

**Finnish Legislation related to
the Convention on Chemical Weapons
2005**

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The entry into force of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (so called Chemical Weapons Convention, CWC) on 29 April 1997, its implementation and amendments to the Convention after its entry into force led into several additions and amendments to the Finnish legislation. The impact of the CWC extends rather wide in the Finnish legislation, for example in the Penal Code. In international discussion, the Finnish legislation has been considered as a good example of comprehensive national implementation of the Convention.

This publication compiles the main elements of CWC-related Finnish legislation (situation on 31 August 2005). It is intended to serve Finnish authorities and experts responsible for CWC implementation and related training, as well as interested authorities and experts in other States Parties and the Technical Secretariat of the OPCW.

Ministry for Foreign Affairs
Political Department
Unit for Arms Control, Disarmament and Non-Proliferation

Summary of legislation contents

Act 346/1997 (as amended by 347/1997 and 623/1997): Implements the legislative measures of the Convention. Establishes implementing authorities, inspection and monitoring rights as well as the obligation to give information and the confidentiality duty.

Decree 348/1997 (as amended by 498/1997 and 1047/1999): Concerns the entry into force of Act 346/1997 and specifies further the verification authorities and duties of persons and establishments undertaking activities relevant to the Convention.

Decision of the Ministry for Foreign Affairs 1216/1997: Establishes that the Finnish Institute for the Verification of the Chemical Weapons Convention (VERIFIN) will perform the CWC National Authority duties in Finland.

Decree 822/1999: Implements the amendment to the Verification Annex of the Convention concerning transfers of saxitoxin.

Act 744/1989 (as amended by 1412/1992, 220/1995, 1073/1995, 12/1997, 57/1999, 696/2001 and 391/2005): Chemicals Act that establishes supervising authorities in the Finnish administration.

Act 39/1889 (as amended by 578/1995, 626/1996, 351/1997, 563/1998, 841/1998, 604/2002, 17/2003, 832/2003 and 650/2004): Penal Code that defines international offences and establishes sentences for war crimes and offences against humanity, in particular breaches of prohibition of chemical weapons, as well as for failures to report a serious offence, breaches of prohibition of chemical weapons with terrorist intent and related preparation, directing, promotion and financing activities, secrecy offences and breaches of official secrecy.

Decree 627/1996 (as amended by 353/1997, 118/1999, 537/2000, 370/2001, 739/2001, 510/2002, 624/2002 and 859/2003): Establishes that breaches of prohibition of chemical weapons are international offences referred to in Penal Code, Chapter 1, section 7 and thus punishable regardless of the law of the place of commission.

Act 450/1987 (as amended by 402/1995, 18/2003, 646/2003 and 651/2004): Coercive Measures Act that authorises telecommunications interception and monitoring as well as technical monitoring in breaches of prohibition of chemical weapons.

Act 256/2004: Implements the legislative measures of the Agreement between Finland and the OPCW on the privileges and immunities of the OPCW.

Decree 379/2004: Concerns the entry into force of Act 256/2004 and other measures of the Agreement between Finland and the OPCW on the privileges and immunities of the OPCW.

Agreement between Finland and the OPCW on the privileges and immunities of the OPCW (Finnish Treaty Series 60/2004): text of the agreement.

Other legislation related to the field of chemical weapons or dangerous chemicals

These acts are not included in this compilation. Those marked with asterisk (*) are reproduced in the publication of the Ministry for Foreign Affairs "Finland's export controls. Revised in April 2004." and on the Ministry's website <http://formin.finland.fi/english/>

Act on the Export and Transit of Defence Materiel 242/1990* (amendments 385/2002 and 900/2002), Decree on the Export and Transit of Defence Materiel 108/1997 (amendments 1178/2002 and 100/2003), Decision of the Ministry of Defence on export and transit of defence materiel 192/1997 (amendments 59/2002 and 543/2002). Decision of the Council of State concerning the export, transit and brokering of defence materiel 1000/2002 (amendment 101/2003).

Act on the Control of Exports of Dual-Use Goods 562/1996* (amendments 891/2000*, 884/2001* and 581/2003*), Decree on the same subject 924/2000* (amendment 669/2003*) and related penal provisions in the sections 1-3 of chapter 46 of the Penal Code (769/1990, 1522/1994, 706/1997).

Council Regulation (EC) N:o 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology and Council Joint Action concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP).

Texts of legislative acts

Act on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on its Application

(346/1997 as amended by 347/1997 and 623/1999)

Unofficial translation © Ministry for Foreign Affairs, Finland

In accordance with the decision of Parliament pursuant to the procedure provided for in section 69, subsection 1 of the Parliament Act, it is hereby enacted:

Section 1 - Entry into force of the Convention

The provision of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, shall be applied as agreed thereupon, if they fall within the sphere of legislation.

Section 2 - Authorities

In Finland the highest implementing authority of the Convention, bearing the supreme responsibility for the management of its application and supervision, is the Ministry for Foreign Affairs.

The Ministry for Foreign Affairs may assign tasks related to the inspections under the Convention and section 5 of this Act and other tasks related to the application of the Convention to the Finnish Institute for Verification of the Chemical Weapons Convention at the University of Helsinki.

The Ministry of Trade and Industry is responsible for the export supervision required under the Convention. The Ministry of Defence is nevertheless responsible for the tasks falling within the scope of application of the Act (242/1990) on the Export and Transit of Defence Materiel.

National Agency for Medicines functions as the licensing authority referred to in section 4.

Section 3 - Exchange of information between authorities

Authorities charged with supervision under this Act shall have, notwithstanding the provisions on confidentiality, the right to obtain from other authorities the information necessary for supervision carried out in accordance with the Convention or this Act.

The authorities referred to in section 2 above may, notwithstanding the provisions on confidentiality, forward information required by the Convention and obtained by virtue of this Act to national authorities of other States Parties referred to in Article VII of the Convention and to the Organization referred to in Article VIII of the Convention.

Section 4 - Activities subject to licence

The production, acquisition, retention or use of the chemicals and their precursors included in Schedule 1 of the Annex on Chemicals of the Convention is allowed in Finland only for research, medical, pharmaceutical or protective purposes with the licence of the National Agency for Medicines, as provided in more detail by decree.

Section 5 - Inspection and monitoring rights

In order to carry out the inspection provided in Articles VI and IX of the Convention, the Ministry for Foreign Affairs and the Institute mentioned in section 2, subsection 2 and, in the presence of a representative of the

Ministry for Foreign Affairs, the inspectors of the Organization for the Prohibition of Chemical Weapons and the Observer referred to in Article IX, paragraph 12 of the Convention have, in accordance with the Convention, the right

- to have access to an area, a building, a factory or other facility which may be subject to an inspection under the Convention,
- to stop and inspect goods traffic to and from the inspection site,
- to receive or take samples and photographs or other visual records of the inspection site,
- to bring to the inspection site measuring devices or other technical devices necessary for the acquisition or registration of information, and to use such devices therein, and
- to obtain from the establishment to be inspected or from a person in its employ the information necessary for the carrying out of the inspection.

