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**ISLAMIC REPUBLIC OF IRAN**

**PEACEFUL TRANSFER THROUGH TRANSPARENCY**

**I. Introduction**

The Chemical Weapons Convention (hereinafter “the Convention”) constitutes a disarmament treaty which is unique in several aspects, especially in establishing a clear link between confidence-building and trust through a comprehensive verification regime and free international trade in chemicals, equipment and related technology in the field of chemical activities for purposes not prohibited under the Convention.

Therefore, maintaining the balance between verification and implementation of Article XI provides sufficient assurance about treaty compliance by verifying relevant chemical activities in the States Parties, while taking measures to avoid hampering their economic and technological development, to implement the Convention.

**II. Basic rights and obligations under Article XI**

The Convention embodies a delicate balance of rights and obligations to be complied with by States Parties. There are obligations relating mainly to prohibitions, which lead to the elimination of all existing chemical weapons and the prevention of them in the future. On the other hand, there are rights and obligations that are basically focused on activities related to purposes not prohibited under the Convention, as defined in Article II, paragraph 9.

Those rights are stated in broader terms in Article VI, paragraph 1, according to which “Each State Party has the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer, and use toxic chemicals and their precursors for purposes not prohibited under the Convention”, together with Article XI, paragraph 1, and Article VI, paragraph 11, both of which are aimed at promoting “... the economic or technological development of States Parties, and international cooperation in the field of chemical activities for purposes not prohibited under this Convention ...”, including the international exchange of chemicals and equipment for production, processing or use of chemicals. The obligations are explicitly reflected in the Article XI text, as contained in paragraphs 2(a), (b), (c), (d), and (e).



Additional provisions strengthening those rights and obligations are: the eighth preambular paragraph of the Convention, which states that "... achievements in the field of chemistry should be used exclusively for the benefit of mankind"; the ninth preambular paragraph, which states the desire to "... promote free trade in chemicals as well as international cooperation and exchange of scientific and technical information in the field of chemical activities for purposes not prohibited under this Convention in order to enhance the economic and technological development of all States Parties," and Article VIII, paragraph 21(g), which concerns the power of the Conference of the States Parties - the highest political organ of the OPCW – to "Foster international cooperation for peaceful purposes in the field of chemical activities".

It is indeed this delicate balance of basic, mandatory, and implementable sets of obligations and rights which make the Convention unique in the multilateral disarmament field, and which make it attractive to any state in the international community. It equally represents the gravitational force for the Convention's universality. Therefore, the prospect of seeing some measures as a means for unilateral or unjustifiable discrimination between States Parties, or disguised restrictions on transfer, seems unthinkable from the point of view of full, effective, and non-discriminatory implementation of the Convention.

In short, States Parties to the Convention, without misreading the general obligations prescribed in Article I and its complementary provisions in Article II related to so-called "General Purpose Criterion", shall not allow Article XI to become a pale provision of the Convention. This is not only because of the worldwide expansion of the chemical industry, but also because of the need to prevent future disputes concerning non-compliance, thus waiving the basic rights and obligations under Article XI.

### III. Transfer of chemicals under the Convention

One underlying principle of the Convention is that **no provision of it can impede the legitimate transfer of chemicals between States Parties**. This is fully consistent with Article VI, paragraph 2, in that "Each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only transferred ... within its territory or in any place under its jurisdiction or control for purposes not prohibited under this Convention".

As an immediate consequence, **the transfer restrictions on chemicals will, in principle, only be applicable by States Parties against States not Party**.

Article I, paragraph 1(d), sets out the basis for this discriminatory approach, according to which States Parties undertake never under any circumstances "to assist, encourage or induce, in any way, any one to engage in any activity prohibited to a State Party under this Convention." Article VII, paragraph 1(a, b, and c) further stipulate the mandatory obligation for States Parties to extend those prohibitions to any natural or legal persons.

*Vis-à-vis* these obligations, the wording of paragraph 1 of Article XI (which is identical to the wording of paragraph 11 of Article VI) then becomes relevant **because it sets forth the obligation of States Parties to implement the provisions of the Convention “in a manner which avoids hampering the economic and technological development of States Parties ... for purposes not prohibited under the Convention.”**

The fact that agreement on Article XI was only reached at the very last moment of the negotiations in Geneva, once the Australia Group agreed to make a commitment in the plenary of the Conference on Disarmament, is in itself highly demonstrative of the unavoidable link between Article XI implementation and the removal of transfer barriers **between States Parties**. Then, respectively, the related parts about the transfer to States not Party were introduced.

