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# Non-transfer vs International Cooperation? Evolving Norm Contestation in the Chemical Weapons Prohibition Regime

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## **Executive Summary**

This working paper provides an analysis of interpretations of the non-transfer and international cooperation norms of the CW prohibition regime, as expressed in Articles I and XI of the CWC. Utilizing the conceptual framework of the contestation of international norms, the paper in its empirical parts traces the interpretation and implementation of these two normative guideposts over the course of CWC implementation. To this end the paper in its five substantive sections provides a snapshot of developments at the OPCW, covering the process leading up and culminating in the five CWC Review Conferences, concluding with an assessment of norm interpretation, modification, and the strategies employed to manage the norm conflict. The analysis shows that the norms themselves and the question of a conflict between the non-transfer and international cooperation norms in the CW prohibition regime have been interpreted differently by different (groups of) CWC states parties since even before the treaty entered into force in April 1997.

NAM CWC states parties and China are clearly perceiving such a conflict and have managed to keep it via constant norm prioritization on the political agenda. In the early CWC implementation phase the NAM and China succeeded in modifying the content of the international cooperation norm by shifting its interpretation from a negative obligation (not to hamper) to a positive one (actively supporting) in terms of norm implementation. NAM criticism of developed states regarding their support for international cooperation and adapting their national transfer regulations and policies has varied over time. Some far-reaching proposals, such as an Article XI action plan or a transfer denial committee, had at no point the support of those CWC states parties who would have had to transfer sovereign national decision making powers. By the time of CWC RevCon 5 in 2023, the long-standing NAM consensus on such proposals seems to have weakened.

Developed CWC states parties, many of whom participate in the Australia Group, have consistently, but at a much lower level of political rhetoric, supported practical steps to implement CWC Article XI, as highlighted in a number of RevCon general debate statements and practical and financial support of such implementation activities. General debate statements and the number of working papers produced clearly show that developed states accorded a lower priority to this norm conflict and instead emphasized other areas of CWC implementation, with a focus on the non-use norm over the past decade. In general, over the past quarter century Australia Group members have in the CWC context not been very vocal in elaborating on their principled stance towards the non-transfer norm and the assumed norm conflict with the international cooperation norm. As the EU explanation of vote on the occasion of the 2022 UN General Assembly resolution on international cooperation for peaceful uses in the context of international security has highlighted, at least the EU denies the existence of a norm conflict, as it regards the portrayal of the two normative guideposts in this manner as the expression of a false dichotomy.

Given the long-established approaches of the two camps to the non-transfer and international cooperation norms, conflicting norm interpretations may persist for the foreseeable future.

## 1 Introduction

The chemical weapons (CW) prohibition regime with the Chemical Weapons Convention (CWC) at its center express several norms against CW. Norms in this context are understood as general obligations defined in terms of rights and obligations. As such, the general obligations of CWC states parties that are contained in Article I 1. (a) of the CWC include the undertaking “never, under any circumstances [...] to [...] transfer, directly or indirectly, chemical weapons to anyone.”<sup>1</sup> Both the prefix “never under any circumstances” as well as the qualifier “directly or indirectly” attest to the comprehensive nature of the non-transfer norm.<sup>2</sup> Yet, the CWC is more complex than just a simple set of prohibitory norms related to toxic chemicals. Already during the treaty negotiations developing states saw to it that a provision was included to ensure that the CWC would be implemented in a way that “avoids hampering the economic or technological development of States Parties, and international cooperation in the field of chemical activities for purposes not prohibited under this Convention.”<sup>3</sup> Article XI of the CWC further states that they shall “not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention.”<sup>4</sup> The rights of CWC States Parties to economic and technological development as well as international cooperation for permitted purposes are also presaged in preambular paragraphs 8 and 9. In this context, Walter Krutzsch has pointed out that these goals under the CWC “will be achieved gradually as the other provisions of the Convention, in particular those dealing with CW disarmament and ... the non-proliferation of CW capabilities, take effect.”<sup>5</sup>