In order to supervise compliance with the Convention the Ministry for Foreign Affairs has the right to order an inspection at the site referred to in subsection 1. The provisions in subsection 1 shall be applied to the inspection.

Before carrying out the inspection the establishment shall be given an opportunity to express an opinion, if it is possible without jeopardizing the objectives of the inspection or without violating the inspection obligations under the Convention.

This section does not give right to carry out inspections in private residences.

Section 6 - Executive assistance

The police, the supervising authorities referred to in the Chemicals Act (744/1989) and, in respect of the import and export of chemicals, the Customs and the Frontier Guard Service shall provide executive assistance for the supervision of compliance with, and the implementation of, this Act and rules and regulations issued by virtue thereof.

Section 7 - Obligation to give information

The establishment shall give to the Institute mentioned in section 2, subsection 2 the information necessary for the supervision of compliance with the obligations imposed by the Convention, as provided in more detail by decree.

Section 8 - Confidentiality duty

Information received from the Organization for the Prohibition of Chemical Weapons and defined as confidential shall not be revealed or used contrary to the Convention.

Section 9 - Sentences

Sentence for a violation of the prohibition of chemical weapons is provided in chapter 11, section 7a of the Penal Code.

Sentence for a violation of the confidentiality duty referred to in section 8 shall be ordered under chapter 38, section 1 or section 2 of the Penal Code unless the offence is punishable under chapter 40, section 5 of the Penal Code or a stricter sentence is provided for the offence elsewhere in the law.

Section 10 - Import and export of chemicals

Provisions on the restrictions under the Convention, concerning the import and export of chemicals governed by the Convention, will be enacted by decree.

The provisions in the Act (157/1974) on the Safeguarding of Foreign Trade and Economic Growth and in the Act (242/1990) on the Export and Transit of Defence Materiel and in the rules issued under them shall be applied to the import and export of chemicals governed by the Convention, where appropriate.

Section 11 - Prohibitions and orders by the supervising authority

If the establishment violates the provisions of section 4 or 7 or rules or regulations issued by virtue thereof, the Ministry for Foreign Affairs or the competent supervising authority, not, however, the Institute for Verification mentioned in section 2, subsection 2, may prohibit the establishment from continuing or repeating the operations in violation of the rules and regulations, and order the establishment otherwise to meet the obligations set out in the rules and regulations.

Section 12 - Conditional fine

The supervising authority may ensure the observance of a prohibition or order issued by it under section 11 with the conditional imposition of a fine. The order for payment of a conditionally imposed fine shall be issued by a provincial government.

Section 13 - Power to issue a decree

More detailed provisions on the implementation of this Act shall be enacted by decree.

Section 14 - Entry into force

This Act shall enter into force on the date stipulated by decree. Measures needed to enforce this Act can be taken before it comes into effect.

Decree on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on the entry into force of the Act on the Approval of Certain Provisions of the Convention

(348/1997 as amended by 498/1997 and 1047/1999)

Unofficial translation © Ministry for Foreign Affairs, Finland

On the submission of the Ministry for Foreign Affairs and by virtue of the Act on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on its Application, it is hereby enacted:

Section 1

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, certain provisions of which have been approved by the Act of 3 February 1995 (346/1997), amended by the Act of 14 March 1997 (347/1997), and which has been ratified by the President of the Republic on 3 February 1995, the instrument of ratification being deposited with the Secretary General of the United Nations on 7 February 1995, shall enter into force on 29 April 1997 as agreed.

Section 2

The single small-scale facility referred to in Section C of Part VI of the Verification Annex is the Research Centre of the Defence Forces. The other facility referred to in Section C of Part VI of the Verification Annex is the Finnish Institute for Verification of the Chemical Weapons Convention at the University of Helsinki (hereinafter the Institute for Verification).

Section 3

The production, acquisition, retention or use of the chemicals or their precursors included in Schedule 1 of the Annex on Chemicals of the Convention for research, medical, pharmaceutical or protective purposes, if the total quantity of the chemicals included in Schedule 1 is more than 100g a year per facility, is only allowed with the licence of the National Agency for Medicines. A licence from the National Agency for Medicines is always

required for the import or delivery of the chemicals or their precursors included in Schedule 1 of the Convention, irrespective of their quantity.

The National Agency for Medicines may grant the licence referred to in subsection 1 upon the recommendation of the Institute for Verification referred to in section 2, subsection 2 of the Act on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on its Application.

An application for the licence referred to in subsection 1 above shall be handed in at least 45 days before the activity requiring the licence begins. The quantities of the chemicals listed in Schedule 1 of the Annex on Chemicals of the Convention and their using purpose, as well as general information on the facility where the production, retention or use of chemicals takes place, shall be included in the application.

Section 4

The person carrying out the activity shall make a yearly report by the end of January to the Institute for Verification, including the quantities of production, treatment, consummation, export and import of a chemical included in Schedule 2 of the Annex on Chemicals of the Convention in respect of the previous calendar year.

The person carrying out the activity shall make a yearly report by the end of January to the Institute for Verification, including the quantities of production, export and import of a chemical included in Schedule 3 of the Annex on Chemicals of the Convention in respect of the previous calendar year.

The person carrying out the activity shall submit a yearly report by the end of January to the Institute for Verification in case the person in question has, during the previous calendar year, produced more than 200 tonnes of discrete organic chemicals referred to in the Verification Annex or more than 30 tonnes of a discrete organic chemical containing phosphorus, sulphur or fluoride.

In addition the person carrying out the activity shall provide the Institute for Verification with all other information necessary for the supervision of the obligations set out in the Convention. The Institute for Verification shall request the information referred to in this subsection in writing, set a reasonable time limit for providing the information and shall in its request indicate the provisions of the Convention on which the request is based.

Section 5

The chemicals and precursors listed in Schedules 1 and 2 of the Annex on Chemicals of the Convention may not be exported or delivered to states other than States Parties, and nor may chemicals and precursors listed in Schedule 2 be imported from states other than States Parties.

The chemicals and their precursors listed in Schedule 1 of the Annex on Chemicals of the Convention, with the exception of ricin and saxitoxin, may be exported outside the European Community or to another Member State of the European Union only for research, medical, pharmaceutical or protective purposes with an export licence granted by the Ministry of Defence, and ricin and saxitoxin only with an export licence granted by the Ministry of Trade and Industry. An application for either type of export licences shall be handed in at least 45 days before the planned date of export or delivery.

The chemicals and precursors listed in Schedules 2 and 3 of the Annex on Chemicals of the Convention may be exported outside the European Community or, in respect of the dual use goods listed in Annex IV of the Council Decision No 94/942/CFSP, to another Member State of the European Union only with an export licence granted by the Ministry of Trade and Industry.

The provisions in the Act (242/1990) on the Export and Transit of Defence Materiel and in the Act (562/1996) on the Export Control of Dual Use Goods and in the rules issued under them shall be applied to the licence procedure and to the control related to the procedure, where appropriate.

Section 6

The Ministry for Foreign Affairs shall issue more detailed provisions on the implementation of this Decree.

