

## **National implementing laws for arms control and disarmament treaties**

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States parties usually need to adopt national laws, along with any other national implementation measures, in order to comply fully with their arms control and disarmament treaty obligations. These laws translate the state's obligations under international law into binding measures enforceable within the state's national jurisdiction. While traditionally it has been assumed that this would be done by states parties as a matter of course, modern arms control and disarmament treaties tend to specifically require them to pass such laws. Whatever the case, this aspect of treaty implementation has long been neglected both by states parties and by observers concerned with treaty implementation.

Not only does the failure to adopt national implementation legislation leave states in non-compliance with their treaty obligations, but it prevents them from effectively outlawing, penalising and deterring banned activities on their territory. In a worst case, it leaves them vulnerable to attack from within by terrorists who are able to take advantage of such legislative inadequacies. The terrorist attacks on the United States on 11 September 2001 have been a catalyst for efforts to improve the national implementation of multilateral arms control and disarmament agreements and to prevent prohibited weapons and materials from being acquired and used by terrorists.

This chapter examines the role of national legislation in the implementation of multilateral arms control and disarmament treaties. It begins by examining the constitutional, treaty and political requirements for the adoption of national implementing legislation. It then assesses challenges to the adoption of effective laws, before outlining how arms control and disarmament regimes monitor the adoption and effectiveness of states' implementing legislation. The chapter compares

the differing experiences of the 1972 Biological Weapons Convention (BWC),<sup>1</sup> the 1993 Chemical Weapons Convention (CWC)<sup>2</sup> and the 1997 Ottawa Convention banning anti-personnel landmines (the Ottawa Convention).<sup>3</sup> Finally, some observations are made as to how the rate of adoption and the effectiveness of national implementation legislation for arms control and disarmament agreements could be improved.

### **The importance of national implementing legislation**

Effective national legislation is crucial for establishing appropriate offences and penalties (together termed 'penal sanctions') for violating treaty obligations not to develop, produce, possess, transfer or use prohibited agents or weapons, to ensure that they are not deployed, and to decommission, deactivate and/or destroy banned items. Without appropriate penal provisions, a state is vulnerable to prohibited activity being carried out on its territory without being able to effectively prosecute and punish transgressions.

Legislation enables a state to enforce the prohibition of activities within its territory or, by extension, in any other area over which it exercises jurisdiction or control.<sup>4</sup> In addition, the state may extend the scope of offences by establishing extraterritorial jurisdiction. This enables it to prosecute its citizens ('natural persons') and companies and other organisations registered in its territory ('legal persons') for offences committed in places outside its legal jurisdiction. Sometimes, although rarely, states have established universal jurisdiction in respect of arms control and disarmament obligations: this enables them to prosecute foreign nationals for offences committed outside their jurisdiction. Such offences may be tried *in absentia* or once the perpetrator has arrived in the state's territory, either voluntarily or by extradition.

Implementing legislation for arms control and disarmament treaties should apply equally to government officials and military personnel, to avoid the state's witting or unwitting collusion in prohibited activity. It is also vital that offences are established in law to cover the transit of prohibited materials or equipment across the state's territory or through its ports and airports to ensure that its territory is not used for illicit trans-shipment by foreign nationals or entities. Small island states with entrepôt ports are particularly in need of such legislative protection.

The adoption of implementing laws is also a demonstration of the state's political commitment to abide by a treaty. The existence of appropriate laws and measures, combined with their effective enforcement, may also enhance a state's credibility and enhance its international relations in other areas. This is particularly so where trade in restricted materials is confined to those states that are able to demonstrate effective legislative and security controls, for example, under the Australia Group's export control regime for biological and chemical materials.<sup>5</sup> Implementing legislation can also serve to publicise treaty obligations generally among the public, industry, other stakeholders and, not least, legislators themselves. Crucially, it should alert those government departments and agencies that are responsible for treaty implementation activities and law enforcement of their legal obligations and statutory duties.

### **The obligation to adopt national implementing legislation**

#### *Constitutional requirements*

Through the act of becoming party to a treaty, either by ratification, accession or approval,<sup>6</sup> a state becomes bound to fulfil all its obligations under the agreement. Each state must ensure that its national laws are adequate and appropriate to enable it to carry out these obligations: it is a principle of international law that a state may not cite the existence or absence of national law to justify a failure to do so.<sup>7</sup> States therefore need to assess the effectiveness of their laws for this purpose and adopt any necessary measures before they become bound by the treaty.

