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Commentary and Model Provisions



# Guide to CTBT National Implementation Measures

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## Guide to CTBT National Implementation Measures

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## Guide to CTBT National Implementation Measures

### 1. Introduction

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#### 1.1 The Comprehensive Nuclear-Test-Ban Treaty and the CTBTO

The Comprehensive Nuclear-Test-Ban Treaty (CTBT) was negotiated and drafted in the Conference on Disarmament in Geneva from 1994 to 1996 and opened for signature in New York in 1996. The object and purpose of the CTBT is to comprehensively ban nuclear weapon test explosions and any other nuclear explosion in any environment in an effectively verifiable manner.

The Treaty establishes a treaty-implementing body, the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), of which all CTBT States Parties are members and which has three organs: Conference of the States Parties, the Executive Council and the Technical Secretariat. The Treaty also establishes a verification regime to monitor compliance with the obligations undertaken in the Treaty. The verification regime is composed of the following elements:

- an International Monitoring System (IMS), comprising facilities for seismological, radionuclide, hydroacoustic and infrasound monitoring, and supported by the International Data Centre (IDC) in Vienna;
- consultation and clarification;
- on-Site inspections; and
- confidence-building measures.

#### 1.2 The *Guide to CTBT National Implementation Measures*

The *Guide to CTBT National Implementation Measures* is intended to facilitate the identification of the elements that may need to be transposed into national law to implement the CTBT. It provides a commentary on those elements and several types of model legislation. In this respect:

- The material in this *Guide* has been developed for illustrative purposes only. It is for each State to decide which information may be of relevance in its national context and how its obligations under the Treaty may be implemented in its legal system and legal culture.
- The information in this *Guide* is not based on a specific legal system and follows the requirements and language of the Treaty. It may, however, reflect elements contained in examples of national implementing legislation enacted by some States and may include references to possible approaches to implementation of obligations of a general nature that have not been specified in detail in the Treaty.
- The model provisions are a generic reference source for legislative drafters and are not intended to be copied literally. Not all elements may be required in a given State and the model provisions may have to be adapted, modified or supplemented as appropriate.

## Guide to CTBT National Implementation Measures

### 2. National implementation measures

#### 2.1 Article III of the CTBT

It is the general obligation of each State to bring its national law into conformity with its obligations under international law.<sup>1</sup> The CTBT will not automatically become a part of the State's internal law unless the Constitution or legislation of that State so provides. Even then, some of the obligations under the CTBT may not be self-executing in States with a “monist” legal system, the act of ratifying an international treaty automatically incorporates the treaty into national law, while States with a “dualist” legal system must adopt national legislation explicitly incorporating the relevant treaty obligations. Nevertheless, if the obligations under a treaty are not “self-executing,” even monist States will need to adopt implementing legislation before such provisions can be given effect.

Article III of the Treaty therefore requires each State Party to take, in accordance with its constitutional processes, any measures that may be necessary to implement its obligations under the Treaty.

Each State Party must assess its international obligations under the Treaty in order to determine the steps that need to be taken to give direct internal legal effect to them.

Where required, implementing legislation and the necessary complementary measures must be adopted by the State to comply with its obligations under the Treaty. In some cases, only statutory or administrative measures may be required. Accordingly, the type of national implementing legislation will depend on the respective legal system and the legal culture of each State Party.

#### 2.2 Overview of Treaty Obligations

Some of the obligations to be implemented by national measures are mentioned in Article III of the Treaty. Others relate to the establishment and operation of the CTBT verification regime, although it will be noted that the implementation of the CTBT verification regime is not cumbersome for States, since there is **no mandatory reporting** and **no routine inspections** under the CTBT.

The national implementation measures explicitly mentioned in Article III of the Treaty are:

- to prohibit natural or legal persons anywhere in the State’s territory or any other place under its jurisdiction or control from undertaking activities prohibited by the CTBT and to extend those prohibitions to natural persons possessing its nationality regardless of where they are located;
- to cooperate with, and afford legal assistance to, other States Parties; and

<sup>1</sup> Article 27 of the 1969 Vienna Convention on the Law of the Treaties provides that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform its obligations under a treaty.

- to designate or set up a National Authority to serve as national focal point for liaison with the CTBTO and other States Parties.

There are other obligations under the Treaty that may need to be incorporated into national law, in order for States Parties to facilitate verification of compliance with its provisions, including:

- to participate, as necessary, in consultation and clarification processes;
- to participate in confidence-building measures;
- to allow, pursuant to Article IV and subject to certain conditions, the CTBTO's inspectors access to conduct on-site inspections in its territory;
- for States hosting facilities of the IMS:
  - to facilitate the establishment and operation of the stations and provision of data from them to the IDC in Vienna; and
  - to conclude a facility agreement or arrangement with the CTBTO concerning, inter alia, the modalities of cooperation in respect of the monitoring stations.

Article II, paragraphs 54 to 57, of the Treaty states that the CTBTO shall enjoy "such legal capacity and such privileges and immunities as are necessary for the exercise of its functions", and that delegates of other States Parties, the Director-General, staff, inspectors and inspection assistants "shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Organization". Consequently, administrative acts or legislative measures will normally be necessary to recognize the legal capacity of the Organisation and grant those privileges and immunities in the national jurisdiction.

## Guide to CTBT National Implementation Measures

### 3. Main elements of CTBT national implementing legislation

#### 3.1 Preamble

The extent and content of the preamble of a legislative act depends on the nature, scope and hierarchy of such instrument. The preamble related to CTBT implementation may include reference to the following aspects:

- the CTBT and its adoption by the State;
- the need to adopt and/or amend national legislation to implement the obligations under the Treaty, where appropriate;
- the constitutional and/or legal basis for enacting the respective legislation;
- existing national legislation that may be related to the subject matter of the CTBT.<sup>2</sup>

Some States have included more comprehensive considerations in preambles of acts related to the CTBT, such as the following:

- the CTBT and its role in the field of disarmament and non-proliferation;
- the commitment of the State to the principles embodied in the CTBT;
- the interest of the State in participating in the CTBT verification regime and eventually in benefiting from its civil and scientific applications.

#### 3.2 Definitions

If the State determines that it is necessary to define in the legislation some of the terms and expressions that appear in the Treaty, it should ensure that their meaning or scope under the Treaty is not changed by the legislative definitions.

#### 3.3 Objectives

In some countries legislative acts may include a statement of objectives. For acts related to the CTBT such a statement may refer to the implementation of the obligations of the State at the national level and to facilitating verification of compliance with the Treaty. In States where the Treaty is submitted

<sup>2</sup> In some jurisdictions the preamble serves to place the legislative measures in the context of the national legal system by making reference to other acts, statutes or regulations that may be related thereto. Depending on the legislative approach of a given State, the subject matter of the CTBT may be considered to pertain to national legislation in one or more of the following fields: public international law, prohibition of weapons of mass destruction, disarmament and non-proliferation, nuclear weapon-free zones, national security, counterterrorism, nuclear law, environmental law, criminal law and/or administrative law.

for approval by the legislature together with the implementing legislation for enactment in the same bill, the objectives may also refer to the approval or ratification of the Treaty.

### 3.4 Criminalization and jurisdiction

Article III of the Treaty requires that each State Party take any necessary measures:

- “(a) To prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under [the] Treaty;
- (b) To prohibit natural and legal persons from undertaking any such activity anywhere under its control; and
- (c) To prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.”

The activities prohibited to the States Parties under the Treaty are those that appear in Article I:

- “... not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under [the State’s] jurisdiction or control”;
- “... refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.”

National implementing measures will normally entail, wholly or partly, the following elements:

- to reproduce Article I in the form of criminal legislation. Penal provisions criminalizing<sup>3</sup> these activities would underline the central importance of the prohibition for the Treaty, provide for a strong deterrent and ensure unequivocally the possibility of enforcement against natural and legal persons, whether State or non-State actors/agents;
- to impose penalties severe enough to reflect the seriousness of the criminal offence in accordance with the CTBT;<sup>4</sup>
- to categorise as an offence the preparatory activities and/or the attempt to carry out a nuclear explosion, as well as the acts of participating in the crime as an accomplice, ordering the commission of the crime, or contributing to it. This would help to strengthen the prohibition and enable law enforcement officers to interrupt or prevent the crime, to the extent possible.

Since the CTBT foresees the exercise of *ad personam* and *ad territorium* jurisdictions for Treaty violations, the following aspects should be taken into account when drafting implementing legislation:

- the penal legislation should apply in the territory of the State or in any other place under the State’s jurisdiction or control as recognized by international law to all natural and legal persons, irrespective of their nationality;
- the penal legislation shall also extend extraterritorially to natural persons possessing the nationality of the State when they commit such an offence outside the territorial jurisdiction of the State;
- the penal legislation shall also extend to legal persons and, ultimately, its administrators or directors;<sup>5</sup>

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<sup>3</sup> The use of terms such as “criminalize”, “offence”, “prohibit” or “proscribe” herein is general; each State will use its own terminology, taking into account the categorization of criminal offences in their national legislation.

<sup>4</sup> In general, the legislation adopted by States have treated violations of the CTBT norms as very serious offences and have included the penalty of imprisonment for the more serious violations, up to and including life imprisonment in jurisdictions which deliver such sentences.

<sup>5</sup> See Section 4 of UNODC’s Model Legislative Provisions against Terrorism, on liability of legal entities.

- in some jurisdictions it may be necessary to specify that the prohibition shall also bind the Government or the Crown;
- the principle of *aut dedere aut judicare* ("extradite or prosecute") is not explicitly stated in the CTBT. The model provisions of the United Nations Office on Drugs and Crime (UNODC) may serve as reference to States that consider pertinent to apply this principle to activities prohibited under the CTBT.<sup>6</sup>

### 3.5 Prevention of nuclear explosions: nuclear security

Article I also requires each State Party to prevent any nuclear explosions in any place under its jurisdiction or control. The creation of criminal offences with adequate and dissuasive penalties will have a certain deterrent effect on potential perpetrators of the crime.

The measures aimed at preventing the acquisition of items and material which could contribute to nuclear explosive activity is also important. Some of these measures are required under other multilateral treaties or arrangements and aim at preventing the illegal or unauthorized uses of nuclear material and facilities through acts such as theft, diversion, threats and sabotage.<sup>7</sup> The International Atomic Energy Agency (IAEA) provides resource materials and legal assistance to its Member States in matters related to nuclear security and physical protection of nuclear materials.<sup>8</sup> UNODC provides resource materials and legal assistance in the implementation of counter-terrorism conventions.<sup>9</sup> Further details in this respect are provided in Chapters 4 and 6 below.

### 3.6 Criminal proceedings and mutual legal assistance

Pursuant to Article III, paragraph 2, of the Treaty, States Parties shall cooperate with one another and afford the appropriate form of legal assistance to facilitate the implementation of their obligations under the Treaty. The Treaty does not spell out the forms of legal assistance or the specific procedures by which such assistance shall be given.

In prosecuting offences concerning activities prohibited under the Treaty, different States Parties may be involved and may have to cooperate and provide mutual legal assistance. It could be expected that cases of nuclear testing would involve the transboundary movement of persons, technology, items and/or financial resources. In order to ensure the prosecution of offences and mutual legal assistance between States, legislation may make reference to the following:

- The obligation of the National Authority or the competent authority to prevent and investigate the offences and to prosecute alleged perpetrators;
- The regime that will be applied to the criminal proceedings and mutual legal assistance, whether through reference to general provisions under the national law for domestic criminal matters or on the basis of a special existing regime in accordance with international obligations, or by establishing specific provisions for such purposes;

<sup>6</sup> For example, see Model Article 26 of the UNODC's Model Legislative Provisions against Terrorism: "*The Courts of [name of the State] shall have jurisdiction for any of the offences set forth in [these Model Provisions] committed outside the territory of the State if: [...]b) the alleged perpetrator is found on the territory of the [name of the State] and is not extradited to any State requesting extradition for the same conduct;*"

<sup>7</sup> The importance of adopting and enforcing such measures has been underscored by the United Nations Security Council. In its resolution 1540 (2004), adopted under Chapter VII of the United Nations Charter and, as such, binding on all Member States, the Security Council explicitly required "all States" to, *inter alia*, take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear weapons, their means of delivery, and related materials among non-State actors.

<sup>8</sup> See IAEA *Handbook on Nuclear Law*, vol. 1 (2003) and vol. 2 (2010).

<sup>9</sup> See UNODC *Model Legislative Provisions against Terrorism* (2009).

- In the absence of bilateral or multilateral mutual legal assistance agreements, the legislation could be drafted so as to provide specific authorization for effective cooperation with other States in areas ranging from authenticating documents and taking testimony or statements, to the location of suspects and extradition of offenders.<sup>10</sup>

Among the preventive measures that may be considered by States to help prevent nuclear explosions is the so-called “whistleblower” protection, whereby individuals providing information on covert activities related to nuclear explosions may be granted witness protection and immunity.<sup>11</sup> Interested States may wish to refer to the UNODC Model Witness Protection Bill,<sup>12</sup> specifically designed for common law countries, as well as the commentary to the bill.<sup>13</sup>

### 3.7 National Authority<sup>14</sup>

#### 3.7.1 Functions of the National Authority

Under Article III, paragraph 4, of the Treaty each State Party is required to designate or set up a National Authority to “serve as the national focal point for liaison with the Organization and with other States Parties.” The core function of the National Authority is to facilitate the interaction between States and with the CTBTO on all matters regarding the implementation of the Treaty. During the preparatory phase, most States already set up at least an interim National Authority because of the need to cooperate with the Preparatory Commission in establishing the verification regime and to facilitate capacity-building initiatives. The functions/powers of the National Authority may include:

- cooperation with national departments, agencies and institutions on matters related to the implementation and enforcement of the Treaty;
- carrying out the obligations of the State Party under the Treaty;
- acting as the main point of contact with the CTBTO and other States Parties to the Treaty;
- cooperating with the CTBTO and the other States Parties in order to facilitate the implementation of the verification regime;
- negotiating agreements or arrangements with any person, States Parties and the CTBTO related to the implementation of the Treaty and coordinating the conclusion;
- requesting and processing information from natural and legal persons regarding implementation of and compliance with the Treaty internally;
- promoting the civil and scientific applications of the technologies of the verification regime established under the Treaty and the cooperation with the CTBTO and States Parties in this area.

#### 3.7.2 Structure of the National Authority

The Treaty does not elaborate in detail the structure or mandate of the National Authority: it is left to the discretion of each State, but it should be in a position to effectively address and coordinate all issues pertaining to implementation of the Treaty. The following options may be considered for the designation or establishment of the National Authority:

<sup>10</sup> See UNODC Model Law on Mutual Assistance in Criminal Matters and Model Law on Extradition.

<sup>11</sup> See Section 7.3 to this *Guide* and see further, Dieter Dieseroth, *Societal Verification* (2008).

