
NATIONAL IMPLEMENTATION MEASURES: LEGISLATION, PRIVILEGES AND IMMUNITIES AND FACILITY AGREEMENTS

Note by the Executive Secretary

This document is an update to document CTBT/PTS/INF.1153, prepared at the request of Working Group A (CTBT/PC-35/WGA/1, paragraph 26). At its Fortieth Session, Working Group A decided to revert to this item at its Forty-Second Session (CTBT/PC-37/WGA/1, paragraph 24).

This document provides information on national implementation measures, including the status of arrangements concerning the privileges and immunities of the Preparatory Commission and its officials, facility agreements with States hosting International Monitoring System facilities, reimbursement of taxes and duties, and the programme of legal assistance of the Provisional Technical Secretariat. It also addresses requests of Working Group B for information on the influence of national implementation measures on data availability (CTBT/PC-35/WGB/1, paragraph 82, CTBT/PC-36/WGB/1, paragraph 74 and CTBT/PC-37/WGB/1, paragraph 76).

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1. INTRODUCTION

- 1.1. Paragraph 18 of the Annex to the Resolution establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (Resolution) mandated the Commission to facilitate the exchange of information between States Signatories concerning legal and administrative measures for the implementation of the Treaty and, upon request, to give advice and assistance to them on these matters. At least some implementation measures will be required at entry into force of the Treaty, regardless of the national legal system, to enable full implementation and enforcement of the Treaty. In the preparatory phase, during provisional operation of the International Monitoring System (IMS) and to support activities of the Commission, some measures may already be necessary, even prior to entry into force of the Treaty. This is particularly the case for measures concerning privileges and immunities of the Commission and its officials that are necessary for the provisional operation of the IMS in territories of States hosting IMS facilities or, for example, training activities and exercises.
- 1.2. Paragraph 7 of the Annex to the Resolution states: “The 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 the fulfilment of its purposes.” Paragraph 22 provides that “[t]he Commission as an international organization, its staff, as well as the delegates of the States Signatories shall be accorded by the Host Country such legal status, privileges and immunities as are necessary for the independent exercise of their functions in connection with the Commission and the fulfilment of its object and purpose.” Furthermore, the Annex mandated the Commission to, *inter alia*: (a) develop standard model agreements or arrangements to be concluded by the Comprehensive-Nuclear-Test-Ban Treaty Organization (CTBTO) with States Parties (paragraph 12(a)); (b) negotiate agreements or arrangements in accordance with these models, in particular with those States prospectively hosting or otherwise taking responsibility for IMS facilities (paragraph 12(b)); and (c) supervise and coordinate the provisional operation of the IMS (paragraph 14).
- 1.3. Working Group A (WGA) has been monitoring progress in the development of national implementation measures on the basis of the information provided to it by the Executive Secretary in 1999 and annually since 2002, pursuant to its request.¹ In accordance with the decision of the Commission taken at its Ninth Session (paragraphs 5.3 and 5.9 of

¹ CTBT/PTS/INF.203 (1999); CTBT/PTS/INF.544 (2002) and Rev.1 (2003), Rev.2 (2004), Rev.3 (2005), Rev.4 (2006), Rev.5 (2007), Rev.6 (2008) and Rev.7 (2009), CTBT/PTS/INF.1095 (2010), CTBT/PTS/INF.1153 (2011).

CTBT/PC-9/1, adopting WGA recommendation 8 of CTBT/PC-9/1/Annex I (1999)), information on the status of arrangements concerning the privileges and immunities of the Commission and its officials was routinely submitted to WGA in the annual versions of the respective Note by the Executive Secretary.² Additional information regarding the status of facility agreements with States hosting IMS facilities was also provided by the Provisional Technical Secretariat (PTS).³ As operationally these matters are interrelated, in 2010 the PTS consolidated in a single document the information previously provided separately on national implementation measures, privileges and immunities, facility agreements and other issues related thereto, as well as the PTS programme of legal assistance.⁴ At its Thirty-Eight Session, WGA decided to consolidate the respective agenda items into a single agenda item with the title “National implementation measures” (CTBT/PC-35/WGA/1, paragraph 26) and has continued its work on the subject accordingly.

- 1.4. Working Group B (WGB) considers the matter from the point of view of the effect that national implementation measures may have on data availability. At the request of WGB at its Thirty-Fifth Session (CTBT/PC-35/WGB/1, paragraph 82) the PTS provided additional information on the problems associated with taxes, duties and customs clearance, and their effect on costs and the annual programme of work and budget and, ultimately, data availability.⁵

2. STATUS OF NATIONAL IMPLEMENTATION MEASURES

Measures Necessary Before Entry into Force

- 2.1. Paragraph 13 of the Annex to the Resolution mandated the Commission to provisionally operate the IMS and the International Data Centre (IDC). At its first session, the Commission instructed the PTS to start concluding agreements/arrangements for IMS facilities (CTBT/PC/I/22, dated 13 March 1997, page 20). As a consequence, some national implementation measures have become necessary now for some States Signatories in relation to provisional operation of the IMS or for the implementation of IMS facility agreements/arrangements, or for the hosting of Commission events.

Measures Necessary at Entry into Force

- 2.2. Article III, paragraphs 1 and 3, of the Treaty require each State Party, in accordance with its constitutional processes, to take any necessary measures to implement its obligations under the Treaty and to inform the CTBTO of the measures taken. Some measures are explicitly required, namely: prohibiting the proscribed activities; cooperation with, and legal assistance to, other States Parties; and the designation or establishment of the National Authority to serve as national focal point for liaison with the CTBTO and other States Parties. Some other measures are implied, as they will be necessary to: facilitate verification of compliance with the Treaty (e.g. to enable the hosting of an IMS station or the conduct of an on-site inspection); recognize the CTBTO in the national jurisdiction; grant privileges and immunities and allocate the

² CTBT/PTS/INF.249 (2000), Rev.1 (2002), Rev.2 (2003), Rev.3 (2003), Rev.4 (2004), Rev.5 (2005), Rev.6 (2006), Rev.7 (2007), Rev.8 (2008) and Rev.9 (2009).

³ CTBT/PTS/INF.1007 (2009).

⁴ CTBT/PTS/INF.1095 dated 30 September 2010.

⁵ CTBT/PTS/INF.1095/Add.1 dated 1 February 2011.

necessary budget. A *Guide to CTBT Implementing Legislation* is available on the CTBTO web site (see Annex 4). Each State Party should decide what measures, in accordance with its constitutional processes, would be necessary or appropriate to implement the Treaty and how to carry them out.

Measures Adopted by States Signatories

- 2.3. Some States Signatories have adopted legislation in advance of entry into force of the Treaty prohibiting nuclear explosions, sometimes as part of environmental or counterterrorism legislation. Others have established or are strengthening national measures to prevent nuclear explosions by safeguarding nuclear materials to further nuclear security. Other States have had legislation in place for some time, to implement their obligations under a nuclear weapon-free zone treaty. Some of this legislation covers 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, to deter persons from undertaking such activity in the State's jurisdiction and prevent the State's territory from being a safe haven for those who might be interested in pursuing such endeavours. Since 2004, the adoption and enforcement of such laws, as well as the establishment of domestic controls aimed at preventing nuclear weapon proliferation, have become the legally-binding obligation of all States under United Nations Security Council resolution 1540, adopted under Chapter VII of the United Nations Charter.⁶ Other events have maintained political momentum in support of that aim: the 2008 United Nations Security Council meeting of Heads of State, the 2010 Nuclear Security Summit in Washington, D.C., the 2010 Review Conference on the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the 2012 Nuclear Security Summit in Seoul.
- 2.4. The Secretariat maintains a list of the national measures adopted so far by States Signatories (see Annex 1), that are either (i) directly related to the implementation of the Treaty, or (ii) related regulatory matters, or (iii) a necessary consequence of provisional operation during the preparatory phase. These measures consist of:
 - (a) Parliamentary statutes to implement the Treaty;
 - (b) Orders recognizing the Commission as a legal entity and granting it privileges and immunities;
 - (c) Decrees or resolutions establishing the National Authority;
 - (d) National provisions prohibiting or criminalizing nuclear explosions, the illicit use of nuclear or radioactive material or weapons of mass destruction.
- 2.5. The PTS invites States to submit updated information on national measures relevant to CTBT implementation, irrespective of the context in which the measures have been taken. These measures and legislative provisions may be consulted on the Commission's online database of national implementing legislation for the Comprehensive Nuclear-Test-Ban Treaty (CTBT) (see Annex 4).

