

**IMPLEMENTING THE
CHEMICAL WEAPONS CONVENTION**

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PRESENTED TO THE

**REGIONAL SEMINAR ON THE NATIONAL IMPLEMENTATION OF
THE CHEMICAL WEAPONS CONVENTION**

IG, REPUBLIC OF SLOVENIA

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PRESENTED BY

PROFESSOR BARRY KELLMAN
DEPAUL COLLEGE OF LAW
DIRECTOR, INTERNATIONAL CRIMINAL JUSTICE &
WEAPONS CONTROL CENTER
25 E. JACKSON BOULEVARD
CHICAGO, IL 60604 USA
V 011-312-362-5258
F 011-312-362-5448
BKELLMAN@WPPOST.DEPAUL.EDU

EDWARD A. TANZMAN
ARGONNE NATIONAL LABORATORY
9700 S. CASS AVENUE
DIS-900
ARGONNE, IL 60439-4832
V 011-630-252-3263
F 011-630-252-5327
TANZMAN@ANL.GOV

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IMPLEMENTING THE CHEMICAL WEAPONS CONVENTION

I. INTRODUCTION

In 1993, as the CWC ratification process was beginning, concerns arose that the complexity of integrating the CWC with national law could cause each nation to implement the Convention without regard to what other nations were doing, thereby causing inconsistencies among States as to how the CWC would be carried out. As a result, my colleagues and I prepared the *Manual for National Implementation of the Chemical Weapons Convention* and presented it to each national delegation at the December 1993 meeting of the Preparatory Commission in The Hague. During its preparation, the Committee of CWC Legal Experts, a group of distinguished international jurists, law professors, legally-trained diplomats, government officials, and Parliamentarians from every region of the world, including Central Europe, reviewed the *Manual*. In February 1998, we finished the second edition of the *Manual* in order to update it in light of developments since the CWC entered into force on 29 April 1997.

The *Manual* tries to increase understanding of the Convention by identifying its obligations and suggesting methods of meeting them. Education about CWC obligations and available alternatives to comply with these requirements can facilitate national response that are consistent among States Parties. Thus, the *Manual* offers options that can strengthen international realization of the Convention's goals if States Parties act compatibly in implementing them. Equally important, it is intended to build confidence that the legal issues raised by the Convention are finite and addressable. We are now nearing completion of an internet version of this document so that interested persons can access it electronically and can view the full text of all of the national implementing legislation it cites. The internet address, or URL, for the internet version of the *Manual* is <http://www.cwc.anl.gov>.

This paper draws from the *Manual*. It comparatively addresses approximately thirty implementing issues, showing how various States Parties have enacted measures that are responsive to CWC obligations. It is intended to highlight the issues that States Parties must address and to identify trends among States Parties that might be useful to States that have not yet made crucial decisions as to how to resolve key matters. At various points in the text, country names are listed in parenthesis to identify pieces of national legislation that demonstrate the point in the text. It should not be inferred that nations not listed have not addressed the point or have taken a different position. In some cases, a nation's position is explained in somewhat more depth to give specific detail to an assertion in the text.

Attached to this paper is a chart which illustrates how States Parties in the Central European region as well as the United States respond to the issues raised. Obviously, in preparing such a chart, many subtle provisions in national legislation must be simplified. The point of the chart is to portray, on a few pages, the major trends of legislation.

Also attached to this paper is the *Chemical Weapons Convention Prototype Implementing Statute*, included in the *Manual*, which provides specific legislative language, drawn entirely from already-enacted legislation. Intended to be a basic, simple text that can be adapted and expanded to meet the needs of States, it was prepared by weaving together applicable provisions from enacted national statutes in order to promote consistency among States Parties in their implementing measures. The selected text was chosen for its simplicity, universality, and consistency; selection of particular language is neither an endorsement of that particular language, nor disapproval of equivalent provisions in other statutes. As with the attached chart, readers are encouraged to consult all of these enacted statutes in their full text to gain a much better understanding of available options than can be obtained merely from this prototype.

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IMPLEMENTING THE CHEMICAL WEAPONS CONVENTION

States Parties must enact legislation to implement six major CWC functions: (1) establishing a national authority; (2) limiting production of Schedule 1 chemicals; (3) import/export regulations; (4) obtaining information for declarations to OPCW; (5) enabling OPCW inspections; and (6) enacting penal measures. This discussion identifies the different ways that State Parties address these functions and highlights trends among States.

I. ESTABLISHMENT OF A NATIONAL AUTHORITY

Each State Party must "designate or establish a National Authority to serve as the national focal point for effective liaison with the Organization and other States Parties." (CWC, Art. VII, Sec. 4). The National Authority may be a newly-established agency, an already-existing agency, or a composite of numerous agencies.

Each State Party must decide how much and what type of power to delegate to the National Authority. Some nations delegate broad power to the National Authority (Australia, Sweden, Oman, Romania, Norway, Netherlands, Dutch Antilles, and Malta). Of course, the CWC's many obligations are not disparate, but are part of an integrated effort to eliminate chemical weapons and verify their continued non-production. By coordinating all those obligations in one office, it is to know who is responsible for all compliance duties, and enforcement is enhanced because the National Authority's principle focus is the CWC. A good example of strong centralization is Sweden which designates its "National Inspectorate of Strategic Products" with authority to "provide all necessary administrative facilities the Convention prescribes."

Other nations divide authority among specialized administrative agencies working in conjunction with the National Authority (Czech Republic, Latvia, China, Slovenia, Argentina, Russia, Chile, Belarus, and Korea). A State's law might not allow a single agency to perform all necessary tasks, or it may lack expertise in particular areas. Distributing authority to various agencies reduces redundancy. It might be logical: (1) to authorize penal matters to the Ministry of Justice, or (2) granting of visas to the Ministry of Foreign Relations. For example, Belarus has designated the Ministry of Foreign Affairs as the National Authority, responsible for "coordinating" the work of various "central government agencies." Moreover, all decisions must be made "in conjunction with appropriate central agencies," including the Ministry of External Economic Relations, the Ministry of the Interior, Ministry of Defense, Ministry of Finance, State Customs Committee, Committee on State Security, the Commander in Chief of the Frontier Forces, and the Belarussian State Concern for Chemicals and Petroleum Production.