Section 7

The Act of 3 February 1995 (346/1997) on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and on its application, the Act of 14 March 1997 (347/1997) on its amendment and this Decree shall enter into force on 29 April 1997.

Decision of the Ministry for Foreign Affairs on the performance of duties related to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

(1216/1997)

Unofficial translation © Ministry for Foreign Affairs, Finland

The Ministry for Foreign Affairs has, pursuant to section 2 of the Act (346/1997) on the approval of certain provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, decided as follows:

Section 1

The Finnish Institute for Verification of the Chemical Weapons Convention at the University of Helsinki (*Institute for Verification*) shall be responsible, apart from its duties provided by other provisions of law, for the performance of the following duties relating to the application of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (FTS 19/1997, *Convention*), under the instructions of the Ministry for Foreign Affairs:

- 1) The Institute for Verification shall serve as the National Authority referred to in Article VII, paragraph 4, of the Convention, for effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties. The Institute for Verification shall cooperate with the Organization and provide assistance to the Technical Secretariat. The duties of the Institute for Verification shall not, however, include the conclusion of agreements with the Organization, nor the appointment of representatives to the bodies referred to in the Convention.
- 2) The Institute for Verification shall be responsible for the acceptance of the inspectors and inspection assistants proposed by the Organization in accordance with Article VII of the Convention and its Verification Annex and Confidentiality Annex, and for the clearances to be given for the employees of the Technical Secretariat for access to confidential information. If the Institute for Verification finds that it cannot accept a proposed inspector or inspection assistant or the clearance to be given for an employee, it shall refer the question of acceptance to the Ministry for Foreign Affairs for decision.
- 3) For the purposes of inspections referred to in Article VI of the Convention, a representative of the Institute for Verification shall serve as the representative of the Ministry for Foreign Affairs, referred to in section 5, subsection 1, of the Act on the Approval of Certain Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction as well as on its Application (Act on the application of the Convention), in whose presence the Organization for the Prohibition of Chemical Weapons may carry out the inspection. The representative of the Institute for Verification shall be, together with the representative of the Ministry for Foreign Affairs, be present in the inspections referred to in Article IX of the Convention.
- 4) The Institute for Verification may submit a proposal to the Ministry for Foreign Affairs for an inspection referred to in section 5, subsection 2, of the Act on the application of the Convention in cases of doubt as to compliance with the Convention.
- 5) The Institute for Verification provides expert assistance for the Ministry for Foreign Affairs for the purposes of the application of Article X of the Convention and Part XI of the Verification Annex, concerning protection against chemical weapons and the provision of assistance for other States Parties in cases of use or threat of use of chemical weapons against them.

6) The Institute for Verification shall provide expert assistance for the Ministry for Foreign Affairs for the purposes of compliance with the provisions on the settlement of disputes in Article XIV of the Convention.

Section 2

The Ministry for Foreign Affairs and the Institute for Verification shall conclude every calendar year an agreement on the performance of the duties referred to in the present Decision.

Section 3

This Decision shall enter into force on 15 December 1997.

Decree on the entry into force of the Amendment to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

(822/1999)

Unofficial translation © Ministry for Foreign Affairs, Finland

On presentation by the Minister for Foreign Affairs, the following is enacted

Section 1

The Amendment to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction concerning transfers of saxitoxin included in Schedule 1 of Annex on Chemicals, which was adopted at The Hague on 15 January 1999 and was approved by the President of the Republic on 26 March 1999, shall be in force as from 31 October 1999, as agreed.

Section 2

This Decree shall enter into force on 31 October 1999.

Chemicals Act (extract)

(744/1989 as amended by 1412/1992, 220/1995, 1073/1995, 12/1997, 57/1999, 696/2001, 391/2005)

NB. Unofficial translation © Ministry of the Environment, Finland

Amendments translated at the Ministry for Foreign Affairs, Finland

Chapter 2

Supervisory Authorities

Section 4

Ministries as supervisory authorities

The supreme management and control of supervision of compliance with this Act, and subsequent rules and regulations based on it, shall rest with:

- 1) the Ministry of Social Affairs and Health in preventing and averting harm to health as well as fire and explosion hazards caused by chemicals; and
- 2) the Ministry of the Environment in preventing and averting damage to the environment caused by chemicals.

Section 5 - Supervisory authorities in the central administration

The supreme supervision of compliance with this Act, and rules and regulations based on it, as well as national guidance of implementation and supervision shall rest with:

- 1) the National Product Control Agency for Welfare and Health in preventing and averting harm to health as well as fire and explosion hazards caused by chemicals; and
- 2) the Finnish Environment Institute in preventing and averting damage to the environment caused by chemicals.

Section 6 - Regional supervisory authorities

The provincial government and the regional environment centre, within their respective areas of competence, shall direct and supervise the activities of the local authorities in complying with the provisions of this Act.

Section 7 - Local supervisory authorities

On the municipal level, the local board shall supervise compliance with this Act, and rules and regulations based on it, unless the charge is delegated to a committee (municipal supervisory authority for chemicals) under the municipal regulations. The charge may also be delegated to a joint municipal board.

Section 8 - Special supervisory authorities

In addition to the provisions on supervision in section 5 above, the National Product Control Agency for Welfare and Health shall supervise compliance with the provisions on material safety data sheets.

The labour protection authorities, together with the other supervisory authorities under this Act, shall supervise the classification, labelling and material safety data sheets concerning chemicals used at work and the provision of other information, as well as compliance with restrictions and prohibitions on chemicals. Separate provisions are given on the supervisory procedures used by the labour protection authorities.

The National Board of Customs shall also supervise compliance with the provisions on the import and export of chemicals, as provided in more detail by decree.

Section 9 - Power to issue a decree

More detailed provisions on the tasks of and cooperation between the supervisory authorities will be enacted by decree.

Penal Code (extract)

(39/1889 as amended by 578/1995, 626/1996, 351/1997, 563/1998, 841/1998, 604/2002, 17/2003, 832/2003, 650/2004)

Unofficial translation © Ministry of Justice, Finland

Chapter 1 - Scope of application of the criminal law of Finland

Section 7 - International offence

(1) Finnish law applies to an offence committed outside of Finland where punishability of the act, regardless of the law of the place of commission, based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (*international offence*).

(2) Further provisions on the application of this section shall be issued by Decree.

(3) Regardless of the law of the place of commission, Finnish law applies also to offence referred to in chapter 34a committed outside of Finland.

Chapter 11 - War crimes and offences against humanity

Section 7a - Breach of the prohibition of chemical weapons

A person, who in breach of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

- (1) uses chemical weapons in a manner not referred to in sections 1 - 3 of this chapter,
- (2) develops, produces, otherwise procures, stockpiles, possesses or transports chemical weapons, or
- (3) participates in military preparations for the use of chemical weapons, shall be sentenced for *breach of the prohibition of chemical weapons* to imprisonment for at least four months and at most six years.