<sup>12</sup> [http://www.unodc.org/pdf/lap\\_witness-protection\\_2000.pdf](http://www.unodc.org/pdf/lap_witness-protection_2000.pdf)

<sup>13</sup> [http://www.unodc.org/pdf/lap\\_witness-protection\\_commentary.pdf](http://www.unodc.org/pdf/lap_witness-protection_commentary.pdf)

<sup>14</sup> Annex 4 to this *Guide* provides a Model Decree for the National Authority, which illustrates in detail the possible functions/powers.

- a Ministry or any other governmental agency with suitable powers to give relevant directions to, and solicit information from, such national institutions that are related to the implementation of the Treaty;
- an inter-institutional entity composed of several competent government authorities in accordance with its internal division of responsibilities, and creating a coordination mechanism for them to cooperate with each other and to liaise with the CTBTO;
- an entity especially created to act as National Authority, with the powers and resources necessary to serve as point of contact with the CTBTO and States Parties.

### **3.7.3 Designation of the National Authority**

The establishment or designation of the National Authority is normally an administrative matter that may be carried out by decree, resolution, ministerial order or other. While it is therefore generally established as a result of general executive powers of the government, in some States it may be necessary to establish the mandate and powers of the National Authority by statute, in particular when its powers would affect the rights of third parties, when it has been assigned some level of enforcement authority or when it is necessary for budgetary purposes.

### **3.7.4 Role of the National Authority in disaster relief and nuclear safety**

Although the CTBT provides for the establishment of the IMS as a tool to verify compliance with the Treaty, IMS monitoring data and technologies have offered additional benefits, particularly in relation to disaster mitigation and nuclear safety.

Consequently, a State may wish to include in its national measures the requirement that the National Authority (or its subsidiary National Data Centre, if any) establish a cooperative arrangement with the national entity(ies) responsible for disaster relief mitigation and radiological emergencies, in order to be in a position to provide, in a timely fashion, any available and relevant IMS data and data bulletins, including possible radioactive releases and dispersal, following a natural or man-made disaster in the State or affected region. This proved to be particularly important following the earthquake in Japan on 11 March 2011. Although the casualties were tragically high, Japanese authorities reported that IMS data helped them to issue tsunami warnings within a few minutes, thus allowing some people to escape to higher ground. The IMS atmospheric transport modelling (ATM) tool assisted with predicting the global dispersion of radioactive material from the damaged Fukushima nuclear power plant, which helped public health authorities to evaluate evacuation and to allay public fears both in Japan and abroad.

Equally, a State may also wish to establish a linkage in its national measures for disaster relief and nuclear safety to the CTBT legislation.

## **3.8 IMS monitoring facilities**

The IMS consists of 337 facilities which, when complete, will operate in 89 host States worldwide, some located in remote and inaccessible regions of the globe, to monitor the planet for nuclear explosions. Once established or upgraded and certified as meeting all technical requirements, monitoring stations and radionuclide laboratories are operated by local institutions under contracts with the Organization. The data recorded at the IMS stations and the IDC data bulletins are transmitted via the CTBTO Global Communications Infrastructure (GCI). IMS data are received and distributed through a network of six satellites. The satellites route the transmissions to three hubs on the ground, and the data are then sent to the IDC by terrestrial links.

States hosting IMS facilities as listed in Annex 1 to the CTBT Protocol shall cooperate with the CTBTO in establishing, operating, upgrading, financing and maintaining IMS facilities. The CTBT provides that the form and modalities of such cooperation is to be set out in agreements or arrangements concluded with hosting States.<sup>15</sup> Article IV of the Treaty provides that States Parties shall own and operate the monitoring stations hosted by them or otherwise under their responsibility in accordance with the CTBT Protocol, however, they remain under the authority of the Technical Secretariat.<sup>16</sup>

For States hosting IMS facilities, depending on existing national arrangements, there may be a need to include a provision in the legislation permitting the National Authority or other entity to:

- establish or designate a facility to serve as an IMS facility: in some States a ministerial decision listing the IMS station(s) for purposes of publication and effect vis-à-vis other public entities or third parties may be necessary;
- negotiate agreements, arrangements or contracts with the CTBTO;
- Contribute to the preparation of appropriate implementing measures at the national level;
- enter into agreements with private parties and pursue the administrative procedures to occupy privately-owned land or otherwise secure unobstructed access to it for the CTBTO's officials and any person charged with the establishment or operation and maintenance of IMS station(s) hosted there.

Furthermore, it is obvious from the foregoing that the security of the IMS, the IDC and the GCI is critical to the Treaty's verification regime. Awareness of cybersecurity and the need for an effective legal framework is growing in the international community. In this context States may wish to review existing legislation to ensure that, if the IMS, IDC or GCI were the object of an attack, it would legally be in a position to investigate, prosecute and punish the offence and to cooperate with an investigation or prosecution led by the authorities of another State.<sup>17</sup>

### **3.9 Consultation and clarification**

Pursuant to Article IV, paragraph 29, of the Treaty, a State Party may seek clarification from another State Party, either directly or through the CTBTO, on whether there has been non-compliance with Article I of the Treaty. This procedure is independent of, and without prejudice to, the right of a State Party to request an on-site inspection under Article IV, Section D. To effectively implement this provision with the aim of satisfying the concerns of a State Party seeking clarification, the legislation may include any or all of the following provisions:

- the obligation of any person, who is occupying or controlling the area where an event giving rise to the clarification request has taken place, to provide relevant information;
- the possibility to conduct national inspections for clarification purposes or take other appropriate enforcement measures to gather the information;<sup>18</sup>
- the obligation of the National Authority to convey the information so gained to the other State Party and/or the CTBTO.

### **3.10 Confidence-building measures**

Voluntary confidence-building measures are foreseen in Part III of the CTBT Protocol. The voluntary reporting in advance of chemical explosions is the main element of such confidence-building

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<sup>15</sup> Protocol I 5.

<sup>16</sup> Treaty IV.17.

<sup>17</sup> See Section 7.4 of this *Guide*.

<sup>18</sup> There are examples of legislation adopted by States which contain provisions enabling the conduct of national inspections for clarification purposes, in some cases in accordance with the same procedures and techniques established in the Treaty for on-site inspections.

measures as it would assist the CTBTO and States Parties in clarifying the origins of any such event detected by the IMS. **There are no routine reporting requirements in the CTBT.**

The Treaty has set a threshold for chemical explosions relevant to voluntary reporting: any chemical explosion using 300 tonnes or greater of TNT-equivalent blasting material detonated as a single explosion anywhere on its territory or under its jurisdiction or control.<sup>19</sup>

To be in a position to report, the State may need to:

- require natural and legal persons to report to the National Authority such explosions in advance, including details on location, date and time of the blast, quality and type of explosive used, as well as on the configuration and intended purpose of the blast;
- establish sanctions for violations of the reporting requirements.

### 3.11 On-site inspections

Article IV, paragraphs 34 and 35, of the CTBT establishes the right of each State Party to request an on-site inspection in accordance with the Treaty and Part II of the CTBT Protocol in order to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of Article I of the Treaty, and to gather facts that might assist in identifying the possible violator. On-site inspections will be an extraordinary event: **there are no routine inspections under the CTBT.**

There are a number of rights and obligations of States Parties in connection with on-site inspections.<sup>20</sup> It is important that any implementing legislation is drafted with a view to securing the effective and timely conduct of on-site inspections as provided in the Treaty and the CTBT Protocol, without limiting the inspection powers or introducing any elements that could delay, or render more difficult, the exercise of an inspection mandate. In this context the implementation of the time frames in the Treaty for the conduct of on-site inspections is of specific importance.

Bearing this in mind, it is up to each State to decide upon the degree of specificity the Treaty provisions on on-site inspection may need to be incorporated into national legislation. The main elements to be borne in mind, addressed in the following sections, may be summarized as follows:

- identifying the authority or authorities competent to carry out the State's obligations regarding on-site inspections;
- granting the National Authority or other competent authority a key role in coordinating the standing arrangements for the conduct of an on-site inspection as required by the Treaty;
- establishing the necessary measures to recognize the privileges and immunities of the inspection team and observers;
- establishing the obligation of the State to accept the conduct of on-site inspections and the right of the inspection team to enter the State's territory, conduct the on-site inspection and exercise the inspection activities established in the Treaty;
- granting the competent authority the powers to accept, allow and facilitate the conduct of an on-site inspection;
- establishing the modalities and procedures to accept, allow and facilitate the conduct of an on-site inspection.

<sup>19</sup> Protocol III.1. Such notification shall be provided in advance, if possible, and include details on location, time, quantity and type of explosive used, as well as on the configuration and intended purpose of the blast.

<sup>20</sup> See further details in: Preparatory Commission for the CTBTO, *Commentary on National Implementation Measures for On-Site Inspections under the CTBT*.

### **3.11.1 Role of the National Authority in on-site inspections**

It is important to clearly identify, by decree or regulation, the authorities who will be competent to coordinate all matters relative to on-site inspections, with a view to securing the effective and timely conduct of these inspections as provided in the Treaty and the CTBT Protocol.

Even in States with a monist legal system, where the CTBT has been automatically incorporated into national law and even taking precedence, the designation of a competent authority (or the distribution of the corresponding responsibilities among various authorities, as the case may be) might be necessary to ensure timely compliance with the State's obligations. Although the CTBT provisions are in principle self-executing in a monist system, the strict time limits established in the Treaty for on-site inspections will require national measures.<sup>21</sup>

### **3.11.2 Standing arrangements**

The Treaty requires the CTBTO to conclude standing arrangements with each State Party so that relevant preliminary preparations will be permanently in place, well in advance of any eventual on-site inspection. These standing arrangements contribute to the compliance with the time limits<sup>22</sup> set out in the Treaty for the arrival of the inspection team in the territory of the Inspected State Party and initiate inspection activities. Accordingly, where necessary, a State may need to adopt measures to enable it to comply with the following obligations:

- designation by the State of inspectors and inspection assistants as part of the list maintained by the Technical Secretariat, to be submitted to the CTBTO no later than 30 days after entry into force of the Treaty, and any follow-up action in respect thereof (granting of visas, nomination, refusal, etc.);
- recognition of the privileges and immunities granted by the Treaty to the inspectors and inspector assistants and to any observers when conducting an on-site inspection in the territory of the State;<sup>23</sup>
- designation of locations for points of entry of the inspection team, to be submitted to the CTBTO no later than 30 days after entry into force of the Treaty;
- issuance of a standing diplomatic clearance number for non-scheduled aircraft transporting an inspection team and equipment, to be submitted to the CTBTO no later than 30 days after entry into force of the Treaty;
- making available equipment for use during on-site inspections pursuant to the CTBTO approved list of equipment, as applicable.

### **3.11.3 Obligations of the Inspected State Party**

National legislation may, if deemed necessary, refer to the obligations of the Inspected State Party during an on-site inspection. Those obligations are, to:

- acknowledge receipt of the notification of inspection by the Organization;
- accept the conduct of an on-site inspection;

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<sup>21</sup> This was one of the conclusions of the 2011 Pilot Workshop on Implementing Legislation for the CTBT, Vienna, 1-5 November 2011.

<sup>22</sup> Given the short time limits granted to the inspection team to arrive at the point of entry of the Inspected State Party (no less than 3 hours before the scheduled departure of the Inspection Team), travel to the Inspection Area (within 36 hours from the Point of Entry) and initiate the inspection activities (within 72 hours after arrival at the point of entry), the national implementing measures required for these provisions may be similar to the measures adopted by States to allow the speedy entry of persons and equipment for international disaster relief efforts.

<sup>23</sup> See Section 3.12.2 below.

- ensure the immediate entry of the inspection team and equipment, provide and arrange for the amenities necessary for the inspection team, and ensure its safe conduct during the period of inspection;
- grant the inspection team access to the inspection area;
- allow inspection activities in the inspection area;
- facilitate the conduct of on-site inspections by assisting the inspection team, collaborating with its tasks and liaising with other national entities for all relevant purposes;
- appoint a point of contact to liaise with the inspection team;
- provide the inspection team with the necessary services and ensure their safe and secure transportation during the on-site inspection;
- organize information meetings with the inspection team;
- facilitate clarifications in connection with ambiguities that may arise during the inspection;
- facilitate the exit of the inspection team and ensure their safe and secure transportation to the exit point.

### 3.11.4 Inspection powers

The Treaty specifies the powers that the inspection team and observers may exercise during the on-site inspection. These could be specified in the legislation, if so required, to facilitate and ensure that the inspection proceeds smoothly. Such legislation would ideally provide broad authority to undertake inspection activities in accordance with the Treaty, the inspection mandate and the CTBTO *On-site Inspection Operational Manual*. A clause granting inspection powers may be of a general nature or specify in more detail the rights of the inspection team.

The powers of the inspection team during an on-site inspection may be summarized as follows:

- determine how the inspection will proceed, consistent with the Treaty, the inspection mandate and the CTBTO *On-site Inspection Operational Manual*, and taking into account any steps taken by the State consistent with the Treaty provisions on managed access;<sup>24</sup>
- modify the Inspection Plan, as necessary, to ensure the effective execution of the inspection, taking into account the recommendations and suggested modifications by the State;<sup>25</sup>
- request clarifications in connection with ambiguities that may arise during the inspection;<sup>26</sup>
- have access within the inspection area for the sole purpose of determining facts relevant to the purpose of the inspection;<sup>27</sup>
- move unimpeded within the inspection area to carry out inspection activities in accordance with the Treaty;<sup>28</sup>
- conduct overflights over the inspection area;<sup>29</sup>
- communicate with each other and with the Technical Secretariat, using their own duly certified and approved equipment;<sup>30</sup>
- collect, handle, analyse and remove samples from the inspection area;<sup>31</sup>
- bring and use equipment approved in accordance with the relevant provisions of the CTBT Protocol;<sup>32</sup>

<sup>24</sup> Protocol II.60 a)

<sup>25</sup> Protocol II.60 b) and c)

<sup>26</sup> Protocol II.60 d), 61 g)

<sup>27</sup> Treaty IV.57 c)

<sup>28</sup> Treaty IV.57 e)

<sup>29</sup> Protocol II.71

<sup>30</sup> Protocol II.62

<sup>31</sup> Protocol II.97

<sup>32</sup> Protocol II.36 a), 40, 42 j) and 50

- transit buildings and other structures housing the entrance to mines, other excavations or caverns of large volume not otherwise accessible;<sup>33</sup>
- following up on approval by the CTBTO Executive Council to extend the duration of the inspection beyond 25 days and 60 days;<sup>34</sup>
- have access to buildings and other structures within the inspection area if the inspection team demonstrates credibly that access to buildings and other structures is necessary to fulfil the inspection mandate and the necessary activities authorized in the mandate could not be carried out from the outside;<sup>35</sup>
- drill to obtain radioactive samples, after approval by the CTBTO Executive Council.<sup>36</sup>

### **3.11.5 Observers and national representatives**

Article IV.61 of the Treaty provides that, subject to acceptance by the Inspected State Party, up to a maximum of three observers from the State(s) requesting the inspection may be permitted to accompany the on-site inspection team. Pursuant to Part II, paragraph 61(c), of the CTBT Protocol, national representatives from the Inspected State Party may accompany the inspection team.

