

**COLLECTING INFORMATION AT THE NATIONAL LEVEL FOR
DECLARATION UNDER THE CHEMICAL WEAPONS CONVENTION**

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prepared by

Edward Tanzman
Argonne National Laboratory
9700 South Cass Avenue
DIS-900
Argonne, IL 60439-4832, USA
1-630-252-3263 (voice)
1-630-252-5327 (fax)
tanzman@anl.gov (e-mail)

Professor Barry Kellman
DePaul University College of Law
25 East Jackson Boulevard
Chicago, IL 60604, USA
1-312-362-5258 (voice)
1-312-362-5448 (fax)
bkellman@wppost.depaul.edu (e-mail)

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COLLECTING INFORMATION AT THE NATIONAL LEVEL FOR DECLARATION UNDER THE CHEMICAL WEAPONS CONVENTION

1 INTRODUCTION

Compliance with the declaration requirements of the Chemical Weapons Convention (CWC)¹ requires national implementation. The process by which this may occur is a matter of national policy. Whatever process is used, the result must be acquisition by the State Party of sufficient information for accurate and timely declaration to the Organisation for the Prohibition of Chemical Weapons (OPCW).² The purpose of this paper is, without implying that there is any prescribed method in the Convention, to show how the legal groundwork for compliance with this national implementation obligation may be laid.

This paper discusses how States Parties may collect information for declaration in four additional sections. Section 2 briefly explains the Convention's obligation to enact national implementing measures. Section 3 reviews how national implementing measures may be used by a State Party to obtain the data that must be declared to the OPCW from those who possess it. Section 4 suggests some national implementing measures to protect confidential information related to the Convention in order to provide a positive incentive for public cooperation with these requirements. Finally, section 5 presents the conclusions of this paper.

The author would like to express his gratitude to the Peoples Republic of China for hosting this seminar and to the staff of the OPCW for inviting him to speak here. The views expressed in this paper are those of the author alone, and do not represent the position of the government of the United States of America or of any other institution.

2 NATIONAL IMPLEMENTING MEASURES UNDER THE CONVENTION

The CWC negotiators wisely recognized that the Convention's verification and enforcement scheme necessitated inclusion of language to incorporate its requirements into the domestic law of each State Party. Thus, Article VII, para. 1, provides that:

Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

1. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, 32 I.L.M. 800 (entered into force April 29, 1997). As of mid-August 2000, the CWC has 135 States Parties and 171 States Signatory.

2. The declaration requirements themselves are outside the scope of this paper. *See generally* Art. III and associated Annexes.

The Convention does not distinguish between different constitutional structures or legal systems, applying this requirement universally.

Among the many effects of Article VII, para. 1, is its impact on the Convention's declaration requirements. This language has the effect of requiring each State Party to exercise its constitutional power to assure that its national laws facilitate compliance with the CWC's declaration requirements. Thus, States Parties must review their domestic laws and adjust them as necessary.³

3 COLLECTING INFORMATION FOR DECLARATIONS

Acquiring information concerning Scheduled chemicals and related facilities for declaration to the OPCW is a central problem that national implementing measures can address. If the chemicals or facilities are owned by the government, then internal arrangements must be made. If the chemicals or facilities are privately owned or operated, then the State Party may want to enact an appropriate measure to make reporting of the necessary information a legal requirement. The problem of keeping this information confidential is addressed in section 4.

3.1 INTER-GOVERNMENTAL TRANSFERS OF INFORMATION

The CWC calls for some information that may concern government-owned chemicals and facilities. In many states, Schedule 1 chemicals and facilities are either government-owned or closely regulated; relevant information is already available;⁴ it must be gathered and organized for declarations. If a single government agency is responsible for these chemicals and facilities, that agency may be made responsible for assembling the declarations. If several agencies are involved, it may be more efficient to assign a single agency to collect relevant information from all agencies and develop declarations.⁵

3. An important question in this regard is whether the national legal system is monist or dualist. Monistic systems automatically incorporate international treaties into domestic law, whereas dualist systems generally require enactment of domestic legislation for this purpose. See B. KELLMAN AND E. TANZMAN, *MANUAL FOR NATIONAL IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION*, § 1.2 (1998).