Chapter 15 - Offences against the administration of justice

Section 10 - Failure to report a serious offence

(1) A person who knows of imminent genocide, preparation of genocide, breach of the prohibition of chemical weapons, breach of the prohibition of biological weapons, compromising of the sovereignty of Finland, treason, aggravated treason, espionage, aggravated espionage, high treason, aggravated high treason, rape, aggravated rape, aggravated sexual abuse of a child, murder, manslaughter, killing, aggravated assault, robbery, aggravated robbery, kidnapping, hostage taking, aggravated criminal mischief, aggravated endangerment of health, nuclear device offence, hijacking, an offence committed with terrorist intent referred to in chapter 34 a, section 1(1)(3), aggravated impairment of the environment or aggravated narcotics offence, and fails to report it to the authorities or the endangered person in time to prevent the offence, shall be sentenced, if the offence or a punishable attempt is committed, for a *failure to report a serious offence* to a fine or to imprisonment for at most six months.

Chapter 34 a – Terrorist offences

Section 1 – Offences made with terrorist intent

- (1) A person who, with terrorist intent and in a manner that is likely to cause serious harm to a State or an international organisation
 - (1) makes an unlawful threat or a false report of a danger shall be sentenced to imprisonment for at least four months and at most three years,
 - (2) deliberately causes a danger or commits a deliberate explosives offence or an offence against the Edged Weapons Act (108/1977) shall be sentenced to imprisonment for at least four months and at most four years,
 - (3) commits an aggravated theft or an aggravated theft for temporary use directed against a motor vehicle suitable for public transport or the transport of goods, sabotage, traffic sabotage, endangerment of health, aggravated damage to property, aggravated firearms offence or an export offence referred to in the Act on the Export and Transit of Defence Supplies (242/1990) shall be sentenced to imprisonment for at least four months and at most six years,
 - (4) violates a ban on chemical weapons, violates a ban on biological weapons or engages in deliberate aggravated pollution of the environment committed in the manner referred to in chapter 48, section 1(1)(1) shall be sentenced to imprisonment for at least four months and at most eight years,
 - (5) commits aggravated assault, kidnapping, the taking of a hostage, aggravated sabotage, aggravated endangerment of health, a nuclear weapon offence or hijacking shall be sentenced to imprisonment for at least two and at most twelve years,
 - (6) commits the offence of killing shall be sentenced to imprisonment for at least four and at most twelve years, or
 - (7) commits homicide shall be sentenced to imprisonment for at least eight years or for life.
- (2) A person who commits murder with terrorist intent shall be sentenced to imprisonment for life.
- (3) An attempt is punishable.

Section 2 – Preparation of an offence to be committed with terrorist intent

A person who, in order to commit an offence referred to in section 1(1)(2-7) or 1(2),

- (1) agrees with another person or prepares a plan to commit such an offence,
 - (2) prepares, keeps in his/her possession, acquires, transports, uses or gives to another an explosive, a chemical or biological weapon or a toxin weapon, a firearm or a dangerous object or substance, or
 - (3) acquires equipment or materials for the preparation of a nuclear explosive, a chemical or biological weapon or a toxin weapon or acquires formulas or diagrams for their production,
- shall be sentenced for *preparation of an offence to be committed with terrorist intent* to a fine or to imprisonment for at most three years.

Section 3 –Directing of a terrorist group

- (1) A person who directs a terrorist group, the activity of which has involved the commission of an offence referred to in section 1(1)(2-7) or the offence referred to in section 1(2) or a punishable attempt at such an offence or the offence referred to in section 2 shall be sentenced for *directing of a terrorist group* to imprisonment for at least two and at most twelve years.
- (2) A person who directs a terrorist group in the activity of which only the offence referred to in section 1(1)(1) has been committed shall be sentenced to imprisonment for at least four months and at most six years.
- (3) A person who is sentenced for directing of a terrorist group shall also be sentenced for an offence referred to in section 1 or the punishable attempt of 80 such an offence or an offence referred to in section 2 that he or she has committed or that has been committed in the activity of a terrorist group under his/her direction.

Section 4 – Promotion of the activity of a terrorist group

- (1) A person who in order to promote, or aware that his or her activity promotes, the criminal activity referred to in sections 1 or 2 of a terrorist group
 - (1) establishes or organises a terrorist group or recruits or attempts to recruit persons for a terrorist group,
 - (2) supplies or seeks to supply a terrorist group with explosives, weapons, ammunition or material or equipment intended for the preparation of these or with other dangerous objects or material,
 - (3) implements, seeks to implement or provides training for a terrorist group for criminal activity,
 - (4) obtains or seeks to obtain or gives to a terrorist group premises or other facilities that it needs or means of transport or other implements that are especially important from the point of view of the activity of the group,
 - (5) obtains or seeks to obtain information which, if transmitted to a terrorist group, would be likely to cause serious harm to the State or an international organisation, or transmits, gives or discloses such information to a terrorist group,
 - (6) manages important financial matters for a terrorist group or gives financial or legal advice that is very important from the point of view of such a group, or
 - (7) commits an offence referred to in chapter 32, section 1(2)(1) or 1(2)(2),shall be sentenced, if the offence referred to in section 1 or a punishable attempt at such an offence is carried out in the activity of the terrorist group, and unless the act is punishable under section 1 or 2 or unless an equally or more severe punishment is decreed elsewhere in law for it, to *promotion of the activity of a terrorist group* to imprisonment for at least four months and at most eight years.
- (2) What is provided above in paragraph 6 regarding legal advice does not apply to the performance of the functions of a legal counsel or attorney in connection with the pre-trial investigation of an offence, court proceedings or the enforcement of a sentence.

Section 5 – The financing of terrorism

- (1) A person who directly or indirectly provides or collects funds in order to finance, or aware that these shall finance
 - (1) the taking of a hostage or hijacking,

- (2) sabotage, aggravated sabotage or preparation of an offence of general endangerment that is to be deemed an offence referred to in the International Convention for the Suppression of Terrorist Bombing (Treaty Series 60/2002),
- (3) sabotage, traffic sabotage, aggravated sabotage or the preparation of an offence of general endangerment that is to be deemed an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Treaty Series 56/1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Treaty Series 43/1998), the Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (Treaty Series 11/1999) or the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Series 44/2000),
- (4) a nuclear explosives offence, endangerment of health, aggravated endangerment of health, a nuclear energy use offence or other criminalised offence directed at a nuclear weapon or committed through the use of nuclear material, that is to be deemed an offence referred to in the Convention on the Physical Protection of Nuclear Material (Treaty Series 72/1989), or
- (5) murder, homicide, killing, aggravated assault, deprivation of liberty, aggravated deprivation of liberty, kidnapping, taking of a hostage or aggravated disturbance of public peace or the threat of such an offence, when the act is directed against a person who is referred to in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Treaty Series 63/1978),

shall be sentenced for the *financing of terrorism* to imprisonment for at least four months and at most eight years.

(2) Also a person who directly or indirectly provides or collects funds in order to finance or aware that they are used to finance the offences referred to in section 1 shall be sentenced for the financing of terrorism.

(3) An attempt is punishable.