The structure of a National Authority is left for each State Party to decide. It could be a single agency, or it could be a working group of other agencies' representatives (South Africa, Peru, Argentina). For example, in South Africa, the Council for Non-Proliferation of Weapons

of Mass Destruction is the National Authority, consisting of representatives from numerous agencies and industries, including: the Department of Foreign Affairs, the Ministry of Defense, the chemical industry, the biological industry; the space industry, the nuclear industry, and the Atomic Energy Corporation. There is a trend to supplement the National Authority with specifically legislated advisory boards. Some States have supported the National Authority's influence over chemical industries by enacting special penal enforcement mechanisms.

A major issue is the National Authority's role in overseeing CWC inspections. The National Authority is most likely to be familiar with the issues raised by CWC inspections (Australia, Romania, South Africa). For example, Romania's National Authority "ensures . . . the conditions needed for carrying out international verification." However, highly technical issues, such as application of national environmental and safety standards, may be within the competence of another agency that would have to work closely with the National Authority. For example, in Korea, the Ministry of Foreign Affairs is the National Authority, but the Convention Weapons Convention Policy Council must take necessary measures for inspections in cooperation with the National Authority.

II. LIMITING PRODUCTION/USE OF SCHEDULE 1 CHEMICALS

Because Schedule 1 chemicals are most dangerous, States Parties may only produce them at CWC-permitted facilities and only for research, medical, pharmaceutical purposes and must not exceed strictly limited quantities. Also, States Parties must subject Schedule 1 chemical production facilities to systematic verification through on-site inspections and instrument monitoring.

There are three options for implementing restrictions on Schedule 1 chemical production. First, the production of Schedule 1 chemicals could be totally banned. Second, implementing measures could authorize only the government to produce or use Schedule 1 chemicals. No State Party has enacted either of these options.

The third option is to allow commercial firms to produce Schedule 1 chemicals subject to regulatory oversight that production is under CWC-permitted ceilings. By enabling facilities to produce or use Schedule 1 chemicals by permit, a State Party can easily impose performance conditions that would implement CWC obligations and ensure that Schedule 1 chemical production is in accordance with national standards for safety and emissions. Most permit systems have provisions to deny a permit to persons who have committed serious offenses and to revoke a permit if the holder subsequently violates relevant obligations or exceeds permitted production levels.

Australia, Japan, the Czech Republic, and Finland each have sophisticated permit systems that apply to all CWC-regulated chemicals. The Czech legislation restricts licenses to legal entities on Czech territory and having a responsible representative with a clean criminal record. The procedures to apply for a license as well as the conditions for granting, terminating, and modifying it are set forth in detail.

Other States Parties authorize an agency to establish relevant regulations but do not specify permit requirements (Canada, Germany, New Zealand, United States, and South Africa). Still other States Parties provide for both regulations and permit requirements, but not so elaborate that they cause a burden or risk bureaucratic overload (Ireland and the United Kingdom).

III. IMPORT/EXPORT REGULATIONS

To stem the trans-national proliferation of chemical weapons, the CWC restricts transfers of dual-use chemicals. Transfers of potential precursors of weapons agents among States Parties must be for purposes not CWC-prohibited. Transfers of Schedule 1 chemicals, and soon Schedule 2 chemicals, to non-States Parties is prohibited. Furthermore, export controls are specified for all Scheduled chemicals.

Schedule 1 chemicals present the greatest risk to the CWC's object and purpose and are subject to severe transfer restrictions. Under no conditions may they be transferred to a non-State Party. Transfers to States Parties may not be retransferred. Both the transferring and receiving States Parties must notify the Technical Secretary of each transfer and make annual aggregate declarations.

Virtually every State Party regulates imports and exports, typically requiring a permit or license for any trans-national transfer of goods. Accordingly, many CWC obligations can be implemented by adding specific provisions to existing law to reflect the new requirements, or can be implemented separately as part of the large package of CWC implementing measures. If the choice is in favor of the existing system, these regulations may be split between an agency that regulates trade in military items and an agency that regulates trade in dual-use items. For instance, in Finland, Schedule 1 chemicals may be exported only with a license granted by the Ministry of Defense; ricin and saxitoxin and all Schedule 2 chemicals may be exported only if the Ministry of Trade and Industry grants an export license.

Relevant regulations should include: (1) the development of end-use statements as well as a method to process them efficiently prior to permitting exports (*see* South Africa); (2) a means to verify that imports and exports in fact comply with CWC restrictions, including post-shipment checks and in-transit shipment controls (*see* Japan); and (3) penalties for violations of import/export control provisions (*see* Canada).

IV. OBTAINING INFORMATION FOR DECLARATIONS

Each State Party must make a series of declarations to the OPCW regarding items and activities relevant to chemical weapons. Declarations of relevant chemicals and facilities used for purposes not prohibited will probably make up the bulk of what States Parties declares. The information to be declared varies with the schedule triggering the declaration. More declared information must be provided about Schedule 1 chemicals than about Schedule 2 chemicals, and even less about Schedule 3 chemicals.

Some States specifically require that a single agency collect relevant information from all agencies as to the facilities for which they are responsible; those agencies must prepare relevant declarations (Sweden, Finland).

The most important issue here is gathering information from the private chemical industry. Three questions must be addressed:

1. Who is responsible for collecting relevant information: the National Authority (Canada, South Africa, United Kingdom) or the Ministry of Commerce or Industry (Swiss).
2. Some States explicitly require that reports be prepared uniformly, that they be comprehensive for anyone who deals with relevant chemicals, that information be reported to the government in sufficient time so that declarations may be prepared, and that confidential business information be protected; most nations leave these requirements to be developed by relevant agencies (New Zealand, Canada, Germany, Norway, United Kingdom).
3. Nearly all States Parties provide penal measures for failing to report or for reporting misleading information. Some nations specifically require penalties only for intentional or reckless non-submission (Australia, United Kingdom, New Zealand); others extend penalties for negligent non-submission (Germany).

