

# **Chemical Weapons Convention: Pakistan's Export Control Measures**

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## **Introduction**

The intensification of international strategic trade and industrial activities has resulted in dual-use items becoming more accessible. No State is immune from Non State Actors attempting to divert sensitive materials, equipment and technology from their legitimate and peaceful purposes. Therefore, any weakness in the national and international control mechanisms can have serious implications for international security. The OPCW is an inspiring example for effective multilateralism. *The EU Weapons of Mass Destruction Strategy* recognizes the CWC and OPCW as foundation for the whole disarmament and non-proliferation architecture. The international community is concerned regarding the threat of chemical proliferation, which is a complex issue and warrants comprehensive response. OPCW is an important international security institution that has to use its mandate and expertise as part of the global struggle against the menace of proliferation.

## **Scope of CWC Export Controls**

Some States Parties are of the view that the CWC covers only Schedule chemicals. Whereas, Article-II amply clarifies that term "Chemical Weapons" has broad meaning and is not limited to chemicals listed in the three schedules of the CWC. The Annex of schedule chemicals itself states that schedules "do not constitute a definition of Chemical Weapons." The CWC obligates State Parties (SPs) to monitor and if necessary restrict transfers of all toxic chemicals and their precursors.

Each State Party to this Convention undertakes never under any circumstances:

“To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; To use chemical weapons; or engage in any military preparations to use chemical weapons; or assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.”

Thus Article-I prohibits transfer of dual-use chemicals, dual-use equipment, finances, and even intangible technology such as production know-how that are intended for use in prohibited activities. The General Purpose Criteria (GPC) under CWC is extremely important regarding export controls under CWC because the CWC schedules cannot cover all known and unknown precursors.

The chapeau of Article VI, paragraph 2, provides a legal basis for requiring States Parties to implement chemical export controls. It stipulates that “*each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only transferred for purposes not prohibited under the Convention.*” This sentence makes clear that the term “necessary measures” is applicable on all dual-use toxic chemicals and chemical precursors and is not restricted to chemicals and precursors listed in the three lists of scheduled chemicals. Thus, regarding non-proliferation obligations, both Article- VI and Article-I compliments each other.

## **Pakistan's National Implementation Measures**

A crucial element in the non-proliferation regime of the CWC is effective national implementation. This requires that States Parties establish the administrative measures necessary to prevent and redress any breach of the CWC by their nationals in any area under their jurisdiction. The existence of loopholes could encourage possible terrorist uses of chemistry and chemicals. Pakistan attaches very high importance to the effective implementation of the CWC and has put in place comprehensive legislative and administrative measures for its effective implementation.

## **Pakistan National Authority on CWC**

The CWC obligates States Parties to establish or designate a National Authority with mainly two functions, i.e. to fulfill national obligations under CWC; and for the OPCW and other States Parties to serve as a national focal point. Therefore, monitoring national obligations is the main responsibility of the National Authorities. In fact, the National Authorities perform the role of guardians for the national monitoring regime; and their weaknesses will undermine the overall CWC verification regime. Effective National Authorities are essential for the future of the CWC. Therefore, the National Authorities should be empowered, equipped and provided with adequate human resources. The Government of Pakistan has designated the Secretary, Ministry of Foreign Affairs (MFA) to serve as National Authority for the Implementation of CWC. Therefore, Pakistan's National Authority on CWC is located at the Ministry of Foreign Affairs (MFA) Islamabad. Disarmament-C Branch of the MFA works on CWC matters.

## **Pakistan CWC Implementation Ordinance, 2000**

Pakistan has a dualist legal system; therefore, the *CWC Implementation Ordinance 2000* was promulgated, which gives effect in Pakistan to the CWC. This Ordinance is a dedicated Act and gives effect to Pakistan's obligations, responsibilities and rights as a State Party to the CWC. Moreover, it is a comprehensive legislation and its scope effectively covers all the national obligations under the CWC such as prohibitions of *all kind* as specified in the Convention; penal provisions; extraterritorial applications; declaration obligations; and regime for Schedule I, II and III chemicals, such as regulation, licensing, import/ export controls, inspections, access to facility, samples, inspectors' privileges/immunities, confidentiality aspects, mandate and enforcement powers of National Authority.

## **Pakistan's CWC Implementation Rules 2010**

Pakistan takes positive steps for preventing private individuals and non-governmental entities from engaging in prohibited activities. Those who violate these provisions can be imprisoned for a term which may extend up to 25 years. Pakistan's administrative measure such as the CWC Implementation Rules-2010 is also a dedicated instrument, which effectively prevents and redresses any breach of the CWC.

## **Registration of Chemical Industry**

Any chemical industry that produces, consumes, possesses, transfers, imports and exports Schedule chemicals or unscheduled PSF DOCs, Unschedule DOCs shall be registered. As per the CWC Implementation Rules, no facility will undertake abovementioned activities without registration. The facility shall provide

information including inter alia, number of plants and their specific production capacity; available storage space; daily consumption of chemicals; complete record of consumption, production and processing; details of scheduled chemical, Unscheduled DOCs and PSF DOCs; or any other information, which is required by the National Authority.