Each state's constitution will prescribe the process for incorporating international law obligations into national law. While every state follows a different process, there has traditionally been a divergence of practice between common law and civil law states.<sup>8</sup>

States with a common law tradition, predominantly those drawing on the legal systems of the United Kingdom and the US, maintain that international and national legal systems are distinct: this is the 'dualist' approach. For these states, treaty obligations must be transformed into national law enforceable within their domestic legal jurisdiction when the treaty enters into force for them, otherwise they may be at odds with their own constitutional requirements and in non-compliance with their treaty obligations.

The situation is more complicated for states of the civil law tradition, for which international law and national law form a single, or 'monist', legal order. Treaties identified by these states as 'self-executing' may be automatically incorporated into national law when the treaty enters into force for the state, with no further national measures necessary to give them legal effect. Other types of treaties will require national legislation to give them full effect within the state.<sup>9</sup> A state's constitution will provide guidance on how the distinction between self-executing and other treaties is to be determined. However, where a treaty contains an obligation to adopt national measures and/or specifically to enact penal sanctions to implement the treaty, a state may not simply assert that the treaty is self-executing and refuse to adopt national legislation. In spite of this, many civil law states maintain this argument and refuse to adopt comprehensive national implementation legislation envisaged by such treaties. Many of these states adopt only piecemeal national measures which only give effect to certain parts of the treaty.<sup>10</sup>

The fulfilment of particular treaty obligations cannot be facilitated by the mere transformation of the international law text into national law. For example, treaties do not specify criminal offences or define the extent of punishments—such as prison terms or monetary fines—as these prescriptions remain the sovereign right of states within their jurisdiction to determine. Yet these provisions are essential for deterring, prosecuting and punishing violations by individuals and organisations of a state's treaty undertakings.

Certain other treaty obligations may similarly not be capable of being performed without authorising legislation. These include the obligation to collate and report information on measures and activities undertaken to ensure compliance with a treaty, or to make declarations of holdings of weapons or military equipment and/or numbers of military personnel. Such declarations may have to be made to other states parties or to an international monitoring, verification or compliance body. Legislation may especially be needed where government departments or agencies cannot share such information between themselves without specific legal authorisation, or where a national authority is established to co-ordinate implementation activities. National law may also be required to facilitate treaty requirements relating to monitoring and verification activities, such as aerial over-flights, on-site inspections and materials sampling, whether conducted by other states parties,

individually or collectively, or by an international verification organisation. For example, on-site inspections may, unless there is legislation in place, contravene civil rights law or constitutional or legal restrictions on access to private property. Where domestic law bans searches of private property without a search warrant, as in the US, an international inspection team conducting an inspection or fact-finding mission under the authority of an arms control treaty must be afforded appropriate access rights. There is also a risk that states which implement treaties solely on a 'self-executing' basis, that is, without any additional national laws, may apply the treaty differently from those states parties which have harmonised their implementation of the treaty by including common provisions in their national laws. This may result in inconsistency in treaty implementation between states parties.

#### *Treaty requirements*

The importance of national implementing legislation for all states—common law and civil law countries alike—is recognised by provisions in many recent arms control and disarmament agreements. These require states parties to adopt national legislation, along with any other national measures deemed necessary, to implement and enforce the treaty. Specifically, these provisions may also require states to establish offences and punishments for activities which violate the treaty. More recent arms control treaties now commonly stipulate the scope and content of national laws, for instance, by requiring that all areas under the state's jurisdiction or control are made subject to treaty-implementing legislation,<sup>11</sup> that offences and punishments are laid down in legislation,<sup>12</sup> and that a national implementing authority be established.<sup>13</sup> Those treaties which establish an international verification organisation to oversee treaty implementation and compliance often charge this body with monitoring the adoption of required national legislation and providing or facilitating legislative drafting and other technical assistance to states parties that request it.