V. ENABLING OPCW INSPECTIONS

The CWC's on-site verification inspections are the most comprehensive and intrusive verification measures of any weapons control treaty in history. In general, fulfillment of inspection-relevant obligations will not raise complex legal issues nor significantly intrude on the rights of private citizens. Primarily, each State Party must decide which domestic agency should be responsible for these tasks.

In regard to routine inspections, each State Party must:

1. Participate in the CWC process to designate inspectors: Virtually every nation's legislation provides that inspectors must possess and display a certificate indicating inspection powers.
2. Provide visas to all authorized members of inspection teams: Typically, the Ministry of Foreign Affairs undertakes this obligation. Romania's legislation so provides.
3. Incorporate all relevant diplomatic privileges and immunities-into national law: Most States extend privileges and immunities already guaranteed by their law. The U.K. legislation is explicit.
4. Inspect equipment brought by the inspection team and permit authorized equipment to accompany inspectors: Most States specifically authorize the escort team to inspect the equipment that inspectors bring with them.
5. Designate national points of entry and facilitate inspectors' entry and safe conduct to the inspection site: All States Parties approve points of entry for inspectors to enter the nation to carry out inspections. and
6. Arrange for and provide for the amenities necessary for the inspection team.

A. ACCESS TO FACILITIES AND CONDUCT OF ROUTINE INSPECTIONS

The most serious issues have to do with the fact that inspections uniquely focus on privately owned facilities. Inspectors have authority to conduct activities at those facilities, and the State Party must ensure that inspectors can exercise these powers without conflicting with the legal rights of facility or personnel. Moreover, the inspected State Party must perform various tasks itself. Finally, the owners and operators of inspected facilities have various tasks to perform. Legal issues arise because CWC inspections must proceed regardless of any privacy objections from any private citizens. But if CWC inspections are authorized to proceed without respecting citizens' legal rights, the State Party may find itself in the extremely awkward position of violating its own law in order to comply with its international obligations.

Legal answers begin with the realization that CWC inspections are, in virtually every jurisdiction, administrative inspections and are thus distinguished from searches to investigate possible criminal activities. Administrative inspections are meant to verify compliance with and prevent violations of administrative regulations; they are subject to few restrictions and must satisfy few procedural prerequisites. To implement CWC inspections as normal administrative inspections, a few provisions must be included in implementing legislation. First, legislation should require that facility owners be notified that access may be demanded and of the purposes of that access (New Zealand, Canada, Germany, Korea). Typically, access is restricted to daytime or to periods when the facility is in operation. For example, the German legislation gives the inspection team the right to enter and inspection locations and premises "during regular business and working hours."

The second issue concerns the necessity of written permission in the form of a search warrant based on evidence or a reasonable suspicion that a violation may be present and specifying how the search is to proceed. The CWC does not itself demand a search warrant, but a problem might arise in most nations if a warrant is required and, for whatever reason, is denied. Therefore, many States require that a search warrant be obtained (Australia, Canada, New Zealand, United Kingdom, United States).

A third issue is what happens if, for whatever reason, the facility owner denies entry. As this could cause a State Party to be in non-compliance, implementing measures should provide civil or criminal sanctions for failure to grant access to CWC inspectors, or for any refusal to cooperate or comply with lawful requests made by the CWC-responsible-agency, or CWC inspectors (Japan, Korea, New Zealand, United States). A few nations have gone further and implemented provisions authorizing the use of reasonable force to gain access to a facility so long as the government has sought access through a legal process (New Zealand, United Kingdom, Canada, Italy, Argentina). In Italy, for example, if someone hinders the carrying out of an inspection, the in-country escort must promptly report to the District Attorney, who will order the coercive implementation of the inspection.

The fourth issue concerns the inspectors' breadth of access. Implementing measures typically authorize inspectors to search documents and records, but some nations limit access by barring electronic surveillance, opening mail, searching vehicles, searching an individual's body,

or taking biomedical samples. For example, the Danish legislation provides that inspections can be carried out without a court order, however, examination of the human body may be effected solely on the basis of a court order. Many nations formally limit the scope of CWC inspections to the requirements and mission of the search, and a few nations deny access to private areas such as employees' sleeping quarters. For example, Germany provides that inspectors have the right to enter and inspect locations so long as the premises to be inspected are not living quarters.

The fifth issue pertains to the State Party's negotiation of facility agreements. The CWC does not contemplate the involvement of facility owners, but some States allow owners to participate in negotiating those agreements (Germany, Denmark, United States). Denmark, for example, requires that facility representatives submit relevant information in connection with facility agreement negotiations and allows them to participate in those negotiations.

The sixth issue pertains to the State Party's role in assisting the inspection before, during, and after the inspection. The State Party must give notice to the inspected facility and must get the team to the inspection site (United Kingdom, Korea). Under some conditions, the State Party must assemble a pre-inspection briefing (Germany, South Africa). Certainly, the State Party's representative must perform certain tasks such as taking photographs or samples (Canada). At the end of an inspection, the State Party may agree to extend its duration; Australia provides an explicit mechanism for such extension.

The seventh issue involves imposing obligations on private persons. Obviously, an international treaty cannot impose obligations directly on private persons; it must obligate State Parties to impose these obligations onto their citizens by means of domestic implementing legislation. The easiest way to do this is to enact domestic laws that penalize a refusal to cooperate with inspectors (New Zealand, United Kingdom, Canada, South Africa, Germany). Germany specifically requires that owners/operators assist the inspection team by giving instructions required to conduct the inspection, by giving a briefing, by making means of communications and transportation and workspace available, and by assisting in the collection of samples or photos.

B. CHALLENGE INSPECTIONS

Issues relating to the conduct of challenge inspections reflect some of the same concerns as those issues already mentioned. The same tensions between the obligation to enable OPCW inspectors to conduct inspections and the privacy rights of inspected facility owners/personnel regarding routine inspections apply in the context of challenge inspections. However, these tensions have potentially broader application to challenge inspections because the scope of facilities potentially impacted is essentially limitless. Challenge inspections can occur anywhere, not only at declared facilities having scheduled chemicals. The only limitation on where access must be granted concerns "any constitutional obligations [the State Party] may have concerning proprietary rights of searches and seizures." In many nations, this limitation may preclude challenge inspections of homes where privacy rights are more vigorous.