(4) What is provided in the foregoing in this section does not apply if the offence is punishable as an offence referred to in paragraph 1, subparagraphs 1 through 5 or an attempt of such an offence or complicity in such an offence or, according to sections 1 or two or elsewhere in law a more severe sentence is provided for it.

Section 6 - Definitions

(1) An offender has a *terrorist intent* if it is his or her intent to:

- (1) cause serious fear among the population,
- (2) unjustifiably force the government of a state or another authority or an international organisation to perform, allow or abstain from performing any act,
- (3) unjustifiably overturn or amend the constitution of a state or seriously destabilise the legal order of a state or cause particularly harm to the state economy or the fundamental social structures of the state, or
- (4) cause particularly extensive harm to the finances or other fundamental structures of an international organisation.

(2) A *terrorist group* refers to a structured group of a least three persons established over a period of time and acting in concert in order to commit offences referred to in section 1.

(3) An *international organisation* refers to an intergovernmental organisation or to an organisation which, on the basis of its significance and international recognised position, is comparable to an intergovernmental organisation.

Section 7 – Right of prosecution

The Prosecutor-General decides on the bringing of charges for offences referred to in this chapter. In so doing the Prosecutor-General shall also designate the person who is to bring the charges.

Section 8 – Corporate criminal liability

(1) The provisions on the criminal liability of legal persons apply to the offences referred to in this chapter.

(2) The provisions on corporate criminal liability apply also to robbery, aggravated robbery, extortion or aggravated extortion committed in order to commit an offence referred to in section 1 or section 2(1)(3) of this chapter as well as to forgery or aggravated forgery committed in order to commit the offence referred to in

section 1, paragraph 1, subparagraphs 2-7 or paragraph 2, section 2, paragraph 1, subparagraph 3 or in section 4 or 5 of this Act.

Chapter 38 - Data and communications offences

Section 1 - Secrecy offence

A person who in violation of a secrecy duty provided by an Act or Decree or specifically ordered by an authority by virtue of an Act

(1) discloses information which should be kept secret and which he/she has learnt by virtue of his/her position or task or in the performance of a duty; or

(2) makes use of such a secret for the gain of himself/herself or another shall be sentenced, unless the act is punishable under chapter 40, section 5, for a *secrecy offence* to a fine or to imprisonment for at most one year.

Section 2 - Secrecy violation

(1) If the secrecy offence, in view of the significance of the act as concerns the protection of privacy or confidentiality, or the other relevant circumstances, is petty when assessed as a whole, the offender shall be sentenced for a *secrecy violation* to a fine.

(2) A person shall also be sentenced for a secrecy violation if he/she has violated a secrecy duty referred to in section 1 and it is specifically provided that such violation is punishable as secrecy violation.

Chapter 40 - Offences in office

Section 5 - Breach and negligent breach of official secrecy

(1) If a public official deliberately, while in service or thereafter, unlawfully

(1) discloses a document or information which under the Act on the Openness of Government Activities (621/1999) or another Act is to be kept secret or not disclosed, or

(2) makes use of the document or information referred to in paragraph (1) to the benefit of himself/herself or to the loss of another, he/she shall be sentenced, unless a more severe penalty for the act has been laid down elsewhere, for *breach of official secrecy* to a fine or to imprisonment for at most two years. A public official may also be sentenced to dismissal if the offence demonstrates that he/she is manifestly unfit for his/her duties.

(2) If a public official commits the offence referred to in subsection 1 through negligence, and the act, in view of its harmful and damaging effects and the other relevant circumstances, is not of minor significance, he/she shall be sentenced, unless a more severe penalty for the act is provided elsewhere in the law, for *negligent breach of official secrecy* to a fine or to imprisonment for at most six months.

Decree on the Application of Chapter 1, section 7 of the Penal Code

(627/1996 as amended by 353/1997, 118/1999, 537/2000, 370/2001, 739/2001, 510/2002, 624/2002 and 859/2003)

Unofficial translation © Ministry for Foreign Affairs, Finland

On presentation by the Minister of Justice, the following is enacted by virtue of Chapter 1, section 1 of the Penal Code as provided for in the Act of 16 August 1996 (626/1996)

Section 1

(1) For the purposes of Chapter 1, section 7 of the Penal Code, the following offences shall be considered international crimes:

- 1) Commission or preparation of the crime of counterfeiting currency, or the use of counterfeited

currency, referred to in the International convention for the suppression of counterfeiting currency (FTS¹ 47/1936) and counterfeiting in respect of euro referred to in Article 7, paragraph 2 of the Council framework Decision of 29 May 2000, on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (Official Journal L 140, 14/06/2000 p.0001-0003.);

2) Such war crime, violation of human rights in a state of emergency, serious war crime or other punishable criminal act which must be considered a grave breach of the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Relative to the Treatment of Prisoners of War, and Relative to the Protection of Civilian Persons in Time of War (FTS 8/1955), as well as the Protocol Additional to the Geneva Conventions, and relating to the protection of victims of international armed conflicts (FTS 82/1980);

3) Commission and preparation of the crime of genocide referred to in the Convention on the Prevention and Punishment of the Crime of Genocide (FTS 5/1960);

4) Commission, preparation and facilitation of a narcotics offence or aggravated narcotics offence or the commission of an concealment offence as referred to in the Single Convention on Narcotic Drugs of 1961 (FTS 43/1965), the Protocol amending the Single Convention on Narcotic Drugs of 1961 (FTS 42/1975), the Convention on psychotropic substances (FTS 60/1976), and the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (FTS 44/1994);

5) Such seizure of aircraft or other punishable act by which the perpetrator unlawfully, by force or threat thereof, seizes or exercises control of an aircraft, and which must be considered an offence referred to in the Convention for the suppression of unlawful seizure of aircraft (FTS 62/1971);

6) Such criminal traffic mischief or criminal mischief, preparation of endangerment or other punishable act which must be considered an offence referred to in the Convention for the suppression of unlawful acts against the safety of civil aviation (FTS 56/1973);

7) Murder, or attack upon the person or liberty of an internationally protected person, or violent attack upon the official premises, the private accommodation or the means of transport of such a person, or a threat thereof, referred to in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (FTS 63/1978);

8) Hostage-taking or other deprivation of liberty referred to in the International Convention against the Taking of Hostages (FTS 38/1983);

9) Such torture for the purpose of obtaining a confession, and assault or aggravated assault, which must be considered torture within the meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (FTS 60/1989);

10) Such nuclear device offence, endangerment of health, fraudulent use of nuclear energy or other punishable act directed at or committed by using nuclear material which must be considered an offence referred to in the Convention on the Physical Protection of Nuclear Material (FTS 72/1989);

11) Such deprivation of liberty or aggravated deprivation of liberty, kidnapping, criminal mischief, endangerment or other punishable act which must be considered an offence referred to in the European Convention on the Suppression of Terrorism (FTS 16/1990);

12) Such killing, assault, deprivation of liberty or kidnapping inflicted upon a person on board a ship or aircraft, or seizure or theft of or damage caused to property on board a ship or aircraft, that must be considered piracy within the meaning of the United Nations Convention on the Law of the Sea (FTS 50/1996);

13) Violation of the prohibition of chemical weapons referred to in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (FTS 19/1997);

14) Such unlawful act against the safety of maritime navigation as is referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (FTS 11/1999);

15) Such unlawful act against the safety of fixed platforms located on the Continental Shelf as is referred to in the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (FTS 44/2000);

¹ FTS - Finnish Treaty Series

- 16) Such crime against United Nations and associated personnel as is referred to in the Convention on the Safety of United Nations and Associated Personnel (FTS 2-3/2001);
- 17) Such offence against a place of public use, state or government facility, a public transportation system or an infrastructure facility as is referred to in the International Convention for the Suppression of Terrorist Bombings (FTS 60/2002);
- 18) Such financing of terrorism as is referred to in the International Convention for the Suppression of the Financing of Terrorism (FTS 74/2002);
- 19) Such wilful killing or causing of serious injury to civilians as is referred to in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and other Devices as amended on 3 May 1996 (FTS 91/1998).

