



THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

THE ROLE OF EXPORT CONTROLS IN THE IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION

1. Introduction

The Chemical Weapons Convention (hereinafter “the Convention”) contains a wide range of obligations and prohibitions which all States Parties have accepted, in the context of their shared overall goal of eliminating chemical weapons worldwide. The key obligations which States Parties accept under Article I of the Convention include “never under any circumstances.....to transfer, directly or indirectly, chemical weapons to anyone” or “to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention”. The aim of this provision is to prevent the acquisition of chemical weapons either by States or – just as importantly in current circumstances – by non-state actors, i.e., terrorists. This paper explores the role of export controls in implementing this element of the Convention.

2. Definition

For the purposes of this paper, the term export controls is defined as a system of effective national legislative or regulatory measures designed to ensure that no export of equipment, materials, technology or information takes place for purposes prohibited by the Convention. An effective export control system must include not only the necessary legislation and regulation, but also the administrative and legal procedures for implementing them effectively, including appropriate criminal sanctions for breaches.

3. Specific export control obligations under the Convention

Effective export controls are needed in order to meet the general obligations not to transfer chemical weapons to anyone, directly or indirectly, or to assist anyone to engage in a prohibited activity, in accordance with Article I of the Convention. But there are also a number of specific obligations under the Convention which can be fulfilled **only** by means of effective export controls:



- Part VI A and B of the Verification Annex to the Convention (hereinafter “the Verification Annex) prohibit the transfer of **Schedule 1 chemicals** to non-States Parties, prohibit re-transfers to a third State, permit transfers to States Parties only for specific purposes, limit the quantities so transferred, and require annual declaration of such transfers;
- in accordance with Part VII C of the Verification Annex, the export of **Schedule 2 chemicals** to States not Parties was prohibited from 29 April 2000. The Conference of the States Parties agreed, however, that low concentrations and items of consumer goods should be exempt from this prohibition, in order not to impose unreasonable restrictions on trade where the risks to the Convention were considered to be very low or negligible;
- in accordance with Part VIII C of the Verification Annex, C, End User Certificates are required for exports of **Schedule 3 chemicals** to States not Party. Again, it was agreed by the Conference of the States Parties in 2000 that low concentrations and items of consumer goods should be exempt from this requirement; and
- in accordance with Parts VII and VIII of the Verification Annex, States Parties are required to declare **Aggregate National Data** for the import and export of Schedule 2 and 3 Chemicals, in order to provide additional transparency and confidence to all States Parties that such chemicals are not being diverted for weapons purposes.

4. The Nature of export control systems required by the Convention

- 4.1 It is clear that, in order to meet both their general and their specific obligations under the Convention, States Parties must have an effective system of export controls. Such a system must enable a State Party to have a high level of confidence that **any** export of a scheduled chemical is intended for a purpose permitted by Article II of the Convention and will not be misused in an offensive chemical weapons programme.
- 4.2 However, the United Kingdom does not believe that it is sufficient for an export control system to address scheduled chemicals alone. The prohibitions of Article I of the Convention apply not only to Scheduled chemicals, but to **any** toxic chemical which is intended for purposes other than those permitted by Article II of the Convention. There are many non-scheduled chemicals capable of being misused, either as chemical weapons or as precursors. An effective export control system must therefore provide for **any** transfer of chemicals to be prohibited and prevented where it is believed that it is **not** intended for a permitted purpose. Accordingly, United Kingdom export controls apply both to scheduled chemicals and to specified non-scheduled chemicals which represent a particular risk to the Convention. They also contain a “catch-all” provision, under which the United Kingdom has legal authority to require prior Government approval for exports of items which are not on control lists, where these are or may be intended for use in Weapons of Mass Destruction (WMD) programmes, including missile programmes which may be intended for WMD delivery. In addition to controlling transfers of chemicals, an effective export control system which is consistent with the obligations of Article I of

the Convention must also provide appropriate controls over equipment, technology or information which could be used for chemical weapons purposes. The United Kingdom's export control legislation seeks to provide controls over all of these areas.