⁶ The national reports submitted by States to the United Nations Security Council 1540 Committee are available at <http://www.un.org/sc/1540/legisdatabase.shtml>

Recognition of the Commission as a Legal Entity

- 2.6. Paragraph 7 of the Annex to the Resolution provides that “[t]he 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 the fulfillment of its purposes.”
- 2.7. The Resolution incorporates the agreement among the States Signatories of the CTBT to establish the Commission and as such is the constituent instrument of the Commission. The Commission is established as an international organization forthwith upon the adoption of the Resolution and, unlike the CTBT which expressly requires ratification for entry into force, the Resolution entered into force upon its adoption. The States Signatories are bound by the Resolution they have adopted and automatically, pursuant to the terms of the Resolution, become Member States of the Commission upon signature of the CTBT.
- 2.8. Facility agreements/arrangements have served to surmount any internal issues States may have with respect to the legal nature and consequences of the Resolution. The process of concluding a facility agreement/arrangement with the Commission will entail recognition of the Commission as a legal entity in the national jurisdiction. Such recognition enables the State to take the next step in granting the necessary privileges and immunities to the Commission in order for it to carry out its activities in relation to IMS facilities on the territory of the host State. In some cases it may be necessary to submit the facility agreement for parliamentary approval in order to make the necessary revisions to tax and customs regulations.
- 2.9. As noted by WGB at its Thirty-Fifth Session (CTBT/PC-35/WGB/1) and as discussed in paragraph 5.7, having a facility agreement in place is not always sufficient to obtain tax and customs exemption, and national legislation may be necessary to grant such exemption to the Commission. These steps form part of the “necessary measures to implement” the obligations of the State under the Treaty, as required by Article III. These may be equally necessary in some circumstances for the provisional operation of the IMS in accordance with the Annex to the Resolution and the decisions adopted by the Commission.
- 2.10. Some States have promulgated governmental orders in order to enable recognition of the Commission at the national level and to grant it the privileges and immunities necessary for it to function effectively and efficiently in their jurisdictions (see Annex 4).

3. STATUS OF THE PRIVILEGES AND IMMUNITIES OF THE COMMISSION UNDER BILATERAL AGREEMENTS AND ARRANGEMENTS

- 3.1. The following is a summary of the legal framework established by the Commission to secure the privileges and immunities necessary for its functions:
 - (a) **Headquarters Agreement.** The Headquarters Agreement between the Commission and the Republic of Austria was concluded and entered into force on 1 November 1997 (CTBT/PC/I/11/Rev.1). It accords in Austria, inter alia, legal personality to the Commission, protection and inviolability of the seat, and

privileges and immunities to Permanent Missions and representatives of States Signatories, Commission officials and experts on mission. In addition, by virtue of that Agreement and Council Directive 77/388/EEC, the Commission enjoys exemption from turnover tax (value added tax) throughout the European Union.

- (b) **Facility agreements/arrangements.** A facility agreement or arrangement shall be concluded between the Commission and each State hosting an IMS facility for the conduct of activities related to their IMS facility, including all post-certification activities (PCAs). The legal basis for the conclusion of such agreements/arrangements is found in:
- For the post-entry-into-force phase: Article II E, paragraph 56 of the Treaty and paragraph 12(b) of the Annex to the Resolution, supplemented by Article IV, paragraphs 19, 20 and 22 of the Treaty and Part I, paragraphs 4 and 5 of the Protocol, which elaborate the content;
 - For the preparatory phase: the above provisions read together with the Appendix to the Annex to the Resolution in respect of paragraph 14 of the Annex (“the responsibility of the Preparatory Commission for...Developing procedures and a formal basis for the provisional operation and funding of the provisional IMS.”), and the resulting decisions of the Commission taken at its First, Second, Fifth, Sixth, Twelfth and Fourteenth sessions (see paragraph 4.2).
- (c) **United Nations laissez-passer.** The Agreement to regulate the relationship between the United Nations and the Commission was concluded and entered into force on 30 June 2000 (CTBT/PC-11/1, paragraph 5.10 and United Nations General Assembly Resolution A/RES/54/280). Article IX of the Agreement entitles officials of the Commission to use the United Nations laissez-passer as a valid travel document. The laissez-passer specifies the privileges and immunities to be accorded to the bearer.
- (d) **Exchanges of letters.** At its Eleventh Session, the Commission adopted the Model Arrangement for meetings (e.g. seminars, workshops, training programmes and experiments) held outside Austria and financed/organized in full or partly by the Commission (CTBT/PC-11/1/Annex I, Appendix I (2000), adopted in CTBT/PC-11/1, paragraph 5.2). On the basis of the model, the Commission routinely concludes exchanges of letters with the States hosting such events to facilitate visas, entry and participation at the event, temporary import and re-export of equipment necessary for the event and indemnification for damages.
- 3.2. At its Ninth Session in 1999, the Commission considered the privileges and immunities necessary for its function and adopted the recommendation by WGA (CTBT/PC-9/1, paragraphs 5.3 and 5.9, adopting WGA recommendation 8 in CTBT/PC-9/1/Annex I) to “Call upon all States Signatories to accord to the activities of the Commission, its officials and experts, cooperation and assistance as may be necessary for the exercise of their functions and the fulfilment of the Commission’s purpose, in accordance with the laws and regulations in force in their respective countries”.
- 3.3. States Signatories have reported the measures taken to grant privileges and immunities to the Commission in their national jurisdiction (see Annexes 1 and 4).

4. STATUS OF FACILITY AGREEMENTS

- 4.1. For provisional operation of the IMS before entry into force, paragraph 12(b) of the Annex to the Resolution mandates the Commission to negotiate agreements or arrangements, in particular with those States prospectively hosting or otherwise taking responsibility for IMS facilities. In turn, the Appendix to the Resolution, in relation to paragraph 14 of the Annex, mandates the Commission to develop procedures and a formal basis for the provisional operation and funding of the provisional IMS. On that basis, the Commission adopted a model facility agreement/arrangement in 1998 (CTBT/PC-6/1/Annex I, Appendix III).
- 4.2. A summary of the decisions taken by the Commission on facility agreements/arrangements is presented below:
 - (a) At its First Session in 1997, the Commission instructed the PTS to “start concluding agreements or arrangements for IMS facilities” (CTBT/PC-I/22, page 20).
 - (b) At its Second Session in 1997, at the recommendation of WGA, the Commission endorsed the first version of the model facility arrangement covering pre-certification activities (CTBT/PC/II/1, paragraph 4, and CTBT/PC/II/1/Add.1, paragraphs 8 and 13 and Appendix IV).
 - (c) At its Fifth Session in April 1998, at the recommendation of WGA, the Commission adopted a model facility arrangement covering PCAs together with improvements to the first model, and urged all States Signatories to give high priority and urgency to the conclusion of facility arrangements (CTBT/PC-5/1/Rev.1, paragraph 6.2, and CTBT/PC-5/1/Add.1, recommendations 1 to 3 on model arrangements and Appendix VII).
 - (d) At its Sixth Session in August 1998, the Commission received from WGA a composite version of the two adopted models, incorporating both the pre- and post-certification activities as well as the approved improvements. It also received a Task Leader Paper on taxation (CTBT/PC-6/1/Annex I, Appendix VI). The Commission decided that States Signatories should take measures to ensure, to the greatest extent practicable, treatment in matters of taxation and duties for the Commission equivalent to that for other international organizations. It also decided that, to the extent that the imposition of any taxes and duties has an adverse impact on the full implementation of the Programme and Budget of the Commission, the relevant States Signatories be encouraged to consider measures to limit, whenever possible, any negative budgetary implications, bearing in mind the particular options in the Task Leader Paper. The PTS was asked to monitor the situation closely and report regularly on the cumulative total of taxation charges on the Commission (CTBT/PC-6/1/Rev.1, paragraph 7.2, and CTBT/PC-6/1/Annex I, recommendation 3).
 - (e) At its Twelfth Session in 2000, at the recommendation of WGA, the Commission adopted a decision on the early conclusion of agreements/arrangements on the conduct of activities relating to international monitoring facilities, in which it called upon States hosting IMS facilities to negotiate and conclude as a matter of priority facility agreements/arrangements and to take the steps necessary to ensure their early entry into force or effect (CTBT/PC-12/1/Annex VIII).