If a challenge inspection takes place at a declared facility, then the same implementing measures to protect private rights regarding routine inspections should suffice to cover the rare situation of a challenge inspection. The same notice and, if appropriate, warrant requirements that would apply to routine inspections at declared facilities should apply to challenge inspections at those same facilities. Moreover, the routine inspection measures that would allow access to inspect documents, to take samples, and question personnel, with appropriate protections for privacy, should apply to challenge inspections. Only a few States, therefore, have enacted legislation to address these issues, in order to specify time limits and to ensure that warrants are obtained (Australia, Canada, New Zealand, United States). A few States recognize that challenge inspections imply non-compliance and therefore authorize these inspections only as part of a criminal investigation (Malta, United States).

Challenge inspections raise one legal concern that is not raised by routine inspections: the potential intrusion on privacy caused by perimeter activities, especially exit monitoring. Notably, the CWC authorizes inspectors to stop exiting non-personnel vehicles in order to identify their contents. This raises questions about the civil liberties of passengers. Only a few nations address these issues (Australia, Germany, United States). The German legislation provides that inspectors may inspect vehicles leaving the inspection site, but this right does not extend to personal passenger vehicles.

VI. ENACTING PENAL LEGISLATION

Each State Party must enact penal legislation to prohibit persons from undertaking prohibited activities. Prohibited activity includes violation of Article I, paragraphs 1 & 5, pertaining to possession and use of chemical weapons. Penal measures also apply to obligations concerning destruction or securing of chemical weapons stockpiles as well as violation of limits pertaining to Schedule 1 chemicals, or violations of transfer restrictions of scheduled chemicals. Finally, most States Parties prohibit violations of verification obligations, including refusals or failure to report required information, providing false or misleading information, tampering with on-site monitoring equipment, and obstructing necessary access to CWC inspectors.

In enacting penal measures, a few questions should be considered. First, most nations penalize criminal entities that engage in CWC-prohibited activities if those activities are directed by a senior corporate official (Australia, Korea, Malta). The reverse question is whether an officer can be held liable for corporate conduct. Most nations uphold liability if the officer has not adequately supervised subordinates (United Kingdom, Romania).

Second, should penal officials be empowered to use CWC inspections to initiate unrelated criminal investigations? Closely related is the question of whether evidence gathered during a CWC inspection can be admitted in a legal proceeding without violating domestic legal protections against unreasonable search and seizure and self-incrimination. Some nations have enacted measures to require persons to answer inspectors' questions so long as those answers are not incriminating. For example, the German legislation provides that a person who is obligated to give information may nevertheless refuse to answer certain questions that would make him liable to criminal or administrative proceedings.

A third issue concerns protection of due process of law, including notice of pending proceedings and a right to counsel. Most important, implementing measures should authorize the CWC-agency to seize specific items relevant to compliance with the treaty, such as chemical weapons, related equipment, and materials (South Africa, Malta). Moreover, implementing measures should specify rights of judicial review and of notice to interested persons (Australia, South Africa).

Finally, Article VII also requires that States Parties provide to each other "appropriate legal assistance." Most States Parties rely on previously-enacted mutual assistance treaties to fulfill this obligation; notably, Switzerland provides that competent Swiss authorities should make information to foreign authorities (if there is reciprocity) as well as to relevant international organizations.

VII. CBI PROTECTION and REMEDIES

CWC verification activities, including declarations and inspections, could threaten the confidentiality of legitimate business information. CBI can be lost in various ways. Of course, declarations are to be based upon information provided by private industry. Inadequate CBI protection in government procedures regarding reported information could lead to inadvertent leaks and the loss of valuable information. Alternatively, CBI could be comprised during routine or challenge inspections, perhaps by OPCW inspectors or inspection observers. Since these threats of exposure of CBI could undermine support for the treaty, the CWC contains measures to ensure non-disclosure of data, even as the CWC promotes full disclosure and transparency. The task of national implementing measures is to give effect to these sometimes contradictory objectives.

Some of these measures are intuitive and do not need specific legislative provisions:

- develop a formal system of marking CBI;
- prepare chemical companies for inspections;
- prepare a CBI-protection Manual; and
- assist training and education of industry.

Romania, for example, requires its National Authority to organize training courses.

Measures to regulate CBI handling and prohibit disclosure are also significant. Implementing measures could strictly limit or prohibit CBI disclosure to persons who do not need the information, including foreign competitors. Alternatively, implementing measures could require a statement expressing the need for information sought and the purposes to which it will be put (Finland, Germany, South Africa). Some measures could restrict government officials and National Authority personnel from disseminating CBI and obligate those officials to maintain records of all persons to whom disclosure has been made (Canada, South Africa, Sweden, United Kingdom).

Finally, implementing measures should include strict penalties for government employees who knowingly disclose protected CBI (United Kingdom, Canada, South Africa). For example, the United Kingdom legislation provides that a person who discloses information in contravention

of the law is guilty of an offense and liable to a fine not exceeding the statutory minimum; on conviction, the person may be subject to imprisonment for no more than two years, a fine, or both. Moreover, if the wrongdoer is a foreign national, implementing measures could seek to impose penalties on that person or sanctions on the foreign nation. Finally, national measures could impose fines on CWC inspectors or OPCW personnel who wrongfully disclose CBI. Any such provision would, of course, be subject to a waiver of immunity from jurisdiction by the Technical Secretariat.

If, despite all these protective efforts, CBI is lost or other injury is sustained due to CWC compliance, the injured person or business should be entitled to legal remedy. By providing a legal remedy, political opposition to compliance is reduced and the likelihood of injunctive relief is substantially diminished. A few States Parties provide that their governments will compensate injured persons for injuries caused either by acts of government officials or OPCW personnel (Australia, United States). Moreover, implementing measures could authorize the government to seek compensation from a foreign nation or corporation for the misconduct of its personnel in connection with CWC activities (United Kingdom, Denmark, and Germany). For example, Danish law provides that the Ministry of Business and Industry may be liable for damages caused by an inspector or observer during the performance of his duties as if the damage was caused by a Danish official.