4. In Sweden for example, information concerning Schedule 1 chemicals is already required under both the Act and the Ordinance Concerning Military Equipment which include a requirement of declarations from licensees and authorizes the government to specify requirements concerning the submission of relevant information. (Swed. Act 1992: 1303, sec. 19; Swed. Ord. 1992: 1303, sec. 22a).

5. In Finland, the National Authority shall have "the right to obtain from other authorities the information necessary for supervision (declarations)." (Fin. Dec. 348, §4).

3.2 CHEMICAL INDUSTRY REPORTING

To obtain accurate and timely information for declarations in many states, especially regarding Schedule 2 and 3 chemicals, it may be necessary to legally obligate private persons or entities to report to the government relevant information that they possess. Consequently, States Parties should enact implementing measures to compel private chemical enterprises to maintain and report appropriate records. Many States Parties have chosen to penalize non-compliance with reporting requirements intended to facilitate CWC compliance.

3.2.1 Options to Require Reporting

Implementing measures to require private firms to report CWC-relevant information should address the following issues:

- *Identification of information-collection agency:* A variety of issues concern which agency of the State Party (e.g., the National Authority or the Ministry of Commerce or Industry) is appropriate to collect relevant information.⁶ Although the National Authority may have responsibility for delivering declarations to the OPCW, it may have comparatively little experience in working with private industry.
- *Record-keeping uniformity:* The obligation to prepare reports suggests an obligation to maintain relevant information in a uniform format.⁷ Each facility's information must be aggregated with the information from every other facility so that national declarations can be prepared; uniform formats greatly simplify that process.
- *Comprehensiveness:* The reporting requirements should be comprehensive, applicable to all those who produce, process, consume, export, or import any Scheduled chemical or related facility under the CWC, those who propose to do so, and those who discover or come into possession of declarable chemicals or facilities

6. Some nations place responsibility for collecting information on the National Authority, *see* Canada, South Africa, and the United Kingdom. But other nations allocate responsibility to other agencies, *see* Japan, Korea, and New Zealand. The Swiss legislation establishes an agency to act as a clearinghouse of information: "The Public Prosecutor of the Confederation shall ensure the operation of an information service responsible for the acquisition, processing, and transmittal of the data necessary for the implementation, the prevention of offenses, and criminal prosecutions." (Switz. Dec., §5, art. 16).

7. Many nations' legislation require that private facilities keep detailed records regarding all activities involving chemicals, and many demand that the records be kept in a specified manner or format. For example, the Japanese legislation requires that facilities prepare a diary "kept as provided for by order of the Ministry of International Trade and Industry." (Japan, Ch. 3, art. 22(2)). The Danish decree requires that information be submitted by means of questionnaires forwarded by the Danish Agency for Development of Trade and Industry to affected enterprises. (Den. Ex. Ord. #771, Ch. 1, §6).

that have not been declared. Consideration should be given to how all relevant facilities can be made to report.

- *Coordination with other regulatory obligations:* It may be desirable to try to coordinate the information required for the CWC with information required to be reported for other regulatory purposes so that duplication with those other reporting requirements is minimized. Consideration should be given to how to take most efficient advantage of reporting mechanisms already in place.⁸
- *Timeliness:* It is important to require that information be reported to the government sufficiently in advance of the CWC deadlines so that the responsible agency will have time to use that information to prepare the required declarations in compliance with the CWC's deadlines.⁹

