The importance of the meaningful implementation of Article XI of the Chemical Weapons Convention (CWC) to the achievement and maintenance of universality has been discussed in an earlier issue of OPCW Synthesis. 

Over the past years, the debate on the role of cooperation clauses in disarmament treaties has intensified. With the establishment of the Preparatory Commission of the OPCW in 1993, the discussion has become institutionalised and permanent, as the issue now regularly features on the agenda of several decision-making bodies, and the Secretariat is trying to develop relevant programmes. Before the question of international cooperation and technology transfers was raised only at the quinquennial review conferences (RevCons) of the 1972 Biological and Toxin Weapons Convention (BTWC), and during the intermediate years, not even the most vocal States demanded concrete action on the conclusions of the RevCons with respect to Article X of the BTWC.

This institutionalisation process has some interesting consequences. Today’s debate on the implementation of Article XI of the CWC is influencing the negotiation of the future Protocol to the BTWC in Geneva, and some of the ideas being developed there—notably the proposed Cooperation Committee as a subsidiary body to the future organisation—are being taken up for consideration in the OPCW. Another outcome is that States with a strong interest in the development pillar of the CWC (and of the BTWC) must move beyond the stage of sweeping political statements, and must begin to formulate concrete proposals and to set priorities. This will require careful coordination among the requesting parties, as country- or region-specific exigencies may otherwise lead to friction and competition among them.

In a complex treaty such as the CWC, States will inevitably accord certain provisions greater weight on the basis of their specific needs. No State Party disputes that the core purpose of the CWC is disarmament: existing chemical weapons (CW) stockpiles must be destroyed, and States Parties may not (re)arm themselves with these weapons under any circumstances. As a result, no State Party advocates the proliferation of CW or of technologies for the purpose of creating CW. Indeed, States Parties have the obligation to actively and purposefully ensure that no legal or physical body under their jurisdiction engages in activities in violation of the CWC. In contrast to the detailed procedures for the elimination of CW, however, the Convention does not concretely specify how States Parties must meet the non-proliferation obligation. No provision in the CWC requires that States Parties meet their non-proliferation obligation solely with treaty-based instruments. The Convention does not preclude the coordination of export control policies in formal or informal arrangements (for example, the European Union common control lists or the Australia Group), nor does it state that such initiatives are the only possible policy. The CWC shares this lack of precision with the BTWC and the Nuclear Non-Proliferation Treaty (NPT).

The Schedules-based export controls in the CWC are hardly satisfactory as a non-proliferation tool. The Schedules are a tool to assist the inspection and monitoring regimes of the Convention. They encompass the political compromises that have been negotiated between an assessment of the threat that certain chemicals pose to the CWC and an assessment of the commercial relevance of these compounds. However, the Schedules are not comprehensive. For instance, the precursors in one production method for mustard agent used in the past are not included in the lists. As the discussions about the transfer of saxitoxin or the inclusion of all salts of Schedule 1 chemicals indicate, changes to the Schedules remain politically sensitive, and can have legal implications for other parts of the CWC. The Schedules-based approach to monitoring transfers is reminiscent of the safeguards in the nuclear area, but questions can be raised about its practicability in the light of the huge number of transactions to be monitored and the possible presence of scheduled chemicals in a variety of mixtures, and in different concentrations. The Schedules also do not cover the transfer of equipment that can be used in the manufacture of CW.
Finally, and this may be the greatest flaw, a Schedules-only non-proliferation strategy is based on an obsolete object-oriented understanding of technology. The diffusion and accumulation of information, processes, knowledge and expertise, and of other intangibles can, over time, potentially pose a greater danger to the objectives of the CWC than the mere transfer of certain compounds. In summary, the Schedules-based approach to the control of technology transfers can easily detract from the importance of the General Purpose Criterion in defining the obligations of States Parties.

'States with a strong interest in the development pillar of the CWC ... must move beyond the stage of sweeping political statements, and must begin to formulate concrete proposals and to set priorities.'

The question is whether supplementary export controls external to the CWC are an adequate remedy. The centrality of proliferation in the current international security debate focuses on the transfer of technologies between States. However, the proliferation threat is also determined by a host of subjective elements, including enemy images and the resulting interpretations of intent. Because of the antagonistic traits that are inherent in proliferation analysis, verification loses much of its intended effectiveness, as the lack of proof of violation of the CWC is not necessarily interpreted as proof of compliance. In this context, it is difficult for an outside observer to understand why some States Parties (in both the industrialised and developing worlds) accuse other States Parties of material breaches under the CWC, without either lodging a formal complaint with the OPCW or requesting a challenge inspection. It is equally difficult for such an observer to understand why the OPCW is unable to draw upon its verification experiences in order to set the public record straight. In this way, the proliferation imperative in the current international security debate threatens to undermine confidence in one of the most sophisticated regimes ever established to deal with the spread of non-conventional weapons. The point is reinforced by the fact that, under this imperative, the proliferation threat can never be fully remedied: even if non-proliferation policies are successful with respect to one country, there remain numerous other countries that pose proliferation risks.

External export controls cannot of themselves remedy the proliferation threat either. Despite coordination, past experience has shown that participants in export control regimes tend to differ in their interpretation of the technologies that should be controlled; in their assessment of countries that should be denied access to the technologies, and indeed in the nature of the proliferation that is taking place. Individual countries still remain responsible for implementing the agreements reached within the export control forums, and economic interests can easily contribute to the varying stringency with which the rules are applied. Most fundamentally, perhaps, the ways in which the participants achieve consensus remain opaque, and have become a source of suspicion for the non-participants. Even if such export controls do not affect trade in any fundamental way, the lack of transparency does not foster trust and cooperation.

Is there a middle ground in the debate? In addition to the traditional verification and monitoring of the destruction and non-production of CW in States Parties, the CWC regime should ideally incorporate an understanding of technology transfer processes that go beyond mere products (agents, production equipment, etc.). The aim of this new set of tools is to render transparent technology transfers between economic units (e.g. individuals, laboratories, companies, etc.) within a State Party and between economic units across national boundaries (including States and transnational companies and organisations). All economic units involved in a given transaction will share responsibility for ensuring that the dual-use potential of the technologies is not realised. The explicit commitment by the economic unit, whether a supplier or a recipient, to uphold this responsibility will then become a key component for granting a transfer license. The principle also applies to scientific and student exchanges, as in-depth background knowledge will enhance transparency with respect to the activities of institutions and individuals. The National Authorities and the OPCW will monitor the transparency of all relevant technology transfers. This mechanism of sharing responsibilities between suppliers and recipients can facilitate assistance and technology development while universally strengthening confidence in full compliance with the CWC at the same time, thus making it much harder for future proliferators, or representatives of terrorist organisations, to acquire CW-relevant technologies. In effect, such an approach could bolster the spirit of security cooperation, as all parties to a given transaction share responsibility and contribute to the operationalisation of the General Purpose Criterion to the satisfaction of everybody.

NOTES


The positions in this paper are those of the author, and do not necessarily reflect the views of SIPRI or of the OPCW.

Dr Jean Pascal Zanders has led the SIPRI Chemical and Biological Warfare Project since October 1996. He was previously Research Associate at the Centre for Peace and Security Studies at the Free University of Brussels. Since 1986, he has published extensively on chemical and biological weapon issues in English, Dutch, and French.