- (f) At its Fourteenth Session in 2001, the Commission considered the report of WGA, which addressed the concerns of the PTS that, as IMS facilities were now being certified, there was an even stronger need to lay a firm legal basis for the disbursement of post-certification costs. WGA highlighted that the negotiation and conclusion of facility agreements/arrangements based on the adopted model remained of primary importance. The certification of IMS facilities increased the need for them, given in particular the possible large and regular amounts of post-certification funds to be disbursed for a certified facility. WGA considered that it was not legally sound for post-certification costs to be paid for a significant period for facilities for which there was no legal arrangement of any kind covering PCAs. However, given the importance of maintaining administrative and operational activity in pursuance of the commissioning of the IMS, it was recognized that interim legal arrangements covering PCAs might therefore be necessary, pending the conclusion of IMS facility agreements/arrangements based on the model, if the interim arrangements could be made expeditiously. These arrangements would be pursued only as an interim measure to cover any absence of a legal basis for PCAs. As a result, the Commission called upon States Signatories and requested the PTS to proceed in that way as the legal basis for post-certification costs (CTBT/PC-14/1, paragraph 15, and CTBT/PC-14/1/Annex I, paragraph 23).
4. 3. Annex 1 contains an update on the number of facility agreements/arrangements that have been signed and entered in force by some of the 89 host States stipulated in Annex 1 to the Protocol to the Treaty. Efforts by the PTS to achieve progress in this area were very limited between 2000 and 2010, in most years resulting in the conclusion of only one or two agreements. In 2009 and 2010, both WGA and WGB took up the issue, each in its respective sphere of responsibility, and there has been increased awareness on the part of States Signatories of the importance of concluding facility agreements/arrangements and the national measures to enable their implementation.

5. OPERATIONAL IMPACT

Sound Legal Basis for Provisional Operation of the IMS

- 5.1. The facility agreement/arrangement regulates the details of the commitment by the host State to host the facility and, during provisional operation of the IMS, to cooperate with the Commission and its PTS to operate the facility in accordance with the relevant (draft) operational manual. Although it could be argued that most of the elements contained in the facility agreement are implied by the Treaty and relevant Commission decisions, when no facility agreement has been concluded and brought into force, the detailed requirements for the collaboration of the host State in establishing and provisionally operating the facility are lacking. This has been identified by the PTS as affecting the conduct of operations and sustainment activities for the provisional operation of IMS facilities.
- 5.2. As pointed out by WGA, the facility agreement provides the sound legal basis for the provisional operation of the IMS facility and the conclusion of subsidiary agreements with station operators and/or other entities for activities such as testing, post-certification and sustainment. It constitutes the fundamental part of the legal framework foreseen by the Treaty. Although interim exchanges of letters were concluded

expeditiously to allow the commencement of site surveys and establishment of IMS facilities, such interim arrangements are not adequate in the long term. Furthermore, there is a lack of uniformity in this approach, as the letters differ greatly in scope and in some cases express little more than the willingness of the host State to accept the presence of the PTS and the initiation of the work.

- 5.3. Although the IMS is operating only provisionally, given the important investment being made by States Signatories in the provisional IMS, it is essential to be able to sustain and protect this investment and therefore the imperative requirement for these agreements is no less important during the preparatory phase. The Treaty stipulates that the stations will be owned and operated by the host State and placed under the authority of the PTS. This is a complex legal relationship which is to be regulated by the facility agreement/arrangement. As WGA pointed out in 2001 in its report (CTBT/PC-14/1/Annex I, paragraph 23), there are also the key issues of facility physical security, access to the site and ownership of equipment which need to be addressed. The IMS represents a significant investment of resources and effort and it is not prudent to proceed without the proper legal framework to protect that investment.

Data Availability

- 5.4. When no facility agreement/arrangement is in force providing for exemption from customs restrictions and requiring the host State to facilitate customs clearance, or when the necessary national measures have not been established to enable implementation of the facility agreement/arrangement, the PTS has experienced delays (ranging from several months to more than a year) in shipping equipment for repair or replacement at IMS stations as well as additional non budgeted costs. This has affected the timely repair or provision of replacement equipment at stations and, consequently, data availability while also increasing the overall costs of these actions.

- 5.5. In 2009, at the Thirty-Third Session of WGB:

“The PTS reported that an important factor causing delays in shipments was lack of established facility agreements and subsequent adoption of necessary national measures to ensure prompt custom clearance and, where applicable, tax exemption. WGB noted that this had a direct effect on data availability. WGB requested that the PTS provide more detailed and specific examples and analysis of this issue for the next WGB session, and encouraged host countries to cooperate closely with the PTS to resolve this issue” (CTBT/PC-33/WGB/1, paragraph 67 (2009)).

- 5.6. In 2010, at its Thirty-Fourth Session, in respect of the oral report of the PTS:

“WGB welcomed the two new initiatives from the PTS... and encouraged all host countries to continue to work towards the establishment of the required facility agreements and the subsequent necessary national legal measures to ensure essential prompt customs clearance and tax exemption. WGB also encouraged all host countries, via their Permanent Missions, to work with the PTS for timely customs clearance of IMS equipment, especially when it affects data availability” (CTBT/PC-34/WGB/1, paragraph 85 (2010)).

5.7. At the Thirty-Fifth Session of WGB in 2010, in respect of the oral report of the PTS:

“The PTS presented preliminary data and findings on time delays associated with shipment of equipment and customs clearance. It appears that these time delays are increasing. In cases where taxes or custom expenses are charged, the PTS sends requests for reimbursement. Historically, the PTS has been unsuccessful in collecting such reimbursement in several instances. The PTS noted that having a facility agreement in place is not always sufficient to obtain tax and customs exemption, and that national legislation normally will be necessary to grant such exemption to the Commission. WGB urged States Signatories to work with the PTS to seek practical solutions to enable prompt tax- and customs-free import and export of equipment for IMS facilities. WGB also requested the PTS to continue monitoring the problems associated with customs clearance and provide a written report, highlighting the effects on data availability, for the Thirty-Sixth Session of WGB” (CTBT/PC-35/WGB/1, paragraph 82 (2010)).

5.8. In 2011, WGB at its Thirty-Sixth Session, in respect of the oral report of the PTS:

“noted with concern that the PTS is incurring growing customs clearance costs, despite all attempts made by the PTS to obtain tax and customs exemption for import of equipment. In cases where such charges are applied, these costs are currently being borne by the PTS. (...) WGB encourages the PTS and host countries to actively work together in order to avoid or solve in a timely manner all problems associated with import/export of IMS equipment” (CTBT/PC-36/WGB/1, paragraph 74).

5.9. At its Thirty-Seventh Session in 2011, WGB, in respect of the oral report of the PTS:

“urged all host countries to continue working together with their station operators and the PTS to mitigate customs delays and associated costs” (CTBT/PC-37/WGB/1, paragraph 76).

Costs

5.10. In 2010, the report of the External Auditor⁷ stated the following in relation to taxes and customs duties (CTBT/PTS/INF.1065, paragraph 61):

“This issue was already addressed in the external audit report on the 2002 financial statements and led to the production of the Administrative Directive No. 51 on Taxation of the Preparatory Commission. But the issue of tax and custom duties is still pending: the cumulative amount of disbursements for taxes since 1998 is of US\$ 2.9 million. There is still a need for state signatories to respect their commitment to exempt the Commission from taxes and custom duties.”

5.11. It has also been reported to the PTS that in some cases, when all efforts to resolve legal obstacles have failed, the National Data Centre (NDC) or the station operator has paid the taxes or customs duties. In other cases, IMS equipment has been discarded inside the host country when national restrictions did not allow its export by the Commission for repair, or when charges to export it would be greater than the combination of the residual cost of the equipment and its repair.

⁷ For further information regarding the External Auditor’s observations and recommendations on the subject of taxes and customs duties, please refer to CTBT/PTS/INF.581 (2003), CTBT/PTS/INF.1122 (2011) and CTBT/PTS/INF.1173/Rev.1 (2012).