#### *Political obligations*

As the threat to international peace and security posed by non-state actors, such as terrorist groups, has gained greater prominence, there is an increasing expectation in the international community, as well as political pressure, especially from the

US, for states to comply with their treaty obligations by passing legislation and/or strengthening existing legislation. As most agreements regulating the trade in and possession of small arms and light weapons are only politically—rather than legally—binding, and they lack international verification organisations, national implementation is often the only obvious compliance mechanism available and is therefore seen as particularly important. Moreover, as efforts to strengthen multi-lateral verification of arms control and disarmament treaty regimes relating to weapons of mass destruction (WMD), such as the BWC, have faltered, there has been increased attention to effective national implementation, through legislation and other measures. While national legislation is clearly important in relation to WMD, it cannot compensate for effective multilateral monitoring and verification.

### **Fulfilling the requirement**

States may choose to amend existing laws, such as penal codes, or adopt new legal instruments to implement their newly-acquired treaty obligations. If they follow the latter route, they may choose to adopt a single, 'stand-alone' piece of legislation to implement all of their obligations under a particular treaty. This is particularly common for small states with no history of involvement with the prohibited weapon, as little activity will be required to implement or enforce the treaty. Some states may choose to adopt 'omnibus' legislation, enabling them to combine multiple treaty obligations in a single piece of legislation.<sup>14</sup> Most states will need many legislative measures to enforce a complex treaty that requires extensive activities to be monitored or performed. This legislation is also likely to grant government agencies authority to adopt successive relevant regulations ('secondary legislation'). For example, acts controlling the export and import of goods may provide for the regular updating of lists of prohibited goods or restricted goods which may only be imported or exported under licence, to be issued quickly as secondary legislation.

Many states have procedures for consultation between government departments, agencies and others involved in implementing a treaty, in order to be able to review existing legislation relevant to treaty implementation effectively. This has the advantage of facilitating the development of a common policy on treaty implementation, co-ordinating the drafting of implementing laws and appropriately allocating responsibilities for treaty implementation activities.

Some states also engage in public consultation in the development of implementation legislation for arms control and disarmament treaties, recognising the public's interest in states' compliance with such treaties. For example, a civil society coalition in South Africa, Mines Action Southern Africa (MASA), was requested by that state's Enabling Legislation Drafting Committee to organise six workshops to hear public comment on the draft bill to implement the Ottawa Convention.<sup>15</sup> Many common law states also have a process whereby a Select Committee receives written and oral submissions from individuals, interest groups and organisations on the draft law, and makes recommendations about amendments to the state legislature.

### Challenges to the adoption of legislation

Despite the fact that national implementing laws are essential for states to fulfil all their obligations under international law, many states have either not adopted them—even where a treaty specifically requires them—or have not effectively covered all their obligations in their legislation. Reviews of the status and effectiveness of national implementation legislation conducted by compliance monitoring processes set out in treaties or by international organisations or non-governmental organisations (NGOs) show remarkably similar results across treaty regimes.

Specific reasons have been identified for this failure to adopt legislation. First, some states have allowed their implementation activities to lapse immediately after joining a treaty and need to be reminded of their responsibilities. For many more states, the officials responsible for developing implementation policies and legislation may not be familiar with the treaty issues or necessary procedures to ensure compliance with the range of complex obligations.

Second, many states simply lack the capacity to adopt national legislation to fulfil all their international obligations. This is particularly the case for small or developing states with small bureaucracies and limited resources. The implementation of treaties prohibiting weapons which these states have never developed or possessed is often of lower priority than the implementation of treaties which directly affect their national—primarily economic—interests, such as those on trade<sup>16</sup> and the environment.<sup>17</sup>

There are also generic problems which may impede the adoption of national implementation legislation in every state. For example, the process of adopting

legislation usually necessitates the co-operation of many government departments and agencies in formulating policy and reviewing draft legislation before it is considered for adoption. This requires significant time, effort, resources and political will, any or all of which may be deficient. Also, parliamentary procedures for considering draft legislation, integrating amendments and adopting final legislation can be time-consuming and may compete with other urgent priorities. Using consultants to draft legislation can be problematic, too, as they may not fully appreciate relevant indigenous issues. Their use may also detract from attempts to build legislative drafting capacity among local staff.<sup>18</sup>

Worst of all, many states refute the claim that legislation is necessary to effect national implementation of arms control treaty obligations under their constitutional processes. They argue that the automatic incorporation of the treaty texts into national law is sufficient to enable them to fulfil their duties and claim their rights under these treaties.