NATIONAL AUTHORITY

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH.	LATVIA	FINLAND	GERMANY
1. Structure: single or inter-agency group?	INTER.A.	INTER.A.	INTER.A.	INTER.A.	SINGLE	INTER.A.	INTER.A.	INTER.A.
2. All powers delegated to N.A. or divided?	DIV.	N.A.	DIV.	DIV.	DIV.	N.A.	DIV.	DIV.
2A. M. of Justice for penal matters?	SILENT	SILENT	SILENT	DIST.ATTY	YES	NO	SILENT	PROSCTR
2B. M. of Defense for military matters?	YES	SILENT	YES	YES	YES	NO	YES	YES
2C. M. of Foreign Affairs for diplomatic matters?	YES	SILENT	YES	YES	YES	NO	YES	YES
2D. M. of Commerce/Industry for import/export?	YES	SILENT	YES	YES	YES	NO	YES	YES
3. N.A. has primary oversight authority for inspections?	YES	YES	YES	YES	YES	YES	YES	NO

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
1. Structure: single or inter-agency group?	SINGLE	SINGLE	SINGLE	SINGLE	SINGLE	SINGLE	INTER.A.	SINGLE
2. All powers delegated to N.A. or divided?	N.A.	N.A.	SILENT	N.A.	N.A.	N.A.	DIV.	N.A.
2A. M. of Justice for penal matters?	SILENT	SILENT	SILENT	NO	SILENT	NO	YES	SILENT
2B. M. of Defense for military matters?	NO	NO	SILENT	NO	SILENT	NO	YES	NO
2C. M. of Foreign Affairs for diplomatic matters?	NO	NO	SILENT	NO	SILENT	NO	YES	NO
2D. M. of Commerce/Industry for import/export?	NO	NO	SILENT	NO	SILENT	NO	YES	NO
3. N.A. has primary oversight authority for inspections?	YES	YES	YES	YES	YES	YES	YES	YES

M= Ministry

INTER.A.= Inter-agency

DIV.=Divided

N.A.=National Authority

PROSECTR= Prosecutor

DIST. ATT'Y= District Attorney

"SCHEDULE 1" REGULATIONS

ISSUES:	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH	LATVIA	FINLAND	GERMANY
4. <i>Is licensing system established, providing:</i>								
4A. <i>Production & performance standards?</i>	NO	NO	NO	NO	YES	YES	YES	NO
4B. <i>Denial of permits to specified persons?</i>	NO	NO	NO	NO	YES	YES	NO	NO
4C. <i>No explicit licensing; agency to develop regs?</i>	YES	YES	YES	YES	NO	NO	NO	YES

ISSUES:	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
4. <i>Is licensing system established, providing:</i>								
4A. <i>Production & performance standards?</i>	NO	NO	YES	YES	YES	NO	NO	NO
4B. <i>Denial of permits to specified persons?</i>	NO	NO	YES	NO	NO	NO	NO	NO
4C. <i>No explicit licensing; agency to develop regs?</i>	YES	YES	NO	NO	NO	YES	YES	YES

IMPORT & EXPORT CONTROLS

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH.	LATVIA	FINLAND	GERMANY
5. Regs are/not split between military and dual-use?	SILENT	SILENT	NOT	NOT	NOT	NOT	NOT	NOT
6. Is there an explicit control scheme?	YES	NO	YES	YES	YES	YES	NO	YES
6A. Regs specifically address end-use statements?	NO	TBD*	YES	NO	YES	YES	TBD	NO
6B. " verification mechanisms?	YES	TBD	YES	YES	YES	YES	TBD	YES
6C. " penalties for non-compliance?	YES	TBD	YES	YES	YES	YES	TBD	YES

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
5. Regs are/not split between military and dual-use?	NOT	NOT	ARE	NOT	SILENT	TBD	ARE	SILENT
6. Is there an explicit control scheme?	YES	YES	YES	YES	NO	YES	YES	NO
6A. Regs specifically address end-use statements?	NO	YES	YES	YES	NO	NO	YES	NO
6B. " verification mechanisms?	YES	YES	YES	YES	NO	NO	YES	NO
6C. " penalties for non-compliance?	YES	YES	YES	YES	NO	YES	YES	SILENT

TBD= To be developed

COLLECTING INFORMATION FOR DECLARATIONS

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH	LATVIA	FINLAND	GERMANY
7. Gov't info: One agency responsible or various?	ONE	TBD *	VARIOUS	VARIOUS	ONE	VARIOUS	ONE	VARIOUS
8. Industry info: N.A. or M. of Commerce/Ind?	N.A.	TBD	N.A.	BOTH	BOTH	N.A.	N.A.	COMM.*
9. Specific regs for info or agency TBD?*	SILENT	TBD	TBD	SPECIFIC	TBD	TBD	SPECIFIC	SPECIFIC
10. Non-submission penalties: intentional or negligent?	SILENT	TBD	SILENT	INTENT	SILENT	INTENT	SILENT	BOTH

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
7. Gov't info: One agency responsible or various?	ONE	VARIOUS	ONE	ONE	ONE	ONE	ONE	ONE
8. Industry info: N.A. or M. of Commerce/Ind?	BOTH	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
9. Specific regs for info or agency TBD?*	SPECIFIC	SPECIFIC	SPECIFIC	SPECIFIC	SPECIFIC	TBD	TBD	TBD
10. Non-submission penalties: intentional or negligent?	BOTH	SILENT	BOTH	BOTH	SILENT	BOTH	INTENT	BOTH