Each State Party has a variety of options in responding to these issues, depending on its government organization and the size of its chemical industry. The simplest option, and the one that most States Parties choose, is to authorize an agency to collect necessary information by whatever means it deems appropriate.¹⁰ Other States Parties' implementing measures, in addition to delegating authority to an agency, incorporate the CWC's definitions and requirements into detailed specifications contained within statutory obligations.¹¹

A few States Parties have adopted more sophisticated mechanisms based on a permitting system. Pursuant to these measures, any facility having Scheduled chemicals must obtain a permit to operate; as a condition thereof, the operator must maintain required records and give them to the appropriate government agency on a specified timetable.¹² A permitting system may be

8. Again, Sweden is a good example. The need for information for declarations of Schedule 2 and 3 chemicals is met by the control mechanisms for chemical products constituting health or environmental hazards under the Act on Chemical Products, subject to a minor adjustment to its scope. (Swed. Ord. 1992: 1303, §22a-22d).

9. In Finland, yearly reports must be filed by the end of January. (Fin. Dec. 348, §4). The Swedish legislation requires submission of declarations by 15 January for the previous year and by 15 September for the next year. (Swed. Ord. 1992: 1303, §22b).

10. In some nations, an authorized agency can simply request information, obligating persons to comply to the best of their ability. For example, the New Zealand legislation provides that the Secretary of Foreign Affairs and Trade may, by written notice, require any person to give information to the Secretary for the purposes of CWC required declarations. (N.Z., Pt. III, §14). *See also* Canada, Germany, Norway, and the United Kingdom.

11. *See e.g.*, the Romanian legislation, arts. 7-13.

12. In Japan for example, a permitted manufacturer must prepare a diary and record concerning specific chemicals and to provide those diaries to the Ministry of International Trade and Industry by specified dates.

bureaucratically complex and even onerous, but it offers advantages for identifying facilities that must report as well as helping to ensure record-keeping uniformity, coordination with other regulatory obligations, and timeliness.

3.2.2 Options to Penalize Non-Compliance with Reporting Requirements

A most important question for the implementing measures to address in the context of declarations is whether to penalize a failure to report information in an accurate and timely manner. Without a penalty provision, reporting obligations are merely hortatory, and compliance will likely be insufficient. If such a provision is implemented, then a State Party may have greater assurance that its nationals will comply, but only if the government is willing to devote the necessary law enforcement resources.

Implementing measures to penalize private firms for failing to report CWC-relevant information should address the following issues:

- *Intent*: Consideration should be given to issues concerning the level of intent necessary to constitute a violation (e.g., whether negligent infractions should be punished, or only intentional violations). Some States Parties penalize only intentional or reckless non-submission, without reasonable excuse.¹³ Some States Parties extend penalties to negligent non-submission.¹⁴ Some States Parties enumerate different penalties depending on the deliberateness of the non-submission.¹⁵
- *Corporate liability*: Whether corporate entities can be penalized, civilly or criminally, varies among nations. In most nations, corporate entities could be

(Japan, Ch.3, art. 22, & Ch. 4, arts. 24-29). In Australia, a permitted facility must give to the Director of the Chemical Weapons Convention office information concerning chemicals "in such form and at such intervals as are prescribed." (Aust. Pt. 4, §30(2)). In South Africa, any person who is in control of any activity with regard to controlled goods or who has in his possession or custody controlled goods must register with the South African Council for the Non-Proliferation of Weapons of Mass Destruction; these persons are required to make a declaration to the Council relating to chemicals, chemical plant sites, or riot control agents. (S.A. Regs, §§3, 4).

13. *E.g.*, Australia (Aust., Pt. 4, §§30(3), 31(4)); the United Kingdom (U.K., §§21(2), 22(3)); and New Zealand (N.Z., Pt. III, §§13(3), 14(4)).

14. *E.g.*, Germany (Ger., art. 15(1)(1)).