According to available legislation examples, the following elements may be taken into account for the implementation of these provisions:

- recognition of privileges and immunities of the observers, in particular for the issuance of visas at short notice;
- identification of officials who may accompany the inspection team; for example, members of the police or armed forces or other public security officers;
- assignment of functions of assistance, liaison and/or exercise of police forces to national representatives;
- bestowal of investigative powers to national representatives in addition to the inspection powers under the Treaty, such as examining documents, interviewing persons or carry out any act necessary to conduct an on-site inspection in the State's territory.

### **3.11.6 Access to the Inspection Area**

In order to ensure access to the Inspection Area (as specified in the Inspection Mandate issued by the CTBTO Director-General), legislative measures may be necessary to compel the occupier(s) of, and any other person(s) present in, the Inspection Area to cooperate with, and support, the inspection team in carrying out its functions. In particular, such support will include: a briefing on the Inspection Area; operational and administrative arrangements for the smooth conduct of the inspection; provision of evidence; and participation and cooperation in the clarification of ambiguities. For this purpose the legislation could: (i) grant the competent authority or the national representative(s) the power to request information and/or cooperation from the occupier and any person(s) present in the Inspection Area; and/or (ii) establish enforcement measures, such as use of public security forces or imposing a fine or penalty on a person who refuses to cooperate or who obstructs or deceives an inspector or national escort.

### **3.11.7 Searches and seizures**

Depending on the constitutional requirements of a State Party, inspection activities, in particular inspection of private or government property or the seizure of evidentiary material, may require the authorization of a judge. In this case the legislation should make appropriate provision for obtaining

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<sup>33</sup> Protocol II.90

<sup>34</sup> Treaty IV.47 and 49; Protocol II.4

<sup>35</sup> Treaty IV.56 and 57; Protocol II.90 and 91

<sup>36</sup> Protocol II.69 h) and 70

such authorization in advance of or during an eventual inspection, bearing in mind the State's obligation under the Treaty to facilitate on-site inspections and to provide timely access to the Inspection Area for the inspection team. Some of the elements in the legislation include:

- a fast-track procedure in lieu of the normal procedures for obtaining a search warrant, so as to avoid delaying the entry of the inspection team into the Inspection Area and creating a risk that the objective of the inspection would be frustrated;
- decision powers to the National Authority or national escorts on this issue;
- authorizing a national inspector to enter premises without a judicial order where access has been denied and there is a risk of loss or destruction of evidentiary material;
- imposing a fine or penalty on a person who refuses to cooperate or who obstructs or deceives an inspector or national escort.

## **3.12 Privileges and immunities**

### **3.12.1 General grant of privileges and immunities**

Pursuant to Article II, paragraphs 54 and 55, of the Treaty, the CTBTO, delegates of States Parties, together with their alternates and advisers, representatives of members elected to the Executive Council, together with their alternates and advisers, the Director-General, the inspectors, the inspection assistants and the members of the staff of the CTBTO shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

Article II, paragraph 56, foresees that the legal capacity, privileges and immunities shall be defined in agreements between the CTBTO and States Parties which shall be approved by the Conference of the States Parties at its first session.<sup>37</sup> It is expected that they will follow the customary privileges and immunities stipulated in the 1946 Convention on the Privileges and Immunities of the United Nations and that the standing as an international organization and legal capacity of the CTBTO will be recognized.

In many States national legislation granting privileges and immunities to international organizations and its officials is already in place. In such a case it would suffice to amend the existing legislation in order to extend it to the CTBTO and the officials referred to in Article II, paragraph 55, of the Treaty and to identify the specific privileges and immunities that shall apply during on-site inspections pursuant to Part II of the CTBT Protocol. Appropriate enabling provisions could be included in the amendment to such legislation. Another possibility would be to explicitly specify the requisite privileges and immunities in the legislation.

### **3.12.2 Privileges and immunities during on-site inspections**

In addition to that general reference, the Treaty explicitly specifies the privileges and immunities to be granted for the purpose of on-site inspections. During the conduct of on-site inspections, the Director-General, inspectors, inspection assistants and members of the staff of the Technical Secretariat shall enjoy the additional privileges and immunities set out in Part II, paragraphs 26 to 30, of the CTBT Protocol. These provisions declare certain clauses of the 1961 Vienna Convention on Diplomatic Relations to be applicable. Observers shall be accorded the same privileges and immunities as the inspection team except for inviolability of samples and approved equipment.<sup>38</sup>

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<sup>37</sup> Treaty II.26 h) and i).

<sup>38</sup> Protocol II. 31 and 27 d)

### **3.13 Confidentiality of data**

There are two main elements regarding confidentiality from the perspective of national legislation:

- natural and legal persons having access to information and data obtained pursuant to the CTBT shall comply with the provisions contained in the Treaty and related decisions by the CTBTO for the protection of confidentiality of information. This applies to the National Authority and other national institutions and their representatives involved in implementing the Treaty;
- the National Authority and other national institutions and their representatives involved in implementing the Treaty will have to communicate information and data among themselves or to the CTBTO for the purpose of the Treaty. There may be the need to provide authority to do so. The National Authority will also receive data from the CTBTO. It would be useful to specify that such information and data may be transmitted to other authorities or private entities in so far as this is required to enable them to monitor compliance with the Treaty or prosecute the relevant criminal offences.

To enable enforcement measures in the case of a failure to comply with confidentiality requirements, fines or penalty provisions could be included in the legislation.

### **3.14 Executive powers**

In accordance with constitutional requirements, the Government, the National Authority or another entity of a State Party would normally be given the powers necessary for implementing the Treaty, the national legislation, as well as subsidiary measures promulgated, such as regulations, resolutions or related administrative decisions.

Such powers could, in accordance with the legislative requirements of the State, be granted pursuant to a general authority provided for in the legislation. Alternatively, powers could be granted in specific terms in connection with specific elements of the legislation, such as, inter alia, those related to administrative procedures for conducting on-site inspections, acceptance of an on-site inspection, designation of facilities as IMS stations, and recognition of privileges and immunities. The National Authority could be given executive powers if a centralized structure has been followed.<sup>39</sup>

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<sup>39</sup> See Section 3.7 above.

## Guide to CTBT National Implementation Measures

# 4. Approaches for CTBT national implementing legislation

### 4.1 Introduction

Each State must determine, in accordance with its constitutional processes, the legislative steps that need to be taken to give direct internal effect to its international obligations under the Treaty. A review of CTBT implementing legislation already adopted by States<sup>40</sup> shows that the nature and extent of legislative measures that need to be taken to implement the CTBT may vary widely from country to country, depending on the legal system, legal culture and internal structure of the State.

In some cases it might merely be a matter of ascertaining that existing national legislation already fulfils some or all of the requirements set out in the Treaty or that some of the Treaty provisions have become automatically applicable at the national level upon ratification of the Treaty. In other cases, existing legislation may need to be amended or supplemented, or a new law may need to be passed. Furthermore, a statute may not always be necessary: in some cases it may suffice that the executive branch promulgates the necessary complementary ordinances or regulations under its own authority.

As different as these approaches may be, it is clear that in each State at least some administrative, if not legislative, measures will be necessary to implement the Treaty obligations. This chapter provides an overview of the main legislative approaches that have been taken so far by States.

### 4.2 Overview of approaches

#### Comprehensive Act to implement the CTBT

In some jurisdictions it may be necessary to incorporate by statute most of the elements discussed in Chapter 3 above in order to make the respective obligations enforceable at the national level. In this case a comprehensive implementation act will need to be adopted. Model provisions for a comprehensive implementation act are contained in Annex 1 to this *Guide*.

#### Framework Act to implement the CTBT

In some cases an implementing statute for the CTBT may consist of only the necessary basic framework for internal implementation as “enabling legislation.” Such a statute would authorize the promulgation of subsidiary regulations or ordinances establishing the procedures for implementation of the Treaty. Acts of this nature are often adopted by parliament upon ratification where the national system requires that implementing legislation be prepared in advance of, and submitted for approval

<sup>40</sup> The CTBT Legislation Database is available on the CTBTO website.

upon, ratification of the Treaty. A Model Framework Act to Implement the CTBT is provided in Annex 2 to this *Guide*.

### **Amendment to the Penal Code**

In many jurisdictions the prohibition of nuclear explosions may already exist, but national provisions enacted before the adoption of the CTBT may not duly reflect the comprehensive prohibition established by the Treaty. Some States have the prohibition explicitly in their Constitution but may lack provisions making it an offence with specific penalties. Furthermore, in many countries there may be related offences pertaining to nuclear terrorism, release of radioactivity or environmental protection, but they may not make a direct reference to nuclear explosions. In other cases, the extraterritorial scope of the prohibition may be lacking. For these reasons, the sole aspect that may require legislative action is the amendment of the criminal code or relevant statutory provisions in order to extend the scope to encompass the comprehensive prohibition set out in the CTBT. A model act for amending the Criminal Code is provided in Annex 3.

### **National Authority Decree**

Under Article III (4) of the CTBT, each State Party is required to designate a National Authority as national focal point for liaison with other States Parties and the Organization. Depending on the legal system of each State, this designation will be made by statute, regulations or administrative decision of a competent authority. National measures adopted by States show that in some cases the State may consider it appropriate to define the functions of the National Authority in the statute, regulations or decision in order to facilitate its coordination role at the national level. Annex 4 contains a model decree for the creation or designation of the National Authority.

## Guide to CTBT National Implementation Measures

# 5. The CTBT in the context of other international instruments

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### 5.1 Introduction

The CTBT forms part of a number of instruments of universal or regional scope that have been adopted in the fields of nuclear counter-terrorism, non-proliferation and disarmament. When ratifying the CTBT or adopting legislative or administrative measures to implement it, a State may wish to look at such other instruments to which it is a party, to place its respective obligations in a more general context and, eventually, to avoid overlaps and ensure consistency of legislative provisions.

### 5.2 Relevant instruments

#### **Treaty on the Non-Proliferation of Nuclear Weapons [NPT], 1970**

The NPT was negotiated in the mid-1960s, completed in 1968 and entered into force 1970. It aims to: (i) prevent the spread of nuclear weapons and weapons technology; (ii) foster the peaceful uses of nuclear energy; and (iii) further the goal of nuclear disarmament.

Nuclear weapon States undertake not to transfer nuclear weapons or other nuclear explosive devices to any Non-nuclear weapon State, while Non-nuclear weapon States undertake not to receive the transfer or control, manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices<sup>41</sup> and to conclude safeguards agreements with the IAEA, which has the mandate to administer and establish safeguards under Article III.A.5 of its Statute.

The fundamental objective of safeguards is to help ensure that nuclear material is not diverted for use in the production of nuclear weapons and nuclear explosive devices, safeguards being the primary means of verifying compliance by States with undertakings not to use safeguarded items for unauthorized purposes.

#### **Convention on the Physical Protection of Nuclear Material [CPPNM], 1980, and its amendment, 2005**

The CPPNM was adopted on 26 October 1979 and entered into force on 8 February 2007. It is the first international instrument to regulate specifically international transport of nuclear material. The

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<sup>41</sup> Article II NPT: “Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”

Convention uniquely combines elements of non-proliferation, nuclear safety and nuclear security. Its objectives are: to establish and define levels of physical protection required to be applied to nuclear material used for peaceful purposes while in international nuclear transport. It also sets forth provisions of criminal law and procedure.

An amendment to the CPPNM was adopted on 8 July 2005. It will enter into force after ratification by two thirds of the States Parties to the CPPNM. The purpose of the amendment is to update the CPPNM and render it more comprehensive, in order “*to achieve and maintain worldwide effective physical protection of nuclear material and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; and to facilitate co-operation among States Parties to those ends*”.<sup>42</sup> In the meantime, many of its provisions are applied in accordance with the non-binding guidelines issued as the IAEA Safety Standards.

### **United Nations Security Council Resolution 1540, 2004**

Resolution 1540 adopted in 2004 requires all States to adopt and implement legislation that prohibits non-state actors to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their delivery systems, in particular for terrorism purposes, as well as any attempt to carry out, participate in, support or finance any of these activities.

Although Resolution 1540 does not spell out the measures required to be adopted by States, an appropriate and effective implementing legislation will require criminalizing those activities and imposing sanctions accordingly. Among the appropriate measures would be legislation prohibiting non-State actors from carrying out a nuclear explosion and the acts ancillary thereto.

### **International Convention for the Suppression of Acts of Nuclear Terrorism [ICSANT], 2005**

This Convention was adopted on 13 April 2005, opened for signature on 14 September 2005 and entered into force on 7 July 2007. It addresses the unlawful possession of or use of nuclear devices or materials by non-State actors in order to enhance international cooperation among States in adopting effective practical measures for the prevention, prosecution and punishment of acts of nuclear terrorism.

### **Nuclear-Weapon-Free Zone treaties**

Nuclear-Weapon-Free-Zone (NWFZ) treaties establish geographical areas where the testing, production, use and stationing of such weapons is prohibited. NWFZs go beyond the provisions of the NPT in that research on and stationing of nuclear weapons and the dumping of radioactive waste can also be prohibited and the physical protection of nuclear materials and safety of nuclear facilities can be required.

The main regional NWFZ instruments are the following: (1) the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean [Treaty of Tlatelolco], 1967; (2) the South Pacific Nuclear Weapon Free Zone Treaty [Treaty of Rarotonga], 1985; (3) the Treaty on the Southeast Asia Nuclear Weapon-Free Zone [Treaty of Bangkok], 1995; (4) African Nuclear Weapon-Free Zone [Treaty of Pelindaba], 1996; and (5) Central Asian Nuclear Weapon-Free Zone Treaty, [Treaty of Semipalatinsk], 2006.

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<sup>42</sup> Article 1 bis CPPNM

### 5.3 Overview of obligations

The above-mentioned instruments set forth different types of obligations that States Parties may need to transpose into national law at or after ratification.

With the aim to provide a general overview of the obligations that may require transposition into domestic law and to facilitate cross-reference among the different instruments, the respective obligations will be summarized pursuant to the following categorization:

- basic undertakings;
- obligations related to the participation in treaty bodies or the designation of points of contact, which will be referred to as “institutional obligations”;
- obligations to regulate nuclear activity, which will be referred to as “regulatory obligations”;
- obligations related to international verification measures, which will be referred to as “verification obligations”;
- obligations to establish criminal sanctions for certain activities, which will be referred to as “criminalization obligations”; and
- obligations to cooperate with other States Parties and provide mutual legal assistance in criminal matters, which will be referred to as “mutual assistance obligations”.