Part VI, Section A, paragraph 1, and Section B, paragraphs 3 and 4 of the same Part VI, as well as paragraphs 5 and 6 of the Verification Annex, all together explicitly prescribe the prohibition of transfer of Schedule 1 chemicals outside the territories of States Parties. The restriction of such transfer to activities which are not prohibited, and the correlation of these prohibitions to notification to the Technical Secretariat of the export and import of Schedule 1 chemicals, and ultimately the obligation for a detailed annual declaration regarding transfers during the previous year, show the scope of prohibitions related to States not Party.

The transfer of Schedule 2 chemicals by States Parties to States not Party, similarly, is also prohibited. Nevertheless, during the interim three-year period, which has already expired, by adoption of the necessary measures, including an end-use certificate, States Parties shall ensure the transfers for activities which are not prohibited. In addition, the obligation of initial and annual declaration for aggregate national data for export and import for the previous calendar year, as well as quantitative specification of each Schedule 2 chemical, are required (Section C, paragraph 32 of Part VII of the Verification Annex and Section A, paragraph 1, Part VII, Verification Annex, Article VI, paragraphs 7 and 8).

Regarding the transfer of Schedule 3 chemicals (Section C, paragraph 26 of Part VIII of the Verification Annex) to States not Party, the transferred chemicals shall only be used for purposes which are not prohibited, and there is a requirement for an end-use certificate. However, after the interim five-year period, as in the case of Schedule 2 chemicals, introducing further measures would remain to be decided. For this purpose, also in the case of Schedule 2 chemicals, a report of initial and annual quantities of exports and imports, as well as their quantitative specifications, are required within the context of declarations. (Article VI, paragraphs 7 and 8; Part VIII, Section C, paragraph 27).

**As regards the transfer of non-scheduled chemicals, equipment and related technologies, between the States Parties, no provisions exist within the Convention, to impede their legitimate transfer. The absence of any provision means that the Convention has not envisaged any export restrictions in their trade between States Parties.** In this Connection, before entry into force (EIF), in the absence of the implementation of the provisions of the Convention any restriction measures remained under the domain of national regulations of the States Parties.

After EIF, the consistency of national regulations with the object and purpose of the Convention, according to the paragraph 2(e) of Article XI, shall be examined for the sake of legitimate transfers between States Parties. This is crucial in the sense that the Convention has established a system with equal duties and responsibilities for all States Parties based on the principle of equal treatment of all States Parties.

It is imperative to note here that the underlying principle of legitimate transfers of unscheduled chemicals, equipment and related technologies between States Parties shall be maintained in implementing any national regulations. **Therefore, national implementation of Article II (the so-called “General Purpose Criterion), due to its emphasis on the purposes for which chemicals are intended, shall not eventually be misinterpreted or misused, as justification for maintaining parallel restrictions on transfers to another State Party.**

Some developed countries are still arguing for the necessity of keeping some kind of control regulations against States Parties to the Convention. This is clearly contrary to the letter and spirit of the Convention. The States Parties should abide by all provisions of the Convention to render their national regulations in the field of trade in chemicals consistent with the obligations undertaken under the Convention.

#### IV. Export control regimes

During the course of the negotiations of the Convention, it was the consistent position of developing countries that it was no longer justifiable for the States Parties to maintain restrictions and parallel existing export barriers in the name of national regulations outside the domain of the Convention. Following intensive negotiations on the subject, a formal and decisive statement was made by the Australian representative in which he enunciated the Australia Group’s commitment to undertake to review the measures that they take to prevent the spread of chemical substances and equipment, with the aim of removing such measures for the benefit of States Parties to the Convention, once the Convention become operational.

This was ultimately confirmed by the Chairman of the Ad Hoc Committee on Chemical Weapons, negotiating the text of the Convention, in his report to the plenary of the Conference on Disarmament in Geneva, which stated that: “The verification regime of chemical industry was balanced by the understanding of States Parties to review restrictive measures in the field of international cooperation with the aim of removing restrictions for the benefit of States Parties acting in full compliance with their obligations under the Convention. In this regard, there was a careful and delicate equilibrium between the interests of industrial States which have to bear the bulk of verification and the interests of developing States whose interests in the increased cooperation was recognized.”<sup>1</sup>

After more than five years after EIF of the Convention, its verification provisions provide adequate safeguards against the proliferation of chemical weapons, and there is no longer a *raison d’être* for parallel export controls for the States Parties. The Verification regime of the Convention also creates discrimination among States

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Statement by Ambassador Adolph Ritter von Wagner of Germany, chairman of the Ad Hoc Committee on Chemical Weapons, Conference on Disarmament, 10<sup>th</sup> August 1992.

