

5. LEGAL ASPECTS

National and international law was identified in Chapter 2 as an essential component of the array of measures serving to protect against the hostile release of biological or chemical agents, and to help to mitigate the consequences should such a release nevertheless take place. The present chapter describes the pertinent features of that law. At the international level, the most important legal instruments are the BWC and the CWC. Both provide for international cooperation in order to prevent the use of chemical and biological weapons, and for assistance and cooperation where breaches of these treaties are suspected, especially when such weapons have been used. The chapter begins with an account of the Geneva Protocol of 1925, which for several decades was the principal international treaty in the field. The two conventions are then described in turn, information being given about the international obligations that they establish and the national measures required to fulfil those obligations. The status of individual WHO Member States under the three treaties is set out in Annex 7.

5.1 The 1925 Geneva Protocol

At least since the early 1600s, international law has condemned what would nowadays be regarded as biological or chemical warfare, instances of which have been reported since antiquity. Subsequent development of that law (1) can be seen in the Brussels Declaration of 1874, which outlawed, *inter alia*, the use of poison or poisoned weapons, and again at the Hague Peace Conference of 1899, where agreement was reached to “abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases”. The 1899 Conference also adopted a convention that enunciated in treaty form the Brussels Declaration’s prohibition of the use of poison or poisoned weapons in land warfare, a prohibition that was later included in the 1907 Hague Convention IV concerning the laws and customs of war on land. Following the extensive use of chemical weapons, such as chlorine and mustard gas, during the First World War, the international community agreed to strengthen the existing legislation on these weapons

so as to prevent their future use. This led Member States of the League of Nations to sign the *Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare (2)* on 17 June 1925, during the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War. This treaty, which is usually referred to as the Geneva Protocol of 1925, entered into force on 8 February 1928, and France is its depositary. At the time of writing, it has 130 States Parties, including the five permanent members of the United Nations Security Council but not including 64 WHO Member States.⁹

The Geneva Protocol prohibits “the use in war of asphyxiating, poisonous, or other gases and of all analogous liquids, materials or devices” and also “extends this prohibition to the use of bacteriological methods of warfare”. The prohibitions set out in the Protocol are now considered to have entered customary international law and are therefore binding even on states that are not parties to it. However, the Geneva Protocol prohibits only the use of such weapons, not their possession. Moreover, since many States Parties at the time reserved the right to use the weapons in retaliation against an attack with such weapons, the treaty was in effect a no-first-use agreement. Some States Parties also reserved the right to use the weapons against states not party to the protocol. For this reason, a comprehensive prohibition of the weapons themselves came to be considered necessary.

5.2 The 1972 Biological Weapons Convention

When discussion of biological and chemical weapons at the Geneva disarmament conference began in the late 1960s, when the first edition of this report was being prepared, there was much debate on whether the comprehensive prohibition of the weapons covered by the Geneva Protocol should be sought or, initially, the prohibition only of biological weapons. The United States, at that time not yet party to the Geneva Protocol, declared its unilateral renunciation of biological and toxin weapons during 1969–1970. This encouraged the international community to adopt the *Convention on the prohibition of the development, production and stockpiling of bacteriological (biological)*

⁹ See Annex 7.

and toxin weapons and on their destruction (3). Opened for signature on 10 April 1972 and entering into force on 26 March 1975, the BWC now has 146 States Parties, including the five permanent members of the United Nations Security Council but not including 48 WHO Member States.¹⁰ The United Kingdom, the United States and the Russian Federation are the depositaries of the treaty.

5.2.1 *International obligations*

The BWC is designed to complement the prohibition of the use of biological weapons embodied in the Geneva Protocol. In Article I, it identifies items that each State Party “undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain”. As has already been noted in Chapter 3, these items are not defined simply as biological weapons or biological-warfare agents. They are instead defined as: “(1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.” The scope of the Convention is thus specified according to a criterion of general purpose. Such an approach was adopted so as not to obstruct the many biomedical and other non-hostile applications of microbial or other biological agents and toxins, while at the same time enabling the Convention to cover any as-yet-unknown products of biotechnology and of scientific research that might find use as weapons. The treaty does not define either the “biological agents” or the “toxins” to which it refers. It is clear from the proceedings both of its negotiation and of its subsequent Review Conferences that the term “toxins” is not limited to microbial products but includes all toxic substances produced by living organisms even when they are actually produced synthetically. There is a description of toxins in Annex 2.