Efficient Organization of Events and Protection of the Interests of the Commission

- 5.12. At its Ninth Session, WGA noted that “a gap existed in the model arrangement scenarios already approved by the Preparatory Commission to cover its activities in countries which did not host International Monitoring System stations” (CTBT/PC-9/1/Annex I, paragraph 12.5 (1999)). At its Eleventh Session in 2000, the Commission adopted a model exchange of letters for conclusion with States hosting CTBTO meetings, workshops, training programmes, experiments or exercises. Although this improved the situation, the gap still exists. The privileges and immunities granted pursuant to facility agreements only cover activities related to the establishment, operation and sustainment of IMS facilities. The exchanges of letters only cover a one-time event.
- 5.13. Even though the PTS is using the model approved by the Commission, the PTS has experienced difficulties in concluding the exchange of letters in a timely manner or in implementing some of the provisions, especially those regarding granting the participants in the Commission’s events the necessary privileges and immunities as well as tax and duty exemption for scientific equipment.
- 5.14. Similarly to facility agreements/arrangements, implementation of the exchanges of letters will be contingent upon necessary national measures, including in some cases parliamentary approval (recognition of the Commission as a legal entity and the granting of privileges and immunities, exemptions to the Commission for the temporary import and re-export of equipment necessary for the event). The indemnification of the Commission for damages is also an element in the model exchange of letters which the authority executing the exchange of letters might not be in a position to grant without higher approval. The short time frame to prepare for the event is frequently not adequate for the conclusion of the exchange of letters based on the model. This leaves the Commission in the unfortunate position of having to cancel the event at the last minute or having to proceed and face tax and customs complications and/or a legal risk. The PTS is drawing the attention of States Signatories to this matter owing to the increasingly extensive and complex nature of Commission events.
- 5.15. The PTS is suggesting that States Signatories that have encountered or anticipated such obstacles may wish to enter into a standing agreement or arrangement with the Commission covering the required privileges and immunities for such events and adopt the measures necessary to implement them. A model bilateral agreement/arrangement or the model put into use by the United Nations for this purpose could serve as the basis for negotiation with interested States Signatories and lead to a resolution of this operational difficulty. The PTS looks forward to holding consultations with interested States Signatories on this matter and it is hoped that WGA may at some stage wish to consider this issue.

6. REIMBURSEMENT OF TAXES AND DUTIES

- 6.1. At the Sixth Session of the Commission in 1998, the issue of taxation was considered. The subject had been thoroughly discussed by WGA, which drew the attention of the Commission to the potential impact taxation could have for the budget of the Commission and the possible consequences for the speed at which the IMS could be established. WGA noted that taxation in effect would mean that the assessed

contributions of all States Signatories would be used to pay taxes charged by a few States Signatories that do not exempt the Commission from taxes. In accordance with the principle of equality, such a situation must be addressed.

- 6.2. Almost all of the facility agreements/arrangements have provided for the application, *mutatis mutandis*, of the 1946 Convention on the Privileges and Immunities of the United Nations to the activities of the Commission, its officials and experts, and explicit exemption from direct tax and customs duties as well as reimbursement of indirect taxes. Annex 2 to this Note shows in tabular form the extent to which the facility agreements in force have exempted the Commission from direct and indirect taxes and customs duties.

Procedure Followed by the PTS

- 6.3. In contracting for goods and services, the PTS takes into account the status of any applicable facility agreement in preparing the contract. If a facility agreement is in force and provides for exemption from direct taxes and duties, in principle such taxes and duties should not be paid. In cases where no facility agreement is in force, however, taxes and duties can form part of the contract price and contractors are required to submit the corresponding documentation on taxes or duties paid in order to receive reimbursement from the Commission.
- 6.4. When the Commission has been unable to secure exemption from taxation at source, the PTS has explored other avenues to achieve the same result:
 - (a) In some cases, tax and customs duty exemption could be secured when the IMS equipment was imported with a letter designating it as a donation to the government or for the purpose of a technical assistance project;
 - (b) Under the Relationship Agreement with the United Nations, a subsidiary agreement has been concluded with the United Nations Development Programme (UNDP) pursuant to which UNDP uses its good offices to assist the PTS with securing tax- and customs-free importation of equipment, when appropriate and when possible and with mixed results;
 - (c) In all cases, when IMS equipment or consumables are to be shipped to a certified IMS facility, the PTS addresses a “transfer of ownership letter” to the host country (with a copy going to the consignee) via the respective Permanent Mission to formalize the provision in Article IV, paragraph 17, of the Treaty: “The International Monitoring System shall be placed under the authority of the Technical Secretariat. All monitoring facilities of the International Monitoring System shall be owned and operated by the States hosting or otherwise taking responsibility for them in accordance with the Protocol.” These “transfer of ownership letters” are necessary for the accounting purposes of asset management but have also been instrumental on several occasions in engaging the Permanent Mission or the National Authority or the NDC to assist with timely customs clearance.

Requests for Reimbursement

- 6.5. Further to the discussions in WGA and WGB, the PTS began requesting reimbursement in all cases where taxes or duties have been paid, regardless of whether there is a facility

agreement in force or not. Such reimbursement requests sent by the Commission have rarely been successful.

- 6.6 Note is made that the reimbursement of turnover tax (value added tax) has been particularly challenging for the Commission. As reflected in most agreements on privileges and immunities of other international organizations, including the United Nations Convention, Member States are only required to, 'whenever possible', reimburse indirect taxes when the international organization is making an important purchase for official use of property. Emphasis is made that, unlike other international organizations, for the fulfillment of its mandate, the Commission is uniquely required to build, provisionally operate and maintain the IMS network in conjunction with the Global Communications Infrastructure, which together represent a billion dollar investment by States Signatories. Hence, nearly all of the purchases made by the Commission are 'important purchases' and given that the value added taxes to be paid are significant, in some countries as high as 22%, it is suggested that conditioning reimbursement to 'whenever possible' may be a position that States Signatories may not wish to support.
- 6.7. The PTS is collaborating closely with many of the States Signatories concerned in following up these requests and in trying to find a long-term solution to the matter. Individual consultations held with several States Signatories have been very useful in providing clarification regarding the nature of taxes paid by the Commission and the necessary national procedures for tax reimbursement, as well as in identifying possible mechanisms to achieve tax exemption and/or reimbursement for the Commission.
- 6.8. As a result of these consultations, the PTS has identified two main categories of circumstances that are affecting tax reimbursement by States Signatories: (i) the absence of relevant national implementation measures, such as a facility agreement, recognition of the Commission as a legal entity or revision of national tax customs and regulations, as explained in Sections 2, 3 and 5 above; and (ii) the difficulty for the PTS to pursue eventual national procedures that may apply to tax reimbursement requests in each particular State but which are not known to the PTS, such as necessary supporting documentation, time frames and administrative procedures to request reimbursement.
- 6.9. The first category is being systematically addressed. The PTS is actively pursuing negotiations on facility agreements with relevant States and is working closely with governments to identify and adopt any measures that may be needed at the national level to implement the tax/duty exemptions. The second category requires the active collaboration of States Signatories in order to agree, where necessary, on specific procedures or mechanisms to obtain a reimbursement of taxes and duties paid, including reimbursement of indirect taxes such as value added tax, in light of their respective national requirements. In four cases, the PTS has established a standing procedure with the State Signatory concerned whereby taxes and duties paid are promptly reimbursed to the Commission. The PTS is currently involved in consultations with other States Signatories to reach similar agreements and/or identify the necessary procedures to be followed.
- 6.10. A few States Signatories have indicated that they are considering mechanisms to respond to the Commission's requests and to reimburse the taxes and duties paid. Since the navigation through the national channels to enable reimbursement may be resource intensive and beyond the current capacity of the PTS, the simplest solution in such cases

is, when possible, to settle the matter through a deduction from the cash surplus. At its Thirty-Seventh Session, the Commission adopted recommendation 5 of WGA to amend Financial Rule 8.1.03(a) in order to allow for tax and/or customs duty reimbursements related to the General Fund expenses to be credited to the Capital Investment Fund – Sustainment (CIF-S), regardless of the financial year to which they relate (CTBT/PC-37/2, paragraph 14). Another mechanism under discussion with one State Signatory is the deduction of taxes and duties paid from future payments to be made by the Commission to the station operator under the contract for PCAs.

- 6.11. An overview of the taxes and duties paid by the Commission, as well as the work of the PTS on this issue is reported to WGA as requested in Annex 3.