### **Monitoring the status and effectiveness of national legislation**

Given the importance of national measures in facilitating a state party's performance of its treaty obligations, it is crucial that information about the adoption of such measures be made available for compliance to be assessed. Disclosing this information to other states parties, through a treaty secretariat where one has been established, as well as to the public, can build confidence in effective implementation of an agreement. But for arms control treaties that do not have a standing verification organisation or effective verification mechanisms of some description,<sup>19</sup> it is vital that this information be made available unilaterally.

Those treaties which require states to adopt national implementation measures and/or, specifically, national legislation, also usually require states parties to provide information to each other regularly as to their compliance with these obligations. A treaty verification organisation, where one exists, is usually tasked with collating this information and even compiling comparative summaries or assessments, distributing these to states parties and/or an executive organ designated by the treaty to assess compliance.

An assessment of compliance with obligations to adopt national legislation in three major treaties, each with a different form of monitoring mechanism, follows.



It illustrates the complex relationship between the rate of adoption and quality of national legislation and the role of treaty oversight mechanisms and civil society organisations.

### *The 1972 Biological Weapons Convention*

Article 4 of the BWC obliges states parties to adopt any necessary measures, in accordance with their constitutional processes, to implement the treaty obligations prohibiting biological weapons. States parties reached agreement at the treaty's Second Review Conference in 1986 on the importance of national legislation, along with any other appropriate national measure, to effectively prevent and suppress prohibited activity.<sup>20</sup> This understanding has been endorsed by successive BWC Review Conferences, along with a request for states to provide information on and the texts of legislation and other regulatory measures enacted, to the UN Department for Disarmament Affairs (UNDDA). In the absence of a treaty verification organisation, BWC states parties have also tasked the UNDDA with some secretariat functions, including the collation and distribution of a report on states parties' compliance with the treaty, prepared for each Review Conference,<sup>21</sup> as well as the annual confidence-building measure (CBM) reports detailing implementation activities under eight categories,<sup>22</sup> including legislation and other national measures.<sup>23</sup>

Opportunities for assessing the rate of adoption, let alone the effectiveness of legislative texts adopted, have been limited since the treaty entered into force in 1975. The information that states provide in their CBM reports is only transmitted between states parties themselves and is not made publicly available. States parties only recently initiated a review of national implementation measures, among other compliance issues, as part of the new process that emerged from agreement at the resumed session of the Fifth Review Conference in November 2002. Discussions on the adoption of national measures generally, and penal legislation specifically, were held in August 2003. While this process did not assess the effectiveness of measures adopted, it significantly increased transparency on the issue and enabled states to share their experiences.<sup>24</sup> Disappointingly, the November 2003 Meeting of States Parties failed to deliver recommendations on how to improve the rate of adoption of national measures or the quality of measures adopted.<sup>25</sup>

This review process has also spurred attempts to make BWC-related national legislation publicly available. The UN has actively requested states to provide informa-

tion on national measures relating to penal sanctions and oversight of pathogens for a CD-ROM database, which is made available only to BWC states parties.<sup>26</sup> The International Committee of the Red Cross (ICRC) disseminates BWC implementing legislation that it has collected on its website.<sup>27</sup> VERTIC has also assessed the status of national legislation in states parties, collected texts of legislation adopted, and prepared a comparative analysis of legislative provisions, all of which are available on its website.<sup>28</sup>

States parties have been more responsive to these initiatives than they are to the calls made prior to each Review Conference for such information to be submitted.<sup>29</sup> Current data indicate that 59 percent of states parties have some national legislation which may implement the treaty, while no information is available for 36 percent of states parties, implying that nearly 30 years after the treaty's entry into force a worryingly large number of states parties simply do not have BWC-related legislation in place to enforce the treaty.

### *The 1993 Chemical Weapons Convention*

Unlike the BWC, the CWC explicitly requires states parties to adopt penal sanctions along with any other necessary measures to implement their treaty obligations.<sup>30</sup> Article 7 also requires states to extend the ban on treaty-prohibited activity, by both natural and legal persons, extraterritorially.<sup>31</sup> Other obligations requiring implementation through national legislation have been identified in guidance promulgated by the Director-General of the Organisation for the Prohibition of Chemical Weapons (OPCW), the international verification organisation established under the CWC,<sup>32</sup> and the OPCW's Office of the Legal Advisor.<sup>33</sup> While the treaty provides for states to determine what measures are necessary according to their constitutional requirements, the complexity of these obligations strongly supports the interpretation—promulgated by the OPCW and others—that the CWC is not a self-executing treaty. The treaty also requires states to co-operate with each other by providing appropriate legal assistance to facilitate the implementation of national measures.<sup>34</sup> The OPCW is currently developing a network of national legal experts for this purpose,<sup>35</sup> indicating that many states are still not in compliance with Article 7 six years after entry into force.