Another important obligation is set forth in Article II, which requires States Parties to destroy or divert to peaceful purposes all agents, toxins, weapons, equipment and means of delivery. This disarmament provision must be fulfilled no later than nine months after the entry into force of the Convention for the State Party concerned. The BWC also

¹⁰ See Annex 7.

requires States Parties to facilitate the exchange of equipment, material and scientific and technological information for the use for peaceful purposes of bacteriological (biological) agents and toxins (Article X), keeping in mind that the treaty prohibits the transfer of agents, toxins, weapons, equipment or means of delivery specified in Article I to any recipient whatsoever (Article III).

The operation of the BWC has been reviewed at intervals of five or six years. States Parties reaffirmed during their Review Conferences that the Convention was sufficiently comprehensive to encompass all new scientific and technological developments. They also instituted confidence-building data exchanges in order to strengthen the BWC by enhancing transparency. The Third Review Conference, in 1991, extended these data exchanges to include information on “past activities in offensive ... biological research and development programmes [since 1 January 1946]”, and in the first year thereafter five States Parties affirmed that they had had such programmes, disclosing particulars. The five states were Canada, France, the Russian Federation, the United Kingdom and the United States. The periods of activity declared for the offensive programmes all terminated before the entry of the BWC into force except for the declaration by the Russian Federation, which specified “1946 to March 1992” as the period of activity.

The Third Review Conference also established an Ad Hoc Group of Government Experts (VEREX) to identify and examine potential verification measures from a scientific and technical standpoint. The VEREX Report was considered by a special conference convened in 1994 for this purpose. The conference established an Ad Hoc Group “to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the convention, to be included, as appropriate, in a legally binding instrument, to be submitted for the consideration of the States Parties”. The Ad Hoc Group worked from 1995 to 2001 without reaching consensus on such an instrument.

5.2.2 National implementation

The BWC stipulates that each State Party is obliged to take any necessary measures to implement the provisions of the Convention within its territory or any territory under its control anywhere (Article IV). Besides the basic obligations mentioned above, there are other areas where national measures are necessary if there is to be full implementation of the BWC. States have long taken measures to implement the obligation under Article III not to transfer to anyone agents, toxins or other items specified in Article I. In contrast, the implementation of Article X on measures for promoting technical cooperation in the field of biological activities has received relatively little direct attention.

Among their national measures under Article IV, some States Parties have enacted implementing legislation. For example, the United Kingdom introduced the *Biological Weapons Act* in 1974, Australia the *Crimes (Biological Weapons) Act* in 1976, New Zealand the *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act* in 1987, and the United States the *Biological Weapons Anti-Terrorism Act* in 1989, while already in 1972, long before the BWC had entered into force in France, that country had enacted Law No. 72-467 prohibiting the development, production, possession, stockpiling, acquisition and transfer of biological or toxin weapons.

Information on national measures is the subject of one of the confidence-building data-exchanges that BWC States Parties have agreed during Review Conferences, and the declarations made in accordance with it constitute the only readily available synoptic reference on the topic. Adopted by the Third Review Conference in 1991, it asks States Parties to provide annual returns of information about “legislation, regulations or other measures” on three different topics, namely, activities prohibited under Article I of the BWC, exports of pathogenic microbial agents and toxins, and imports of the same. Between 1992 and 1997, 46 (one-third) of the States Parties provided such information, 37 of them declaring the existence of specific measures in at least one of the three areas, and 26 declaring that they had enacted legal measures in all three areas. Examples of such legislative measures are given in Appendix 5.1.

5.3 The 1993 Chemical Weapons Convention

The CWC was negotiated over a period of more than 20 years, during which time related agreements were also concluded, notably the restrictions on warfare conducted with chemicals toxic to plant life set out in the 1977 *Convention on the prohibition of military or any other hostile use of environmental modification techniques*, and the reaffirmation of the Geneva Protocol by the 149 states represented at the Paris Conference of 1989 on the Prohibition of Chemical Weapons. The *Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (4)* was opened for signature on 13 January 1993, entered into force on 29 April 1997 and, as of October 2002, had 147 States Parties,¹¹ including the five permanent members of the United Nations Security Council but not including 47 WHO Member States.¹² The CWC creates an elaborate regime to ensure compliance, and specifies in detail how its obligations are to be implemented; it also establishes an international organization (OPCW) to oversee its operation.