TBD= To be developed

M= Ministry

N.A.= National Authority

Ind= Industry

ENABLING INSPECTIONS

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH	LATVIA	FINLAND	GERMANY
11. CWC inspections are/not admin. searches w/regs?	ARE		ARE				ARE	ARE
12. Are warrants necessary?								
13. Is use of force authorized?				YES				
14. Is access & scope of inspection restricted?			NO				YES	YES
15. Facility owners participate in F.A.* negotiations?			YES					YES
16. Gov't officials specifically assist inspectors?			YES	YES	YES		YES	YES
17. Persons must perform CWC tasks?	YES		YES	YES	YES		YES	YES
18. Measures grant access for challenge inspections?			YES					YES
19. Specific measures for exit monitoring?			YES					YES

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ	U.S.A	NORWAY
11. CWC inspections are/not admin. searches w/regs?	ARE	ARE	ARE	ARE	ARE	ARE	ARE	ARE
12. Are warrants necessary?				YES			YES	
13. Is use of force authorized?			YES	YES	YES	YES		
14. Is access & scope of inspection restricted?	YES	NO	YES	NO	NO	YES	YES	NO
15. Facility owners participate in F.A.* negotiations?	YES	YES					YES	
16. Gov't officials specifically assist inspectors?	YES	YES	YES	YES	YES	YES	YES	YES
17. Persons must perform CWC tasks?	YES	YES	YES	YES	YES		YES	YES
18. Measures grant access for challenge inspections?	YES	YES	YES	YES	YES		YES	
19. Specific measures for exit monitoring?							YES	

TBD= To be developed

F.A.= Facility Agreement

PENAL LEGISLATION

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH	LATVIA	FINLAND	GERMANY
20. Liability specifically for corporation/corp. personnel?	LEG. ENT.	TBD	NO	NO	LEG. ENT.	NO	NO	NO
21. CWC info allowed in unrelated proceedings?	NO	TBD	SILENT	SILENT	NO	NO	NO	YES
22. Provisions to protect rights of search and seizure?	SILENT	TBD	NO	SILENT	APPEAL	SILENT	SILENT	YES
23. Provisions to protect against self-incrimination?	SILENT	TBD	NO	SILENT	NO	SILENT	SILENT	YES
24. Implementing measures to protect due process?	SILENT	TBD	SILENT	YES	APPEAL	SILENT	SILENT	YES
25. Specific provisions to require MLA & cooperation?	NO	NO	NO	NO	NO	NO	NO	NO

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
20. Liability specifically for corporation/corp. personnel?	YES	YES	NO	YES	NO	NO	YES	NO
21. CWC info allowed in unrelated proceedings?	SILENT	NO	SILENT	YES	SILENT	SILENT	YES	SILENT
22. Provisions to protect rights of search and seizure?	YES	YES	SILENT	YES	SILENT	SILENT	YES	SILENT
23. Provisions to protect against self-incrimination?	SILENT	NO	TBD	SILENT	SILENT	SILENT	YES	SILENT
24. Implementing measures to protect due process?	YES	YES	YES	YES	SILENT	APPEAL	YES	TBD
25. Specific provisions to require MLA & cooperation?	NO	NO	NO	NO	NO	YES	YES	NO

LEG. ENT. = Legal entity

TBD=To be developed

MLA= Mutual Legal Assistance

CONFIDENTIAL BUSINESS INFORMATION PROTECTIONS & REMEDIES

ISSUES	SLOVENIA	RUSSIA	BELARUS	ITALY	CZECH	LATVIA	FINLAND	GERMANY
26. Gov't assistance to lessen risks of CBI loss?	NO	TBD	NO	NO	NO	NO	NO	NO
27. Regs for gov't handling of CBI?	YES	TBD	NO	NO	NO	NO	YES	YES
28. Penalties for gov't officials who disclose CBI?	TBD	TBD	NO	NO	NO	NO	YES	NO
29. Remedies for persons who lose CBI?	NO	TBD	NO	NO	TBD	TBD	NO	YES

ISSUES	DENMARK	ROMANIA	SWEDEN	U.K.	NETH'LND	SWITZ.	U.S.A.	NORWAY
26. Gov't assistance to lessen risks of CBI loss?	YES	NO	NO	NO	NO	NO	YES	TBD
27. Regs for gov't handling of CBI?	NO	NO	TBD	YES	NO	NO	YES	YES
28. Penalties for gov't officials who disclose CBI?	NO	NO	NO	YES	NO	NO	YES	TBD
29. Remedies for persons who lose CBI?	YES	NO	NO	YES	NO	TBD	YES	TBD

TBD= To be developed

APPENDIX A

CHEMICAL WEAPONS CONVENTION PROTOTYPE IMPLEMENTING STATUTE

This Appendix presents the *Chemical Weapons Convention Prototype Implementing Statute* which was prepared to meet a need that some States Parties may have for specific legislative language usable as a starting point to prepare their own draft measures. It is intended to be a simple text that can be adapted and expanded to meet the needs of individual States.

The *Prototype Statute* relies largely on already-enacted legislation that has been devoted to this purpose in order to promote consistency among States Parties in their national implementing measures. It was woven from the simplest and most universally applicable provisions in the national statutes available to the authors at this writing. One or more provisions from each of the statutes cited in the MANUAL are included here.

The *Prototype Statute*, whose text is contained in the center column, should be used in conjunction with the rest of the MANUAL. The left-hand column, entitled "Manual," references the sections that correspond to the material that the statutory provision addresses in the center column. For example, section 3 of the *Prototype Statute* presents two alternative approaches for States Parties to define the jurisdiction of their implementing statutes. The left-hand column shows that a discussion of the issue of jurisdiction under the Convention can be found in section 1.3 of the MANUAL. Readers are strongly urged to consult the referenced material adjoining each provision in order to understand the reasons to include the statutory provision, as well as relevant legal and policy issues.

The statute from which each provision was taken is indicated in the right-hand column, entitled "Source". In the case of section 3 of the *Prototype Statute*, section 5(1) of the Australian national implementing statute is the source of the first alternative jurisdictional definition, and section 3 of the Swedish national implementing statute is the source of the second alternative. Sections 4 and 22 of the *Prototype Statute* also include two alternatives each. Selection of language for this prototype is neither an endorsement of that particular language nor disapproval of equivalent provisions in other statutes; often, the differences among corresponding provisions of various national implementing statutes are minor. Readers are encouraged to consult each enacted statute in its entirety to gain a deeper understanding of available options.