While Article 7 also obliges states parties to inform the OPCW of the legislative and administrative implementation measures they have taken, only 82 states parties

(54 percent) had complied with this requirement by 7 May 2003,<sup>36</sup> including in response to two comprehensive surveys of national measures by the organisation. States parties reaffirmed their commitment to overcome the delays in adopting legislation and to ensure that measures adopted reflected the comprehensiveness of their obligations.<sup>37</sup>

The existence of an international cwc verification organisation, with a standing Executive Council and annual meetings of states parties, has ensured that for that treaty, at least, any implementation assistance or expertise needed is readily identified and made available to states that request it. The OPCW has also provided information on legislative requirements and served as a repository for information on these measures, although it does not make legislative texts available publicly.

Despite the advantages that the cwc has, the rate of adoption of national implementation measures is still no higher than it is for treaties that do not have an international verification organisation or oversight body. Contributory factors may include the complexity of the legislation required and the relatively short period of time since the treaty entered into force. The ready availability of expert legal, technical and other assistance makes the traditional arguments used by states for failing to adopt such measures spurious in this case.

### *The 1997 Ottawa Convention*

States parties are required by Article 9 of this convention to adopt penal legislation to enforce the treaty's prohibitions and facilitate the performance of an array of humanitarian mine action activities. They must also report annually on the status of their legislation, among other implementation activities, in accordance with the transparency and reporting system laid down in Article 7. States parties have agreed to make these reports publicly available to facilitate their review of implementation and assist with necessary resource mobilisation.<sup>38</sup>

The unique combination of treaty advocacy, resource mobilisation and treaty implementation by civil society,<sup>39</sup> international organisations<sup>40</sup> and states parties makes this the most successfully implemented and comprehensively-monitored disarmament agreement in history. The popular interest and acclaim for this treaty has also made states parties more eager to demonstrate their adherence to its humanitarian norms. The constant advocacy and ground-breaking compliance monitoring activities conducted by civil society organisations, via the Landmine

Monitor initiative of the International Campaign to Ban Landmines (ICBL), as well as the ICRC and others, has pressured states parties to fulfil their treaty obligations expeditiously in order to reduce the possibility of disparaging public reports on their non-compliance.

However, despite this wealth of attention and the relative simplicity of the treaty, the rate of adoption of national implementing legislation remains lower than that for other treaty implementation activities<sup>41</sup> and indeed, for other treaties. Four and a half years after the Ottawa Convention's entry into force, only 35 of 136 states parties (26 percent) have adopted specific legislation or made amendments to existing legislation, particularly penal codes.<sup>42</sup>

### **Overcoming obstacles to adopting legislation**

There are several ways in which the adoption of national implementation legislation for multilateral arms control and disarmament agreements might be improved. States should, for instance, be regularly reminded of their obligations at regular meetings held under the auspices of each treaty, as well as at the annual sessions of the First Committee of the UN General Assembly which deals with all aspects of disarmament. While not all states can maintain permanent missions to the UN in New York, Geneva and Vienna, where the majority of these meetings take place, most documentation from such meetings is made available publicly on the internet. Civil society can play an important role by advocating the adoption of effective legislation, monitoring states' compliance with this requirement and publicising deficiencies. States may draw on the knowledge and expertise of specialised NGOs, which are often better informed than many governments, in fulfilling their obligations, including by holding consultations over government policy or draft legislation.<sup>43</sup> Closer co-operation among states parties and increased interaction between governments and civil society on treaty implementation can also assist in identifying sources of assistance and in the allocation of donor support.

#### *Sources of assistance for drafting implementing legislation*

Numerous avenues of assistance are available to states that require technical, financial, drafting or other assistance in adopting appropriate legislation to enforce treaty obligations. These include other states parties, treaty secretariats, intergovernmental organisations, and relevant international organisations and NGOs. Other states parties,

especially donor or partner governments, are often willing to provide assistance in drafting legislation on request. *Démarches* by donor governments promoting accession to treaties and compliance with them—including the adoption of national legislation and transparency reporting—are often successful in achieving action.

