

WHY AND WHAT TO IMPLEMENT?

ENSURING EFFECTIVE NATIONAL LAWS ON NUCLEAR, BIOLOGICAL AND CHEMICAL WEAPONS

FACTS ABOUT INTERNATIONAL ARMS CONTROL AND DISARMAMENT LAW

- International arms control and disarmament regimes contain several obligations that could usefully be implemented into national law.
- The principal nuclear, biological and chemical weapons instruments are the:
 - 1963 Partial Test Ban Treaty (PTBT)**
 - 1968 Nuclear Non-Proliferation Treaty (NPT)**
 - 1972 Biological Weapons Convention (BWC)**
 - 1980 Convention on the Physical Protection of Nuclear Material (CPPNM)**
 - 1993 Chemical Weapons Convention (CWC)**
 - 1996 Comprehensive Nuclear Test Ban Treaty (CTBT)**
 - United Nations Security Council Resolution 1540 (2004)**
- Arms control and disarmament law is supplemented with non-compulsory instruments, such as the guidelines of the Australia Group (on dual-use biological and chemical agents and equipment), the Nuclear Suppliers Group and the Zangger Committee (on dual-use nuclear materials and equipment).



Many multilateral arms limitation and disarmament agreements have been negotiated at the Conference on Disarmament (CD) in Geneva, Switzerland.

Photo United Nations



WHY IS NATIONAL IMPLEMENTATION OF INTERNATIONAL AGREEMENTS IMPORTANT?

There are many benefits in adopting national legislation. For instance, national implementation measures can:

- Demonstrate a state's commitment to abide by its international obligations.
- Prohibit nuclear, biological and chemical weapons on the state's territory, thereby enhancing national and international security.
- Enable a state to investigate and prosecute violations of international law.
- Deter and prevent activities prohibited by international law.
- Enhance domestic and international awareness of the treaty.

IS MY STATE UNDER AN OBLIGATION TO IMPLEMENT INTERNATIONAL LAW?

- Every treaty in force is binding on its states parties. Each state party is obliged to fulfill its treaty obligations in good faith. States must abide by any relevant treaty provisions that require national implementation through legislation or other national measures. Without these measures, a state is in breach of its international obligations.
- Certain treaties lack specific requirements on the scope of national measures necessary to give effect to treaty obligations. However, some form of national measures will usually be necessary to ensure that the state's domestic legal system is compatible with its obligations under international law. These measures should be developed in accordance with the state's constitutional requirements.
- All states are obliged to fulfill their obligations under UN Security Council resolutions that are adopted under Chapter VII of the UN Charter, including those provisions relating to national implementation.

WHAT SHOULD OR COULD MY STATE IMPLEMENT?

International arms control and disarmament law may call for certain acts to be *criminalized*. The following acts are often prohibited:

- use and acquisition of a prohibited object;
- manufacture and development of a prohibited object;
- control over and deployment of a prohibited object;
- transfer of a prohibited object;
- participation in prohibited acts;
- causing or allowing prohibited acts; and
- attempting or encouraging prohibited acts.

Treaty implementation may also require changes in *criminal procedural law*. Issues for consideration may include:

- extradition conditions and requirements;
- fair trial guarantees;
- rights to private property; and
- procedures relating to law enforcement.

Changes may be needed in *administrative law*. For example:

- the establishment of a national authority or national focal point;
- the facilitation of appropriate access for multilateral verification personnel and their equipment.

It may also be necessary to adopt *secondary law*. A national authority may be authorized to develop, adopt and promulgate these types of measures. It may be empowered to:

- Prepare and transmit necessary reports to an international treaty organization or to other state parties;
- Promulgate national legislation among relevant constituencies, to ensure that they are aware of their rights and obligations under such laws;
- Cooperate with relevant international bodies to establish and maintain appropriate physical protection systems;
- Cooperate with relevant international bodies to investigate, locate, identify and secure lost or stolen objects; and
- On request, facilitate legal and technical cooperation with international organizations and other states.

WHAT ASSISTANCE IS AVAILABLE FOR DRAFTING NATIONAL LEGISLATION?

- *Treaty organizations* often have legislative assistance programmes.
- *States* may provide legislative assistance.
- *Non-governmental organizations* (NGOs) and *academic institutions* may also offer appropriate assistance.
- A range of supportive activities may be available through legislative assistance programmes. These may include:
 - evaluating existing national measures;
 - identifying gaps in existing national measures;
 - developing specific implementation plans fitting a state's individual requirements; and
 - legislative drafting or other technical assistance to prepare appropriate legislation and other measures.