- 4.3 The United Kingdom believes that the requirement for national export controls as set out above is self-evident as a means of contributing to the effective and universal implementation of the Convention. Export control systems of this sort are in place in many States Parties, including both developed and developing States, and States from most - if not all - regional groups.. The United Kingdom does not believe that there are substantial differences of view between States Parties on these aspects of export controls, although there may be variation in the scope or nature of their national systems. However, it remains a serious concern that, as reported in the Verification Implementation Report (hereinafter the "VIR") (EC-30/HP/DG.1, dated 4 July 2002) a significant number of States Parties had not reported their export control legislation as at 31 December 2001. This represents a clear weakness in the effectiveness of implementation of the Convention, since the absence of such legislation in a State Party creates the risk that chemicals, equipment, technology and information may still be transferred from a State Party – without its knowledge - to state or non-state entities which will misuse them for weapons purposes. To help remedy this situation, the United Kingdom and other States Parties have provided advice to States Parties in order to assist them with setting up and implementing national export control systems; the United Kingdom remains willing to do so.

5. Aspects of the implementation of export controls

- 5.1 There are three aspects of export control that have been criticised by some:
- the application of export control measures to transfers between States Parties;
 - the coordination of national export control measures between State Parties; and
 - the potential impact of export controls on economic development.
- 5.2 Some states appear to believe that national controls on exports between States Parties to the Convention are unnecessary, hamper economic development and should therefore be automatically relaxed, or even eliminated, in order to promote technology exchange and cooperation. The United Kingdom believes that these arguments are flawed.
- 5.3 Some of these arguments seem to be based on the assumption that the Convention itself establishes an export control regime. As noted above, the Convention imposes some specific restrictions on trade in scheduled chemicals, some of which apply to trade between States Parties. The application of these restrictions unavoidably requires national export controls of some sort. But the role of the OPCW in export matters is essentially the collection of data on exports and imports made by States Parties; this information, therefore, is provided **after** the import or export has taken place. This is a valuable function, supplementing the understanding by the Technical Secretariat (hereinafter "the Secretariat) of industrial activities and trade flows, and

thus contributing to an effective verification regime. However, it does not of itself constitute a process of export control, which requires a decision to be made **in advance** as to whether a specific export should or should not be permitted. Such a decision must remain a responsibility of States Parties, and Article I of the Convention does not in any way limit the exercise of this responsibility to consideration of exports only to States not Parties.

- 5.4 It is clear from the VIR that many States Parties have failed to meet their obligations to take effective export control measures in order to prevent transfers of toxic chemicals for non-permitted purposes. The implementation of the Convention's prohibitions and restrictions on transfer can only be as effective as the export control system of States Parties. No State Party – however well intentioned – can be confident that it meets its transfer obligations, **unless** it has an effective export control system. And no State Party can be confident that any toxic chemicals or precursors that it exports to another State Party will not be diverted elsewhere for non-permitted purposes, perhaps through several intermediaries, **unless** all other States Parties have effective export controls. So until all States Parties have effective export control systems, any State Party considering the transfer of chemicals to another will have to take into account the possibility of further transfer from the receiving State – in good faith - and subsequent diversion for weapons purposes.
- 5.5 Other arguments used against national export controls seem to be based on the assumptions that verification measures will ensure that States Parties remain in compliance, and that the good faith of States Parties should not be questioned in the absence of verified non-compliance. The Convention does indeed provide valuable transparency and verification measures, and essential tools for deterring non-compliance and for investigating concerns about possible non-compliance. But the Convention can provide no absolute guarantee that **all** States Parties will at all times be compliant, or that **any** non-compliance will immediately be detected. Membership of the Convention, in and of itself, can provide no guarantee of compliance, and States Parties can not be confident that all other States Parties will always act in good faith. That is why the Convention specifically includes measures to investigate alleged breaches of the Convention by States Parties. However, even if investigations result in objectively strong evidence of non-compliance, we cannot assume that this will be invariably or quickly accepted by States Parties.
- 5.6 Transferring States therefore also have to take into account the risk of misuse by the receiving State itself, or entities within it. In these circumstances, the verification measures provided by the Convention need to be reinforced by controls on the export of goods where there is concern that they may be misused. States Parties can not be expected simply to abandon national export controls on transfers to other States Parties. An exporting party would clearly not be able to fulfil its obligations under Article I of the Convention, if it were not to apply export controls simply on the grounds that the receiving State was a Party to the Convention. Exporting states must continue to permit transfers **only** if they believe the items will **not** be misused. They cannot permit transfers simply on the grounds that they cannot **prove** publicly that they **will** be misused. The United Kingdom believes that obligations under Article I of the Convention and the assessment of the impact of exports on national security must remain the sovereign responsibility of the exporting state. It follows that, where a state has concerns about compliance, it has the right to share these concerns with