#### 5.3.1 Basic undertakings

<b>NPT</b>	<ul style="list-style-type: none"> <li>• Refrain from transferring nuclear weapons or assisting others to manufacture them (NWS)</li> <li>• Refrain from acquiring or manufacturing nuclear weapons (NNWS)</li> <li>• Refrain from providing to others material or equipment not subject to safeguards</li> <li>• Pursue disarmament negotiations in good faith</li> <li>• Pursue negotiations on a treaty on general and complete disarmament under strict and effective international control</li> </ul>
<b>CPPNM</b>	<ul style="list-style-type: none"> <li>• Ensure protection of nuclear material during international transport</li> <li>• Refrain from importing or exporting unprotected material</li> </ul>
<b>CTBT</b>	<ul style="list-style-type: none"> <li>• Refrain from carrying out nuclear explosions</li> <li>• Prohibit and prevent nuclear explosions</li> <li>• Refrain from causing, encouraging or participating in nuclear explosions</li> </ul>
<b>ICSANT</b>	<ul style="list-style-type: none"> <li>• Adopt necessary measures to establish criminal offences related to unlawful possession, use, attempt and threat to use nuclear or radioactive material or to damage a nuclear facility</li> </ul>
<b>NWFZ treaties<sup>43</sup></b>	<ul style="list-style-type: none"> <li>• Refrain from research,<sup>44</sup> development, manufacture, use, production, testing, acquisition, receipt, storage, stockpiling, transport, control, installation or deployment of nuclear weapons and nuclear explosive devices<sup>45</sup>, and from encouraging the above</li> <li>• Refrain from providing fissile material to NWS or NNWS unless under IAEA safeguards<sup>46</sup></li> <li>• Refrain from radioactive dumping or storage<sup>47</sup></li> <li>• Reversal of nuclear capabilities and disarmament<sup>48</sup></li> <li>• Refrain from armed attack on nuclear installations<sup>49</sup></li> </ul>

<sup>43</sup> General listing of terms and undertakings contained in the different NWFZ treaties. For specific wording of each NWFZ treaty, please consult the relevant instrument.

<sup>44</sup> Only the Treaty of Pelindaba prohibits research on nuclear weapons.

<sup>45</sup> The Treaty of Tlatelolco and the Treaty of Bangkok do not use the term “nuclear explosive devices”.

<sup>46</sup> Treaty of Rarotonga, Treaty of Bangkok, Central Asian Treaty.

<sup>47</sup> Treaty of Rarotonga, Treaty of Bangkok.

<sup>48</sup> Treaty of Pelindaba.

### 5.3.2 Institutional obligations

<b>CPPNM</b>	<ul style="list-style-type: none"> <li>Identify and inform the central authority and point of contact responsible for physical protection of nuclear material and for coordinating recovery and response operations</li> <li>Establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework</li> </ul>
<b>CTBT</b>	<ul style="list-style-type: none"> <li>Membership obligations resulting from the establishment of a treaty implementing body (CTBTO): contributions, privileges and immunities</li> <li>Designate or set up a National Authority to serve as the national focal point for liaison with the Organization and with other States Parties</li> </ul>
<b>ICSANT</b>	<ul style="list-style-type: none"> <li>Inform the Secretary General of the United Nations of their competent authorities and liaison points responsible for sending and receiving information</li> </ul>
<b>NWFZ Treaties</b>	<ul style="list-style-type: none"> <li>Membership obligations resulting from the establishment of a treaty implementing body<sup>50</sup> or commission<sup>51</sup></li> </ul>

### 5.3.3 Regulatory obligations

<b>IAEA Safeguards</b>	<ul style="list-style-type: none"> <li>Establish a system of accounting for and control of all nuclear material subject to safeguards</li> </ul>
<b>CPPNM</b>	<ul style="list-style-type: none"> <li>Apply within the framework of its national law the levels of physical protection described in Annex I to transport of nuclear material</li> </ul>
<b>A/CPPNM</b>	<ul style="list-style-type: none"> <li>Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and to nuclear facilities under its jurisdiction</li> <li>Establish and maintain a legislative and regulatory framework to govern physical protection</li> </ul>
<b>NWFZ treaties</b>	<ul style="list-style-type: none"> <li>Physical protection of nuclear material<sup>52</sup></li> <li>Export controls<sup>53</sup></li> </ul>

### 5.3.4 Verification obligations

<b>NPT</b>	<ul style="list-style-type: none"> <li>Accept IAEA safeguards and conclude safeguards agreements with the IAEA</li> </ul>
<b>IAEA Safeguards</b>	<ul style="list-style-type: none"> <li>Reporting system</li> <li>Inspections by IAEA inspectors</li> </ul>
<b>CTBT</b>	<ul style="list-style-type: none"> <li>Establish and operate monitoring facilities</li> <li>Consultation and clarification process</li> <li>On-site inspections</li> <li>Confidence-building measures</li> </ul>
<b>NWFZ treaties</b>	<ul style="list-style-type: none"> <li>Exchange of reports</li> <li>Accept IAEA safeguards and conclude safeguards agreements with the IAEA<sup>54</sup></li> <li>Special inspections,<sup>55</sup> fact-finding missions<sup>56</sup></li> </ul>

<sup>49</sup> Treaty of Pelindaba.

<sup>50</sup> Treaty of Tlatelolco: OPANAL

<sup>51</sup> Treaty of Bangkok: Commission for the Southeast Asia Nuclear Weapon-Free Zone; Treaty of Pelindaba: African Commission of Nuclear Energy.

<sup>52</sup> Treaty of Pelindaba, Central Asian Treaty.

<sup>53</sup> Central Asian Treaty.

<sup>54</sup> The Central Asian Treaty also requires the conclusion of the Additional Protocol with the IAEA.

<sup>55</sup> Treaty of Rarotonga.

<sup>56</sup> Treaty of Bangkok.

### 5.3.5 Criminalization obligations

<b>CPPNM</b>	<ul style="list-style-type: none"> <li>• Offences related to unlawful use, robbery, etc., of nuclear material or threat of use</li> </ul>
<b>A/CPPNM</b>	<ul style="list-style-type: none"> <li>• Offences related to acts directed against a nuclear facility</li> </ul>
<b>CTBT</b>	<ul style="list-style-type: none"> <li>• Prohibit and prevent nuclear explosions</li> </ul>
<b>ICSANT</b>	<ul style="list-style-type: none"> <li>• Offences related to unlawful possession, use, attempt and threat to use nuclear or radioactive material or to damage a nuclear facility with a criminal intent</li> </ul>

### 5.3.6 Mutual assistance obligations

<b>CPPNM</b>	<ul style="list-style-type: none"> <li>• Cooperate in the recovery and protection of nuclear material</li> <li>• Cooperate in the design, maintenance and improvement of systems of physical protection of nuclear material</li> <li>• Cooperate in connection with criminal proceedings</li> </ul>
<b>CTBT</b>	<ul style="list-style-type: none"> <li>• Cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of obligations</li> </ul>
<b>ICSANT</b>	<ul style="list-style-type: none"> <li>• Cooperate with nuclear terrorism investigations and prosecution, through information sharing, extradition and the transfer of detainees</li> </ul>

## 5.4 Significance

The common ground of both global and regional instruments is their objective, which is directly or indirectly linked to nuclear security, non-proliferation of nuclear weapons and/or nuclear disarmament. Nuclear weapons, nuclear material, radioactive material, nuclear facilities, nuclear devices, nuclear explosions, etc., are covered therein as determining elements of prohibited or regulated activities.

Beyond this common ground, the scope of obligations necessarily varies, being as they are independent treaties drafted at different times and with distinct purposes. At the same time, certain obligations may be similar and their implementation will allow the compliance with commitments in different instruments, i.e. the obligation to conclude safeguards agreements appears in both the NPT and NWFZ treaties, the physical protection of nuclear material is required in both the CPPNM and some NWFZ treaties.

In relation to the CTBT, it may be easily appreciated that the criminalization of the prohibition of conducting a nuclear explosion serves to fulfil obligations assumed under several other international and regional instruments, and may already have been incorporated at the national level pursuant to such instruments.

It is thus feasible for a State party to those treaties to consider establishing criminal offences covering prohibited activities under several instruments, notably UNSC Resolution 1540, the International Convention for the Suppression of Acts of Nuclear Terrorism, the CPPNM and its amendment,<sup>57</sup> and the CTBT.

In relation to mutual legal assistance, it may be noted that the CTBT does not specify in detail the extent of the obligation to provide legal assistance. However, a State that has adopted legislation in order to implement the above mentioned instruments, which do contain specific requirements, could consider extending these provisions to CTBT-related offences in order to have a coherent system for crimes arising from international instruments. These provisions may relate to investigations

<sup>57</sup> See *IAEA Handbook on Nuclear Law*, Volume II, for model provisions covering the offences established by the CPPNM and the ICSANT.

(whistleblower and witness protection, preventive measures, seizure), international cooperation (exchange of information, mutual legal assistance) and extradition.<sup>58</sup>

Finally, in relation to the CTBT verification regime, it may be appreciated that the element of inspections is a common element of international verification. Lessons may be learned from the national implementation of inspection mechanisms under other treaties when identifying and adopting the legislative or administrative measures that may be required to make effective the respective on-site inspection obligations under national law.

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<sup>58</sup> See *UNODC Model Legislative Provisions against Terrorism*.

## Guide to CTBT National Implementation Measures

### 6. Measures necessary during the preparatory phase

#### 6.1 Mandate of the Preparatory Commission for the CTBTO

The CTBT will enter into force 180 days after ratification by the 44 States listed in Annex 2 of the Treaty.<sup>59</sup> Pursuant to Article IV.1, the verification regime established by the CTBT to monitor compliance with the Treaty shall be capable of meeting the verification requirements of the Treaty at entry into force. The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (Preparatory Commission) was established pursuant to the Resolution adopted by CTBT States Signatories on 19 November 1996 to create and provisionally operate the CTBT verification regime, including the IMS and the IDC, in preparation for entry into force of the CTBT.

#### 6.2 Measures

Due to the extensive activities required to be taken by the Preparatory Commission and States Signatories to establish and provisionally operate the IMS and IDC during the preparatory phase, some States have found that they needed to take measures to enable cooperation with the Preparatory Commission before entry into force. Legislation was adopted and brought into force in those jurisdictions to:

- establish or designate the National Authority;
- recognize the standing and legal capacity of the Preparatory Commission as an international organization;<sup>60</sup>
- authorize the negotiation and conclusion of facility agreements or arrangements with the Preparatory Commission;<sup>61</sup>
- authorize and enable the conduct of activities pursuant to the Resolution Establishing the Preparatory Commission, including cooperation between the National Authority and the Preparatory Commission;
- allocate budgetary and personnel resources to participate in the Commission and its activities; and
- grant privileges and immunities to the Preparatory Commission, delegates, the Executive Secretary, staff and experts.

<sup>59</sup> Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Vietnam, Zaire.

<sup>60</sup> Text of the Resolution Establishing the Preparatory Commission for the CTBTO, paragraphs 7 and 22.

<sup>61</sup> Text of the Resolution Establishing the Preparatory Commission for the CTBTO, paragraph 14.

### **6.3 Cooperation**

A review of CTBT implementing legislation adopted by States shows that in some cases the provisions that may be needed to ensure cooperation with the Preparatory Commission have been made applicable with immediate effect. In these cases, a distinction has been established between: (a) provisions of the legislation that will take immediate effect upon adoption of the statute; and (b) the provisions that will take effect only upon entry into force of the Treaty.

Furthermore, during the preparatory phase, most States Signatories set up an interim National Authority because of the need to cooperate with the Preparatory Commission in establishing the verification regime. Section 6.4 below comments on model provisions regulating the collaboration with the Preparatory Commission during the preparatory phase. Annexes 1 and 2 to this *Guide* include model provisions on commencement date of the legislation and on the authorization to cooperate with the Preparatory Commission.

### **6.4 Privileges and immunities**

The Preparatory Commission is an intergovernmental international organization which was established in order to carry out preparations for the effective implementation of the CTBT and particularly to establish the monitoring system for the Treaty prior to its entry into force. The status of the Commission is set out in its founding document, the Text on the Establishment of a Preparatory Commission for the CTBTO, which was annexed to the Resolution Establishing the Preparatory Commission for the CTBTO, adopted by the States Signatories of the CTBT in New York on 19 November 1996. Paragraph 7 of the Text expressly provides that the Preparatory Commission “shall have standing as an international organization, authority to negotiate and enter into agreements and such other legal capacity as necessary for the exercise of its functions and fulfilment of its purpose”. Paragraph 22 of the Text further provides that the host country shall accord the Preparatory Commission such legal status and privileges and immunities as are necessary for the fulfilment of its object and purpose “as an international organization”, as well as to allow its staff to exercise their functions independently.<sup>62</sup>

As the Preparatory Commission is an international organization separate and independent from the future CTBTO, in many States, in particular those which are hosting an IMS facility, it has been necessary to issue, in advance of entry into force of the CTBT, an order or resolution pursuant to the relevant national legislation in order to recognize the legal personality of the Preparatory Commission and accord to it the privileges and immunities needed for the performance of its functions in the jurisdiction of that State. A model resolution on privileges and immunities of the Preparatory Commission is provided in Annex 5.

### **6.5 Prohibiting nuclear explosions during the preparatory phase**

For policy reasons, or to give effect to other parallel multilateral obligations, a number of States have decided to adopt the national normative constraints against nuclear testing with immediate effect, in advance of the Treaty’s entry into force.<sup>63</sup> Some States, at the time of ratifying the CTBT, amended their penal codes with immediate effect while others already had such legislation in place for some time, for example, to implement their obligations under a regional nuclear weapon-free-zone treaty.

The creation of explicit criminal offences for carrying out a nuclear explosion, with penalties appropriate to the gravity of the crime, together with measures aimed at preventing the acquisition of enabling materials or devices, act to deter persons from undertaking such activity in the State’s jurisdiction and prevent the State’s territory from becoming a haven for those who might be interested in pursuing such endeavours.

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<sup>62</sup> Text of the Resolution Establishing the Preparatory Commission for CTBTO, paragraphs 7, 20, 21 and 22.

<sup>63</sup> See Chapter 5 of this *Guide*.

Since 2004, the adoption and enforcement of effective laws that prohibit the manufacture, acquisition, possession, development, transport, transference or use of nuclear, chemical or biological weapons and their delivery systems, as well as the establishment of a range of domestic controls aimed at preventing proliferation of these weapons among non-State actors, has become the obligation of all States under United Nations Security Council Resolution 1540 (2004). Examples of such legislation are available in the CTBTO Legislation Database on the CTBTO website.

## Guide to CTBT National Implementation Measures

# 7. Legal assistance programmes and reference material

### 7.1 Preparatory Commission for the CTBTO, Legal Assistance

Paragraph 18 of the Annex to the Resolution Establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization provides that the Preparatory Commission shall:

“(a) facilitate the exchange of information between States Signatories concerning legal and administrative measures for the implementation of the Treaty and, if requested by States Signatories, give advice and assistance to them on these matters;

(b) follow the ratification process and, if requested by States Signatories, provide them with legal and technical information and advice about the Treaty in order to facilitate its ratification process; and

(c) prepare such studies, reports and records as it deems necessary.”