(2) A punishable attempt of or participation in any of the offences referred to in paragraph 1 above shall also be considered an international crime.

Section 2

This Decree shall enter into force on 1 September 1996.

Coercive Measures Act (extract)

(450/1987 as amended by 402/1995, 18/2003, 646/2003 and 651/2004)

Unofficial translation © Ministry for Foreign Affairs, Finland

Chapter 5a - Telecommunications interception, telecommunications monitoring and technical surveillance

Section 2 - Preconditions for telecommunications interception

Where there is reason to suspect a person of:

- 1) genocide, preparation of genocide, a violation of the prohibition of chemical weapons, a violation of the prohibition of biological weapons,
- 2) compromising the sovereignty of Finland, warmongering, treason, aggravated treason, espionage, aggravated espionage, disclosure of a national secret, unlawful intelligence operations,
- 3) high treason, aggravated high treason, preparation of high treason,
- 4) aggravated dissemination of pictorial recordings relating to a minor,
- 5) aggravated sexual abuse of a child,
- 6) manslaughter, murder, killing,
- 7) aggravated deprivation of liberty, trafficking in human beings, aggravated trafficking in human beings, taking of a hostage,
- 8) aggravated robbery, aggravated extortion,
- 9) aggravated receiving offence, professional receiving offence, aggravated money laundering,
- 10) criminal mischief, criminal traffic mischief, aggravated criminal mischief, aggravated health endangerment, nuclear device offence, hijacking,
- 11) an offence committed with terrorist intent within the meaning of section 1, subsection 1, paragraphs 2 to 7, or section 2 in Chapter 34a of the Penal Code, preparation of an offence committed with terrorist intent, directing of a terrorist group, promotion of the activity of a terrorist group, financing of terrorism,
- 12) aggravated criminal damage,
- 13) aggravated usury,
- 14) aggravated counterfeiting,
- 15) aggravated impairment of the environment,
- 16) aggravated narcotics offence, or
- 17) a punishable attempt to commit one of the aforementioned offences,

the investigative authority may be authorised to listen to or record telecommunications messages sent by the suspect sent from a subscriber connection, address or terminal device which is in the suspect's possession or is assumed to be otherwise used by him or her, or messages sent to such a subscriber connection and addressed to him or her, if the information obtained by such means may be assumed to be of great relevance for the investigation of the offence.

The authorisation referred to in subsection 1 above may, on the conditions provided therein, also be given where there is reason to suspect, in relation to business or professional activities, a person of such:

- 1) aggravated bribery,
- 2) aggravated embezzlement,
- 3) aggravated tax fraud, aggravated subsidy fraud,
- 4) aggravated forgery,
- 5) aggravated fraud,
- 6) aggravated dishonesty by a debtor, aggravated fraud by a debtor,
- 7) aggravated acceptance of a bribe, aggravated abuse of a public office,
- 8) aggravated regulation offence,
- 9) aggravated abuse of insider information or aggravated market price distortion, or
- 10) a punishable attempt to commit one of the aforementioned offences, as aims at particularly large proceeds and is committed particularly systematically.

The authorisation referred to in subsection 1 above may, on the conditions provided therein, also be given where there is reason to suspect a person of aggravated pandering, the purpose of which is to aim at particularly large proceeds and which is committed particularly systematically, or which is referred to in section 9a, subsection 1, paragraph 3 or 4 in Chapter 20 of the Penal Code, or of a punishable attempt to commit one of the aforementioned offences.

Section 3 - Preconditions for telecommunications monitoring

Where there is reason to suspect a person of:

- 1) an offence for which the maximum penalty provided by law is at least four years of imprisonment,
 - 2) an offence against a system of automatic data processing, committed by using a telecommunications terminal, or of pandering, threatening a person to be heard in the administration of justice, menace or a narcotics offence,
 - 3) a punishable attempt to commit one of the aforementioned offences, or
 - 4) preparation of an offence committed with terrorist intent,
- the investigative authority may be authorised to subject a subscriber connection, address or terminal device which is in the suspect's possession or is assumed to be otherwise used by him or her to telecommunications monitoring, or to obtain the identification data showing the location of a mobile communications device, or to temporarily disconnect such a subscriber connection or device, if the information obtained by means of such telecommunications monitoring or by the disconnection of the subscriber connection or terminal device may be assumed to be of great relevance for the investigation of the offence.

The investigative authority may be authorised, on the victim's consent, to subject a subscriber connection or address which is in the victim's possession or is otherwise used by him or her to telecommunications monitoring, to the extent it is necessary for the purpose of the investigation of one of the offences referred to in subsection 1 above. If the investigation concerns an offence on account of which someone has been killed, the authorisation does not require the consent of the killed person's successors.

Section 3a - Obtaining of the identification data showing the location of a mobile communications device

The authority carrying out the investigation of an offence referred to in paragraphs 1 to 4 of subsection 1 of section 3 above may be authorised to obtain the identification data showing the location of such mobile communications devices from which data has been registered in the telecommunications system through a base station that is located close to the assumed crime scene or other place of relevance for the investigation of the offence, if the obtaining of such data may be assumed to be of great relevance for the investigation of the offence.

Section 4 - Preconditions for interception

Where there is reason to suspect a person of:

- 1) an offence for which the maximum penalty provided by law is at least four years of imprisonment,
- 2) a narcotics offence,
- 3) a punishable attempt to commit one of the aforementioned offences, or
- 4) preparation of an offence committed with terrorist intent,

the investigative authority may subject the suspect to interception if the information obtained by means of such interception may be assumed to be of great relevance for the investigation of the offence.

The suspect may only be subjected to interception under subsection 1 above when he or she is outside the premises used as permanent residence. In addition, the suspect may be subjected to interception while he or she is serving a sentence in a penal institution, is placed in solitary confinement or is a remand prisoner, when he or she is in the prison cell or in another room used by prisoners in the penal institution in question.