In light of the historical dimension of attempts to balance disarmament and development objectives, and the diverging negotiating positions of the group of non-aligned states (NAM) on the one hand and the participants in the so-called Australia Group,<sup>6</sup> it should not come as a surprise that different priorities and norm interpretations persisted during the years of preparing for treaty implementation, and well after CWC entry-into-force. As noted by Kenyon and Kisselev, only a collective statement in August 1992 on behalf of the then 22 states participating in the Australia Group (AG) broke the negotiating deadlock. The statement noted that AG participants would “review, in light of the implementation of the convention, the measures that they take to prevent the spread of chemical substances and equipment for purposes contrary to this convention.”<sup>7</sup> Subsequently, four years of work of the Preparatory Committee for the OPCW (PrepCom) from 1993 to 1997 were unable to overcome the diverging views, so that the “PrepCom ... was unable to make any recommendations on Article XI issues in its Final Report to the First Session of the” Conference of the States Parties (CSP).<sup>8</sup> Similarly, for the first decade and a half of CWC implementation Müller et.al. identify “the priority of nonproliferation versus civilian cooperation [as] the most basic conflict” of the CW prohibition regime.<sup>9</sup>

<sup>1</sup> The text of the CWC is available at <https://www.opcw.org/chemical-weapons-convention>.

<sup>2</sup> See Walter Krutzsch, “Article I: General Obligations”, in W. Krutzsch, E. Myjer and R. Trapp (eds.), *The Chemical Weapons Convention: A Commentary*, Oxford: Oxford University Press, 2014, pp.61-72.

<sup>3</sup> See Article XI of the CWC at <https://www.opcw.org/chemical-weapons-convention/articles/article-xi-economic-and-technological-development>.

<sup>4</sup> Ibid.

<sup>5</sup> Walter Krutzsch, “Preamble”, in Krutzsch, Myjer & Trapp (eds.), *The Chemical Weapons Convention*, pp.51-57, quote on p.56.

<sup>6</sup> See <https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html> for details on the group.

<sup>7</sup> Ian R. Kenyon and Sergei Kisselev, “Cooperation in Peaceful Uses: Article XI”, in I.A. Kenyon and D. Feakes (eds.), *The Creation of the Organization for the Prohibition of Chemical Weapons. A Case Study in the Birth of an International Organization*, The Hague: T.M.C. Asser Press, 2007, pp.249-260, quote on p.252.

<sup>8</sup> Kenyon and Kisselev, 2007,p.255.

<sup>9</sup> Harald Müller, Una Becker-Jakob and Tabea Seidler-Diekmann, “Regime Conflicts and Norm Dynamics: Nuclear, Biological and Chemical Weapons”, in H. Müller and C. Wunderlich (eds.), *Norm Dynamics in Multilateral Arms Control. Interests, Conflicts, and Justice*, Athens, GA: The University of Georgia Press, 2013, pp.51-81, quote on p.70.

Against this background, this working paper provides an in depth analysis of interpretations of the non-transfer and international cooperation norms of the CW prohibition regime. To this effect it first elaborates the conceptual framework of norm contestation, so-called interpretive contestation in particular – which is what has happened to both of these norms ever since the days of CWC negotiations – and links this approach to the norms of the prohibition regime (section 2). The empirical material is organized in five sub-sections (3.1. to 3.5.), each culminating in one of the CWC Review Conferences held since the CWC entered into force in 1997. This approach is chosen because the purpose of CWC review conferences is twofold: to review the operation of the treaty in the previous five years and, ideally, to provide strategic guidance for the upcoming five-year period. As such the CWC Review Conferences (RevCons) held up to now represent five opportune moments in the treaty’s more than quarter-century history to take stock of implementation and contestation of the non-transfer and international cooperation norms. Serving as the culmination point of a longer process, CWC RevCons provide ample empirical material reflecting the contestation of these two (and other) key regime norms in the form of general debate statements by states parties, working papers submitted for consideration by the RevCon, and the final report of the conference. As CWC implementation is an ongoing process, and norm contestations likely to occur not only at RevCons themselves, each subsection will first provide an overview of relevant developments in the intervening period before analyzing norm contestations during the review process and the RevCon itself. In order to keep the number of primary source documents at a manageable level, only a selection of CWC states parties and groups of states, such as members of the Australia Group and the Non-Aligned Movement (NAM) will be considered in the analysis.<sup>10</sup> The final section of the paper will summarize the evolution of norm contestation in relation to the non-transfer and international cooperation norms during the process of CWC implementation at the international level.<sup>11</sup>