Developed under that mandate, the programme of legal assistance of the Preparatory Commission provides States with information, documentation and advice regarding the implementation of obligations under the CTBT. This includes reference materials, comments on draft legislation and other assistance on a bilateral and confidential basis upon request, as well as presentations in workshops, seminars, training courses and external events.

To assist the Preparatory Commission in developing further its programme of legal assistance, and to facilitate the exchange of information on legal and administrative measures, States are informing the Preparatory Commission of the national implementation measures they have taken and are providing a copy of the legislation adopted for inclusion in the CTBTO Legislation Database.

For further information on the Preparatory Commission’s Legal Assistance Programme:

**Preparatory Commission for the CTBTO**  
**Legal Services Section**  
**Legal and External Relations Division**  
**Vienna International Centre**  
**P.O. Box 1200, A-1400 Vienna**  
**Tel.: (+43-1) 26030-6107**  
**Fax: (+43-1) 26030-5976**  
**Email: [legal.registry@ctbto.org](mailto:legal.registry@ctbto.org)**  
**Website: [www.ctbto.org](http://www.ctbto.org)**

## 7.2 IAEA Legal Assistance

The IAEA provides assistance to its Member States in the establishment of national legal frameworks governing the safe and peaceful uses of nuclear energy in all branches of nuclear law, including nuclear safety, nuclear security, safeguards and liability for nuclear damage. The IAEA legislative assistance programme is implemented through training courses and seminars, bilateral assistance in drafting national laws, training of individuals and reference material. For further information please contact the IAEA Office of Legal Affairs:

**International Atomic Energy Agency**  
**Office of Legal Affairs**  
**Wagramer Strasse 5**  
**A-1400 Vienna**  
**Tel.: (+43-1) 2600-21506**  
**Fax: (+43-1) 2600-29784**  
**Email: [official.mail@iaea.org](mailto:official.mail@iaea.org)**  
**Website: <http://ola.iaea.org>**

## 7.3 UNODC Legal Assistance, Terrorism Prevention Branch

The UNODC Terrorism Prevention Branch provides specialized legal assistance in counter-terrorism to requesting countries, under the framework of its global project on “Strengthening the legal regime against terrorism.” To facilitate the delivery of assistance, the Terrorism Prevention Branch has developed a set of specialized technical tools and substantive publications accessible on their website. For further information please contact the Terrorism Prevention Branch:

**United Nations Office on Drugs and Crime**  
**Terrorism Prevention Branch**  
**Vienna International Centre**  
**P.O. Box 500**  
**A-1400 Vienna**  
**Tel.: (+43-1) 26060-5604**  
**Fax: (+43-1) 26060-5968**  
**Email: [unodc.tpb@unodc.org](mailto:unodc.tpb@unodc.org)**  
**Website <http://www.unodc.org/unodc/en/terrorism/index.html?ref=menuside>**

## 7.4 Legal Assistance with Cybersecurity

An integral component of any national cybersecurity strategy is the adoption of appropriate legislation against the misuse of information and communication technology for criminal or other purposes, including activities intended to affect the integrity of national (or international) critical information infrastructures. As threats can originate anywhere around the globe, the challenges are inherently international in scope and it is desirable to harmonize legislative norms as much as possible to facilitate regional and international cooperation. In the case of so-called “inside-out” or “asymmetric” threats, such as cyber attacks, unforeseen attack vectors may cause significant damage to both public and private infrastructure. This forces a change in security strategies, requiring both Governments and private entities to adopt cooperative frameworks for sharing threat intelligence and pro-actively addressing potential asymmetric threats or enter into public-private partnerships.

In May 2011, the International Communication Union (ITU) and UNODC signed a Memorandum of Understanding to collaborate globally on assisting Member States in mitigating the risks posed by cybercrime with the objective of ensuring an effective crime prevention and criminal justice response,

secure use of information and communication technologies and the protection of the integrity of national (and international) critical information infrastructures. The two organisations work together on technical assistance to be provided to Member States on cybercrime and cybersecurity, making available the necessary expertise and resources to facilitate the establishment of legal measures and legislative frameworks at the national level and to harmonize legislative norms as much as possible to facilitate regional and international cooperation.

**United Nations Office on Drugs and Crime**  
**Focal Point for Cybercrime**  
**Organized Crime Branch**  
**Vienna International Centre**  
**P.O. Box 500**  
**A-1400 Vienna**  
**Tel.: (+43-1) 26060-4084**  
**Email: [unodc.tpb@unodc.org](mailto:unodc.tpb@unodc.org)**  
**Website: <http://www.unodc.org/unodc/organized-crime/emerging-crimes.html#Cybercrime>**

**International Telecommunication Union (ITU)**  
**ICT Applications and Cybersecurity Division (CYB)**  
**Policies and Strategies Department**  
**Bureau for Telecommunication Development**  
**Place des Nations**  
**1211 Geneva 20**  
**Switzerland**  
**Tel.: (+41) 22 730 5825/5429**  
**Fax: (+41) 22 730 5484**  
**Email: [cybmail@itu.int](mailto:cybmail@itu.int)**  
**Website: <http://www.itu.int/ITU-D/cyb>**

## **7.5 International Federation of the Red Cross and Red Crescent (IFRC), Disaster Law Programme**

The IFRC Disaster Law programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. As discussed in Section 3.7.4 above, States may wish to consider a linkage or a role for the CTBT National Authority and IMS data in assisting with the response to a radiological disaster:

**International Federation of Red Cross**  
**and Red Crescent Societies**  
**P.O. Box 372**  
**CH-1211 Geneva 19**  
**Switzerland**  
**Tel.: (+41) 22 730 42 22**  
**Fax: (+41) 22 733 03 95**  
**Email: [idrl@ifrc.org](mailto:idrl@ifrc.org) or [disaster.law@ifrc.org](mailto:disaster.law@ifrc.org)**  
**Website: [www.ifrc.org](http://www.ifrc.org)**

## 7.6 Reference Material

- CTBT Signature and Ratification Guide.  
[http://www.ctbto.org/fileadmin/user\\_upload/pdf/Signature\\_and\\_ratification\\_Guide\\_engilsh\\_15\\_Sept\\_09.pdf](http://www.ctbto.org/fileadmin/user_upload/pdf/Signature_and_ratification_Guide_engilsh_15_Sept_09.pdf)
- Background Information for Parliamentarians on the Comprehensive Nuclear-Test-Ban Treaty (CTBT).  
[http://www.ctbto.org/fileadmin/content/reference/outreach/ctbto\\_guide\\_parliamentarians.pdf](http://www.ctbto.org/fileadmin/content/reference/outreach/ctbto_guide_parliamentarians.pdf)
- National Implementation Measures: Legislation, privileges and immunities and facility agreements. CTBT/PTS/INF.1204 of 21 September 2012.  
[http://www.ctbto.org/fileadmin/user\\_upload/legal/NIM\\_paper\\_English.pdf](http://www.ctbto.org/fileadmin/user_upload/legal/NIM_paper_English.pdf)
- CTBT Legislation Database  
<http://www.ctbto.org/member-states/legal-resouces/>
- CTBT Legislation Questionnaire  
<http://www.ctbto.org/member-states/legal-resouces/>
- IAEA Handbook on Nuclear Law (2003)  
[http://www-pub.iaea.org/MTCD/publications/PDF/Pub1160\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Pub1160_web.pdf)
- IAEA Handbook on Nuclear Law: Implementing Legislation (2010)  
[http://www-pub.iaea.org/MTCD/publications/PDF/Pub1456\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Pub1456_web.pdf)
- UNODC Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (2006)  
[http://www.unodc.org/documents/terrorism/Publications/Guide\\_Legislative\\_Incorporation\\_Implementation/English.pdf](http://www.unodc.org/documents/terrorism/Publications/Guide_Legislative_Incorporation_Implementation/English.pdf)
- UNODC Model Legislative Provisions against Terrorism (2009)  
[https://www.unodc.org/tldb/en/model\\_laws\\_treaties.html](https://www.unodc.org/tldb/en/model_laws_treaties.html)
- UNODC Legislation Database  
<https://www.unodc.org/tldb/>

## Guide to CTBT National Implementation Measures

### ANNEXES: Model legislation

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#### **Annex 1**

#### **Comprehensive Act for Implementing the CTBT**

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  - Section 24 – Commencement

## Preamble

Whereas the Comprehensive Nuclear-Test-Ban Treaty was adopted by the United Nations General Assembly on 10 September 1996 and signed [ratified] by [name of State] on [date of signature or ratification] pursuant to [Government or parliamentary decision];

Whereas the Comprehensive Nuclear-Test-Ban Treaty prohibits nuclear explosions and creates a verification regime to monitor compliance with the obligations under the Treaty;

Whereas [name of State] is required to adopt the necessary measures to implement its obligations under the Comprehensive Nuclear-Test-Ban Treaty;<sup>64</sup>

Whereas pursuant to [national legal basis] legislation [may] [shall] be adopted to implement the obligations assumed by [name of State] under the Comprehensive Nuclear-Test-Ban Treaty.

## Part 1 – Preliminary Provisions

### Section 1 – Definitions

[The terms and expressions appearing in this Act shall have the same meaning as in the Treaty.]

[OR]

[The following terms and expressions shall have the following meaning for the purposes of this Act:

“**Director-General**” means the head of the Technical Secretariat and chief administrative officer of the Technical Secretariat of the Organization.<sup>65</sup>

“**Inspection area**” means the site at which an on-site inspection is conducted pursuant to an inspection mandate issued in accordance with the Treaty.<sup>66</sup>

“**Inspection mandate**” means the document issued by the Director-General for the conduct of an on-site inspection under the Treaty.<sup>67</sup>

“**Inspection team**” means the inspectors and inspection assistants designated by the Director-General in the inspection mandate in accordance with the Treaty for the purpose of conducting an on-site inspection in [name of State].<sup>68</sup>

“**Inspector**” means an individual nominated for designation as an inspector or an inspection assistant in accordance with the Treaty, and so accepted by [name of State], for conducting an on-site inspection as part of an inspection team.<sup>69</sup>

“**International Data Centre**” means the focal point within the Technical Secretariat of the Organization for storage and processing of data received from facilities of the International Monitoring System.<sup>70</sup>

“**International Monitoring System**” means the facilities for seismological monitoring, radionuclide monitoring including certified laboratories, hydroacoustic monitoring, infrasound monitoring and respective means of

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N.B. The roman numerals in the footnotes refer to the articles of the Treaty and the parts of the Protocol, the Arabic numerals to their paragraphs.

<sup>64</sup> Treaty III.1

<sup>65</sup> Treaty II.49

<sup>66</sup> Treaty IV.42, Treaty IV.57 (c); Protocol II.42 (c); Protocol II.3, II.86 to 91

<sup>67</sup> Treaty IV.54; Protocol II.42

<sup>68</sup> Treaty IV.53; Protocol II.14 to 22

<sup>69</sup> Protocol II.14 to 22

<sup>70</sup> Treaty IV.14 (b)

communication, supported by the International Data Centre of the Technical Secretariat of the Organization, established in the Treaty as one of the four elements of the verification regime.

“**Monitoring facilities**” means the facilities comprising the International Monitoring System, as listed in Annex I to the Protocol of the Treaty.<sup>71</sup>

“**National Authority**” means the National Authority [designated] [set up] in [name of State] to serve as national focal point for liaison with the Organization and other States Parties in accordance with the Treaty.<sup>72</sup>

“**National Data Centre**” means the entity designated by [the National Authority] [competent authority] to exchange data with the International Data Centre.

“**National inspector**” means: (a) an individual designated by [the National Authority] [name of competent authority] to assist and accompany the inspection team during the conduct of an on-site inspection in accordance with the Treaty.<sup>73</sup>

“**National monitoring facilities**” means the monitoring facilities of the International Monitoring System hosted by [name of State] in accordance with the Treaty.<sup>71</sup>

“**Observer**” means a person who represents a State Party requesting the conduct of an on-site inspection in [name of State] under the Treaty, and accepted by [name of State] to observe the conduct of an on-site inspection in [name of State].<sup>74</sup>

“**On-site inspection**” means an on-site inspection carried out in accordance with the Treaty to clarify whether a nuclear explosion has been carried out in violation of the Treaty and, to the extent possible, to gather any facts which might assist in identifying any possible violator.<sup>75</sup>

“**Organization**” means the Comprehensive Nuclear-Test-Ban Treaty Organization established by the Treaty.<sup>76</sup>

“**Person**” means a natural or a legal person.

“**Technical Secretariat**” means the Technical Secretariat of the Organization, including the International Data Centre.<sup>77</sup>

“**Treaty**” means the Comprehensive Nuclear-Test-Ban Treaty adopted by the United Nations General Assembly in New York on 10 September 1996 and ratified by [name of State] on [date of ratification], including the Annexes to the Treaty, the Protocol to the Treaty and the Annexes to the Protocol [as amended or changed from time to time in accordance with Article VII of the Treaty].

“**Verification regime**” means the regime established to monitor compliance with the Treaty which consists of four elements:

- (a) the International Monitoring System, supported by the International Data Centre;
- (b) consultation and clarification;
- (c) on-site inspections;
- (d) confidence-building measures.<sup>78</sup>

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<sup>71</sup> This provision may not be necessary if the State does not host any IMS stations or cooperating national facilities (“CNFs”) (Treaty IV.27 and 28). While CNFs may be formally established only after entry into force of the Treaty, during the preparatory phase it has been envisaged that prototype CNFs may participate in cooperative experiments, through a Draft Model Arrangement/Agreement on Prototype Cooperating National Facilities, approved by the Preparatory Commission (CTBT/PC-6/1/Annex I, Appendix IV).

<sup>72</sup> Treaty III.4

<sup>73</sup> Protocol II.61 (c)

<sup>74</sup> Treaty IV.61

<sup>75</sup> Treaty IV.35

<sup>76</sup> Treaty II.1

<sup>77</sup> Treaty II.42 to 53

<sup>78</sup> Treaty IV.1

## Section 2 – Objectives of the Act

**(General)** The purpose of this Act is to fulfil the obligations of [name of State] under the Treaty.

[OR]

**(Specific)** The objectives of this Act are the following:<sup>79</sup>

- (a) to approve the Treaty signed by [name of State] on [date];
- (b) to [enable the implementation of the] [fulfil] obligations of [name of State] under the Treaty;
- (c) to establish criminal sanctions for the authors and accomplices of activities prohibited by the Treaty;
- (d) to adopt measures to ensure the prevention, detection and enforcement of activities prohibited by the Treaty;
- (e) to adopt measures to facilitate the implementation by [name of State] of its obligations in relation to the verification of compliance with the Treaty;
- (f) to adopt measures to ensure the operation of national monitoring facilities hosted by [name of State] under the Treaty;<sup>80 71</sup>
- (g) to facilitate the conduct of on-site inspections under the Treaty in [name of State];
- (h) to [designate] [set up] the National Authority to coordinate all matters related to the implementation of the Treaty.<sup>81</sup>

## Part 2 – Prohibition of Nuclear Explosions

### Section 3 – Prohibited Activities and Criminal Offences<sup>82</sup>

- (1) No person shall
  - (a) carry out a nuclear weapon test explosion or any other nuclear explosion;<sup>83</sup>
  - (b) cause, encourage or in any way participate in the carrying out of a nuclear weapon test explosion or any other nuclear explosion.<sup>84</sup>
- (2) A person who engages in conduct prohibited by Subsection 1 commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.
- (3) A person who participates in the planning or preparation of an offence set forth in this section commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

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<sup>79</sup> If and as applicable.

