

Division. However, since the National Authority will have the most knowledge regarding the scope of the Protocol, constant dialogue and cooperation will be necessary between these two branches.

As seen in part 4.2, considerable legislation exists as to the regulation of the subject matter of the Protocol. The concern for the outbreak of disease demonstrates in part the seriousness of the tasks faced by the National Authority. It also informs the National Authority as to the measures that are available in Canadian society to prevent and remedy a potential outbreak, including the governmental bodies that can contribute to the National Authority's mandate. Finally, as addressed in part 4.3 of this report, several legitimate concerns exist with respect to the protection of commercial proprietary information. Although the declarations are not unduly onerous and the potentially affected industries are already highly regulated, there exists a risk of disclosure which could result in significant loss, despite efforts made in the Protocol to protect CBI. As such, it may be desirable to set up a mechanism to indemnify victims for loss of information.

Finally, the establishment of a National Authority for the Protocol to the BTWC is a task that need not be overly complicated. The lessons learned from the creation of the CWC National Authority, coupled with the analysis provided herein, can provide some insight into the duties to be assumed by the prospective National Authority.

5. CONCLUSION

Setting up a National Authority for the BTWC need not be an unduly onerous task. If Canada is going to play an active role in the implementation of the Protocol, serious consideration should be given to the various challenges outlined in this report. As demonstrated in the conclusion to the previous section, some States Parties are already assessing their industries and carrying out mock visits. Planning for a National Authority not only constitutes sound management practice, but it can also provide a further example of commitment to the international community and so underscore Canada's dedication to an effective verification mechanism for the BTWC.

Within Canada, many challenges exist with respect to the implementation of the Protocol. On a purely legal level, some concern remains as to the constitutionality of regulating business activities by the Federal Parliament. Nevertheless, it has been argued that legislation enacted pursuant to the Protocol would be upheld as a proper use of the federal parliament's criminal law power. More significant concerns reside in the types of visits provided for under the Protocol and their potential infringement on the *Charter* provision guaranteeing against unreasonable searches and seizures. In some cases, a full warrant may be required to undertake such an investigation.

The protection of commercially sensitive information is a priority for the State Party and there are insufficient provisions in the Protocol to remedy loss suffered from revelation of, for example, a trade secret. Given the state of the industries most likely to be affected by the inspection mechanism, the loss of a trade secret could spell disaster for, as an example, a cutting-edge biotechnology company. However, this concern must not be overstated, as many of the reporting