The Chemical Weapons Convention—a unique disarmament treaty aiming at eliminating a complete category of weapons of mass destruction under strict and effective international control—is a great achievement in the history of multilateral disarmament activities and initiatives. States Parties to the Convention have to commit themselves to implementing a vast range of obligations in order to ensure the effective attainment of the Convention’s goals. There is a great hope that, through the comprehensive implementation of the Convention, future generations of human beings will neither witness nor experience the cruel suffering and the horrible experience resulting from an attack by chemical weapons, which so many people had to undergo during the last century.

The people of Iran, because of their recent experience, have made an enormous investment in the Convention and have placed great hope in its scrupulous implementation. More than 100,000 people, both military and civilian, were exposed to chemical weapons used by Iraqi forces in the 1980s. Those who are still alive, suffering the painful miseries of these inhuman weapons on a daily basis, find particular merit in the Convention’s objectives. They have a legitimate expectation and demand that the international community will spare no effort in ensuring that no one else will have to share their horrifying experience in a world free from chemical weapons.

There are now 143 States Parties to the Chemical Weapons Convention. By joining the Convention, the States Parties commit themselves to declare all their relevant chemical activities and facilities, to destroy their chemical weapons and their production facilities, to refrain from the use of chemical weapons, and not to encourage or assist anyone to engage in any activity prohibited to a State Party under the Convention.

Moreover, the States Parties are obliged not (to) maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.

It is self-evident that the credibility and efficacy of the Convention depends unequivocally on the full and non-discriminatory implementation of all of its provisions. The only discriminatory approach that the Convention entails is towards States not party. It clearly draws a line between those that have committed themselves to comply with the Convention, by joining it, and those that have preferred to stay outside of its purview. The Convention provides that Schedule 1 and 2 chemicals cannot be transferred to States not party to the Convention. This means that a vast range of chemicals, most of them necessary for chemical industries producing goods for everyday life, will be deleted from the import/export lists of States not party. These sanctions were drafted to ensure that remaining outside of the Convention would be extremely difficult, if not prohibitive.

‘The only discriminatory approach that the Convention entails is towards States not party.’

The Convention has at the same time assured the States Parties that their economic and technological development for peaceful purposes would not be hampered if they implemented their obligations under the Convention. This assurance is of the utmost importance, as international cooperation in chemical trade and technology for peaceful purposes is a compelling incentive for some States to join the Convention. Such cooperation further encourages States Parties, especially developing countries, to stay on board,
and to meet their obligations more willingly. Failure to fulfil this assurance through the removal of impediments to the economic and technological development of States Parties would irreparably impair the integrity and relevance of the Convention.

The issues of economic and technological development and access for peaceful purposes are of such importance that all major disarmament treaties have mandatory provisions requiring States Parties to cooperate in order to allow peaceful access to material and technology. Article XI of the CWC provides strong assurances and commitments in this regard, addressing the very clearly-stated concerns of developing countries in the field of economic and technological development. Regrettably, the implementation of Article XI is facing major challenges.

Article XI, as one of the main pillars of the Convention, needs a concrete, accurate and operationally oriented procedure akin to those contained in other provisions of the Convention. In this procedure the respective roles of the Executive Council, the Conference of the States Parties, and the OPCW Secretariat, as well as the obligations and rights of States Parties, should clearly be defined.

Article XI, as it now stands, establishes a general principle for defining how States Parties should formulate their national policies in the field of chemical cooperation and activities, and how the Organisation for the Prohibition of Chemical Weapons (OPCW) should implement verification procedures. Despite this clarity, there are still some regimes, mainly export control regimes, which are operating in a manner repugnant to the essence of Article XI. It is notable that the export control regimes outside the Convention continue to be applied despite the clearly-stated commitment, made in 1992, that the restrictions in place under the Australia Group would be dismantled once the Convention became operational.

The Director-General of the OPCW, in his address to the Fourth Session of the Conference of the States Parties, made a very pertinent observation in this regard.

He stated:

‘As the Convention contains its own in-house export control regime, it becomes increasingly difficult, after entry into force, to justify the continuing application of ad-hoc export control regimes to state parties to the Convention ... A prolonged continuation of the current situation can only damage the Convention and its long-term goal, which we have all pledged ourselves to support.’

It does not seem that the proponents of ad-hoc export control regimes are themselves not convinced of the effectiveness of the Organisation’s in-house export control mechanism. If this were the case, it would have been appropriate to raise the issue within the context of the Conference of the States Parties with a view to addressing the deficiencies and to finding solutions that make the Convention and the Organisation stronger.

It is evident that those who are supporting and applying export control regimes outside the Convention are indeed attempting to maintain unilateral, non-transparent, and politically-oriented mechanisms which—instead of adding more credibility to the Convention—tend to serve their national political priorities.

A clear illustration of the political agenda of the export control regimes can be detected in their targets. While certain States not party to the Convention with proven chemical weapons capabilities have remained immune from these export control regimes, they continue to apply restrictions against States Parties which have scrupulously complied with the Convention. This practice, as the Director-General has correctly stated, damages the very credibility of the Convention and its goals and objectives.

The verification regime of the Convention, implemented by the well-equipped and well-prepared Organisation, is and should be the only tool for verifying compliance. The Convention has provided States Parties with the opportunity and instruments to raise, in a logical and rule-based fashion, their concerns over any possible non-compliance by other States Parties. The various categories of inspection envisaged in the Convention established an effective mechanism for ensuring the successful implementation of the Convention.

Therefore, all efforts should be directed at ensuring the universality of the Convention by faithfully enforcing disincentives for States not party, while at the same time complying with the incentives provided for those States which have already joined. Failure to implement Article XI with regard to States Parties not only lacks any justification whatsoever and constitutes flagrant non-compliance, but also impedes the much-needed universality of the Convention. This lack of action is therefore detrimental to both the Convention and the global regime that it intends to establish.
In order to avoid further erosion of the credibility and relevance of the Convention, it is imperative to devise a rule-based and institutionalised approach to the implementation of Article XI. In this context, the Iranian delegation has proposed the establishment of a ‘Cooperation Committee’ as a policy-making subsidiary organ to devise the necessary requirements for the implementation of Article XI, while providing a disputes-settlement mechanism regarding compliance with its provisions. This committee, whose terms of reference and procedures require further discussion, would finally contribute to efforts by the Organisation to develop a framework for activities aimed at promoting scientific and technological exchanges for peaceful purposes. It should also assist States Parties to adopt specific measures aimed at avoiding impediments to the socio-economic development of other States Parties.

NOTES
1 The CWC, Article XI, subparagraph 2(c).
2 Even when transferring Schedule 3 chemicals to States not party to the Convention, each State Party shall adopt the necessary measures to ensure that the transferred chemical shall only be used for purposes not prohibited under this Convention.
3 It is interesting that export control regimes outside the Convention are still being applied despite the definite commitment, made in 1992, to dismantle the restrictions imposed by the Australia Group when the Convention became operational. See the Report of the Ad-hoc Committee on Chemical Weapons to the Conference on Disarmament (CD/1170(1992)).

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