<sup>80</sup> Treaty IV.3

<sup>81</sup> Treaty III.4

<sup>82</sup> Subsection (1) of this section reproduces Article I of the Treaty. Subsection (2) establishes the penalty for carrying out the activities/conduct prohibited by Subsection (1). For purposes of criminal liability in common law-based jurisdictions, it can be said that Subsection (1) provides the objective element (*actus reus*) of the conduct. In respect to the subjective element (*mens rea*), the question of guilt should be determined by the objective element itself; thus the model draft does not propose a specific intent (or motive), on account of the grave nature of the offence and the extent of the damage to people and the environment in the event of a nuclear explosion, nor does it propose to include any kind of strict liability or negligence; this is left for the legislator to decide. In civil law, it is usually not necessary to prove a subjective element to establish liability. Among the practical considerations to be borne in mind, when determining the level of culpability or whether it is advisable to require specific intent for the prohibited activities in Subsection (1), is that proving such subjective element can be extremely difficult, in the absence of a confession by the suspect. Another consideration is that, in the event of a request for extradition or mutual legal assistance, adding a specific subjective element may obstruct or complicate the process, as generally the conduct should be punishable in both the requesting and the requested State. In Subsections (3) and (4), the draft proposes to criminalize both the attempt to carry out any of the activities in Subsection (1) as well as participation as an accomplice.

<sup>83</sup> Treaty I.1

<sup>84</sup> Treaty I.2

- (4) A person who attempts to commit an offence set forth in this section commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

#### Section 4 – Jurisdiction

- (1) [Name of State] shall have jurisdiction with respect to the offences set forth in Section 3 if they have been attempted or committed: (a) in the territory of [name of State]; (b) on board ships and aircraft registered in [name of State]; or (c) in any other place which are under the jurisdiction or control of [name of State] as recognized by international law.<sup>85</sup>
- (2) [Name of State] shall have jurisdiction with respect to the offences set forth in Section 3 committed outside [name of State] if the offence was attempted or committed by a national of [name of State].<sup>86 87</sup>

#### Section 5 – Proceedings, Mutual Legal Assistance

- (1) The competent authorities of [name of State] shall institute appropriate proceedings to prevent, investigate and prosecute alleged offences under this Act in accordance with the provisions of the [Criminal Code] [applicable laws].

**(Mutual Legal Assistance General)** (2) The competent authorities of [name of State] may collaborate and exchange relevant data with competent foreign authorities and with international organizations, to the extent required for the prevention or prosecution of offences under this Act or comparable foreign rules.<sup>88</sup>

[OR]

**(Mutual Legal Assistance Specific)** (2) The competent authorities [,pursuant to the relevant applicable laws and treaties in force in [name of State],] may collaborate with competent foreign authorities and international organizations in the exchange of information and the provision of mutual legal assistance in relation to the prevention or prosecution of offences under this Act or comparable foreign rules.

- (3) Mutual legal assistance may include:
- (a) taking evidence or statements from persons;
  - (b) assisting in the availability of detained persons or others to give evidence or assist in investigations;
  - (c) effecting service of judicial documents;
  - (d) executing searches or seizures;
  - (e) examining objects and sites;
  - (f) providing information and evidentiary items;
  - (g) Any other form of assistance.<sup>89</sup>

- (4) The offences set forth in this Act shall be extraditable offences under the relevant applicable laws and treaties in force in [name of State].

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<sup>85</sup> Treaty I.1, IV.34; Protocol II.6, 7

<sup>86</sup> The term “national” should also include legal persons located in the territory of the State. If this is not explicitly provided in the State’s criminal legislation, specific wording extending the application of the provisions to legal persons, and regulating their liability and that of the managers or directors, would need to be included in the legislation. For model provisions on Liability of Legal Entities see Section 4 of the UNODC Model Legislative Provisions against Terrorism.

<sup>87</sup> For States that may wish to implement the principle of prosecuting or extraditing (“*aut dedere aut judicare*”) for offences under the CTBT, the following UNODC model provisions may be useful: “*The courts of [Name of State] shall have jurisdiction with respect to offences set forth in this Section committed outside [name of State] if the alleged perpetrator is found on the territory of [name of State] and is not extradited to any State requesting extradition for the same conduct.*”

<sup>88</sup> Treaty III.2

<sup>89</sup> See UNODC Model Law on mutual assistance in criminal matters.

### Part 3 – National Authority

#### Section 6 – Designation of the National Authority

The [name of entity] is hereby designated as the National Authority to serve as national focal point for liaison with the Organization and with States Parties to the Treaty on any matter relating to the object and purpose, or the implementation, of the Treaty.<sup>90</sup>

[OR]

A National Authority is hereby set up to serve as national focal point for liaison with the Organization and with States Parties to the Treaty on any matter relating to the object and purpose, or the implementation, of the Treaty. The National Authority shall be composed as follows: [ ].

[OR]

The [competent authority] shall, by [ministerial order] [presidential decree], [designate an entity as National Authority] [set up a National Authority] to serve as national focal point for liaison with the Organization and with States Parties to the Treaty on any matter relating to the object and purpose, or the implementation, of the Treaty.

#### Section 7 – Functions of the National Authority

The National Authority shall, in accordance with the Treaty and in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty.<sup>91</sup>

- (a) ensure the effective operation of this Act;
- (b) carry out the obligations of [name of State] under the Treaty;
- (c) act as the main point of contact with the CTBTO and other States Parties to the Treaty;
- (d) inform the CTBTO of the result of criminal proceedings related to activities prohibited by the Treaty;
- (e) negotiate and pursue conclusion of agreements or arrangements related to the implementation of the Treaty;<sup>92</sup>
- (f) request and process information from natural and legal persons regarding implementation of and compliance with the Treaty;
- (g) establish a cooperative arrangement with the national entit(ies) responsible for disaster relief mitigation and radiological emergencies;
- (h) promote the civil and scientific applications of the technologies of the verification regime established under the Treaty and the cooperation with the CTBTO and States Parties in this area<sup>93</sup>;
- (i) carry out the duties and exercise the powers conferred on the National Authority under this Act or the regulations or under any other law of [name of State];
- (j) do anything incidental or conducive to performing any of the above functions.

### Part 4 – Monitoring Facilities<sup>71</sup>

#### Section 8 – Monitoring Facilities

(1) The National Authority, in cooperation with other national departments, agencies and institutions, the CTBTO and States Parties to the Treaty, shall

- (a) cooperate with the CTBTO in establishing, upgrading, operating and maintaining national monitoring facilities, including the necessary communication means as part of the International Monitoring System, to permit the performance of verification measures;
- (b) transmit data obtained from national stations that are part of the International Monitoring System to the International Data Centre.<sup>94</sup>

<sup>90</sup> Treaty III.4, II.5

<sup>91</sup> See model provisions on monitoring facilities, consultation and clarification and on-site inspections for further eventual functions of the National Authority. See also Annex 4 for a model “National Authority Decree”.

<sup>92</sup> Treaty II.5, II.56, III.2; Protocol I.4, 5

<sup>93</sup> Treaty IV.10, IV.12

(2) The National Authority, in cooperation with other national departments, agencies and institutions, the CTBTO and States Parties to the Treaty, may

- (a) enter into agreements or arrangements with the CTBTO and other parties, occupy, buy or lease land and provide the related utilities for national monitoring facilities;<sup>95</sup>
- (b) establish or designate a facility to serve as National Data Centre for the exchange of data with the International Data Centre;<sup>96</sup>
- (c) establish or designate a facility to serve as a Cooperating National Facility of the International Monitoring System.<sup>97</sup>

## **Part 5 – Clarification and Confidence-Building Measures**

### **Section 9 – Participation**

(1) The National Authority shall participate with the Organization and States Parties to the Treaty in consultation and clarification processes relating to matters which may cause concern about possible non-compliance with Article I of the Treaty<sup>98</sup>.

**(Model Provisions on Confidence-Building Measures General OR Specific see Section 12)**

(2) [The National Authority may cooperate with the CTBTO, States Parties to the Treaty and relevant local industries, entities and persons in respect of confidence-building measures relating to the notice of chemical explosions to the CTBTO.

### **Section 10 – Request for Information**

The National Authority may seek information from any person that it believes has information or documents relevant to the:

- (a) clarification of a matter which may cause concern about possible non-compliance with Article I of the Treaty;<sup>99</sup> or
- (b) clarification as may be necessary to resolve a matter that has arisen during an on-site inspection;<sup>100</sup> or
- (c) implementation of the Treaty or the enforcement of this Act.

### **Section 11 – Offences**

In response to a request under Section 10, a person commits an offence and shall be liable to a penalty of [ ] who:

- (a) fails to supply such information or documents without reasonable excuse and to the extent capable of complying with it; or
- (b) knowingly provides false or misleading information or forged documents.

**(Model Provisions on Confidence-Building Measures Specific OR General see Section 9(2))**

### **Section 12 – Notice of Chemical Explosions**

- (1) The National Authority shall cooperate with the CTBTO in confidence-building measures and shall notify it in advance of any planned chemical explosions using [300] tonnes or more of TNT-equivalent blasting material detonated as a single explosion in the territory of [name of State] <sup>101</sup>.
- (2) A person intending to carry out a chemical explosion using [300] tonnes or more of TNT-equivalent blasting material detonated as a single explosion shall give notice of it to the National Authority at least seven days prior to the explosion, specifying:

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<sup>94</sup> Treaty IV.3(b)

<sup>95</sup> Treaty IV.3(a), IV.17

<sup>96</sup> Treaty IV.19(c); States Parties can send IMS data and receive IDC products without establishing a National Data Centre.

<sup>97</sup> Treaty IV.27-28

<sup>98</sup> Treaty IV.29-33

<sup>99</sup> Treaty IV.29

<sup>100</sup> Protocol II.61(g)

<sup>101</sup> Treaty IV.68; Protocol III.1, 2: Each State Party shall provide the Technical Secretariat with preferably advance notification of certain chemical explosions on a voluntary basis.

- (a) the geographic location of the site where the explosion will originate;
  - (b) the time and date of the explosion;
  - (c) the quantity and type of the explosive;
  - (d) the configuration of the explosion;
  - (e) the purpose of the explosion; and
  - (f) any other relevant details about the explosion.
- (3) Subsection 2 also applies to a person intending to carry out a series of chemical explosions using less than [300] tonnes of TNT-equivalent blasting material in each explosion and detonated by a single command in which the total amount of TNT-equivalent blasting materials used is [300] tonnes or more.<sup>102</sup>
- (4) A person who fails to give prior notice in accordance with Subsections 2 and 3 shall give the notice without further delay.
- (5) A person is guilty of an offence and subject to a penalty of [ ] if the person has not submitted the notice required in Subsections 2 and 3.

## **Part 6 – On-site Inspections**

### **Section 13 – Functions of the National Authority**

The National Authority, in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty, shall:

- (a) nominate for designation inspectors and inspection assistants;<sup>103</sup>
- (b) facilitate the conduct of on-site inspections in [name of State] by assisting the inspection team, collaborating with its tasks and liaising with other national entities for all relevant purposes;<sup>104</sup>
- (c) designate points of entry in [name of State] for on-site inspections;<sup>105</sup>
- (d) obtain a standing diplomatic clearance number for non-scheduled aircraft transporting an inspection team;<sup>106</sup>
- (e) acknowledge receipt of the notification of inspection by the Organization,<sup>107</sup> ensure the immediate entry of the inspection team,<sup>108</sup> provide and arrange for the amenities necessary for the inspection team,<sup>109</sup> and ensure its safe conduct during the period of inspection;<sup>110</sup>
- (f) perform pre-inspection equipment checks, briefings for the inspection team and post-inspection procedures;<sup>111</sup>
- (g) appoint national inspectors to accompany or assist an inspection team;
- (h) issue directions to any person or entity for the purpose of facilitating an on-site inspection;
- (i) issue a certificate identifying inspectors, observers and national inspectors.

### **Section 14 – Inspection Powers**

- (1) The inspection team shall have the right to conduct an on-site inspection at an inspection area in [name of State] in accordance with the Treaty and relevant decisions of the CTBTO to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of Article I of the Treaty and, to the extent possible, gather any facts which might assist in identifying any possible violator.<sup>112</sup>

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<sup>102</sup> Protocol III.2

<sup>103</sup> Protocol II.14 to 22

<sup>104</sup> Treaty IV.59

<sup>105</sup> Protocol II(32)

<sup>106</sup> Protocol II(35). Experience shows that national regulations may need to be amended or a waiver issued in order to allow the State to issue such a number.

<sup>107</sup> Protocol II(44)

<sup>108</sup> Protocol II (45)

<sup>109</sup> Protocol II (11)

<sup>110</sup> Protocol II (54) and (110)

<sup>111</sup> Protocol II (109)

<sup>112</sup> Treaty IV.56

- (2) The inspection team shall have the right to:
- (a) determine how the inspection will proceed, consistent with the Treaty, the inspection mandate and the CTBTO on-site inspection operational manual, and taking into account any steps taken by [name of State] consistent with the Treaty provisions on managed access;<sup>113</sup>
  - (b) modify the inspection plan, as necessary, to ensure the effective execution of the inspection, taking into account the recommendations and suggested modifications by the National Authority;<sup>114</sup>
  - (c) request clarifications in connection with ambiguities that may arise during the inspection;<sup>115</sup>
  - (d) have access within the inspection area for the sole purpose of determining facts relevant to the purpose of the inspection;<sup>116</sup>
  - (e) move unimpeded within the inspection area to carry out inspection activities in accordance with the Treaty;<sup>117</sup>
  - (f) conduct overflights over the inspection area;<sup>118</sup>
  - (g) communicate with each other and with the Technical Secretariat, using their own duly certified and approved equipment;<sup>119</sup>
  - (h) collect, handle, analyse and remove samples from the inspection area;<sup>120</sup>
  - (i) bring and use equipment approved in accordance with the relevant provisions of the Protocol;<sup>121</sup>
  - (j) transit buildings and other structures housing the entrance to mines, other excavations or caverns of large volume not otherwise accessible;<sup>122</sup>
  - (k) following the approval of the continuation of the inspection after 25 days in accordance with Article IV, paragraph 47 of the Treaty:
    - (i) have access to buildings and other structures within the inspection area if the inspection team demonstrates credibly that access to buildings and other structures is necessary to fulfil the inspection mandate and the necessary activities authorized in the mandate could not be carried out from the outside;<sup>123</sup>
    - (ii) drill to obtain radioactive samples, after approval by the Organization's Executive Council.<sup>124</sup>

## Section 15 – Observers and National Inspectors

The inspection team may be accompanied by:

- (a) up to three observers of the State Party or Parties to the Treaty requesting the on-site inspection in [name of State];<sup>125</sup>
- (b) up to [ ] national inspectors<sup>126</sup> appointed by the National Authority to liaise with the inspection team, assist it throughout the on-site inspection, facilitate its task and ensure its safe conduct.<sup>127</sup>

## Section 16 – Access to Sites and Premises

- (1) Inspectors, observers and national inspectors:
  - (a) Must carry an identification certificate issued to him or her by the National Authority [competent authority]; and
  - (b) Must produce the identification certificate or other means of identification to any person appearing to be in charge of a place entered:

<sup>113</sup> Protocol II.60 (a)

<sup>114</sup> Protocol II.60 (b) and (c)

<sup>115</sup> Protocol II.60 (d), 61 (g)

<sup>116</sup> Treaty IV.57(c)

<sup>117</sup> Treaty IV.57 (e)

<sup>118</sup> Protocol II.71

<sup>119</sup> Protocol II.62

<sup>120</sup> Protocol II.97

<sup>121</sup> Protocol II.36-40, 42 (j) and 50

<sup>122</sup> Protocol II.90

<sup>123</sup> Treaty IV.56 and 57; Protocol II. 90 and 91

<sup>124</sup> Protocol II.69(h) and 70

<sup>125</sup> Treaty IV.61, Protocol II, 63-67

<sup>126</sup> National legislation adopted by States has in some cases specified the type of national officers that may accompany the inspection team, i.e. peace or enforcement officers, in which case certain decision powers, such as applying for warrants, are expressly delegated to such officers.

