national implementation. This is due to several factors: (a) how international law has to be incorporated into national law; (b) the size of chemical industry; (c) the existing regulatory framework with respect to industry, especially chemical industry, with respect to data reporting, environmental regulations, trade regulations and work, safety and health regulations; (d) the magnitude of trade with chemicals; (e) the organizational set-up of industry, such as Chemical Manufacturers Associations; (f) the size of the problems related to old or abandoned CW; (h) the level of activities under Schedule 1, including a single small-scale facility; and (i) the experience the respective Ministry of Foreign Affairs might have with respect to reporting of declarable data through existing agreements .

The following country profiles as the result of an analysis undertaken by the SIPRI-Saskatchewan-Frankfurt Project should be looked upon as illustrative examples how countries have coped with national implementation. By no way the models identified should be seen as general models which could be copied automatically. It should be repeated again that national implementation of the CWC is the responsibility of the individual state. A model for national implementation workable for one country may not work for another.

Two different strategies have been identified.⁶ Setting up new uniform legislation or amending already existing acts seems to be the two general possibilities. However, it has to be kept in mind that all countries examined do not possess CW, so that activities related to the destruction of CW or CWFs are not of concern to them.

A review of the available information on the establishment of national authorities in various countries demonstrates the approaches which have been taken. Australia has chosen the most specific set-up by establishing a Chemical Weapons Convention Office,⁷ a non-statutory unit co-located with the Australian Safeguard Office (ASO). The Swedish approach is different; the National Authority will be the Ministry of Foreign Affairs, but it will only serve as a co-ordinator. The various compliance tasks will be performed by existing governmental agencies. In general, the same approach has been chosen by Germany,⁸ where the National Authority, as a point of liason, is also in the Foreign Office. The 'military' component (aspects of Schedule 1 activities and old and abandoned CW) will be the responsibility of the Minister of Defence and the 'civilian' component (all activities related to Article VI) will fall under the responsibility of the Minister of Economics. In our analysis we have focused on several aspects: (a) the country's legal system, (b) the institutionalization of the National Authority, (c) the administration for collecting the data on Article VI, (d) the legal aspects concerning verification activities from the future International Inspectorate, including the supervision of the different ministries, (e) the legal status

⁶ Note by the Executive Secretary, 'Model National Implementation Legislation', Preparatory Commission for the OPCW document, PC-XI/7, 18 July 1995.

⁷ McCormack, T., 'National Implementing Legislation for the Chemical Weapons Convention', paper presented to the Regional Seminar on the National Implementation of the Chemical Weapons Convention, Jakarta, Indonesia, 28-30 Nov. 1994.

⁸ Sutherland, R., Kurzidem, T. and Stock, T., 'The Role and Function of a National Inspector in the National Authority under the CWC', paper presented to the Regional Seminar on National Implementation of the Chemical Weapons Convention, Pretoria, South Africa, 12-14 September 1994.

of international inspectors, and (f) the administration of export controls, (g) penal sanctions and legal actions in cases of CWC violations.

We hope to contribute with our analysis to the process of national implementation and at the end to speed up the ratification process. The goal is not to provide models; the goal our analysis is to provide better understanding why ratifiers have chosen different implementation approaches.

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