Treaties with an international verification organisation or a standing treaty secretariat will have legal personnel to advise and assist states parties with national implementation requirements, including through the preparation of manuals on national implementation. Examples are the CWC,<sup>44</sup> the 1996 Comprehensive Nuclear Test Ban Treaty's Provisional Technical Secretariat,<sup>45</sup> the International Atomic Energy Agency (IAEA)<sup>46</sup> and the various assistance bodies associated with the Ottawa Convention.<sup>47</sup> As described above, the UN's departments and specialised agencies may be requested to facilitate or provide legislative drafting assistance as appropriate.

Intergovernmental organisations outside the arms control and disarmament field also have an interest in aspects of arms control treaties and can play a role in assisting their member states to nationally implement legislation within their sphere of expertise. For example, the complexity of BWC implementation is such that, in the absence of a treaty secretariat, many intergovernmental organisations could likely assist their member states which are party to the BWC to draft treaty-related legislation. These include the Food and Agriculture Organization (FAO), the Office International des Epizooties (World Organisation for Animal Health), the World Customs Organisation and the World Health Organization (WHO). Alliance and regional organisations are regularly approached by member states for legislative drafting assistance on, among other issues, arms control agreements. These organisations include the African Union, the Caribbean Community, the Commonwealth Secretariat, the European Union and the Inter-American Committee Against Terrorism.

Other international organisations may also be able to provide specialist assistance. For example, the ICRC's Legal Advisory Service comprises a global network of legal advisers providing specialist, confidential assistance to states drafting national legislation to implement international humanitarian law, including the Ottawa Convention, the BWC and 1925 Geneva Protocol.<sup>48</sup>

NGOs and civil society are also a resource for legislators adopting implementation legislation. Many individuals and organisations have relevant expertise in the issues

arising from national implementation of arms control and disarmament treaties and can make useful contributions to the processes of legislative review and drafting.

### Conclusion

The adoption of comprehensive and effective national legislation is crucial for facilitating states' adherence to all of their obligations under disarmament and arms control agreements. These measures are also further evidence of a state's commitment to abide by an agreement and take all action necessary to prevent and suppress prohibited activity from occurring on its territory.

Analysis of the rate of adoption and effectiveness of national implementing legislation for some key arms agreements to date indicates the large number of states in non-compliance with their legal obligations. This is true of most states in Africa, Asia and Latin America. It illustrates the importance of having a standing body to promote the requirement to adopt legislation, issue guidance on which treaty provisions require legislation, collate and disseminate the texts of legislation and provide assistance. These bodies can act as a clearing-house for information on treaty implementation, as the Ottawa Convention's Implementation Support Unit does;<sup>49</sup> as a source of technical assistance in the adoption of necessary legislation, such as the OPCW's Office of the Legal Advisor for the CWC and the ICRC for national implementation of international humanitarian law; and as a repository of information on national implementation measures like the UNDDA for the BWC.

The existence of legislation repositories and technical assistance cannot, however, entirely overcome a lack of awareness of treaty obligations and certainly cannot redress the lack of capacity to fully implement legislation once it is passed. States should ideally address these needs during treaty negotiations, especially by establishing vigorous multilateral mechanisms to ensure that appropriate international attention and resources are devoted to national implementation.

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## Endnotes

<sup>1</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. The treaty was opened for signature on 10 April 1972 and entered into force on 26 March 1975.

<sup>2</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. The treaty was opened for signature on 13 January 1993 and entered into force on 29 April 1997.

<sup>3</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. The treaty was opened for signature on 3 December 1997 and entered into force on 1 March 1999.

<sup>4</sup> Some treaties specifically require such extension, for example, Article 4 of the BWC.

<sup>5</sup> See [www.australiagroup.net](http://www.australiagroup.net).

<sup>6</sup> Ratification demonstrates the state's intention to be bound by a treaty after it has signed it, while accession and approval are one-step processes for acceding to a treaty. In the interim period between signature and ratification, a signatory state is obliged not to carry out activity contrary to the purpose and object of the treaty; Article 18, 1969 Vienna Convention on the Law of Treaties.

<sup>7</sup> Article 27, 1969 Vienna Convention on the Law of Treaties.