15. The Swiss legislation provides that failure to declare as required is punishable by imprisonment or a fine not exceeding one million francs, unless the failure was a result of negligence, in which case the punishment is non-rigorous imprisonment for a term not exceeding six months or a fine not exceeding 100,000 francs. (Switz. Dec., §4, art. 9).

penalized for engaging in CWC-prohibited activities.¹⁶ If corporations can be held liable for CWC-prohibited activities, then an issue of imputed liability arises: when can corporate personnel or agents be liable for the acts of the corporation? Some nations' laws provide that officers, directors, or agents may be subject to penal consequences for corporate activities within their knowledge and control even if the individual has not performed the unlawful act, at least when such individual(s) ordered or authorized the activity. A broader basis of liability may apply to situations where the corporate officer knows of a subordinate's unlawful activity and does nothing to prevent it. If the corporate officer stands in a position of responsibility over the act in question, liability may be predicated on the failure of the corporate officer to adequately supervise subordinates.¹⁷ A still broader basis of liability is similar to strict liability: the corporate officer may be liable even without evidence of the officer's direct participation or acquiescence in a subordinate's unlawful behavior if the corporate officer holds a responsible position: only an officer who exercises a high degree of care in attempting to prevent the illegal activity will not be liable.

- *Extent of penalties:* Consideration should be given to questions concerning whether non-submission should be penalized by fines, permit denial, imprisonment, or some other reprimand.¹⁸ Also, consideration should be given to whether a penalty should

16. The Australian legislation speaks in detail to the issues corporate liability raises: the "state of mind" of a corporate body can be established by showing that the conduct was engaged in by a director, servant, or agent of the corporate body within the scope of his actual or apparent authority. If the wrongful conduct was engaged in on behalf of the corporate body or with the consent of a corporate officer or agent, the conduct is taken to have been engaged in by the corporate body unless the corporate body establishes that it took reasonable precautions and exercised due diligence to avoid the conduct. (Aust., Pt. 1, §9). The Korean legislation provides that a corporate entity shall be liable if its representative or agent commits a crime under its implementing legislation. (Korea, Ch. VII, art. 20). In Malta, if a director, manager, secretary or similar officer commits an offense on behalf of the economic interests of a legal person, that legal person shall be liable together with the actor. (Malta, §4).

17. The United Kingdom legislation provides that where an offense is committed by a corporate body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary, or other similar officer, or any person purporting to act in any such capacity, he as well as the corporate body shall be guilty of that offence. (U.K., §31(3)). In Romania, "leaders of legal persons are obliged to ensure the compliance with the provisions of this Act and to establish, in this respect, the duties for subordinated staff." (Romania, art. 49).

18. Most nations penalize non-submission by fines and/or imprisonment: Australia - imprisonment for up to one year (Aust., Pt. 4, §31(4)); Canada - on summary conviction, a fine up to \$5,000 or imprisonment for up to 18 months, on conviction on indictment, a fine up to \$500,000 or imprisonment for up to 5 years (Can., §20); Germany - administrative fine up to 100,000 Deutsche Marks (Ger., art. 15(1)(1)); Korea-

be inflicted only on an offending commercial entity or whether individuals employed by that offending entity may be personally liable.

4 PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION

National implementing measures to collect data for declaration under the CWC could threaten the confidentiality of information. To protect confidentiality, the CWC contains measures to ensure its secure retention¹⁹ and encourages States Parties to adopt protective measures. States Parties and industries may be concerned that confidential business information (CBI),²⁰ may be revealed by CWC reporting obligations, adversely affecting competitiveness in chemical production and trade. This section reviews existing legal protections for CBI and presents some options for national implementing measures that protect CBI whose adoption may encourage reporting of CWC-relevant CBI for declaration. These measures are only suggestions; the suitability of any single measure will depend on national legal standards and administrative capabilities.

CBI includes any information that gives its holder a commercial advantage because it is not widely known to competitors or the general public. CBI can consist of either technical or non-technical forms of information, including: formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, price codes, customer lists, economic studies, cost reports, and bookkeeping methods. Some of these, such as production methods or customer lists, may be involved in gathering information for declarations.