7. COMPLETION OF THE MANDATE OF THE COMMISSION

Model Agreements and Negotiated Agreements

- 7.1. Pursuant to paragraph 13 of the Annex to the Resolution, the Commission has the mandate to undertake all necessary preparations to ensure the operationalization of the CTBT verification regime at entry into force. Paragraph 12 requires the Commission to develop and submit for approval by the Conference of the States Parties: (a) standard model agreements/arrangements to be concluded by the CTBTO; and (b) agreements/arrangements negotiated by the PTS in accordance with these models, in particular with those States hosting IMS facilities. To fully meet that mandate, the PTS must conclude negotiations with all 89 host States and will continue to pursue that goal, as outlined in Section 4 above.
- 7.2. Almost all of the facility agreements/arrangements in force have provided for a duration that will continue until a new facility agreement/arrangement is concluded with the CTBTO after entry into force of the CTBT. The Conference of the States Parties will need to agree to the succession of those agreements/arrangements for the transitional period, if appropriate.
- 7.3. Regarding the agreement/arrangement to be concluded with the CTBTO, based on 14 years of experience operating and sustaining IMS facilities in accordance with facility agreements/arrangements, the PTS considers that the current model needs improvement. It is suggested that WGA and the Commission may wish to review and reconsider the current model before submitting it to the Conference of the States Parties for approval at its First Session. The PTS is currently preparing a commentary on the provisions of the model that are lacking clarity, with proposals for revision.

Agreements on Privileges and Immunities

- 7.4. Paragraph 56 of Article II of the CTBT stipulates that the legal capacity, privileges and immunities referred to in Article II shall be defined in agreements between the CTBTO and the States Parties as well as in an agreement between the CTBTO and the State in which it is seated. Such agreements must be approved by the Conference of the States Parties in accordance with the applicable procedures. Typically, the legal arrangements would consist of the headquarters agreement with the State hosting the seat of the organization and a general convention on privileges and immunities concluded with member States (as in the cases of the United Nations, its specialized agencies, the

International Atomic Energy Agency (IAEA) and the International Criminal Court, for example), or a series of bilateral agreements negotiated individually with each member State (as in the case of the Organisation for the Prohibition of Chemical Weapons (OPCW)).

- 7.5. In his report to the Thirteenth Session of WGA (CTBT/PTS/INF.213), the Executive Secretary informed WGA that in order for the Commission to prepare the legal framework for implementing the relevant provisions of the CTBT on privileges and immunities, the PTS would present a draft multilateral or model bilateral convention on the privileges and immunities of the CTBTO for the future consideration of WGA whenever WGA was prepared to consider the matter. The draft convention will be based on the relevant provisions of the CTBT and the practice of other international organizations.
- 7.6. In contemplating the legal framework for implementation of the CTBT after entry-into-force, including the privileges and immunities agreement, it is clear that several aspects of the current model facility agreement would become redundant. Development for a new model facility agreement should consequently be drafted to be concluded in tandem, with no gaps or conflicts, or integrated into it.
- 7.7. With reference to Article II, paragraph 57, of the Treaty, it is understood that the privileges and immunities enjoyed by the CTBTO Director-General, the inspectors, the inspection assistants and members of the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in the Protocol, and be enjoyed on that basis when the Treaty enters into force. Certain procedural aspects will be considered in the course of establishing standing arrangements under Part B of the Protocol to the CTBT.

PTS Programme of Legal Assistance

- 7.8. Paragraph 18 of the Annex to the Resolution requires the Commission to:
 - (a) “Facilitate the exchange of information between States Signatories concerning legal and administrative measures for implementation of the Treaty and, if requested by States Signatories, give advice and assistance to them on these matters; and
 - (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.”
- 7.9. Annex 4 provides an update on the activities carried out as part of the PTS programme of legal assistance, as well as the various documents and databases developed to support such activities and to assist States Signatories in the process of implementing legislation for the CTBT.

ANNEX 1

**LEGISLATION AND NATIONAL MEASURES ADOPTED BY STATES
SIGNATORIES⁸
(as of 31 August 2012)**

State	Title of Legislation
STATUTES TO IMPLEMENT THE CTBT	
Australia	Comprehensive Nuclear Test-Ban Treaty Act 1998, as amended (<i>some sections in force; some awaiting CTBT entry into force</i>)
Austria	Federal Constitutional Act concerning a Nuclear-Free Austria, passed on 1 July 1999
Canada	Comprehensive Nuclear Test-Ban Treaty Implementation Act of 1998
Cook Islands	Nuclear-Test-Ban Act 2007, including the prohibition of any nuclear weapon test explosion or any other nuclear explosion; or causing, encouraging or in any way participating in one
Denmark	Act no. 403 of 2 June 1999 on measures pursuant to the [CTBT]
Estonia	CTBT Ratification Act 1999
Germany	Statute of 9 July 1998 on the [CTBT]
Hungary	Government Resolution no. 2087/1999 (5 May) on ratification of the CTBT and designation of the National Authority
Ireland	Nuclear Test Ban Act 2008
Italy	Law No. 484 of 15 December 1998, "Ratification and Implementation of the CTBT, including its Protocols and Annexes, as adopted by the General Assembly of the United Nations on 10 September 1996" Law no. 197 of 24 July 2003, "Amendments and Integration to Law No. 484 of 15 December 1998 concerning the CTBT"
Mongolia	Law of Mongolia on the Nuclear-Weapon-Free Status of 3 February 2000, including the prohibition on testing or using nuclear weapons Resolution 19 of the State Great Hural of Mongolia on measures to be taken in connection with the adoption of the law on its nuclear-weapon-free status, adopted on 3 February 2000
New Zealand	New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987, including the prohibition on testing any nuclear explosive device Nuclear-Test-Ban Act 1999
Qatar	Council of Ministers' Decision no. 26 of 2004 on the establishment of a National Weapons-Ban Committee
Russian Federation	Federal Act on Ratification of the CTBT of 2000
Sri Lanka	Atomic Energy Authority Act, Article 22, provides that neither the authority nor persons shall produce or develop atomic weapons or parts thereof or conduct or cause to be conducted experimental work with the intention that it shall lead to explosive nuclear assemblies for atomic weapons
Sweden	Act SFS 1998: 1702 on Inspections under the [CTBT] Act amending Act (1984:3) on nuclear activities Act SFS 1998: 1703 amending the Criminal Code Act SFS 1998: 1704 amending Act (1976:661) on Privileges and Immunities
United Kingdom	Nuclear Explosions (Prohibition and Inspection) Act 1998
REGULATIONS ON PRIVILEGES AND IMMUNITIES OF THE COMMISSION	
Australia	Preparatory Commission for the [CTBTO] (Privileges and Immunities) Regulations 2000 and Amendment 2004 (no. 1)
Canada	Order respecting Privileges and Immunities in relation to the Preparatory Commission for the [CTBTO] and its Provisional Technical Secretariat
European Union	Council Directive 77/388/EEC of 17 May 1977 [Article 159(10) exempting the Preparatory Commission from turnover taxes (value-added-tax – VAT) by virtue of the Headquarters Agreement concluded with Austria]

⁸ States Signatories are invited to inform the PTS of corrections and updates to this list by writing to: legal.registry@ctbto.org

