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LEGAL SUPPORT

This tab provides guidance to the Staff Judge Advocate General (JAG) or Legal Officer concerning legal responsibilities of the facility and legal support of the preparation process during a Chemical Weapons Convention (CWC) challenge inspection. It also contains a Legal Officer's Checklist.

RESPONSIBILITIES

The designated staff JAG or Legal Officer is responsible for all legal planning and advice to the Commanding Officer (CO) and facility personnel during the challenge inspection.

BACKGROUND

The JAG/Legal Officer should become familiar with legal issues involved in CWC Treaty implementation, particularly:

- Diplomatic privileges and immunity
- DON liability for facility related inspector injuries
- DON responsibility for emergency medical care
- Legal issues pertaining to access
- Issues associated with contracts.

The Legal Officer should be prepared to provide legal advice to the CO during the CWC challenge inspection. The Naval Treaty Implementation Program will have a Strategic Systems Program (SSP) legal representative available to address specific issues during the inspection.

The CWC stipulates that the members of the International Inspection Team (IIT) shall be afforded certain diplomatic privileges and immunities. A summary of these privileges follows:

Inspector Privileges and Immunities

The information provided on inspector privileges and immunities is drawn from the CWC Treaty text, Verification Annex, Part II, Paragraph B. With the exception of the rights associated with samples and inspection equipment, listed in paragraph 4 below, all privileges and immunities described extend to requesting State Party observers as well as inspectors and inspection assistants.

Reference (a): Vienna Convention on Diplomatic Relations of 18 April 1961

To exercise their functions effectively, inspectors and inspection assistants shall be accorded the following privileges and immunities for the entire period between arrival on and departure from the territory of the Inspected State Party or Host State and thereafter with respect to acts previously performed in the exercise of their official functions:

1. Inviolability

The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to Article 29 of Reference (a). They shall not be liable to any form of arrest or detention. The Host State shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom, or dignity.

2. Living Quarters

The living quarters and office premises occupied by the inspection team carrying out inspection activities shall be accorded the inviolability and protection accorded to the premises of diplomatic agents pursuant to Article 30 paragraph 1 of Reference (a). Personnel of the Inspected State Party or Host State may not enter them, except with the consent of the Inspection Team Leader.

The Inspected State Party and Host State have a responsibility to take all appropriate steps to protect the living quarters of the inspection team against any intrusion or damage and to prevent any disturbance of the peace of the quarters or impairment of the dignity of the quarters.

The inspection team living quarters, their furnishings and other property thereon shall be immune from search, requisition, attachment, or execution.

3. Records

The papers and correspondence, including records, of the inspection team shall enjoy the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to Article 30, paragraph 2 of Reference (a). The inspection team shall have the right to use codes for its communications with the Technical Secretariat.

4. Samples and Equipment

Samples and approved equipment carried by members of the inspection team shall be inviolable and exempt from all customs duties. Hazardous samples shall be transported in accordance with relevant regulations. Note that this is the only privilege and immunity that does not also apply to observers of the requesting State Party.

5. Immunities

Per paragraphs 1, 2, and 3 of Article 31 of Reference (a), members of the inspection team shall be accorded immunity from the criminal jurisdiction of the Inspected State Party as well as that of the Host State. Inspectors and inspection assistants shall also possess immunity from the civil and administrative jurisdictions of the inspected and Host States, except in cases specifically delineated in Reference (a).

Inspectors are not obliged to give evidence as a witness.

No measures of execution of criminal, civil, or administrative matters may be taken in respect to an inspection team member except in the specific cases delineated in Reference (a) and provided that the measures concerned can be taken without infringing the inviolability of the inspection team member's person or of his or her quarters.

6. Dues and Tax Exemption

Inspection team members shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- Indirect taxes of a kind normally incorporated in the price of goods or services
- Charges levied for specific services rendered.

7. Personal Articles

Members of the inspection team shall be permitted to bring articles for personal use without payment of any customs duties or related charges, with the exception of imported or exported articles, which are prohibited by law or controlled by quarantine regulations.

8. Profit

The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the Inspected State Party or the Host State.

Without prejudice to their privileges and immunities, the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party or Host State and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. If the inspected State Party or Host State Party considers that there has been an abuse of specified privileges and immunities, consultations shall be held between the State Party and the Director-General of the Technical Secretariat to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

Legal Officer's Checklist

Phases 1 through 6 — Notification/Initial Planning & Response— Post-Inspection Recovery

PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 6

Phase 1 is the time period from initial notification to start of self-monitoring. Self-monitoring must begin NLT 12 hours after International Inspection Team (IIT) arrives at the point of entry (POE).

Phase 2 is the time period from the start of self-monitoring (which is 12 hours after the IIT arrives at the POE) to the arrival of the IIT at the facility (which must occur by 36 hours after arrival of the IIT at the POE).

Phase 3 is the time period from IIT arrival at the facility to the crossing of the final perimeter by the IIT. Crossing of the perimeter can be as much as 72 hours after the IIT arrives at the facility.

Phase 4 is the time period from the IIT crossing of the final perimeter to the conclusion of the inspection by the IIT. Phase 4 can last up to 84 hours.

Phase 5 is the 24-hour period following the conclusion of the IIT inspection.

Phase 6 commences upon IIT departure. Phase 6 includes a complete post-inspection recovery and cleanup, continuing until the facility is fully restored to normal operating conditions.

- 1. Attend all appropriate meetings and report progress of inspection preparations.....**

Meetings include: Commanding Officer's (CO) initial inspection planning, Tiger Team planning meeting, Phase 1-2 transition meeting, and facility pre-arrival meeting.

- 2. Coordinate with the Naval Treaty Implementation Program, Office of the Chief of Naval Operations (OPNAV) legal representative**

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3. **Review appropriate sections of the Inspection Readiness Plan as directed**

4. **Provide legal expertise to the command and the Inspection Planning Staff relevant to treaty provisions and contract requirements**.....

5. **Allow for 24-hour legal support for the duration of the preparation, inspection, and post-inspection phases**

6. **Provide a legal review of public affairs, medical, and safety plans**

Ensure actions that may be undertaken in those plans are in accordance with the rights of the IIT and their specific immunities and privileges as specified by United States Government guidance with respect to the Chemical Weapons Convention.

7. **Support facility after-action reporting as required**

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