<sup>127</sup> Treaty IV.59, 56, 57; Protocol II.61(c) and (g)

- (i) on entering the place (if such a person is then present); and
  - (ii) at any reasonable time afterwards, if asked to do so by the person.
- (2) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection has been completed, national inspectors must, as soon as practicable after the inspection is completed, ensure that an occupier or person in charge of the place is given a written notice stating that the place has been entered, and specifying:
- (a) the date and time of entry;
  - (b) the circumstances and purpose of entry;
  - (c) the name of every person entering.
- (3) Any person who is required to submit to on-site inspections shall:
- (a) support the inspection team, observers and national inspectors in order to facilitate the conduct of the inspection;<sup>128</sup>
  - (b) give all necessary internal instructions and make arrangements in order to provide access to the installations in accordance with the Treaty;<sup>129</sup>
  - (c) assist the National Authority with briefing the inspection team on the inspection area;<sup>130</sup>
  - (d) contribute to clarifying ambiguities.<sup>131</sup>
- (4) Any person who infringes a provision relating to an obligation to cooperate pursuant to this Section or wilfully or negligently obstructs, hinders, resists or deceives an inspector, observer or national inspector who is exercising any function contemplated or any power provided for in the Treaty, commits an offence and is subject to a penalty of [ ].
- (5) If a national inspector discovers any offence or suspected offence under this Act as a result of accompanying an inspector on an on-site inspection, the person must report that offence or suspected offence to the police as soon as practicable after the completion of that inspection.

### **Section 17 – Searches and Seizures**

- (1) If the consent of a person in control of a place in an inspection area is not obtainable, the competent authority may, on application, issue a search warrant in respect of the place if satisfied that there are reasonable grounds for believing that:
- (a) entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for in the Treaty and in this Act; or
  - (b) evidence of the commission of an offence under this Act is to be found there.
- (2) A warrant issued under Subsection 1 authorizes:
- (a) inspectors, observers and national inspectors to enter the place at any time for the purpose of exercising any function contemplated, or any power provided for, in the Treaty and in this Act;
  - (b) a national inspector to use such force as is reasonable in the circumstances for effecting entry to or inspection of a place specified in the warrant.

## **Part 7 – Privileges and Immunities**

### **Section 18 – Legal Capacity of Organization**

The Organization is a body corporate with perpetual succession. It is capable, in its corporate name, of negotiating and entering into contracts and other agreements; acquiring, holding and disposing of property; and suing.

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<sup>128</sup> Treaty IV.59, 56, 57; Protocol II.52

<sup>129</sup> Treaty IV.59, 56, 57; Protocol II.52

<sup>130</sup> Treaty IV.59, 56, 57; Protocol II.52

<sup>131</sup> Treaty IV.59, 56, 57; Protocol II. 61(g) and 109

## **Section 19 – Privileges and Immunities**

[The privileges and immunities of the (title of the relevant law granting privileges and immunities to international intergovernmental organizations of the State Party) apply] [The Convention on Privileges and Immunities of the United Nations shall apply, mutatis, mutandis,] to the Organization, the delegates of States Parties, together with their alternates and advisers, the representatives of members elected to the Executive Council, together with their alternates and advisers, the Director-General, the inspectors, the inspection assistants and the members of the staff of the Organization.<sup>132</sup>

## **Section 20 – Privileges and Immunities of Inspection Team**

- (1) Without prejudice to Section [ ], to carry out their on-site inspection activities, members of the inspection team shall have the privileges and immunities provided for in Paragraph 27, Part II of the Protocol of the Treaty, including those enjoyed by diplomatic agents pursuant to the following provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961:
  - (a) Article 29,
  - (b) Paragraphs 1 and 2 of Article 30,
  - (c) Paragraph 1, 2 and 3 of Article 31, and
  - (d) Article 34.
- (2) Without prejudice to Section [ ], when transiting [name of State] to or from another State Party in connection with on-site inspections activities, the members of the inspection team shall have the privileges and immunities provided for in Paragraph 28, Part II of the Protocol of the Treaty, including those enjoyed by diplomatic agents pursuant to the provisions of paragraph 1 of Article 40 of the Vienna Convention on Diplomatic Relations of 18 April 1961.
- (3) Observers shall enjoy the same privileges and immunities as members of the inspection team under Subsections 1 and 2 with the exception of those accorded pursuant to Part II, paragraph 27, (d) of the Protocol to the Treaty.<sup>133</sup>
- (4) The members of the inspection team shall not enjoy immunity under this Act if such immunity is waived by the Director-General in accordance with Part II, paragraph 30, of the Protocol to the Treaty. Observers shall not enjoy immunity under this Act if the State Party on whose behalf the observer participates in an on-site inspection under the Treaty waives the immunity of the observer.

## **Part 8 – Confidentiality**

### **Section 21 – Confidentiality**

- (1) All activities pursuant to this Act shall be conducted in accordance with the relevant provisions of the Treaty and relevant decisions of the Organization regarding confidentiality of information and data.<sup>134</sup>
- (2) Subject to Subsection 1, the authorities involved in implementing the Treaty may communicate among themselves and to the Organization the information and data which is received under this Act, or which has come to their attention in the exercise of their functions pursuant to this Act, including personal data, in so far as this is required to monitor compliance with the obligations arising from the Treaty or to prosecute criminal offences pursuant to this Act. Such information and data may only be used for the purpose of which it was communicated.
- (3) A person in possession of information or data that has been provided under this Act or pursuant to the Treaty, which is subject to a claim that it is confidential, shall not knowingly communicate it or allow any person to have any access to it unless permitted by this Act or any other Act or regulation made pursuant to it.
- (4) A person who discloses information or data in contravention of Subsection 3 commits an offence and shall be liable to a penalty of [ ].

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<sup>132</sup> Treaty II.54, 55

<sup>133</sup> Protocol II.31

<sup>134</sup> Treaty II.6, 7, IV.5, 7 to 10, 18, 57 (b), Protocol II.88 (a), 89

## Part 9 – Miscellaneous Provisions

### Section 22 – Provisional Measures

- (1) Until entry into force of the Treaty, the National Authority shall cooperate with the Preparatory Commission and States Signatories of the Treaty in order to meet requirements of the Annex to the Resolution Establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, adopted by the States Signatories of the Comprehensive Nuclear-Test-Ban Treaty on 19 November 1996. The National Authority shall carry out the functions provided in this Act to the extent required for this purpose.<sup>135</sup>
- (2) Until entry into force of the Treaty and until the Preparatory Commission is dissolved, the Preparatory Commission shall enjoy in the territory of [name of State] such legal capacity, privileges and immunities as are necessary for the performance of its functions. Accordingly the privileges and immunities set out in this Act shall apply, mutatis mutandis, to the Preparatory Commission, its representatives, officials and experts.<sup>136</sup>

### Section 23 – Executive Powers

The [Government] [competent authority] may promulgate regulations on matters necessary or desirable for:

- (a) giving full effect to this Act;
- (b) implementing [name of State] obligations under the Treaty;
- (c) implementing an agreement or arrangement concluded with the Organization under the Treaty;
- (d) putting into effect changes of an administrative and technical nature to the Protocol and Annexes of the Treaty approved by the Organization; or
- (e) implementing amendments to the Treaty approved by the States Parties.

### Section 24 - Commencement

- (1) Sections [ ] shall enter into force [without the need of regulations] on the day of the [promulgation] [publication] of this Act.
- (2) Sections [ ] shall enter into force on the day on which the Treaty enters into force pursuant to its Article XIV.

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<sup>135</sup> Treaty IV.1, Text of the Resolution Establishing the Preparatory Commission for the CTBTO, paragraph 1.

<sup>136</sup> Text of the Resolution Establishing the Preparatory Commission for the CTBTO, paragraphs 7, 20 to 22.

## **Annex 2**

# **Framework Act for Implementing the CTBT**

### **Section 1 - Interpretation**

(1) In this Act,

“Organization” means the Comprehensive Nuclear-Test-Ban Treaty Organization established in the Treaty’;

“Person” means a natural or a legal person;

“Treaty” means the Comprehensive Nuclear-Test-Ban Treaty adopted by the United Nations General Assembly in New York on 10 September 1996 [and ratified by [name of State] on [date of ratification]], including the Annexes to the Treaty, the Protocol to the Treaty and the Annexes to the Protocol [as amended or changed from time to time in accordance with Article VII of the Treaty].

(2) The terms and expressions appearing in this Act shall have the same meaning as in the Treaty.

### **Section 2 – Objectives of the Act**

The objectives of this Act are the following:

- (a) to approve the Treaty signed by [name of State] on [date];
- (b) to [enable the implementation of the] [fulfil] the obligations of [name of State] under the Treaty;
- (c) to grant [the Government] [competent authority] the authority to issue the necessary or desirable regulations to give full effect to this Act and to implement the obligations of [name of State] under the Treaty.

### **Section 3 – [Ratification] [Approval] of the Treaty**

The Treaty signed by [name of State] on [date] is hereby [approved] [ratified].

### **Section 4 – Prohibition of Nuclear Explosions<sup>82</sup>**

(1) No person shall:

- (a) carry out a nuclear weapon test explosion or any other nuclear explosion;
- (b) cause, encourage or in any way participate in, the carrying out of a nuclear weapon test explosion or any other nuclear explosion.

(2) A person who engages in a conduct prohibited in subsection (1) above commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

(3) A person who participates in the planning or preparation of an offence set forth in subsection (1) commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

(4) A person who attempts to commit an offence set forth in subsection (1) commits an offence and is liable to a term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

(5) The courts of [name of State] shall have jurisdiction with respect to the offences set forth in Subsections (1), (2), (3) and (4), if they have been attempted or committed (a) in the territory of [name of State], (b) on board of ships and aircraft registered in [name of State], or (c) in any other places which are under the jurisdiction or control of [name of State] as recognized by international law.<sup>137</sup>

(6) The courts of [name of State] shall have jurisdiction with respect to the offences set forth in subsections (1), (2), (3) and (4) above committed outside [name of State] if the offence was attempted or committed by a national of [name of State].

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<sup>137</sup> Treaty I.1, IV.34; Protocol II.6, 7

## Section 5 – On-site Inspections

- (1) The Organization's inspection team shall have the right to conduct an on-site inspection at an inspection area in [name of State] in accordance with the Treaty, the inspection mandate and the on-site inspection operational manual of the Organization to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of Article I of the Treaty and, to the extent possible, gather any facts which might assist in identifying any possible violator, conducting the activities and using the techniques set out in the Treaty.
- (2) Inspectors and inspection assistants shall have the right, and every person must permit them to enter a place, to inspect a place and exercise a function contemplated, or a power provided for, in the Treaty in connection with an on-site inspection within an inspection area in accordance with the Treaty.
- (3) The [Government] [competent authority] shall facilitate the conduct of on-site inspections in [name of State] by assisting the inspection team, collaborating with its tasks and ensuring its safe conduct.
- (4) If the consent of a person in control of a place in an inspection area is not obtainable, the competent authority may, on application, issue a search warrant in respect of the place if satisfied that there are reasonable grounds for believing that entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for in the Treaty in connection with an on-site inspection.
- (5) Any person who infringes a provision relating to an obligation to cooperate pursuant to this Section or wilfully or negligently obstructs, hinders, resists or deceives an inspector, observer or national inspector who is exercising any function contemplated or any power provided for in the Treaty, commits an offence and is subject to a penalty of [ ].

## Section 6 – National Authority

- (1) The [Government] [competent authority] shall [designate an entity as National Authority] [set up a National Authority] to serve as national focal point for liaison with the Organization and with States Parties to the Treaty on any matter relating to the object and purpose, or the implementation, of the Treaty.
- (2) The National Authority shall, in accordance with the Treaty and in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty:
  - (a) ensure the effective operation of this Act;
  - (b) carry out the obligations of [name of State] under the Treaty;
  - (c) act as the main point of contact with the CTBTO and other States Parties to the Treaty;
  - (d) inform the CTBTO of the result of criminal proceedings related to activities prohibited by the Treaty;
  - (e) negotiate and pursue conclusion of agreements or arrangements related to the implementation of the Treaty;<sup>138</sup>
  - (f) request and process information from natural and legal persons regarding implementation of and compliance with the Treaty;
  - (g) establish a cooperative arrangement with the national entit(ies) responsible for disaster relief mitigation and radiological emergencies;
  - (h) promote the civil and scientific applications of the technologies of the verification regime established under the Treaty and the cooperation with the CTBTO and States Parties in this area;<sup>139</sup>
  - (i) carry out the duties and exercise the powers conferred on the National Authority under this Act or the regulations or under any other law of [name of State];
  - (j) do anything incidental or conducive to performing any of the above functions.

<sup>138</sup> Treaty II.5, 56, III.2; Protocol I.4, 5

<sup>139</sup> Treaty IV.12

### **Section 7 – Request for Information**

- (1) The National Authority may seek information from any person that it believes has information or documents relevant to the:
  - (a) clarification of a matter which may cause concern about possible non-compliance with Article I of the Treaty, or
  - (b) implementation of the Treaty or the enforcement of this Act.
- (2) A person commits an offence and shall be liable to a penalty of [specify penalty] who
  - (a) fails to supply information or documents under Subsection (1) without reasonable excuse and to the extent capable of complying with it;
  - (b) knowingly provides false or misleading information or forged documents.