Parties and States not Party. **In actual practice, during these five years, while developing States Parties have been fulfilling their obligations under the Convention, they have been denied free access to chemicals and equipment and related technology for peaceful purposes. At the same time, some countries outside the Convention enjoyed unimpeded access to such materials. Preservation of such discrimination and double standard is contrary to the universality of the Convention.**

Implementation of Article XI still suffers from the lack of political will by a limited number of States Parties who wish to use parallel export controls as a means to follow their political considerations through imposing restrictions contrary to what is provided under the Convention.

Although non-proliferation issues, along with total destruction of Chemical Weapons, are of great concern to all States Parties, these concerns shall in no way be used to justify maintaining export controls against States Parties beyond the verification mechanism envisaged in the Convention.

The assessment of full compliance by States Parties would have to result from the assessment by the OPCW as a whole, not from prejudgment by individual States Parties. Consequently, parallel unilateral actions taken by some States will undermine the object and purpose of the Convention.

Any proliferation concern is best addressed through multilaterally-negotiated, universal, comprehensive and non-discriminatory agreements.

## **V. How to proceed**

The States Parties to the Convention shall ultimately come up with a common and standard approach to ensure, and provide reassurance on, the effective, full and non-discriminatory implementation of Article XI by all States Parties. The principle of free trade for peaceful purposes, which is the *raison d'être* of this very Article, applies both to the Organisation and to the States Parties. It thus provides the guidelines for the Organisation on how to implement the relevant provisions of Article XI and it also underlines the general requirements for both developed and developing States Parties on how to tailor their national policies in the field of legitimate chemical activities and cooperation to the obligations undertaken under the Convention.

Six years after EIF the developed countries should assess the advantages and disadvantages of parallel export control measures such as the Australia Group, directed at denial toward States Parties. In our view, a denial strategy will always eventually fail due to its serious disadvantages. The most important disadvantage of denial measures is that they involve denial decisions taken by a self-selected group of states, without the consensus of the broader international community. For this reason, they are politically divisive, and so self-defeating, as they undercut efforts to build an international consensus to prevent the proliferation of chemical weapons.

Although, the Australia Group has remained informal, its recommendation and its list, which contains chemicals additional to those of the Convention, plus a list of

equipment, are applied as the basis for existing strict national parallel export control measures beyond the Convention. Furthermore, the list currently applied by the Australia Group has been adopted as the basis for an additional parallel export control regime in the context of formal regional unity. The legal consistency of such a regime - which was decided before EIF – has apparently not yet been reconsidered. It is assumed though, when the legal framework of the Convention is well in place, that such a regime shall be reviewed and rendered consistent with obligation undertaken under Article XI of the Convention.

However, by contrast, **the non-proliferation measures - even those involving unscheduled chemicals and equipments, within the context of comprehensive regime of the Convention - directed towards reassurance, rather than towards denial, can play a vital role in increasing confidence among the States Parties.**

At the third session of the Conference of the States Parties at the end of 1998, some Non-Aligned States Parties brought up the issue of parallel export control mechanisms outside the domain of Convention. The Conference then tasked the Executive Council to consider the matter; it remained an item on its agenda ever since. **The First Review Conference presented a good opportunity to revisit this agenda and come up with follow-up recommendations. The recommendations of the Review Conference were laid out in paragraphs 7.83(g) and 7.107 of its final report. The First Review Conference urged States Parties that had not yet done so to review their existing regulations in the field of trade in chemicals in order to render them consistent with object and purpose of the Convention. It also urged the Executive Council to continue its facilitation to reach early agreement on the full implementation of Article XI, taking into account earlier and recent proposals submitted.**

## **VI. Proposal**

In view of the above, the development of a **transparency procedure** to monitor all transfers under the Convention, under the auspices of the main decision-making bodies of the OPCW, is necessary. With the institutionalisation of such a procedure for the sake of increasing transparency on trade activities through reporting of transactions, annual declarations of transfers, declaration of intended end-use, and the like, the States Parties (either as transferor or as transferee, or both), through the timely reporting of their transactions to the Organisation as the third party and sole body responsible for the determination of compliance, can play an essential role in confidence-building, and in increasing the trust that all trade activities between them are solely for peaceful purposes.

**The guiding principle of such a procedure is that any transfer of scheduled chemicals, unscheduled chemicals, and eventually equipment and related technology, between States Parties shall be unrestricted and will be implemented in accordance to the Convention.** Hence national regulations would have to be adjusted accordingly as part of the national implementing legislation. If a state is State Party, the basic assumption is that it is the State Party's intention to fully comply with the provisions of the Convention. To mistrust a State Party, or to put

into question its good faith<sup>2</sup>, risks seriously hampering the security component of the Convention since it would give rise to the opportunity for a State Party, in the comfortable role of supplier, to have the right to judge whether the transfer is appropriate or not. Under said procedure however in order to promote transparency, confidence-building and trust, all transfers between States parties would have to be notified to the National Authorities of both exporting and importing States Parties and ultimately to the OPCW - as the third party - in a manner consistent with the Convention and responsive to the need for transparency as agreed by all States Parties.