The chemical industry is extremely competitive; innovation and proprietary knowledge are critical to success. Small differences in expertise or refinements in production processes can give a chemical company a significant competitive edge. Moreover, the prosperity of firms that focus on a niche market or technology may depend on the possession of a few highly-specialized trade secrets. Chemical, biotechnology, and pharmaceutical firms invest massively in research and development and must protect the confidentiality of the resulting product in order to recover their investment.

imprisonment for up to 2 years or a fine up to 10 million Wons (Korea, Ch. VII, art. 28); New Zealand - imprisonment up to one year or a fine up to \$100,000 (N.Z., Pt. III, §13(3)); United Kingdom - a fine not exceeding the statutory maximum (U.K., §§21(2), 22(3)).

19. The Convention's confidential information protection provisions are outside the scope of this paper. In particular, this paper does not address protection of national security information under the Convention. *See, for example*, the Confidentiality Annex. In addition, this paper does not address protection of confidential information that could be compromised through CWC verification inspections.

20. Confidential business information or "CBI" is herein treated as synonymous with and encompassing: trade secrets, proprietary information, industrial intellectual property, and know-how.

The process for collecting information for declaration could threaten CBI loss. Inadequate CBI protection in the procedures of the government agency responsible for declarations could lead to inadvertent leaks and the loss of valuable information. For instance, some countries have domestic statutes that require public disclosure of government information and data. Unless these statutes adequately protect CBI and prohibit its disclosure, valuable information could be lost.

4.1 LEGAL PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION

Intellectual property protection varies among nations. Most nations legally protect CBI, although the source of that protection varies. Domestic statutes that recognize patents, copyrights, and trademarks often do not recognize CBI. Many nations recognize CBI as property that the government cannot take without due process of law and unless just compensation is paid to the owner. In nations where CBI is not specifically recognized as property, its unauthorized disclosure may be prohibited by laws relating to contracts, unfair competition, breach of a confidential relationship, or torts. Typically, the same legal protections apply to foreign owners as to domestic owners under the system of "national treatment," which, though nondiscriminatory, is of little assistance in nations with minimal or no protections in place.

Legal protections apply to CBI for as long as the owner can maintain its secrecy. Thus, owners must carefully handle CBI to maintain its confidentiality. CBI can be protected by physical means or through contracts that establish binding confidential relationships. If an owner voluntarily discloses CBI to someone not obligated to maintain its secrecy, the law's protection will be forsaken. In addition, CBI is not protected from legitimate independent discovery (e.g., by means of reverse engineering).

A key to CBI protection in many nations is holding private persons and public officials having access to CBI accountable for any unauthorized disclosure. A private person who discloses CBI without authorization will usually be liable to the owner for civil damages. Government officials who divulge CBI can be fined or even imprisoned; in addition, the CBI owner could sue him/her for civil damages.

Several international treaties, organizations, and conventions allow foreigners to obtain intellectual property protection in another country.²¹ These systems define the protected right and

21. The major agreements to be considered include: the Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 168 C.T.S. 185 (entered into force Dec. 5, 1887); the Universal Copyright Convention 6 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132; and the Paris Convention for the Protection of Industrial Property Mar. 20, 1883, T.S. No. 941. The World Intellectual Property Organization (WIPO) is responsible for ensuring multinational administrative cooperation in the international protection of intellectual property. The WIPO is a United Nations agency headquartered in Geneva. It oversees nine "Unions" based on the major international intellectual property agreements. Within each "Union," each signatory agrees to grant nationals of other signatories the protections granted their own nationals. These

address the processes and procedures involved in protecting that right abroad or in a specific country. However, none of the treaties contains specific procedures for settling disputes over infringement of property rights that might arise in the CWC context.