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Statutory provisions are not always quoted completely or exactly. In some cases, changes were necessary to make these provisions grammatically or legally consistent; in other cases, terms that are duplicative or unique to a nation's legal system have been omitted. Generic names in italics (e.g., "*State Party Name*") have been substituted in the prototype text for proper names contained in the text of the original source.

The *Prototype Statute* should be employed cautiously because it was not developed for any specific national legal system. The *Prototype Statute* should be thoroughly reviewed in light of a nation's constitution and laws, as well as with existing national policies. National legislation should be prepared in accordance with accepted national formats that mesh with existing governmental and legal structures.

National implementing measures are a CWC obligation that can be met with relative ease. The *Prototype Statute* blends a number of approaches to this task into a single text. International cross-fertilization in this endeavor can result in more coherent CWC implementation.

PROTOTYPE IMPLEMENTING STATUTE

**CHEMICAL WEAPONS CONVENTION
PROTOTYPE IMPLEMENTING STATUTE**

Manual	Prototype Text	Source
	The Parliament of <i>State Party Name</i> adopts this Act:	Romania
1.2	1. Purpose of Act. This Act is to implement <i>State Party Name's</i> obligations under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.	New Zealand sec. 4
1.2.1	2. Interpretation. Unless the context otherwise requires, all words and expressions used in this Act have the same meaning as in the Convention.	Canada sec. 2
1.3	3. Jurisdiction. This Act extends to acts done or omitted to be done by a <i>State Party</i> citizen outside <i>State Party Name</i> or to acts done on board <i>State Party</i> ships and aircraft. or A crime against the Convention will be sentenced by <i>State Party Name</i> law and at a <i>State Party Name</i> court even if the crime is committed abroad and irrespective of the perpetrator's nationality.	Australia sec. 5(1) Sweden sec. 3
Ch. 2	4. National Authority. The highest implementing authority of the Convention, bearing the supreme responsibility for the management of its application and supervision, is the Ministry for Foreign Affairs. The Ministry for Foreign Affairs may assign tasks related to the inspections under the Convention to the Finnish Institute for Verification of the Chemical Weapons Convention. The Ministry of Trade and Industry is responsible for the export supervision required under the Convention. National Agency for Medicines is the licensing authority (for activities related to Schedule 1 chemicals). or The "National Council for the Prohibition of Chemical Weapons" acting as "National Authority," shall be composed of representatives of ministries.	Finland sec. 2 Peru art. 2

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Manual	Prototype Text	Source
Ch. 2	<p>5. Regulatory Authority. The <i>Head of State</i> may make regulations for carrying out and giving effect to the provisions of the Convention and, without limiting the generality of the foregoing, may make regulations:</p> <p>(a) prescribing conditions under which restrictions on chemicals may be carried on and prescribing the fees or the manner of calculating fees to be paid in respect of any license;</p> <p>(b) respecting the procedures to be followed by representatives of the National Authority in exercising their functions under this Act; and</p> <p>(c) prescribing anything that by this Act is to be prescribed.</p>	Canada sec. 18
3.2.1 5.2.1	<p>6. Prohibited Activities Concerning Chemical Weapons. No person shall:</p> <p>(a) undertake any activity which is prohibited to a state party under the Convention;</p> <p>(b) assist, finance or otherwise take part in any activity which leads to the production, development, acquisition, stockpiling, retaining, direct or indirect transferring of chemical weapons;</p> <p>(c) use chemical weapons;</p> <p>(d) engage in military preparations to use chemical weapons;</p> <p>(e) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a state party under the Convention;</p> <p>(f) use, transfer or receive any chemical product listed in the schedules to the Convention for purposes other than those specified in Articles IV and V of the Convention or in a manner other than that specified in the Convention;</p> <p>(g) be responsible for a chemical production facility which produces any part or the whole of any type of chemical weapon or chemical agent listed in the schedule to the Convention; or</p> <p>(h) knowingly conceal any knowledge or information on any type of chemical weapons, including old chemical weapons, production facilities or any activities related thereto from the competent authorities.</p>	Malta sec. 4

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Manual	Prototype Text	Source
7.2	<p>9. Information and Documents.</p> <p>(a) Any person who produces, acquires, retains, transfers, or uses toxic chemicals or their precursors to which any provision of Parts VI to IX of the Verification Annex applies must –</p> <p>(1) Notify the chemicals and the facility to the <i>Designated Agency</i> as soon as practicable by giving written notice in an approved form, containing such information as is required by the form;</p> <p>(2) Keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put;</p> <p>(3) Prepare, from those records, periodic reports relating to the chemicals and the facility in an approved form; and</p> <p>(4) Send those periodic reports at intervals specified by the <i>Designated Agency</i> or by regulation.</p> <p>(b) The records and reports must be sufficient to satisfy the <i>Designated Agency</i> that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.</p> <p>(c) Court orders or a fine shall be imposed on anyone who deliberately refuses to provide information or documents or who makes false declarations.</p>	New Zealand sec. 13
7.2	<p>10. Authorization for Declarations.</p> <p>(a) The <i>Designated Agency</i> shall arrange for the submission of declarations as required by the Convention as well as with regard to facilities specified in Article VI of the Convention to the extent necessary to implement the obligations under the Convention. Such arrangement shall provide for the frequency, periods, contents and format of such declarations, the manner of their transmission and transmission deadlines.</p> <p>(b) Authorities charged with supervision under this Act shall have the right to obtain from other authorities the information necessary for supervision carried out in accordance with the Convention or this Act.</p> <p>(c) The <i>Designated Agency</i> shall be entitled to transmit the data collected during the implementation of this Act to the OPCW, provided this is necessary to implement the obligations under the Convention.</p>	<p>Germany art. 6 (2)</p> <p>Finland sec. 3</p> <p>Germany art. 6 (3)</p>

