

9 Chemical Weapons Convention (CWC) Article XI and the future of the CWC

Jean Pascal Zanders

Introduction

Article XI of the Chemical Weapons Convention (CWC) deals with the economic and technological development of states parties.¹ It adds detail to the penultimate preambular paragraph expressing the common 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.

Both passages belong to the so-called non-security provisions which, in one form or another, feature in many international treaties that restrict the use, development, acquisition and possession of certain classes of weaponry. Article XI's immediate precursors are Articles IV and V of the 1968 Nuclear Non-Proliferation Treaty (NPT) and Article X of the 1972 Biological and Toxin Weapons Convention (BTWC). A variation of the language makes up Article III of the 1976 Environmental Modification (ENMOD) Treaty.

The rights and obligations flowing from non-security clauses in arms control and disarmament treaties has been a bone of contention between developed and developing countries for many decades. The controversy rose to new levels of intensity in the late 1980s and early 1990s as industrial societies were shifting their emphasis from disarmament to export controls and other non-proliferation measures. Although those measures seek to prevent or shut down armament programmes, the same raw materials, equipment, knowledge and skills may contribute significantly to the economic, scientific and technological development of a society. The Australia Group – an informal export control and intelligence-sharing arrangement initially set up in 1985 by Western industrial states in response to the use of chemical weapons (CW) in the Iran–Iraq war – came to epitomise the deep divisions over the disarmament–development

nexus between North and South. More than anything else, opposition to extraneous export controls almost prevented closure of the CWC negotiations in the summer of 1992. During the phase preceding the entry into force of the convention (January 1993–April 1997) ongoing deep disagreements over the matter kept a working group of the Preparatory Commission (PrepCom) of the Organisation for the Prohibition of Chemical Weapons (OPCW) from submitting formal proposals to implement Article XI.

Over the past 15 years, the world has changed significantly. Many developing countries have evolved into economic and industrial powerhouses, becoming in the process autonomous centres of advanced chemical production and technology exports. South–South trade and technology transfers complement erstwhile virtually exclusive North–South transactions. Some of the new industrial states have joined the Australia Group, while others have adopted corresponding technology transfer control lists, thus making the informal body less the focus of international controversy. The OPCW has moved from its initial hesitant projects to an array of programmes, some of which reach into areas adjacent to the convention’s core goals. It has also identified stakeholders other than states to cooperate in several of its activities. As a result of current opportunities and partnerships, states parties today feel more comfortable with the interconnected pursuit of the prevention of future armament and development. Maintaining the balance between both tracks is key to preserving the long-term relevancy of the CWC to the global community.

The Third Review Conference (2013) should have ushered in the post-CW destruction phase characterised by a major refocusing of monitoring and verification resources from CW destruction to a variety of industry activities, including trade and other forms of technology transfers. Actors other than states – industry, the scientific community and various civil society constituencies – would consequently have seen their stake in the enduring health of the disarmament convention rise. However, delays for environmental, financial and technological reasons mean that Russia and the United States will not complete CW destruction operations for another decade. Nevertheless, the resulting extended transition phase offers states parties time and opportunity to design the future treaty regime, frame new common understandings, develop fresh programme content, or perhaps even adapt, where deemed necessary, the text of the CWC and its annexes in serenity and enlarge their comfort zone with other stakeholders.

This chapter first analyses the different parts of Article XI and their relationship to other sections of the CWC. The second part looks into the history of the disarmament–development link. How the shifting foci have shaped the debates in the OPCW is described in the next part. The fourth section looks at the current implementation of the provisions and the chapter concludes with a look at the future relevancy of Article XI and challenges for its implementation.