State	Title of Legislation
Italy	Law No. 1318 of 20 December 1957, "Adhesion to the United Nations Convention on Privileges and Immunities, approved by the General Assembly of the United Nations on 13 February 1946" EU Council Directive No. 77/33/EEC of 17 May 1977
Russian Federation	Federal Act on Ratification of the CTBT of 2000, Article 4, granting until EIF legal capacity to the Preparatory Commission as well as privileges and immunities as are necessary for independent exercise of functions to the Preparatory Commission, staff and delegates
Sweden	ACT SFS 1998:1704 amending ACT (1976:661) on Privileges and Immunities
United Kingdom	International Immunities and Privileges. The Preparatory Commission for the [CTBTO] (Immunities and Privileges) Order 2004 Resolution, dated 12 March 2008, by the Corporation of Hamilton of Bermuda on the Waiver of Goods Wharfage on Infrasound Station (IS51) Equipment International Immunities
NATIONAL AUTHORITY DECREES	
Belarus	Presidential Decree no. 199 of 19 April 2000 on implementation by Belarus of its obligations under the [CTBT] designating the National Authority By-law of the Council of Ministers no. 1170 of 28 July 2000 on implementation of the CTBT [NDC, budget, staff]
Bulgaria	Council of Ministers Decision of 2003 on the National Authority
Czech Republic	Government Decision no. 535 of 16 October 1996 designating the National Authority Government Decision no. 883 of 23 December 1998 [budget for Preparatory Commission contribution, costs of AS26, staff]
Hungary	Government Resolution no. 2087/1999 (5 May) on ratification of the CTBT and designation of the National Authority
Lithuania	Government Resolution of 12 July 1998 designating the National Authority
Madagascar	Ministerial Order no. 5983/99 establishing the National Authority
Portugal	Council of Ministers Resolution no. 102/2001 establishing the National Authority
Russian Federation	Decision no. 733 of 18 October 2001 designating the National Authority
Ukraine	Presidential Decree designating the National Authority
OTHER RELEVANT LEGISLATION (including provisions prohibiting or criminalizing nuclear explosions, the illicit use of nuclear or radioactive material or weapons of mass destruction)	
Albania	Criminal Code Article 234 establishes the offence of production, storage or transport of nuclear weapons which have a poisonous or explosive base with the intent of committing acts of terrorism
Andorra	Penal Code Article 253 makes an offence of illicit possession of nuclear material or radioactive products which can endanger life or health. Article 254 makes it an offence to import, export, transport or establish a deposit of nuclear material or radioactive products which can endanger life or health. Article 255 makes it an offence to unlawfully expose someone to ionizing radiation which can endanger his or her life or health. Article 256 makes it an offence to operate an installation where nuclear material or radioactive products are used so as to endanger life or health. Article 257 makes it an offence to handle nuclear or radioactive material carelessly or recklessly so life or health is endangered. Article 258 makes it an offence to emit radiation carelessly or recklessly so life or health is endangered.
Antigua and Barbuda	Nuclear Material (Offences) Act 1993 making it an offence for a person by means of nuclear material to do an act outside Antigua and Barbuda that if committed in Antigua and Barbuda would have made the person guilty of murder, manslaughter, assault, malicious damage, embezzlement, fraud or extortion, or to receive, hold or deal with nuclear material intending to enable another to do an act which is an offence mentioned above
Armenia	Criminal Code Article 215.2 makes an offence of contraband of radioactive materials or nuclear weapons; Article 386 makes it an offence to manufacture, acquire or proliferate weapons of mass destruction.
Australia	Weapons of Mass Destruction (Prevention of Proliferation) Act 1995, with the object to ensure that goods are not supplied or exported, and services are not provided, in circumstances where the goods will or may be used in, or the services will or may

State	Title of Legislation
	assist, the development, production, acquisition or stockpiling of weapons that are capable of causing mass destruction Weapons of Mass destruction Regulations – Statutory Rules 1995 No. 373
Austria	Criminal Code, Articles 172 and 173, making it an offence to cause danger to persons or property through the release of nuclear energy and ionizing radiation, and Article 175 on the use of nuclear material, ionizing radiation or explosive devices for the preparation of an offence
Azerbaijan	Criminal Code, Articles 206.2 and 206.4 on smuggling of radioactive explosives and nuclear weapons of mass destruction, Article 226 on illegal handling with radioactive material, Article 227 on plunder or extortion of radioactive material and Article 350 on infringement of rules on manipulation with a weapon, radioactive material or explosive
Bangladesh	Nuclear Safety and Radiation Control Act 1993 prohibits and makes punishable the act of gathering, producing acquiring, importing, exporting, transporting, holding, processing, reprocessing, using ,selling, transferring, shifting, storing, leaving or destroying any radioactive substance, nuclear material, material or apparatus generating radioactive or ionizing radiation
Belarus	Criminal Code of 1999 no. 255-3
Belgium	Law on State Security in the field of nuclear energy, dated 4 August 1955
Bosnia and Herzegovina	Criminal Code Articles 192-194 on illicit procurement, use, disposal or dispersion of nuclear material
Botswana	Explosives Act Article 7 makes it an offence to cause an explosion where property is damaged, or persons hurt or endangered
Brazil	Constitution of Brazil, as amended in 2006, Title II, Article 21, Section XXIII (a), all nuclear activity within the national territory shall only be admitted for peaceful purposes and subject to approval by National Congress
Brunei	Internal Security Act 1984, Chapter 133
Cambodia	Constitution of Cambodia (as adopted on 21 September 1993), chapter IV, article 54, prohibiting nuclear weapons
Cape Verde	Criminal Code Article 294 makes it an offence to possess explosives, manufacture, sell, transport, possess or establish stockpiles of weapons or munitions of war.
Chile	Act 17,798 on Control of Arms, Explosives and Similar Elements
China	Amendment III to the Criminal Articles 1-6 criminalise the spreading, illegal manufacture, trade, transport, storage, theft and forcible seizure of radioactive substances. Regulations of the People’s Republic of China on export control of missiles and missile related items and technologies. Article 18 criminalises the export of missile related items without a license. Article 19 criminalises forgery, sales or purchase of a missile-export licence.
Colombia	Codigo Penal Act no. 599/2000 (amended by Act no. 890/2004), articles 350-367 on offences that may cause danger or damage to the public, including the possession, use, fabrication or release of dangerous substances or radioactive and nuclear substances considered as such under international treaties to which Colombia is a party, and the fabrication, possession or use of chemical, biological and nuclear weapons. Constitution of Colombia, article 81, prohibiting nuclear weapons.
Costa Rica	Arms and Explosives Act 1995 Article 88-94 criminalise the possession, stickpiling, import and trafficking, smuggling, illicit trade, illicit manufacture, illicit bearing and alteration of weapons.
Cyprus	The Protection from Ionizing Radiation Law 2002
Czech Republic	Peaceful utilization of nuclear energy and ionizing radiation act 1997, section 5
Denmark	Weapons Act, section 10
Dominican Republic	Criminal Code, section 192a criminalizes the import, production, ownership, carrying, use or transfer of highly dangerous weapons or explosives.
Dominican Republic	Constitution, article 67.2, prohibiting nuclear weapons
Ecuador	Constitution of the Republic of Ecuador, article 90, prohibiting nuclear weapons
El Salvador	Criminal Code, article 264 on the release of any type of energy that endangers the life or the health of persons or their property, even if no explosion occurs
Estonia	1999 Amendment to the Penal Code, section 305 on causing an explosion using nuclear energy

State	Title of Legislation
Ethiopia	Criminal Code Articles 497-499 make it an offence to cause or help cause an explosion using a dangerous substance maliciously, knowingly or negligently.
Fiji	Arms and Ammunition Act 2003 Articles 3-4 criminalise the manufacture, possession or use of arms or ammunition without a license. Article 10 criminalises storage, assembly, disassembly, manufacture, sale, disposal, exposal and possession of arms without a license. Article 16 and 19 criminalise import and export of arms without a license.
Finland	Penal Code 39/1889 with amendments up to 940/2008, Section 6 – Nuclear device offence (578/1995), providing that a person who imports, produces or detonates a nuclear device in Finland or has one in his or her possession shall be sentenced for a nuclear device offence to imprisonment for at least two and at most ten years
Georgia	Criminal Code, article 230-232 on illicit handling of nuclear material or device, including testing, seizure of nuclear material and manufacture of nuclear weapons or other nuclear explosive device
Germany	1999 Amendment of the Penal Code, Section 328 on causing, inducing another or encouraging a nuclear explosion. War Weapons Control Act 1961.
Greece	Penal Code, articles 187 and 187a
Grenada	Terrorism Act no. 5 of 2003 Article 31 makes it an offence to illegally provide instruction or training in the making or use of nuclear weapons
Hungary	Act IV of 1978 on Criminal Code, Section 160/A on use of weapons prohibited by international treaties
Iceland	Penal Code, article 169a, whereby anyone illegally accepting, having in his/her custody, using, moving, altering, discharging or distributing nuclear substances and thereby endangering human lives, health and assets shall be subject to imprisonment for up to six years
Iraq	Constitution of Iraq, article 9, paragraph 1(e), prohibiting nuclear weapons
Ireland	Radiological Protection Act 1991
Italy	Law No. 185 of 9 July 1990, “New regulations on the control of export, import and transit of weapon production materials”, prohibiting production, import and transit of weapons of mass destruction, as well as research aiming at their production and transfer of relevant technologies or instruments and technologies used for their construction Legislative Decree No. 96 of 9 April 2003, “Partial implementation of EU Regulation No. 1334/2000, establishing an EU regime of dual use items export” Law No. 483 of 15 December 2001, “Terrorist purposes”, amending Law No. 110 of 18 April 1975 “on the regulations concerning weapons, ammunitions and explosives control” to include chemical, biological and radioactive weapons Penal Code, Article 270 bis as amended by Law No. 438 of 15 December 2001, “Criminal associations engaged in terrorist activities (also internationally) or attempting to overthrow the democratic order” Law No. 1860 of 31 December 1962, “Peaceful use of nuclear energy” Legislative Decree No. 230 of 17 March 1995, “Implementation of the Directives regulating the activities of production, use, import, export, storage, collection and disposal of fissile material and/or radioactive sources/substances, including the integrations and amendments to those Directives” Law No. 99 of 23 July 2009, “Measures concerning the development and internationalization of companies and energy”, arranging for Italy to exploit again nuclear energy for civil purposes
Japan	Explosives Control Act prohibits nuclear weapons Law no. 80 concerning the Partial Amendment of the Law concerning the regulation of Nuclear Source Materials, Nuclear Fuel Materials and Reactors
Jordan	Nuclear Energy and Radiation Protection Act 2001, Article 23
Kazakhstan	Criminal Code, articles 158-161, under which production, purchase or sale of chemical, biological and other weapons of mass destruction prohibited under an international treaty of the Republic of Kazakhstan shall be punished by imprisonment for a period from five to ten years
Lao People's Democratic Republic	Penal Code articles 70-73 and 164-165