4.2 IMPLEMENTING MEASURES TO PROTECT CONFIDENTIAL BUSINESS INFORMATION

States Parties can take some basic precautions to limit disclosure of CBI that could be compromised in connection with the CWC declaration requirements. Disclosure of information could be restricted to the bare minimum required by the CWC, taking care not to unnecessarily transmit confidential information to the OPCW. Governments could enact statutes to preserve the confidentiality of CBI and forbid all disclosures not statutorily authorized.²² The remainder of this section outlines several additional possible measures.

4.2.1 Formalize System of Marking CBI

An important element of CBI protection includes procedures for CBI identification. As the OPCW has promulgated a system to mark CBI, national implementing measures should coordinate reporting obligations with that system. Accordingly, national regulations or guidelines could be issued for private industry to follow with regard to designating CBI when submitting CWC-related information. Consistent with those regulations, measures could be developed for separating CBI and submitting it apart from other information.

The National Authority will need to take similar measures when it submits CBI to the OPCW. Confidential information should be designated, perhaps submitted separate and apart from other information. The National Authority need not rely solely on the submitters' designations; so long as consistent with the OPCW's system, the State Party could develop its own guidelines to designate CBI.

4.2.2 Preparation of a CBI-Protection Manual

Advance preparation and planning may significantly reduce the risk of CBI loss. A thorough understanding of CWC procedures and possible data collection techniques could limit CBI exposure. Governments have an important role in educating private industries as to what to expect from CWC operation by developing and distributing a manual on how companies can best protect valuable CBI.

instruments and organizations, which are vital to the international protection of intellectual property, do not recognize or protect CBI.

22. The Canadian legislation specifically provides that no one shall be required to produce any statement or other record containing privileged information unless the proceedings related to enforcement of the CWC implementation act. (Can., §17(4)).

An important part of such a manual could be guidelines on how firms could best identify CBI. As to reporting requirements, the manual could provide guidance on the following information: (1) a description of information that the government will treat as confidential; (2) techniques for identifying CBI (e.g., consistent marking techniques, different marks for true trade secrets and other types of confidential or proprietary business information, etc.); and suggestions for marking techniques compatible with government and OPCW guidelines.

4.2.3 Government-Assisted Training and Education

Other government initiatives could further educate private firms about means to protect CBI and thereby to minimize concerns about CBI. These measures might include:

- conducting trial data submissions whereby company reports are evaluated for their effectiveness in protecting CBI;
- communication between the national government and private industry to verify CBI designations; or
- CWC preparation, training, and education seminars.²³

4.3.3 Regulate CBI Handling and Prohibit Its Disclosure

States Parties could implement procedural and administrative measures to minimize the risk of losing CBI. The implementing measures could strictly limit, or prohibit, CBI disclosure to persons not needing the information, including foreign competitors or intermediaries such as their attorneys; these measures may include a few justified exceptions to a general prohibition on CBI disclosure to persons other than the OPCW.²⁴ Before disclosure can be made, implementing

23. The Argentina decree provides that the National Authority will coordinate with the Armed Forces National Scientific and Technical Research Institute of the Armed Forces (CITEFA) the organization of courses and seminars to train chemical engineers and laboratory staff. (Arg., §10(d)). Also, Romania requires its National Authority to organise training courses. (Romania, art. 47).

24. First, CBI that is necessary to protect public health or the environment may be exempted from a rule of non-disclosure. Second, disclosure to other government agencies for law enforcement purposes, particularly enforcement of CWC implementing measures, should be permitted. But the duty to maintain confidentiality could extend to all government employees and agencies that gain access to CBI. Third, disclosure to government contractors could be permitted if necessary for the satisfactory performance of a government contract. Finally, disclosure could be permitted when it is relevant to proceedings under the CWC implementing measures. Disclosures in such proceedings should be made in a manner designed to preserve the information's confidentiality.