5.3.1 *International obligations*

The CWC prohibits the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons. It also forbids States Parties to assist, encourage or induce anyone to be involved in such outlawed activities. Like the BWC, the CWC uses a general purpose criterion to define its scope,¹³ so that States Parties have the right to conduct activities involving toxic chemicals for purposes not prohibited under the CWC. Similarly, the provisions of the CWC must also be implemented in such a way as to avoid hampering the economic and technological development of the States Parties.

The CWC stipulates that the States Parties must totally destroy their existing stockpiles of chemical weapons and the related production facilities located on their territory or under their jurisdiction or control within 10 or, under certain conditions, 15 years after the CWC's entry into

¹¹ This means that 147 states had deposited their instruments either of ratification of the CWC or of accession to it. An additional 27 states, all of which are members of WHO, had signed the treaty, but not yet ratified their signature.

¹² See Annex 7.

¹³ The language that the CWC uses to specify the weapons that it covers is quoted and discussed further in section 3.1.1 above on pages 28–29.

force. This destruction process must be completed in such a way as to ensure the safety of the population and the protection of the environment.

Finally, the CWC establishes an international system for verifying compliance. This relies on several types of verification techniques and methods that allow for the protection of national security. This verification machinery, which includes declarations by the States Parties, routine inspections as well as means (such as challenge inspections) to investigate allegations of violations of the treaty, is operated by OPCW. The main element of the system is factual information obtained through verification procedures in accordance with the Convention that are independently conducted by the OPCW Technical Secretariat, sufficiency of such information being essential for successful operation (5).

While fewer than 40% of the States Parties are directly affected by the routine verification regime, all States Parties participate in the security benefits conferred by the Convention. Accordingly, arrangements are in place for the delivery to OPCW Member States of assistance against the use and threat of use of chemical weapons (see Chapter 6). Such international cooperation is agreed between OPCW and the United Nations and will be extended to other international organizations. Cooperative measures in accordance with the CWC also extend to advice on the implementation of the Convention and in those areas in which the Technical Secretariat of OPCW has considerable expertise (6).

5.3.2 *National implementation*

The CWC requires its States Parties to promulgate implementing legislation. Under Article VII, paragraph 4, States Parties are required to establish a National Authority. The twin pillars of the Convention's verification regime are thus (1) the OPCW Technical Secretariat (through which compliance is verified) and (2) the National Authority (through which compliance is demonstrated, including compliance with those obligations not overseen by the Technical Secretariat). The National Authority is essential to the success of the verification regime. As the national focal point for liaison with OPCW and with other States Parties, the national collection point of data and the facilitator of national implementation, effective National Authorities are essential to the

effectiveness of the Convention itself. To meet its basic obligations, a State Party must be in a position to carry out the following eight fundamental functions, all of which involve its National Authority to a greater or lesser extent: (1) submit all the required declarations; (2) communicate with OPCW; (3) cooperate with other States Parties; (4) facilitate OPCW inspections; (5) respond to OPCW requests for assistance; (6) protect the confidentiality of classified information; (7) monitor and enforce national compliance; and (8) cooperate in the field of chemical activities for purposes not prohibited under the Convention, including the international exchange of scientific and technical information, and chemicals and equipment for the production, processing or use of chemicals for purposes not prohibited under the Convention.

Implementing legislation is normally necessary in order to enforce the prohibitions imposed on states by Article I of the CWC, to compel the submission of the information needed for an accurate national declaration, and for export/import controls. The requirements are described further in Appendix 5.2. Experience in the first five years of implementation has shown that comprehensive implementing legislation is essential to the reporting of reliable, complete information by States Parties. A survey of national implementing legislation showed that, in addition to the areas specified in Article VII, paragraph 1 (prohibitions, penal measures, extraterritorial application to nationals), several States Parties have found it necessary to enact legislation in 15 other areas (legal assistance; definition of chemical weapons; declaration obligations; the regime for scheduled chemicals – regulation of Schedule 1 production/use; criteria for Schedule 2 and 3 declarations; import/export controls; mixtures – licensing of industry; access to facilities; inspection equipment; application of inspectors' privileges and immunities; confidentiality; liability; mandate of the National Authority; enforcement powers of the National Authority; samples; environmental measures; and primacy of the Convention) (7–8).