State	Title of Legislation
Latvia	Criminal Code, chapter 1, sections 73 and 89 on the manufacture, amassment, deployment or distribution of nuclear and other weapons of mass destruction, which is subject to a sentence of life imprisonment or deprivation of liberty for three to twenty years
Liechtenstein	Swiss Federal Law on War Material of 13 December 1996, articles 7 and 34 (this legislation is also effective in Liechtenstein)
Lithuania	Criminal Code, articles 256-257 on unlawful possession of nuclear or radioactive materials or other sources of ionizing radiation Law on Environmental Protection, article 21 on the prohibition of reprocessing radioactive matter used for the production of nuclear weapons, and of importing, stationing or producing nuclear weapons
The former Yugoslav Republic of Macedonia	Criminal Code, Article 231 on unauthorized procurement and possession of nuclear materials, Article 288 on creating a general danger by fire, flood, explosion, poison or poisonous gas, ionizing radiation, motor power, electrical or other energy.
Marshall Islands	Counter Terrorism Act 2002, section 125 on weapons of mass destruction offenses: (1) Except as authorized by the Cabinet, any person who: (a) knowingly, directly or indirectly, develops, produces, ships, transports, transfers, receives, acquires, retains, possesses, imports, exports, or manufactures a weapon of mass destruction, commits a crime punishable by the penalties established by section 107(1) (a) of this Act.
Mexico	Constitution of Mexico paragraph 7, article 27, providing that nuclear energy shall only be used for peaceful purposes
Mongolia	Law on Radiation Protection and Safety, Articles 36.3, 37.3 and 41.2.6, making it an offence to produce or store radiation sources and preparations intended for use of weapons
Montenegro	Criminal Code, Chapter 26, Article 327: (1) Anyone who causes danger to life or body of people or property of a larger scale through causing fire, flood, explosion, by poison or poisonous gas, radioactive or other ionizing radiation, electrical power, motor power or any other generally dangerous act or means shall be liable to an imprisonment sentence of six months to five years.
Netherlands	Penal Code, Section 161
Nicaragua	Special Act for the Control and Regulation of Firearms, Ammunition, Explosives and Other Related Materials, article 16(i), banning weapons that are prohibited under international conventions
Norway	Penal Code, articles 152-152b, providing that any person who without lawful permission receives, possesses, uses, transfers, alters, disposes of or distributes any material consisting of or containing plutonium or uranium and thereby causes a risk or damage to persons, property or the environment shall be subject to fines or imprisonment for a term not exceeding four years
Paraguay	Constitution of the Republic of Paraguay prohibits nuclear weapons
Philippines	Constitution of the Philippines, article II, section 8, prohibiting nuclear weapons
Republic of Korea	Atomic Energy Act Act for the Physical Protection and Radiological Emergency Criminal Code
Romania	Law on the Safe deployment of nuclear activities no. 111/10 October 1996. Art. 46: (1) The decommissioning, manufacture, holding, import, export, transit, or detonation of nuclear weapons or of any other nuclear explosive devices shall be punished with imprisonment from 10 years to 25 years and interdiction of some rights.
Rwanda	Counter-Terrorism Act 2009, Section 4, Chapter 2, Article 23 on use of nuclear weapons: Any person who deliberately, and in contradiction with the law, uses or threatens to use mass destruction weapons, attempts to conspire or one who conspires deliberately in order to use nuclear weapons contrary to laws shall be guilty of the terrorist offence.
Seychelles	Prevention of Terrorism Act 2004, section 2 (iii)(c) Penal Code
Slovakia	Act no. 541/2004 on Peaceful Use of Nuclear Energy (Atomic Act) and on Amendments of 1 December 2004, including the prohibition on carrying out nuclear weapons test explosions or any other nuclear explosions or to support or participate in them
Slovenia	Act on Protection Against Ionizing Radiation and on Nuclear Safety of 2002,

State	Title of Legislation
	prohibiting the use of nuclear material for nuclear weapons or other explosives or for research and development of nuclear weapons or explosives
South Africa	Non-Proliferation of Weapons of Mass Destruction Act no. 87 of 1993
Spain	Act of criminal offences threatening the public safety, articles 341, 343 and 345, making it an offence to release nuclear energy or radioactive elements that may endanger life, health or property, even when no explosion has taken place
Sri Lanka	Atomic Energy Authority Act, article 22
Switzerland	Swiss Federal Law on War Material of 13 December 1996, chapter II, article 7, prohibiting development, manufacture, brokerage, procurement, transfer, import, export, transit or storage of nuclear weapons or other possession of them; article 34, under which the development of nuclear weapons may be subject to imprisonment of up to ten years and a fine of up to five million francs
Tajikistan	Law of combating terrorism of 1999, Article 4, defining a terrorist act as the direct commission of terrorist crimes in the shape of explosion, arson or the use of or threat to use nuclear explosive devices or radioactive substances
Trinidad and Tobago	Anti-Terrorism Act 2005 no. 26, article 20, making it an offence to acquire or possess nuclear material or to design or manufacture a weapon of mass destruction with an intent to cause damage
Tunisia	Act no. 75 of December 2003 on combating terrorism and preventing money laundering
Turkey	Turkish Criminal Code no. 5237, article 174
Turkmenistan	Penal Code of 1997, article 271
Ukraine	Criminal Code Law on the Fight against Terrorism of 2003
United Arab Emirates	Federal Law no. 1 on combating terrorism Federal law no. 4 on the criminalization of money laundering
United Kingdom	Anti-terrorism Crime and Security Act 2001, Articles 47-49, providing that any person who knowingly causes a nuclear weapon explosion, develops or produces a nuclear weapon or has a nuclear weapon in its possession is guilty of an offence
United States of America	Nuclear Non-proliferation Act of 1978
Uzbekistan	Criminal Code, Article 246 on smuggling, Article 252 on unlawful acquisition of radioactive materials, Article 253 on violation of regulations governing handling of radioactive materials, Article 254 on unlawful handling of radioactive materials, Article 255-1 prohibiting development, production, stockpiling, acquisition, transfer, storage or unlawful acquisition of or any other acts involving weapons of mass destruction prohibited by international agreements to which the Republic of Uzbekistan is party
Vanuatu	Treaty of the Non-Proliferation of Nuclear Weapons (ratification) Act 1995 Penal Code (Amendment) Act 2003
Venezuela (Bolivarian Republic of)	Penal Code, articles 272-275, providing that the import, manufacture, supply and possession of war weapons as defined in the Weapons and Explosives Act may be subject to imprisonment of five to eight years
Viet Nam	Penal Code, articles 236 and 237
Zimbabwe	Explosives Act: No person shall (a) prepare, press home or fire an explosive charge or conduct any blasting operation unless (i) he is the holder of; or (ii) he is under the direct supervision of the holder of; a blasting licence granted under the regulations which permits the holder thereof to prepare, press home or fire the explosive charge or conduct the blasting operation, as the case may be.