### **Section 8 – Penal Code**

The [Penal Code] [applicable law] applies to the offences under this Act.

### **Section 9 – Privileges and Immunities**

The Organization, the delegates of States Parties, together with their alternates and advisers, the representatives of members elected to the Executive Council, together with their alternates and advisers, the Director-General, the inspectors, the inspection assistants and the members of the staff of the Organization shall enjoy in [name of State] the privileges and immunities necessary for the performance of their functions, as provided in the Treaty.

### **Section 10 - Regulations**

- The [Government] [competent authority] may promulgate regulations on matters necessary or desirable for
- (a) giving full effect to this Act;
  - (b) implementing [name of State] obligations under the Treaty;
  - (c) implementing an agreement or arrangement concluded with the Organization under the Treaty;
  - (d) putting into effect changes of an administrative and technical nature to the Protocol and Annexes of the Treaty approved by the Organization; or
  - (e) implementing amendments to the Treaty approved by the States Parties.

### **Section 11 – Commencement**

- (1) Sections [ ] shall enter into force [without the need of regulations] on the day of the [promulgation] [publication] of this Act.
- (2) Sections [ ] shall enter into force on the day to be fixed by order of the [competent authority].

## **Annex 3**

### **Amendment of the Penal Code**

#### ***Model CTBT penal provision***

Whereas the Comprehensive Nuclear-Test-Ban Treaty was adopted by the United Nations General Assembly on 10 September 1996 and signed [ratified] by [name of State] on [date of signature or ratification] pursuant to [Government or Parliament decision];

Whereas the Comprehensive Nuclear-Test-Ban Treaty requires States Parties to adopt the necessary measures to prohibit and prevent nuclear explosions;

Whereas the [Penal Code or other applicable legislation] prohibits the [unlawful use, possession, transfer or disposal of nuclear material] [the manufacture, acquisition, possession, development, transport, transfer or use of nuclear weapons] [the manufacture, construction or development of weapons of mass destruction];

Whereas the [Penal Code or other applicable legislation] needs to be amended to cover the prohibition of all nuclear explosions;

Therefore

**Article 1.** - The [Penal Code or other applicable legislation] shall be amended as follows:

(1) In Article [ ] the following provisions shall be inserted:

#) carry out a nuclear weapon test explosion or any other nuclear explosion

##) cause, encourage or in any way participate in, the carrying out of a nuclear weapon test explosion or any other nuclear explosion

(2) In Article [ ] the following provisions shall be inserted:

\*) The courts of [name of State] shall have jurisdiction with respect to the offences set forth in paragraphs #) and ##) of Article [ ] if they have been attempted or committed (a) in the territory of [name of State], (b) on board of ships and aircraft registered in [name of State], or (c) in any other places which are under the jurisdiction or control of [name of State] as recognized by international law.

\*\*\*) The courts of [name of State] shall have jurisdiction with respect to the offences set forth in paragraphs #) and ##) of Article [ ] and committed outside [name of State] if the offence was attempted or committed by a national of [name of State].

**Article 2.** - Publication, Entry into Force

(1) The [competent authority] shall publish in the [name of official publication] the revised text of the [Penal Code or other relevant legislation].

(2) This Statute shall enter into force on the date of [promulgation] [publication].

## ***Model integrated penal provision***<sup>140</sup>

- (1) Whoever, without lawful authority, uses or disperses in any way radioactive/nuclear material or uses or makes a device:
  - (a) With the intent to cause:
    - (i) death or serious bodily injury; or
    - (ii) substantial damage to property or to the environment; or
  - (b) to compel a natural or legal person, an international organization, or a State to do or refrain from doing an act; or
  - (c) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;shall be punished with [penalties which take into account the grave nature of those offences<sup>141</sup>].
- (2) Whoever carries out a nuclear weapon test explosion or any other nuclear explosion shall be punished with [penalties which take into account the grave nature of those offences].
- (3) Whoever manufactures, acquires, possesses, develops, transports, imports, introduces, transfers or uses nuclear weapons shall be punished with [penalties which take into account the grave nature of those offences].
- (4) Whoever causes, encourages, attempts, participates in, or threatens to commit any of the offences set forth in this Article shall be punished with [penalties which take into account the grave nature of those offences].
- (5) Whoever contributes to the commission of one or more such offences by a group of persons acting with a common purpose, where such contribution is intentional and is made with the aim of furthering the criminal activity or criminal purpose of the group [in the knowledge of the intention of the group to commit such offence] shall be punished with [penalties which take into account the grave nature of those offences].
- (6) [Name of State] shall have jurisdiction over the offences set forth in [cite relevant article] as follows:
  - (a) when the offence is committed within the territory of [name of State] or on board a ship or aircraft registered in [name of State] or in any other place which are under the jurisdiction or control of [name of State] as recognized by international law;<sup>142</sup>
  - (b) when the alleged offender is a national or permanent resident of [name of State];<sup>143</sup>
  - (c) when the alleged offender is present in the territory of [name of State] and is not extradited to any other State asserting jurisdiction;
  - (d) when an act is done outside [name of State] if the act is done in the course of international transport of nuclear material in a case where it is the State where the shipment originates or the State of ultimate destination.

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<sup>140</sup> These provisions were developed during the Pilot Workshop on CTBT Implementing Legislation conducted on 1-5 November 2011. They cover prohibited activities and criminal offences under UN Security Council Resolution 1540 and international treaties including the CTBT, the International Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material and its Amendments. For example, it may be noted that paragraph (2), which prohibits nuclear explosions, covers the prohibited activities in Article I of the CTBT, while paragraph (1) covers other activities involving a release of nuclear energy or radioactive material for purposes of the afore mentioned international treaties. See further CTBT/PTS/INF.1204 on National Implementation Measures.

<sup>141</sup> Term of imprisonment not exceeding [ ] years or to a fine not exceeding [ ], or to both.

<sup>142</sup> Treaty I.1, IV.34; Protocol II.6, 7

<sup>143</sup> The term “national” should also include legal persons located in the territory of the State. If this is not explicitly provided in the State’s criminal legislation, specific wording extending the application of the provisions to legal persons, and regulating their liability and that of the managers or directors, would need to be included in the legislation. For model provisions on Liability of Legal Entities see Section 4 of the UNODC Model Legislative Provisions against Terrorism.

## Annex 4

### National Authority Decree

#### Preamble<sup>144</sup>

Whereas the Comprehensive Nuclear-Test-Ban Treaty was adopted by the United Nations General Assembly on 10 September 1996 and signed [ratified] by [name of State] on [date of signature or ratification] pursuant to [Government or Parliament decision];

Whereas under Article III.4 of the Treaty each State Party shall designate or set up a National Authority to serve as the national focal point for liaison with the Organization and with other States Parties;

Whereas it is desirable to ensure a proper coordination of all relevant functions of the National Authority at the national level;

Therefore

#### Section 1. - Designation of the National Authority

- (1) The National Authority for the Comprehensive Nuclear-Test-Ban Treaty is hereby set up to serve as national focal point for liaison with the Organization and with States Parties to the Treaty on any matter relating to the object and purpose, or the implementation, of the Treaty.
- (2) The [competent authority] is hereby designated as the National Authority [or] The National Authority shall be composed as follows: [ ]

#### Section 2. - Functions of the National Authority

The National Authority shall, in accordance with the Treaty and in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty:

- (a) ensure the effective operation of this Act;
- (b) carry out the obligations of [name of State] under the Treaty;
- (c) act as the main point of contact with the CTBTO and other States Parties to the Treaty;
- (d) inform the CTBTO of the result of criminal proceedings related to activities prohibited by the Treaty;
- (e) negotiate and pursue conclusion of agreements or arrangements related to the implementation of the Treaty;<sup>145</sup>
- (f) request and process information from natural and legal persons regarding implementation of and compliance with the Treaty;
- (g) establish a cooperative arrangement with the national entit(ies) responsible for disaster relief mitigation and radiological emergencies;
- (h) promote the civil and scientific applications of the technologies of the verification regime established under the Treaty and the cooperation with the CTBTO and States Parties in this area;<sup>146</sup>
- (i) carry out the duties and exercise the powers conferred on the National Authority under this Act or the regulations or under any other law of [name of State];
- (j) do anything incidental or conducive to performing any of the above functions.

#### Section 3. - Monitoring Facilities<sup>71</sup>

The National Authority, in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty, shall:

- (a) cooperate with the Organization in establishing, upgrading, operating and maintaining monitoring facilities including the necessary communication means as part of the International Monitoring System

<sup>144</sup> This model was finished during the Pilot Workshop on CTBT National Implementation Measures. See also Sections 3.7 and 4.2 of this *Guide*.

<sup>145</sup> Treaty II.5, 56, III.2; Protocol I.4, 5

<sup>146</sup> Treaty IV.12

- to permit the performance of verification measures, and enter into agreements or arrangements with the Organization and other parties, occupy, buy or lease land and provide the related utilities for such purposes;
- (b) establish or designate a facility to serve as National Data Centre for the exchange of data with the International Data Centre;
- (c) transmit data obtained from national stations that are part of the International Monitoring System to the International Data Centre;
- (d) establish or designate a facility to serve as a Cooperating National Facility of the International Monitoring System.

#### **Section 4. - On-site Inspection**

The National Authority, in cooperation with other national departments, agencies and institutions, the Organization and States Parties to the Treaty, shall:

- (a) nominate for designation inspectors and inspection assistants;
- (b) facilitate the conduct of on-site inspections in [name of State] by assisting the inspection team, collaborating with its tasks and liaising with other national entities for all relevant purposes;
- (c) designate points of entry in [name of State] for on-site inspections;
- (d) obtain a standing diplomatic clearance number for non-scheduled aircraft transporting an inspection team;
- (e) acknowledge receipt of the notification of inspection by the Organization, ensure the immediate entry of the inspection team, provide and arrange for the amenities necessary for the inspection team, and ensure its safe conduct during the period of inspection;
- (f) perform pre-inspection equipment checks, briefings for the inspection team and post-inspection procedures;
- (g) appoint national inspectors to accompany or assist an inspection team;
- (h) issue directions to any person or entity for the purpose of facilitating an on-site inspection;
- (i) issue a certificate identifying inspectors, observers and national inspectors.

#### **Section 5. - Requests for Information**

- (1) The National Authority shall participate with the Organization and States Parties to the Treaty in the consultation and clarification processes relating to matters which may cause concern about possible non-compliance with Article I of the Treaty.<sup>147</sup>
- (2) [The National Authority may cooperate with the Organization and States Parties to the Treaty in implementing confidence-building measures relating to chemical explosions] or [The National Authority shall cooperate with the Organization in confidence-building measures and shall notify to it chemical explosions using [300] tones or more of TNT-equivalent blasting material detonated as a single explosion in the territory of [name of State]].<sup>148</sup>
- (3) The National Authority may seek information from any person that it believes has information or documents relevant to the:
  - (a) clarification of a matter which may cause concern about possible non-compliance with Article I of the Treaty; or
  - (b) clarification as may be necessary to resolve a matter that has arisen during an on-site inspection; or
  - (c) implementation of the Treaty.

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<sup>147</sup> Treaty IV.29-33

<sup>148</sup> Treaty IV.68; Protocol III.1, 2: Each State Party shall provide the Technical Secretariat notification preferably in advance of certain chemical explosions on a voluntary basis.

## Annex 5

### Resolution on Privileges and Immunities of the Commission

**Section 1.** - The following terms and expressions shall have the following meaning for the purposes of this Resolution:

“Officials of the Preparatory Commission for the CTBTO” shall mean the staff of the Provisional Technical Secretariat of the Preparatory Commission for the CTBTO.

“Preparatory Commission for the CTBTO” shall mean the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization established by the Resolution adopted by States Signatories of the Comprehensive Nuclear-Test-Ban Treaty at New York on 19 November 1996;

“Representatives of Member States” shall mean the delegates, alternates and advisers of delegations accredited to the Preparatory Commission for the CTBTO.

**Section 2.** - The Preparatory Commission for the CTBTO is an international organization with legal capacity [under title of relevant legislation].<sup>149</sup>

**Section 3.** - The Preparatory Commission for the CTBTO shall enjoy the following privileges and immunities in the territory of [name of State] [as defined in title of relevant legislation]:<sup>149</sup>

- (a) immunity from suit and legal process;
- (b) inviolability of official premises and archives;
- (c) immunity in relation to its property and assets from search, requisition, confiscation, expropriation, or any other form of interference;
- (d) exemption from direct and indirect taxes, except for charges related to the provision of public utility services;
- (e) exemption from taxes and customs duties on the importation or the exportation of goods for official use in [name of State];
- (f) exemption from prohibitions and restrictions on importation or exportation of goods for official use;
- (g) reduced rates in respect of telegraphic communications and press telegrams for official use.

**Section 4.** - Representatives of Member States shall enjoy, in the exercise of their functions, the following privileges and immunities in the territory of [name of State] as defined in [title of relevant legislation]:<sup>149</sup>

- (a) immunity from suit and legal process as accorded to a diplomatic agent;
- (b) inviolability of official archives as accorded to a diplomatic agent;
- (c) exemption from taxes and customs duties as accorded to a diplomatic agent.

**Section 5.** - Officials of the Preparatory Commission for the CTBTO shall enjoy the following privileges and immunities in the territory of [name of State] as defined in [title of relevant legislation]:<sup>149</sup>

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of the performance of their official duties;
- (b) exemption from taxes in respect of salaries and benefits received by them as Officials of the Preparatory Commission for the CTBTO;
- (c) exemption from customs duties for importing or exporting personal items in the course of the performance of their official duties.

**Section 6.** - The Executive Secretary of the Preparatory Commission for the CTBTO shall enjoy the following privileges and immunities in the territory of [name of State] as defined in [title of relevant legislation]:<sup>149</sup>

- (a) immunity from suit and legal process as accorded to a diplomatic agent;
- (b) inviolability of residence, official premises and official archives as accorded to a diplomatic agent;
- (c) exemption from taxes and customs duties as accorded to a diplomatic agent.

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<sup>149</sup> The text in brackets may be necessary if an international organization is required to be registered under a specific national legislation to be recognized within the State’s territory, or to make reference to the 1946 Convention on the Privileges and Immunities of the United Nations.

**Section 7.-** Experts employed on missions on behalf of the Preparatory Commission for the CTBTO shall enjoy, in the exercise of their functions, the following privileges and immunities in [name of State] as defined in [title of relevant legislation]:<sup>149</sup>

- (a) immunity from suit and legal process in respect of acts done or omitted to be done by them in the course of the performance of their mission as accorded to a diplomatic agent;
- (b) inviolability of official archives as accorded to a diplomatic agent.

**Section 8.-** The privileges and immunities conferred by this instrument do not apply in so far as in a particular case a privilege or immunity is waived by the Preparatory Commission for the CTBTO, the Executive Secretary of the Preparatory Commission for the CTBTO or the Government of the Member State concerned, as the case may be.