For example, the Canadian legislation provides that CWC-relevant information and documents are privileged unless they must be disclosed or communicated for purposes of a public safety emergency. (Can.,

measures could require a statement expressing the need for information sought and the purposes to which it will be put.²⁵

Some measures could restrict government officials and National Authority personnel. First, National Authority employees should be of the highest integrity and could be required to sign confidentiality agreements or pledges. Second, the dissemination of CBI within the National Authority and between other government agencies should be limited to what is necessary to the CWC. Third, all CBI should be stored in secure locations, including secure computers. Fourth, the National Authority could be required to maintain records of all persons to whom disclosure has been made.

An important procedural safeguard to limit CBI disclosure concerns the resolution of disputes between government agencies and submitters of information as to the character of that information. If a State Party proposes releasing information that the submitter has marked as confidential, the disclosure should be postponed until the submitter has an opportunity to explain why the information is indeed confidential and should not be disclosed. If the State Party still proposes to disclose the information, the submitter could be allowed to appeal that decision, possibly even to a judicial body, to prevent the disclosure. These protections should not be applied in a manner that hinders a State Party's obligation to submit CWC-relevant information to the OPCW.

4.3.4 Penalties for Wrongful Disclosure

To deter wrongful disclosure of CBI, implementing measures could also include criminal penalties, civil liability, or fines against government employees who knowingly disclose protected

§17(1)&(2)). The South African legislation similarly provides that information may be transmitted if required as evidence in any court or in regard to an investigation or a criminal prosecution. (S.A. Act #87, §21(1)(d)). The United Kingdom legislation specifies conditions for non-consensual disclosure of confidential information: (1) in connection with anything done for CWC purposes; (2) in connection with anything done for purposes of the implementing legislation; (3) in connection with any criminal investigation or for the purposes of any criminal proceedings; (4) in connection with the enforcement of restrictions on import/export; (5) in dealing with an emergency involving danger to the public; or (6) to the International Court of Justice for the purpose of enabling the Court to deal with any dispute referred to it under the CWC. (U.K., §32(2)).

25. The Finnish legislation provides: "Whosoever, in the performance of work connected with this Act or with the application of the Convention, has obtained information regarding a professional or business secret of another person, shall not reveal or use such information without authorization." (Fin. Act #346, §8). The German legislation specifically provides that all authorities handling information shall use the data transmitted only for the purpose for which they were transmitted. (Ger., art. 6(4)). Similarly, the South African legislation provides that any officer or employee of the National Authority or anyone else concerned with CWC functions shall not disclose, transmit, or make known to any person any information obtained in the performance of a CWC function. (S.A. Act #87, §21(1)).

CBI.²⁶ 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 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.²⁷

5 CONCLUSIONS

Declarations under the CWC must be preceded by a process in each State Party to gather the data that is to be declared. States Parties may want to legally require accurate and timely reporting of such information to a government agency for declaration as necessary to the OPCW. Attention should be given to whether and how to punish those who fail to report the specified information as required. Protection of CBI is a special problem because of its great value to the chemical industry. States Parties may want to consider adoption of various CBI protection measures, such as a formal national CBI marking system, government-assisted training and education, standards for proper CBI handling and protection, and criminal or civil penalties for wrongful CBI disclosure. A carefully considered combination of national implementing measures that addresses these issues can play an important role in facilitating each State Party's compliance with the CWC declaration requirements.

26. The South African regulations provide for a fine or imprisonment for up to 10 years for any person who contravenes the confidentiality requirements of the implementation act. (S.A. Regs., §7). 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 of an amount not exceeding the statutory minimum; on conviction on indictment, the person may be subject to imprisonment for a term not exceeding two years or to a fine or both. (U.K., §32(4)). The Canadian legislation prohibits persons in possession of privileged information from knowingly and without consent communicate that information to any other person except to give effect to the CWC. (Can., §17(3)). *See also* Aust. §102.1.

27. Confidentiality Annex, (D)(20).