The purpose of the proposed procedure could be to facilitate transfers through a generally accepted regime. This procedure could contribute as well to elucidate any misgiving or misunderstanding surrounding a particular transfer. It is assumed that the transparency procedure has to be acceptable by all States Parties. In this process, the OPCW should be seen as the sole responsible body to verify the compliance of the States Parties with their obligations undertaken under the Convention. This authority shall not be undermined by resorting to unilateral action in alleging to prevent the proliferation of chemical weapons. The States Parties should resolve any suspicion arising from such transfers through the process of consultation and clarification in accordance with Article IX of the Convention, and abide by the result of the process.

**A consensus-based resolution adopted and applied by all States Parties concerning the implementation of Article XI of the Convention would be the most expeditious way to implement it.**

The transparency procedure could be based on two distinct assumptions. On the one hand, each State Party will have to implement Article XI in full consistency with the object and purposes of the Convention which are disarmament and non-proliferation aiming at excluding completely an entire category of weapons of mass destruction. Nevertheless, it needs to be recalled that toxic chemicals and their precursors do not fall within the prohibition under Article I as long as they are used in accordance with Article II for purposes not prohibited under the Convention, in types and quantities consistent with such purposes. Among those purposes the Convention singles out, in paragraph 9 of Article II: industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes, as well as protective purposes, military purposes not connected with the use of chemical weapons, and law enforcement for domestic riot control purposes.

On the other hand, in implementing this procedure, discrimination in the field of transfers of chemicals will be allowed only against non-parties. This shall be so if States Parties are to achieve the universality pillar of the Convention, which is to bring into its fold all significant non-parties, including those with recognised chemical weapons capabilities in the regions of concern.

This proposal might be new from the standpoint of the Convention. However, as a matter of fact, it has its precedent in other international organisations, if one

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The principle of **Pacta sunt servanda** contained in Article 26 of the Vienna Convention on the Law of Treaties make that assumption untenable.

takes into account the efforts made by **UNEP** and **FAO** with respect to the Prior Informed Consent Procedure (**PIC**) under the London Guidelines for the Exchange of information on chemicals in international trade (as amended in 1989). It is also the practice applied within the context of the United Nations, to prevent the illicit transfer of narcotic drugs and psychotropic substances (**1961 UN Single Convention on Narcotic Drugs and 1971 UN Convention on Psychotropic Substances**).

Five years after the implementation of the Convention, it seems that the proponents of ad-hoc export control regimes such as the Australia Group, despite the stated commitment made during the negotiations of the Convention in Geneva, are themselves not yet convinced of the effectiveness of the Organisation's ability to implement the verification procedures of the Convention. If this is the case, it would be appropriate to raise this issue with a view to finding a solution that would make the Organisation a stronger and more effective instrument to achieve this goal.

Regrettably, in spite of tremendous efforts during the Preparatory Commission and even after EIF, and of many concessions being made by developing States Parties, Article XI, which has as its intentional core action the free and unimpeded legitimate trade of chemical substances, equipment, and related technologies between States Parties, still remains unresolved. To accomplish the very objective of this Article, any resolution has to aim at putting into operation the provisions contained therein. To this end, the delegation of the Islamic Republic of Iran, along with several other delegations from developing countries, have proposed the creation of a body, namely the "**Cooperation Committee**"<sup>3</sup> to be established under the decision-making bodies of the Organisation during the Sixth Session of the Conference of the States Parties. **This committee would play a vital role as a forum for deliberations aimed at the further development of the transparency procedure as suggested in this paper for full, effective and non-discriminatory implementation of Article XI.**

We believe such a procedure would lead to an eventual, common approach to reassure and remove differences and controversies surrounding the particular transfer of chemicals and related equipment and technologies for purposes not prohibited under the Convention. **With such a consensus-based, common approach, the ad-hoc control regimes could evolve into the comprehensive regime of the Convention.**

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Draft Decision: Bangladesh, Cameroon, Cuba, Ethiopia, India, Indonesia, Iran (Islamic Republic of), Malaysia, Nigeria, Pakistan, Sri Lanka, Sudan, Yemen – Implementation of Article XI (C-VI/DEC/CRP.18, dated 17 May 2001).