Five years after the entry into force of the CWC, 43% of States Parties had met their obligation to inform OPCW of the legislative and administrative measures taken to implement the Convention. At its fifth session (May 2000), the Conference of the States Parties encouraged States Parties that are in a position to do so to offer assistance to other

States Parties in their efforts to fulfil their obligations under Article VII (9). In December 2001, the OPCW Executive Council identified full implementation of the legislative measures required by Article VII as one of the five priority areas to be focused upon in OPCW's contribution to global antiterrorist efforts.

5.4 Conclusions

Through its contribution both to preventing the release of biological or chemical agents for hostile purposes and to mitigating the consequences should such release nevertheless occur, the legal regime just described stands alongside the measures of protective preparation described in Chapter 4. A complementarity is evident. Civilian populations are vulnerable to deliberate releases of biological and chemical agents to such a degree that this complementarity needs to be strengthened. Clearly, prevention and protection can be no substitute for one another but can, instead, be mutually reinforcing. The conclusion must be, then, that an emphasis on the one should not become a detraction from the other, for a danger is bound to exist that confidence in protective preparation may seem to diminish the value of preventive preparation. Full and complete implementation of the 1972 and 1993 Conventions is therefore an objective that needs continual affirmation and national support.

REFERENCES

1. Roberts A, Guelff R. *Documents on the laws of war*, 3rd ed. Oxford, Oxford University Press, 2000.
2. The text of the Geneva Protocol is available in reference 1 and also at www.disarmament.un.org.
3. The text of the Biological Weapons Convention is available in reference 1 and also at www.opbw.org.
4. *Convention on the prohibition of the development, production, stockpiling, and use of chemical weapons and on their destruction, corrected version in accordance with Depositary Notification C.N.246.1994.TREATIES-5 issued on 31 August 1994 and the change made under Article XV (new paragraph 5bis of Section B of Part VI of the Verification Annex), in accordance with Depositary Notification C.N.916.1999.TREATIES-7 issued on 8 October 1999; together with Depositary Notification C.N.157.2000.TREATIES-1 issued on 13 March 2000.* The text of the Convention is available at <http://www.opcw.org>.
5. Krutzsch W, Trapp R. *Verification practice under the Chemical Weapons Convention*. The Hague, Kluwer Law International, 1999.
6. *Opening Statement by the Director-General to the Organisation for the Prohibition of Chemical Weapons conference of the States Parties at its fifth session*, OPCW document C-VIDG.11 dated 12 May 2000.
7. *Survey of national implementing legislation*. Organisation for the Prohibition of Chemical Weapons document S/259/98, dated 16 May 2001.
8. Checklist for the legislator and model national implementing legislation and addendum. In: Tabassi L, ed. *OPCW: the legal texts*. The Hague, TMC Asser Press, 1999, 310–315.
9. *Decision on national implementation measures taken by the Organisation for the Prohibition of Chemical Weapons Conference of the States Parties at its fifth session*. OPCW document C-V/DEC.20, 19 May 2000.

APPENDIX 5.1: BWC IMPLEMENTING LEGISLATION

Legislation to enforce the prohibitions of Article I

Article IV of the BWC provides that each State Party shall take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified within Article I of the Convention. It further requires that these measures apply within the territory of the State or any territory under its jurisdiction or under its control anywhere. At subsequent Review Conferences, States Parties have been invited to consider the application of such measures also to actions taken anywhere by natural persons possessing its nationality. For consistency with the Convention, the national legislation or measures should incorporate the definition of biological weapons as contained in the Convention. The fulfilment of these obligations will contribute significantly to the achievement of the object and purpose of the Convention, namely to prevent the use of biological and toxin weapons as a means of warfare or as a terrorist threat.

Examples are provided below of the relevant language in the legislation enacted by three of the States Parties.