### **Permit for Import and Export of Schedule Chemicals**

In the light of the CWC Implementation- Ordinance and CWC Implementation Rules, the National Authority may issue a permit to any facility that intends to export or import Schedule I, II or III chemicals and their mixtures. For obtaining permit, the importer or exporter shall apply at least forty-five days prior to the intended export or import. For securing the permit, the chemical importing company or exporting company has to fulfill the certain requirements such as providing information on the purpose of import, quantity of imported chemicals, the end uses, name and address of end user (s), certificate that Schedule chemical will not be re-transferred, and will be used for not permitted purposes under CWC, etc.

### **Pakistan Export Controls under CWC**

Pakistan is fully committed to prevent the proliferation of WMD and their related materials and means of delivery. As a responsible State and whilst safeguarding foreign policy interests and national security, Pakistan is fulfilling its international obligations. Through CWC Implementation Ordinance-2000 and CWC Implementation Rules-2010 Pakistan undertake never to assist, encourage or induce in anyway, another State to engage in prohibited activities. For effective enforcement of CWC export controls Pakistan has criminalized CWC prohibitions.

Moreover, Pakistan has also implemented specific restrictions on transfer of scheduled chemicals as following:

- a. **Schedule-1 Chemicals.** They can only be transferred in limited quantities only among States Parties that too for specific declared purpose.
- b. **Schedule 2 Chemicals.** The import or export of Schedule 2 chemicals from non-States Parties is prohibited.
- c. **Schedule 3 chemicals.** An End-Use Certificate must be obtained for the export of Schedule 3 chemicals to non-State Party.

### **Scope of Pakistan Export Controls under CWC**

The scope of Pakistan's export controls under CWC takes into account the definition of "Chemical Weapons", which has a wider meaning and is not limited to Schedule chemicals listed in the CWC or families of Schedule chemicals. The CWC Implementation Ordinance requires National Authority to monitor transfers of all toxic chemicals and their precursors. The Article-I prohibitions duly incorporated in Pakistan CWC Implementation Ordinance-2000 and CWC Implementation Rules-2010 prohibit and make criminal offence the transfer of financial resources, equipment, and intangible technology that are intended for use in prohibited activities.

### **Correct and Timely National Declarations**

Pakistan meticulously prepares its national annual declarations on transfers of scheduled chemicals and regularly and timely submits national declarations to the OPCW. Such national measures enable the OPCW

Technical Secretariat to effectively monitor the international trade and movement of scheduled chemicals. Pakistan seriously takes the significance of such reports as a non-proliferation tool.

### **Capacity Building of Customs Authorities**

The OPCW in collaboration with the World Customs Organization conducts courses for national customs services and National Authorities. Pakistan fully avail such training opportunities and has an active outreach programme to educate Customs Authorities regarding national export control obligations under CWC. Pakistan also train and equip border security personnel to prevent, deter and investigate transfer of WMD related material and technology. The monitoring of transfers and trade in chemicals will need to be made more rigorous for effective implementation of export control regime under CWC. Pakistan is striving hard to be able to fully monitor the import and export of chemicals of concern by enhancing the knowledge and skills of their relevant governmental authorities, especially the customs authorities.

### **Conclusion**

The CWC has a comprehensive and multilateral mechanism for addressing the chemical proliferation concerns, but the outcome is dependent upon the commitment and political will of States Parties. Declared Chemical Weapons stockpiles are under strict monitoring and gradually being destroyed, threats in the medium to long term are more likely from the misuse of scientific and technological developments by either States or Non State Actors. Therefore, shift of the OPCW resources and efforts would be beneficial for the effectiveness of the CWC as a nonproliferation tool. Regarding the scope

of the prohibitions, Article-II makes clear that the term “Chemical Weapons” has a broad meaning and is not limited to chemicals or the families of chemicals listed in the three schedules of the CWC. Instead, the Convention requires States Parties to monitor and if necessary restrict transfers of all toxic chemicals and their precursors. It can even be argued that Article-I prohibits transfer of equipment, financial resources, and intangible technology that are intended for use in conjunction with activities prohibited under the CWC. States Parties should pay due attention to the intangible technology transfer such as technical know-how, and comprehensively incorporate the General Purpose Criteria (GPC), which is extremely important because the CWC schedules do not and cannot include all known precursors. States should develop the capacity to fully monitor the import and export of chemicals of concern by enhancing the knowledge and skills of their relevant governmental authorities, especially the customs authorities. The proliferation of sensitive dual-use chemicals is a major threat to the international community; therefore, the counter proliferation strategy should view this issue as a national, regional and international issue and adopt a multilateral approach. Nonetheless, much depends on industry’s role; ideally, all major producers of scheduled chemicals and certain unscheduled chemicals should monitor and control their imports and exports of chemicals. This would increase transparency, contribute to confidence building and nonproliferation efforts, and reduce the risk of misuse of chemicals.