Where there is reason to suspect a person of:

- 1) genocide, preparation of genocide, a violation of the prohibition of chemical weapons, a violation of the prohibition of biological weapons,
- 2) compromising the sovereignty of Finland, warmongering, treason, aggravated treason, espionage, aggravated espionage,
- 3) high treason, aggravated high treason,
- 4) aggravated sexual abuse of a child,
- 5) manslaughter, murder, killing,
- 6) aggravated trafficking in human beings,
- 7) aggravated robbery,
- 8) aggravated criminal mischief, aggravated health endangerment, a nuclear device offence, hijacking,
- 9) an offence committed with terrorist intent within the meaning of section 1, subsection 1, paragraphs 2 to 7, or section 2 in Chapter 34a of the Penal Code, preparation of an offence committed with terrorist intent, directing of a terrorist group, promotion of the activity of a terrorist group, financing of terrorism,
- 10) an aggravated narcotics offence, or
- 11) a punishable attempt to commit one of the aforementioned offences,

the investigative authority may also be authorised to subject premises used as permanent residence to interception where it is likely that the suspect is staying on such premises, if the investigation of the offence is significantly more difficult or impossible by using such coercive measures as intervene in the rights of the suspect or others to a lesser extent.

The investigative officer has the right to place the interception device on premises subject to interception if it is necessary for the purpose of carrying out the interception. In such a case, the officer has the right to secretly enter the said premises for the purpose of placing and removing the device.

Section 4a - Preconditions for technical monitoring

Where there is reason to suspect a person of an offence for which the maximum penalty provided by law is more than six months of imprisonment, the suspect or a specific place where he or she may be assumed to be staying may be subjected to technical monitoring, if the information obtained by means of such monitoring may be assumed to be of great relevance for the investigation of the offence.

If the person subject to technical monitoring is a person held in custody by the Prison Administration, who is serving a sentence in a penal institution, is in solitary confinement or is a remand prisoner, it is required, however, that the suspicion concerns an offence for which the maximum penalty provided by law is at least four years of imprisonment, or a narcotics offence, a punishable attempt of one of such offences, or the preparation of an offence committed with terrorist intent, and that the information obtained by such monitoring may be assumed to be of great relevance for the investigation of the offence.

The suspect may only be subjected to technical monitoring when he or she is outside the premises used as permanent residence. In addition, the suspect may be subjected to interception while he or she is serving a sentence in a penal institution, is placed in solitary confinement or is a remand prisoner, when he or she is in the prison cell or in another room used by prisoners in the penal institution in question.

The investigative officer has the right to place the monitoring device on premises subject to monitoring if it is necessary for the purpose of carrying out the monitoring. In such a case, the officer has the right to secretly enter the said premises for the purpose of placing and removing the device.

Section 4b - Preconditions for technical tracking

Where there is reason to suspect a person of an offence for which the maximum penalty provided by law is more than six months of imprisonment, a vehicle used by him or her or goods that are the object of the offence may be subjected to technical tracking for the purpose of investigating the offence. The investigative officer has the right to place the tracking device in the vehicle subject to monitoring if it is necessary for the purpose of carrying out the tracking. In such a case, the officer has the right to secretly enter the vehicle for the purpose of placing and removing the device.

Act on the Implementation of the Provisions of a Legislative Nature in the Agreement between the Government of the Republic of Finland and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW

(256/2004)

Unofficial translation © Ministry for Foreign Affairs, Finland

In accordance with the decision of Parliament, the following provisions shall be enacted:

Section 1

The provisions of a legislative nature in the Agreement between Government of the Republic of Finland and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW, done in The Hague on 10 February 2003, shall be applicable law as committed to by Finland.

Section 2

Further provisions on the implementation of this Act may be given by Government Decree.

Section 3

The provisions on the entry into force of this Act shall be given by Decree of the President of the Republic.

Decree implementing the Agreement between the Government of the Republic of Finland and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW and on the Entry into Force of the Act on the Implementation of the Provisions of a Legislative Nature in the Agreement

(379/2004)

Unofficial translation © Ministry for Foreign Affairs, Finland

In accordance with the decision of the President of the Republic, on presentation by the Minister for Foreign Affairs, the following provisions shall be enacted:

Section 1

The Agreement between Government of the Republic of Finland and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW, done in The Hague on 10 February 2003, which has been approved by Parliament on 9 March 2004 and by the President of the Republic on 2 April 2004, and the instrument of approval of which has been deposited with the Director-General of the Organisation for the Prohibition of Chemical Weapons on 29 April 2004, shall enter into force on 29 May 2004 as agreed.

Section 2

The Act (256/2004) on the Implementation of the Provisions of a Legislative Nature in the Agreement, adopted on 2 April 2004, shall enter into force on 29 May 2004.

Section 3

The provisions of the Agreement other than those of a legislative nature shall be in force as implemented by Decree.

Section 4

This Decree shall enter into force on 29 May 2004.

Agreement between the Government of Finland and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW

(Finnish Treaty Series 60/2004)

Whereas Article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the OPCW shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions;

Whereas Article VIII, paragraph 49, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with their alternates and advisers, the Director General and the staff of the Organisation shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the OPCW;

Whereas notwithstanding Article VIII, paragraphs 48 and 49 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the privileges and immunities enjoyed by the Director-General and the staff of the Secretariat during the conduct of verification activities shall be those set forth in Part II, Section B, of the Verification Annex;

Whereas Article VIII, paragraph 50, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction specifies that such legal capacity, privileges and immunities are to be defined in agreements between the Organisation and the States Parties,

Now, therefore, the Organisation for the Prohibition of Chemical Weapons and the Government of the Republic of Finland have agreed as follows:

Article 1

Definitions

In this Agreement:

- (a) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;
- (b) "OPCW" means the Organisation for the Prohibition of Chemical Weapons, established under Article VIII, paragraph 1, of the Convention;
- (c) "Director-General" means the Director-General referred to in Article VIII, paragraph 41, of the Convention, or in his absence, the acting Director-General;
- (d) "Officials of the OPCW" means the Director-General and all members of the staff of the Secretariat of the OPCW;
- (e) "State Party" means the State Party to this Agreement;
- (f) "States Parties" means the States Parties to the Convention;
- (g) "Representatives of States Parties" means the accredited heads of delegation of States Parties to the Conference of the States Parties and/or to the Executive Council or the Delegates to other meetings of the OPCW;

- (h) "Experts" means persons who, in their personal capacity, are performing missions authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;
- (i) "Meetings convened by the OPCW" means any meeting of any of the organs or subsidiary organs of the OPCW, or any international conferences or other gatherings convened by the OPCW;
- (j) "Property" means all property, assets and funds belonging to the OPCW or held or administered by the OPCW in furtherance of its functions under the Convention and all income of the OPCW;
- (k) "Archives of the OPCW" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the OPCW or any officials of the OPCW in an official function, and any other material which the Director-General and the State Party may agree shall form part of the archives of the OPCW;
- (l) "Premises of the OPCW" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the OPCW, including those referred to in Part II, subparagraph 11(b), of the Verification Annex to the Convention.

Article 2

Legal personality

The OPCW shall possess full legal personality. In particular, it shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute and act in legal proceedings.