Australia: Crimes (Biological Weapons) Act 1976

The Act makes it unlawful for Australians to develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The Act extends to the acts of Australian citizens outside Australia.

Contravention of the Act is an indictable offence.

New Zealand: New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987

Section 8 of the Act states:

“Prohibition of biological weapons – No person shall manufacture, station, acquire or possess, or have control over any biological weapons in the New Zealand Nuclear Free Zone.”

“Biological weapon” is defined as “any agent, toxin, weapon, equipment or means of delivery referred to in Article I of the Convention”.

United States of America: Biological Weapons Anti-Terrorism Act 1989

Paragraph 175. Prohibitions with respect to biological weapons:

“(a) IN GENERAL. – Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agents, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States.

(b) DEFINITION. – For purposes of this section, the term “for use as a weapon” does not include the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for prophylactic, protective, or other peaceful purposes.”

Legislation regulating exports of agents and toxins

Article III of the BWC provides that each State Party undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage or induce any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment and means of delivery specified within Article I of the Convention. At subsequent Review Conferences, it has been stated that States Parties should also consider ways and means to ensure that individuals or subnational groups are effectively prevented from acquiring, through transfers, biological agents and toxins for other than peaceful purposes.

Examples are provided below of the relevant language in the legislation adopted by two States Parties.

Australia: The Quarantine Act (1908) and Regulations, the Biological Control Act (1984) and Regulations, and the Therapeutic Goods Act (1989) and Regulations

The Quarantine Act 1908 and Regulations require prior permission before a biological agent may be imported. Under the provisions of Section 13 of the Act, goods of biological origin, including human pathogenic microorganisms and toxins, may only be imported into Australia if approval has been given by the Director of Human Quarantine. Import conditions vary, depending on the nature of the organisms and the risks involved. High-risk organisms, such as serious pathogens of humans, animals and plants which might be considered as potential biological weapons, will only be permitted under the most stringent high security conditions. Very few imports are approved and these will generally be needed for diagnostic research in preparation for emergency responses to specific serious exotic disease incursions. Penalties for the importation of controlled goods without a permit, and for breaches of permit requirements, are severe and may include a fine or imprisonment or both.

Biological Control Act (1984) and Regulations

“This Act ... provides powers additional to those of the Quarantine Act in order to regulate the release of biological agents for the control of pests, diseases and weeds.”

Therapeutic Goods Act (1989) and Regulations

The Act covers the import and export of therapeutic goods and will include pathogenic microorganisms where these are included in vaccines for human use.

Brazil: Law no. 9.112 (1995) (unofficial translation)

Article 1 – This Law regulates transactions related to the export of sensitive goods and services directly related to such goods.

...

Article 2 – The goods covered by the previous Article will be included in the Lists of Sensitive Goods that will be periodically updated and published in the Federal Government Gazette (*Diário Oficial da União*).

Article 3 – The export of the following items will depend on prior formal authorization issued by the competent federal entities in compliance with the regulations established and published in the Federal Government Gazette (*Diário Oficial da União*):

I – goods included in the Lists of Sensitive Goods; and

II – services directly linked to goods included in the Lists of Sensitive Goods.

...

Article 4 – Under the aegis of the Office of the President of Brazil, the Interministerial Commission for Controlling Exports of Sensitive Goods is established, consisting of representatives of the federal entities involved in the process of exporting the goods covered by this Law.

...

Article 6 – The export of sensitive goods and services directly linked thereto, if in violation of the provisions of this Law and its Regulations, will subject the violator to the following penalties:

I – warning;

II – fine of up to twice the value equivalent to that of the transaction;

III – loss of the goods covered by the transaction;

IV – suspension of the right to export for a period of six months to five years;

V – cancellation of qualification to work with foreign trade, in case of repeat offences.

...

Article 7 – Individuals who fail to comply with this Law either directly or indirectly, through either action or omission, will be committing a crime.

Penalty – imprisonment of one to four years.