ANNEX 2

**FACILITY AGREEMENTS/ARRANGEMENTS IN FORCE
(as of 31 August 2012)**

Out of the total number of facility agreements/arrangements required for the 89 host States stipulated in Annex 1 to the Protocol to the Treaty, 43 have been signed and 35 of these are in force. As of August 2012 there were active negotiations with 21 of the 46 remaining States.

	State Signatory	Document No. and Date of Issue	UN Convention Applies, Mutatis Mutandis	Exemption from:		
				Direct Taxes	Indirect Taxes (Reimbursement)	Customs Duties
1	Argentina	CTBT/LEG.AGR/24 26 April 2004	X	X	X	X
2	Australia	CTBT/LEG.AGR/7 25 August 2000	X	X	(granted by regulations)	X
3	Canada	CTBT/LEG.AGR/10 12 February 2001	X	X	X	X
4	Central African Republic	CTBT/LEG.AGR/38 2 February 2011	X	X	X	X
5	Cook Islands	CTBT/LEG.AGR/4 30 May 2000	X	X		
6	Czech Republic	CTBT/LEG.AGR/23 10 March 2004	X	X	X	X
7	Finland	CTBT/LEG.AGR/5 8 June 2000	X	X	X	X
8	France	CTBT/LEG.AGR/25 17 May 2004	X	X	X	X
9	Guatemala	CTBT/LEG.AGR/29 13 September 2005	X	X	X	X
10	Iceland	CTBT/LEG.AGR/30 6 February 2006	X	X	X	X
11	Jordan	CTBT/LEG.AGR/3 10 February 2000	X	X	X	X
12	Kazakhstan	CTBT/LEG.AGR/35 12 December 2008	X	X	X	X
13	Kenya	CTBT/LEG.AGR/2 10 February 2000	X	X	X	X
14	Mauritania	CTBT/LEG.AGR/17 29 September 2003	X	X	X	X
15	Mexico	CTBT/LEG.AGR/40 28 October 2011	X	X		X
16	Mongolia	CTBT/LEG.AGR/12 8 August 2001	X	X	X	X
17	Namibia	CTBT/LEG.AGR/36 4 May 2009	X	X	X	X
18	New Zealand	CTBT/LEG.AGR/9 5 January 2001	X	X		X
19	Niger	CTBT/LEG.AGR/8 1 December 2000	X	X		X
20	Norway	CTBT/LEG.AGR/15 19 June 2002	X	X	X	X
21	Palau	CTBT/LEG.AGR/14 14 June 2002	X	X	X	X
22	Panama	CTBT/LEG.AGR/20 19 December 2003	X	X	X	X

	State Signatory	Document No. and Date of Issue	UN Convention Applies, Mutatis Mutandis	Exemption from:		
				Direct Taxes	Indirect Taxes (Reimbursement)	Customs Duties
23	Paraguay	CTBT/LEG.AGR/31 6 February 2006	X	X	X	X
24	Peru	CTBT/LEG.AGR/16 1 August 2002	X			
25	Philippines	CTBT/LEG.AGR/22 10 March 2004	X	X	X	X
26	Romania	CTBT/LEG.AGR/27 4 November 2004	X	X	X	X
27	Russian Federation	CTBT/LEG.AGR/33 16 January 2007	X	X		X
28	Senegal	CTBT/LEG.AGR/32 11 April 2006	Partial application	X	X	X
29	South Africa	CTBT/LEG.AGR/1 12 October 1999	X	X	X	X
30	Spain	CTBT/LEG.AGR/21 19 December 2003	UN Convention Specialized Agencies	X	X	X
31	Uganda	CTBT/LEG.AGR/41 20 June 2012	X	X	X	X
32	Ukraine	CTBT/LEG.AGR/11 3 May 2001		X	X	X
33	United Kingdom	CTBT/LEG.AGR/26 15 September 2004	X	X	X	X
34	United Republic of Tanzania	CTBT/LEG.AGR/34 19 December 2007	X	X	X	X
35	Zambia	CTBT/LEG.AGR/13 4 February 2002	X	X	X	X

ANNEX 3

OVERVIEW OF TAXES AND DUTIES PAID (as of 31 August 2012)

1. During the period 1998-2011, the total cumulative amount of taxes and customs duties disbursed as of 31 December 2011 was US\$3 563 153. The latest Programme and Budget Performance Report for 2011 (CTBT/PTS/INF.1177, page 268, dated May 2012) presents the following information on disbursements for taxes and customs duties:

Year	US Dollars
1998	5 780
1999	152 520
2000	58 143
2001	151 768
2002	271 921
2003	192 839
2004	245 799
2005	750 946
2006	288 335
2007	331 405
2008	295 116
2009	218 381
2010	295 435
2011	304 765
Total	3 563 153

2. Since 1 January 2010, the PTS has been tracking this type of expense systematically and in more detail and has been providing oral reports to WGA and WGB on cumulated taxes and customs expenses, and their impact on costs and data availability.

Requests for Reimbursement

3. In March 2012, the Executive Secretary sent requests for tax/customs reimbursement to all countries that had levied duties/taxes upon the Commission in 2011. These requests have rarely been successful, for example, in the period 2007-2011 less than 3% of the value added tax paid was refunded. However, in 2012 positive responses by States Signatories to tax reimbursement requests show an increasing trend.

ANNEX 4

THE PTS PROGRAMME OF LEGAL ASSISTANCE (as of 31 August 2012)

1. **Bilateral assistance.** States wishing to consult with the PTS on the subject of national implementation measures may contact the Legal Registry at legal.registry@ctbto.org or telephone +43 1 26030 6371 or +43 1 26030 6107. Comments by the PTS on draft legislation and other assistance in connection therewith may also be provided upon request. During the period August 2011-August 2012, bilateral consultations were held with six States Signatories to discuss their draft legislation or other national measures, at their request.
2. **Training courses, workshops and presentations.** As part of its programme of legal assistance, presentations on national implementation are routinely delivered by the PTS at workshops, seminars, training courses and other external events. Notably, in the past year:
 - (a) A Pilot Workshop on CTBT Implementing Legislation took place from 1 to 5 November 2011 with the objective of providing a venue for experts from three requesting States Signatories to analyse and discuss, in the context of existing national provisions, the main elements of CTBT implementing legislation, including during the preparatory phase. The aim was to provide input to eventual draft legislation and to the adoption of national implementation measures through the provision of legal assistance by the PTS and the exchange of national experiences, approaches and views among participants. The results of the workshop, as a pilot project, provided valuable input for the further development of the PTS programme of legal assistance. The workshop report is available from the PTS upon request and will be posted on the Commission's web site in due course.
 - (b) A workshop on the development of a legislation questionnaire took place in Vienna on 19 July 2012, with the participation of representatives from nine States Signatories. The workshop was conducted as a half-day session, during the Capacity Development Initiative Intensive Policy Course (16-20 July 2012). Participants completed a legislation questionnaire prior to the workshop as a tool for national self-assessment and actively discussed it during the meeting. This facilitated the exchange of information and the identification of the elements necessary for implementing legislation or other national measures in different legal systems and respecting different legal cultures. The workshop report is available from the PTS upon request and will be posted in the Commission's web site in due course.
 - (c) A module on national implementation measures was prepared for the e-learning programme with funding provided by the European Union. The module is already available in all official languages and is being utilized in training courses.

3. Reference material and other tools on the CTBTO web site (printed versions available from the PTS upon request)

Document	Description	Address
Signature and Ratification Guide	<ul style="list-style-type: none">• English, French and Spanish available	www.ctbto.org/member-states/legal-resources/
Background Information for Parliamentarians on the CTBT	<ul style="list-style-type: none">• English, French and Spanish available• Updated versions in the other official languages available in 2013	www.ctbto.org/fileadmin/content/reference/outreach/ctbto_guide_parliamentarians.pdf
Guide to CTBT Implementing Legislation	<ul style="list-style-type: none">• Includes different formats for model legislation• English only• Updated versions in the other official languages available in 2013	www.ctbto.org/member-states/legal-resources/national-implementation-measures/
Database of national implementing legislation for the CTBT	<ul style="list-style-type: none">• Includes national legislation related to nuclear testing and other relevant nuclear legislation	www.ctbto.org/fileadmin/user_upload/pdf/Legal_documents/National_provisions_database-online_july2011.pdf
CTBT Legislation Questionnaire	<ul style="list-style-type: none">• Developed to facilitate the assessment of national measures that may be required for the implementation of the CTBT• Updated versions in the other official languages available in 2013	Available in English and Spanish upon request