<sup>8</sup> For an excellent discussion of the relationship between international law and national law see Anthony Aust, *Modern Treaty Law and Practice*, Cambridge University Press, Cambridge, 2000.

<sup>9</sup> Such as those treaties requiring the performance of specific activities in the state which would otherwise be illegal. For example, the Ottawa Convention provides for fact-finding missions to be granted specific rights of access in states parties' territory which might contravene national laws restricting access to private property.

<sup>10</sup> For example, while one official of a BWC state party maintains that their state does not require national implementing legislation under its constitution, the state has in fact adopted at least three measures to implement aspects of the treaty.

<sup>11</sup> For example, Article 4 of the BWC; Article 9 of the Ottawa Convention; and Article 7 of the CWC.

<sup>12</sup> For example, Article 9 of the Ottawa Convention.

<sup>13</sup> For example, Article 7(4) of the CWC.

<sup>14</sup> For example, the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987 [New Zealand] implements four nuclear treaties as well as the BWC.

<sup>15</sup> MASA is the South African affiliate of the International Campaign to Ban Landmines. The Anti-Personnel Mines Prohibition Act 2003 [South Africa] incorporated many suggestions from the public consultation process. See International Campaign to Ban Landmines, *Landmine Monitor Report 2003*, Human Rights Watch, Washington, DC, 2003, p. 430.

<sup>16</sup> Much assistance has been made available to help small states to enact legislation to combat terrorism and its financing, as required by UN Security Council Resolution 1373 of 28 September 2001. States have been threatened with trade sanctions from major trading partners if they did not adopt such legislation.

<sup>17</sup> For example, the 1992 Convention on Biological Diversity, which assists in the protection of natural resources, has comprehensive mechanisms available, co-ordinated through its secretariat, for providing a range of implementation assistance to states parties. Effective implementation of the 1982 UN Convention on the Law of the Sea enables small island states to derive economic benefit by granting licences to foreign fishers within their exclusive economic zone, if they have claimed one.

<sup>18</sup> However, the use of specialist, pro-bono legal advisors—such as the Legal Advisory Service of the International Committee of the Red Cross (ICRC)—is to be encouraged for states which might otherwise not adopt implementing legislation.

<sup>19</sup> Such as the BWC and 2002 Strategic Offensive Reductions Treaty (SORT).

<sup>20</sup> BWC Second Review Conference Final Declaration, BWC/CONF.II/13/11, 26 September 1986. See [www.opbw.org](http://www.opbw.org).

<sup>21</sup> UNDDA compiles and publishes states parties' compliance reports as public Review Conference documents.

<sup>22</sup> The UNDDA prepares a background document on states parties' participation in CBM reporting which indicates which states have reported new or amended information under each form. These are the only public reports of the CBM reporting process, yet they do not indicate any substantive information provided by states parties. In fact, many states' reports on compliance to Review Conferences mirror their CBM reports, whether this is done for consistency, in the interests of transparency or perhaps out of complacency.

<sup>23</sup> Form E 'Declaration of legislation, regulations and other measures'.

<sup>24</sup> See chapter by Jez Littlewood in this volume.

<sup>25</sup> See Final Report, Meeting of States Parties to the Biological Weapons Convention, BWC/MSP/2003/4, 14 November 2003.

<sup>26</sup> It is entitled 'BWC Information Repository'.

<sup>27</sup> Database of National Implementation of International Humanitarian Law; see [www.icrc.org](http://www.icrc.org).

<sup>28</sup> See VERTIC, *Time to Lay Down the Law: National Legislation to Enforce the BWC*, The Verification Research, Training and Information Centre, London, August 2003, available at [www.vertic.org](http://www.vertic.org); and the 'Biological Weapons Convention: Collection of national legislation' dataset at [www.vertic.org](http://www.vertic.org).

<sup>29</sup> Twenty-three per cent of states parties responded to VERTIC's request for information. In addition, VERTIC collected information from open sources, to make information on the status of legislation available for a total of 63 percent of states parties.

<sup>30</sup> Article 7(1)(a) of the CWC.

<sup>31</sup> Article 7(1)(c) of the CWC.

<sup>32</sup> Organisation for the Prohibition of Chemical Weapons, 'Note by the Director-General. Compliance with Article VII: legislation, cooperation and legal assistance', Conference of the States Parties document, C-III/DG.1/Rev.1, 17 November 1998.