APPENDIX 5.2: CWC IMPLEMENTING LEGISLATION

Legislation to enforce the prohibitions of Article I, including penal provisions

Article VII of the CWC provides that specific legislation must be in place prohibiting actions that would contravene a State Party's obligations under Article I. Any natural and legal person on the territory of a State Party shall be prohibited under penal law, for instance, to develop, produce or otherwise acquire chemical weapons, to transfer such weapons to anyone, to use them or to assist others in committing such crimes. Penalties will include both criminal and administrative sanctions. For consistency with the Convention, the national legislation should incorporate the definition of chemical weapons as contained in the Convention. The Convention requires States Parties to extend the application of these penal provisions to actions undertaken anywhere by natural persons possessing their nationality. Furthermore, States Parties shall assist each other and cooperate to prosecute those who contravene the prohibition of chemical weapons worldwide. The fulfilment of these obligations will contribute significantly to the achievement of the object and purpose of the Convention, namely to prevent the use of toxic chemicals as a means of warfare or as a terrorist threat. As these are the most basic violations of the very purpose of the Convention, penalties should be severe enough to deter possible violators. Legislation already promulgated by States Parties specifies that the most serious violations shall be punished by life imprisonment.

States may find it difficult to comply with their obligation under Article VII, paragraph 2, to respond to requests from other States Parties for cooperation and legal assistance. The modalities of such cooperation and legal assistance may include: (1) extradition; (2) mutual legal assistance in penal matters; (3) transfer of prisoners; (4) seizure and forfeiture of illicit proceeds of crime; (5) recognition of foreign penal judgements; or (6) transfer of penal proceedings. There is no customary practice in international cooperation and legal assistance in criminal matters; the modalities and procedures are normally prescribed in bilateral treaties or partially in a few multilateral instruments. Thus States Parties to the CWC need to check whether their municipal law

and their various treaties concerning different forms of mutual legal assistance concluded with other states will allow for cooperation in this regard. If a State Party seeks mutual legal assistance and encounters obstacles, certain other non-judicial coercive techniques may be available based on comity or cooperation through organizations such as Interpol (1).

Regulating and monitoring the relevant chemical industry and exports of specific chemicals

States Parties shall by law require public and private entities or persons to report if they are producing, or in some cases consuming or processing, chemicals specified in the Convention when threshold limits are exceeded. On the basis of this information, States Parties will be able to fulfil their obligation under the Convention to submit full and accurate declarations to OPCW on national activities related to chemicals listed in the schedules of the CWC. To maintain a nationwide overview of activities regulated by the CWC and ensure complete declarations, some States Parties have promulgated legislation subjecting producers of chemicals to licensing.

From the entry into force of the Convention, States Parties were required to notify OPCW 30 days in advance of any transfer of a Schedule 1 chemical to or from another State Party, and were prohibited from transferring Schedule 1 chemicals to or from states not party. From 29 April 2000, the transfer of Schedule 2 chemicals to states not party to the Convention was also prohibited. Appropriate measures of States Parties must also ensure that Schedule 3 chemicals transferred to states not party to the Convention shall only be used for purposes that are not prohibited. Each State Party's National Authority must negotiate and conclude facility agreements with OPCW governing the procedures for the implementation of verification activities by the Technical Secretariat in certain declared facilities. In order to perform these tasks, the National Authority must identify the sites, both public and private, that have to be declared and for which data for inclusion in the state's initial and annual declarations must be provided. Contacts with chemical industry associations and searches of commercial databases, and those of universities and hospitals, will usually be necessary to

obtain the necessary information on the national activities that may be relevant to the Convention.

The OPCW Technical Secretariat and the Secretariat of the Organisation of Eastern Caribbean States have developed a pesticide regulation model act in which the provisions required to implement the CWC are incorporated. The result, a draft Pesticides and Toxic Chemicals Control Act and Regulations, (i) allows the parliaments concerned to consider the regulations for pesticides and toxic chemicals in a single step; (ii) facilitates ratification of, and accession to, the CWC; (iii) makes a single interministerial agency in each country responsible for pesticides and toxic chemicals and serve as the National Authority under the Convention; and (iv) enables the CWC to be enforceable in the subregion (2).

REFERENCES

1. Yepes-Enríquez R, Tabassi L, eds. *Treaty enforcement and international cooperation in criminal matters with special reference to the Chemical Weapons Convention*. The Hague, TMC Asser Press, 2002.
2. *An integrated approach to national implementing legislation/model act developed by the secretariat of the Organisation of Eastern Caribbean States*. OPCW document S/190/2000 dated 23 May 2000.