PROTOTYPE IMPLEMENTING STATUTE

Manual	Prototype Text	Source
9.2.2.1	<p>11. Facility Agreements.</p> <p>(a) The <i>Designated Agency</i> shall conclude a facility agreement necessary for facilities subject to international inspection (including certain areas referred to in the Convention) pursuant to the Verification Annex to the Convention with the Organization.</p> <p>(b) When the <i>Designated Agency</i> intends to conclude a facility agreement, it may, if deemed necessary, have a person who owns or operates facilities subject to inspection express his opinion or submit relevant facility specifications, design diagrams, etc.</p>	Korea art. 14.
Ch. 9	<p>12. Powers To Carry Out Routine Inspections.</p> <p>(a) The international inspection team and the escort team shall –</p> <ol style="list-style-type: none"> (1) inspect any property, any building or any area within a building; (2) see relevant data bases, documents and records; (3) interview facility personnel; (4) take photographs; (5) have goods traffic from the enterprise halted and checked; (6) collect and analyse samples at the enterprise; (7) leave measuring instruments and other material on site for the inspection; (8) collect all other particulars of significance for the inspection. <p>(b) The enterprise is required to make all relevant facilities available to the inspection team such as communications, office premises, equipment and provide assistance in the use of this to the extent desired by the inspection team.</p> <p>(c) The enterprise personnel are required to provide assistance in the conduct of the inspection to the extent desired by the inspection team.</p> <p>(d) Anyone performing activities subject to restrictions or declarations in accordance with this act shall take measures necessary to prevent the loss or unauthorized use of chemicals.</p>	<p>Denmark art. 14</p> <p>Denmark art. 15</p> <p>Germany art. 4</p>

MANUAL FOR NAT'L IMPLEM. OF THE CWC

Manual	Prototype Text	Source
8.2 9.2	<p>13. Role of the <i>Designated Agency</i> Concerning Inspections.</p> <p>When the <i>Designated Agency</i> has been notified of the inspection plan by the OPCW, it shall notify the competent authorities without delay. The <i>Designated Agency</i> shall:</p> <p>(a) cooperate with and accompany those inspections ordered by the OPCW to comply with the commitments stated in the Convention through arranged visits to the facilities located in the national territory;</p> <p>(b) give the OPCW inspectors an identification certificate with name, rank and functions so they may carry out the assigned mission in the national territory;</p> <p>(c) grant the visas, privileges and immunities to inspectors and representatives of the OPCW and States Parties so that they may develop their specific functions in the national territory;</p> <p>(d) deal with all the technical aspects during the inspections within the national territory;</p> <p>(e) control the equipment the OPCW inspectors have taken to carry out inspections within the national territory complies with the description laid down in the documents provided by the OPCW;</p> <p>(f) in conjunction with the State Aviation Committee, issue a permanent diplomatic clearance number for the non-scheduled aircraft which transports the inspection team and the equipment required for the inspection and shall notify the Organisation of the permanent diplomatic clearance number for that aircraft;</p> <p>(g) authorise an in-country escort to accompany the inspection team in accordance with the provisions of the verification annex; and</p> <p>(h) authorise any constable to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the Verification Annex.</p>	<p>Korea art. 15</p> <p>Argen. sec. 7(d)</p> <p>sec. 7(g)</p> <p>sec. 8(e)</p> <p>sec. 10(f)</p> <p>sec. 10(j)</p> <p>Belarus art. 12(5)</p> <p>United Kingdom sec. 25(3)</p> <p>sec. 25(4)</p>

PROTOTYPE IMPLEMENTING STATUTE

Manual	Prototype Text	Source
5.3.2.2	<p>17. Protection Against Self-Incrimination.</p> <p>(a) A person is not excused from answering or giving any information or document under this Act or the Convention on the ground that to do so may incriminate or tend to incriminate that person.</p> <p>(b) A self-incriminating statement made or given under this Act or the Convention is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that statement.</p>	New Zealand sec. 28
11.3	<p>18. Confidentiality.</p> <p>(a) Information and documents obtained pursuant to this Act or the Convention are privileged.</p> <p>(b) Information and documents are not privileged to the extent that they are required to be disclosed or communicated for the purposes of an emergency involving public safety.</p> <p>(c) No person in possession of privileged information or documents shall knowingly, without the written consent of the person from whom they were obtained, communicate them or allow them to be communicated to any person, or allow any person to have access to them, except</p> <p>(1) for the purpose of the enforcement of this Act or to give effect to the Convention;</p> <p>(2) pursuant to an obligation of <i>State Party Name</i> under the Convention.</p>	Canada sec. 17

PROTOTYPE IMPLEMENTING STATUTE

Manual	Prototype Text	Source
<p>5.3</p> <p>5.3.1.3</p>	<p>21. Enforcement</p> <p>(a) Every person who contravenes any provision of this Act is guilty of an offence and liable --</p> <p>(1) on summary conviction, to a fine not exceeding _____ or to imprisonment for a term not exceeding _____ months, or to both; or</p> <p>(2) on conviction on indictment, to a fine not exceeding _____ or to imprisonment for a term not exceeding _____ years, or to both.</p> <p>(b) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of --</p> <p>(1) a director, manager, secretary or other similar officer of the body corporate, or</p> <p>(2) any person purporting to act in any such capacity, shall, as well as the body corporate, be guilty of that offence and be liable to be prosecuted and punished accordingly.</p>	<p>Canada sec. 20</p> <p>United Kingdom sec. 31(3)</p>
<p>12.2</p>	<p>22. State Party Liability.</p> <p>Nothing in this Act makes <i>State Party Name</i> liable for any act or omission on the OPCW's part, or of any inspector, in implementing the Convention in <i>State Party Name</i>.</p> <p>or</p> <p>If anyone suffers damage caused by a member of the inspection team, the <i>State Party Name</i> shall be liable for such damage in accordance with the provisions and principles of <i>State Party Name</i> law which would be applicable if the damage was caused by an official of the <i>State Party Name</i> or by an act or omission for which the <i>State Party Name</i> bears responsibility.</p>	<p>Australia sec. 103.</p> <p>Germany art. 14</p>