<sup>33</sup> Organisation for the Prohibition of Chemical Weapons, Office of the Deputy Director-General, 'General obligations under the Chemical Weapons Convention and related tasks', S/246/2001, 15 March 2001.

<sup>34</sup> Article 7(2), CWC. This obligation is understood to apply to 'states in a position to' provide legislative assistance, with states parties seemingly having to be repeatedly encouraged to consider rendering it. See Conference of the States Parties decision C-V/DEC.20, 19 May 2000, available at [www.opcw.org](http://www.opcw.org).

<sup>35</sup> Organisation for the Prohibition of Chemical Weapons, Office of the Legal Adviser and International Cooperation and Assistance Division, 'Note by the Technical Secretariat. Legal technical assistance: network of legal experts', S/363/2003, 28 May 2003.

<sup>36</sup> Organisation for the Prohibition of Chemical Weapons, Office of the Legal Adviser and International Cooperation and Assistance Division, 'Note by the Technical Secretariat. Legal technical assistance: network of legal experts', S/363/2003, 28 May 2003.

<sup>37</sup> 'Committee of the Whole: Report to the First Special Session of the Conference of the States Parties to review the operation of the Chemical Weapons Convention. Annex 1. Draft Political Declaration', RC-1/COV.1, 9 May 2003.

<sup>38</sup> This was agreed at the First Meeting of States Parties, held on 3–7 May 1999, in Maputo, Mozambique. These reports are collated and published by the UNDDA at <http://disarmament.un.org/MineBan.nsf>.

<sup>39</sup> Particularly by the International Campaign to Ban Landmines (ICBL), which was instrumental in the treaty's inception, negotiation and adoption. The ICBL's Landmine Monitor initiative monitors the implementation of the norm against landmines globally. See [www.icbl.org](http://www.icbl.org) and [www.icbl.org/lm](http://www.icbl.org/lm), respectively.

<sup>40</sup> In particular, the UN (especially the UN Mine Action Service) and the Geneva International Centre for Humanitarian Demining, which houses the Ottawa Convention Implementation Support Unit.



<sup>41</sup> For example, 86 percent of Ottawa Convention states parties have provided their initial Article 7 transparency report to the UNDDA, an unprecedented reporting rate for a disarmament agreement.

<sup>42</sup> Intervention of the International Committee of the Red Cross, Agenda Item #13, Article 9 discussion, Thursday, 18th September 2003, Fifth Meeting of States Parties to the Ottawa Convention, Bangkok, Thailand. See [www.gichd.ch](http://www.gichd.ch). At least 13 other states parties consider existing legislation sufficient to give effect to the treaty.

<sup>43</sup> For example, the public consultation process on the Anti-Personnel Mines Prohibition Bill in South Africa. See note 15.

<sup>44</sup> The Organisation for the Prohibition of Chemical Weapons, based in The Hague, Netherlands. See [www.opcw.org](http://www.opcw.org).

<sup>45</sup> The Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization. See [www.ctbto.org](http://www.ctbto.org).

<sup>46</sup> See [www.iaea.org/worldatom](http://www.iaea.org/worldatom).

<sup>47</sup> The Implementation Support Unit of the Geneva International Centre for Humanitarian Demining. See [www.gichd.ch](http://www.gichd.ch). The establishment of the Implementation Support Unit was endorsed by Ottawa Convention states parties at the 3rd Meeting of States Parties, held on 18–21 September 2001 in Managua, Nicaragua. The unit is funded voluntarily by donor states parties and is housed in the Geneva International Centre for Humanitarian Demining in Geneva, Switzerland. The unit supports the work of an Intersessional Standing Committee meeting process, Coordinating Committee and President of the Meeting of States Parties. See 'Implementation support for the Convention on the Prohibition of Anti-Personnel Mines', APLC/MSP.3/2001/L.6, 21 September 2001, at [www.gichd.ch](http://www.gichd.ch); and Angela Woodward, 'Verifying the Ottawa Convention' in Trevor Findlay and Oliver Meier (eds), *Verification Yearbook 2001*, The Verification Research, Training and Information Centre (VERTIC), London, 2001, pp. 104–105.

<sup>48</sup> The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

<sup>49</sup> See note 47.