Article 3

Privileges and Immunities of the OPCW

1. The OPCW and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the OPCW has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
2. The premises of the OPCW shall be inviolable. The property of the OPCW, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
3. The archives of the OPCW shall be inviolable, wherever located.
4. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) the OPCW may hold funds, gold or currency of any kind and operate accounts in any currency;
 - (b) the OPCW may freely transfer its funds, securities, gold and currencies to or from the State Party, to or from any other country, or within the State Party, and may convert any currency held by it into any other currency.
5. The OPCW shall, in exercising its rights under paragraph 4 of this Article, pay due regard to any representations made by the Government of the State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the OPCW.
6. The OPCW and its property shall be:
 - (a) exempt from all direct taxes; it is understood, however, that the OPCW will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the OPCW for its official use; it is understood, however, that articles imported under such exemption will not be sold in the State Party, except in accordance with conditions agreed upon with the State Party;
 - (c) exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.
7. While the OPCW will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the OPCW is making important purchases for official use of property on which such duties and taxes have been charged or are

chargeable, the State Party will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 4

Facilities and Immunities in Respect of Communications and Publications

1. For its official communications the OPCW shall enjoy, in the territory of the State Party and as far as may be compatible with any international conventions, regulations and arrangements to which the State Party adheres, treatment not less favourable than that accorded by the Government of the State Party to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes for post and telecommunications, and press rates for information to the media.

2. No censorship shall be applied to the official correspondence and other official communications of the OPCW. The OPCW shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Nothing in this paragraph shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the State Party and the OPCW.

3. The State Party recognises the right of the OPCW to publish and broadcast freely within the territory of the State Party for purposes specified in the Convention.

4. All official communications directed to the OPCW and all outward official communications of the OPCW, by whatever means or whatever form transmitted, shall be inviolable. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos, films, sound recordings and software.

Article 5

Representatives of States Parties

1. Representatives of States Parties, together with alternates, advisers, technical experts and secretaries of their delegations, at meetings convened by the OPCW, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention;

(b) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;

(c) inviolability for all papers, documents and official material;

(d) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;

(e) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the State Party in the exercise of their functions;

(f) the same facilities with respect to currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(g) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this Article may be present in the territory of the State Party for the discharge of their duties shall not be considered as periods of residence.

3. The privileges and immunities are accorded to the persons designated in paragraph 1 of this Article in order to safeguard the independent exercise of their functions in connection with the OPCW and not for

the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party.

4. The provisions of this Article apply irrespective of whether the State Party maintains or does not maintain diplomatic relations with the State of which the person designated in paragraph 1 of this Article is a national and irrespective of whether the State of which that person is a national grants a similar privilege or immunity to the diplomatic envoys or nationals of the State Party.

5. The provisions of paragraphs 1 and 2 of this Article are not applicable in relation to a person who is a national of the State Party.

Article 6

Officials of the OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in Part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with Article VIII, paragraph 51, of the Convention, the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in Part II, paragraph 12, of the same Annex.

2. For other activities related to the object and purpose of the Convention, officials of the OPCW shall:

- (a) be immune from personal arrest or detention and from seizure of their personal baggage;
- (b) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (c) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;
- (d) enjoy exemptions from income tax in respect of salaries and emoluments paid to them by the OPCW, provided that an internal effective tax for the benefit of the OPCW on the salaries and emoluments paid to them by the OPCW is applied;
- (e) in the event that the OPCW operates a system for the payment of pensions or annuities to former officials, the provisions of subparagraph (d) of this Article shall not apply to such pensions or annuities;
- (f) be exempt, together with their spouses, from immigration restrictions and alien registration;
- (g) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
- (h) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.

3. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the State Party, such exemption shall be confined to officials of the OPCW whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the OPCW and approved by the State Party. Should other officials of the OPCW be called up for national service by the State Party, the State Party shall, at the request of the OPCW, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this Article, the Director-General of the OPCW shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with international law. The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the OPCW acting on behalf of the Director General.

5. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW, and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any official of the OPCW in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

6. The OPCW shall cooperate at all times with the appropriate authorities of the State Party to facilitate the proper administration of justice, and shall secure the observance of local laws and regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article 7

Experts

1. Experts shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with such functions.

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer performing official functions for the OPCW;

(c) inviolability for all papers, documents and official material;

(d) for the purposes of their communications with the OPCW, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. The privileges and immunities are accorded to experts in the interests of the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

Article 8

Abuse of Privilege

1. If the State Party considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the State Party and the OPCW to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State Party and the OPCW, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with Article 10.

2. Persons included in one of the categories under Articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the State Party on account of any activities by them in their official capacity. In the case, however, of abuse of privileges committed by any such person in activities outside official functions, the person may be required to leave by the Government of the State Party, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the State Party. Such approval shall be given only in consultation with the Director-General of the OPCW. If expulsion proceedings are taken against the person, the Director-General of the OPCW shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 9

Travel Documents and Visas

1. The State Party shall recognise and accept as valid the United Nations laissez-passer issued to the officials of the OPCW, in accordance with special OPCW arrangements, for the purpose of carrying out their tasks related to the Convention. The Director General shall notify the State Party of the relevant OPCW arrangements.

2. The State Party shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under Articles 5, 6 and 7 above, travelling in their official capacity, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.

3. Applications for visas and transit visas, where required, from persons included in one of the categories under Articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. In addition, such persons shall be granted facilities for speedy travel.

4. The Director-General, the Deputy Director(s)-General and other officials of the OPCW, travelling in their official capacity, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.

5. For the conduct of verification activities visas are issued in accordance with paragraph 10 of Part II, Section B, of the Verification Annex to the Convention.

Article 10

Settlement of Disputes

1. The OPCW shall make provision for appropriate modes of settlement of:

(a) disputes arising out of contracts or other disputes of a private law character to which the OPCW is a party;
(b) disputes involving any official of the OPCW or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with Article 6, paragraph 5, or Article 7, paragraph 2, of this Agreement.

2. Any dispute concerning the interpretation or application of this Agreement, which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such an appointment.

4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.

5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry into force of this Agreement.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 11

Interpretation

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the OPCW.

2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in Part II, Section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Secretariat of the OPCW in Article VIII, paragraph 51, of the Convention. The provisions of this Agreement shall not themselves operate so as to abrogate, or derogate from, any provisions of the Convention or any rights or obligations which the OPCW may otherwise have, acquire or assume.

Article 12

Final Provisions

1. This Agreement shall enter into force on the thirtieth day following the date of deposit with the Director-General of an instrument of acceptance of the State Party. It is understood that, after the entry into force of this Agreement, the State Party will be in a position under its own law to give effect to the terms of this Agreement.
2. This Agreement shall continue to be in force for so long as the State Party remains a State Party to the Convention.
3. The OPCW and the State Party may enter into such supplemental agreements as may be necessary.
4. Consultations with respect to amendment of this Agreement shall be entered into at the request of the OPCW or the State Party. Any such amendment shall be by mutual consent expressed in an agreement concluded by the OPCW and the State Party.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done in The Hague in duplicate on 10 February 2003, in the English language

For the Government of the Republic of Finland,

For the Organisation for the Prohibition of Chemical Weapons,