other states and to adopt a common approach on exports, in order to minimise the risk that **any** of them fail to meet their obligations in relation to transfers.

- 5.7 The argument that export controls hinder the economic development of developing nations, by preventing the transfer of materials and technology, also appears to reflect misunderstanding about the true nature of export controls. The natural tendency of trading nations is to export wherever there is a market for their goods. The United Kingdom – like other states - does not impose or exercise export controls carelessly or arbitrarily, much less maliciously or with the intention of discriminating against or harming other states. The United Kingdom does so carefully, seriously, systematically and fairly, solely in order to fulfil the obligations that it has assumed under national and international law. The reality is that, in the vast majority of cases, transfers **are** approved by the United Kingdom and other exporting states. Export licensing systems do not mean an automatic veto on exports of chemicals and related technology to any developing country. Very few requested transfers are denied to any State.
- 5.8 The decisions that States Parties make about proposed transfers to others very much depend on the level of trust that develops between the states concerned. This in turn depends, in particular, on the effectiveness and transparency that importing states demonstrate in their national implementation of the Convention. If states requesting transfers should encounter genuine problems, it would be entirely appropriate for them to pursue bilateral consultations. In any such consultations, the importing State Party may help to dispel any suspicions by demonstrating its responsible and transparent behaviour.

6. Conclusion

6.1 The United Kingdom firmly believes that:

- an effective export control system is one of the fundamental obligations of every State Party under the Convention;
- effective export controls provide significant security benefits for **all** States Parties, by reducing the risks that chemical weapons will be developed and used **anywhere**;
- export controls are most effective in meeting the requirements of the Convention when they are voluntarily co-ordinated between states;
- effective national export controls and improved transparency resulting from full implementation of the Convention's verification measures will enhance international security and improve mutual confidence between States Parties over time; and
- any genuine remaining problems with refusals of export licenses can best be dealt with under the Convention's provisions for bilateral consultation.

- 6.2 A blanket relaxation or abandoning of national export monitoring and control arrangements between States Parties would undermine the fundamental object and purpose of the Convention, would be contrary to the obligations of Article I, and would prevent States Parties from meeting their specific Convention obligations in relation to transfers of scheduled chemicals. The United Kingdom has reviewed its export control system in accordance with Article XI.2 (e) of the Convention and is satisfied that it is consistent with the object and purpose of the Convention. The United Kingdom will continue to carry out such reviews, to ensure that its export controls remain appropriate in the light of all relevant considerations, including progress in the effective and universal implementation of the Convention on the one hand and, on the other, the risk of diversion of chemicals and related items for non-permitted purposes. The United Kingdom and other States Parties have actively provided encouragement and assistance to other States Parties to set up and enhance their own national export control systems. The United Kingdom will continue to do so.
- 6.3 The United Kingdom **recommends** that the Review Conference:
- (a) urge all States Parties to meet their obligations under the Convention by setting up and maintaining effective national export control systems; and
 - (b) urge those States Parties best placed to do so, as well as the Secretariat, to assist other States Parties to implement and improve their export control systems.