## 2 Norms, Their Contestation, and the Chemical Weapons Prohibition Regime

Some 40 years ago, Stephen Krasner defined norms as standards of behavior, which can take the form of rights or obligations.<sup>12</sup> Yet, since Krasner identified norms as one structural element of international regimes — besides principles, rules and decision-making procedures — research on international norms has progressed significantly. According to Orchard and Wiener, the evolution of constructivist research on norms in international relations can be categorized into three phases.<sup>13</sup> In the first of these, starting in the 1990s, researchers, who focused on the social dimension in international politics, sought to establish that norms do matter and just like interests and power can have an effect in guiding state behavior. In a widely adopted norm cycle-model norm entrepreneurs seek to create a new norm and once that has been accomplished, norms assume a fairly stable state. If accepted by enough actors this could lead to a situation, in which they “achieve a ‘taken-for-granted’ quality that make conformance with the norm almost automatic.”<sup>14</sup>

Applied to the CW prohibition regime, this approach would identify the member states of the Geneva-based Conference on Disarmament as norm entrepreneurs who in the course of negotiating the CWC during the 1980s and early 1990s established and put into treaty law a set of norms against CW. Several of these normative standards are expressed in the general obligations of CWC

<sup>10</sup> See <https://www.opcw.org/chemical-weapons-convention/articles/article-viii-organization> for more details.

<sup>11</sup> An analysis of the domestic contestation of regime norms in the respective states parties is beyond the scope of this paper.

<sup>12</sup> Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables”, *International Organization*, 36(2), 1982, pp.185-205

<sup>13</sup> Phil Orchard and Antje Wiener, “Introduction: Norm Research in Theory and Practice”, in P. Orchard and A. Wiener (eds.) *Contesting the World. Norm Research in Theory and Practice*, Cambridge: Cambridge University Press, 2024, pp.1-25, DOI: 10.1017/9781009479141.

<sup>14</sup> Finnemore and Sikkink 1998, p.904, as quoted in Orchard and Wiener 2024, p.6.

Article I, such as the one not to transfer CW, directly or indirectly, to anyone. Additional normative guideposts are contained in other parts of the treaty, such as the assistance norm in Article X and the one on international cooperation in Article XI. While most of the norms against CW can be ‘taken-for-granted’ most of the time, CWC implementation over time provides several examples of diverging norm interpretations, delayed implementation (e.g. in relation to the disarmament norm), and, in smaller numbers, outright non-compliance with key treaty provisions, such as violations of the non-use norm.

Scholars identified several limitations with the assumed static nature or end-state of norms that would supposedly remain unaffected by actors’ discourse or state practice, and subsequently focused more on the adaptation of norms and their diffusion in policymaking. As Orchard and Wiener have summarized, this included an increased focus on “aspects of norm salience, degree of fit, stability, robustness and power – all of which were considered to lead to more resilient norm implementation.”<sup>15</sup> Yet, this assumed a rather high degree of homogeneity of states both in the role of norm entrepreneurs and as addressees of normative guidance. As such, it “worked well with an underlying liberal community assumption, but such accounts were less effective in the context of a globally pluralist and diverse world.”<sup>16</sup> In addition, this body of work has moved the focus away from states and other agents that could affect norm change.<sup>17</sup> Part of the research on larger normative structures, such as international regimes or institutions more broadly, has mirrored this development by focusing on the historical context in which such institutions have been created and their subsequent path-dependent development. While the CW-prohibition regime was set on such a path emphasizing the verified destruction of declared CW stockpiles when the CWC entered into force in 1997, this changed in the mid-2010s after an increasing number of CW use cases challenged the non-use norm that also triggered calls for the attribution of CW-use.<sup>18</sup>

The third phase in the evolution of norm research identified by Orchard and Wiener puts the focus on norm contestation. In their understanding – which is followed here – “norm contestation illuminates how norms emerge, change and are replaced, but as a process, it is inherently neutral.”<sup>19</sup> This is a clear departure from norm research that regards contestation as inherently negative because it could lead to norm decay or even death.<sup>20</sup> Yet, as Percy and Sandholtz have shown, generally “norms are not disappearing, but are rather subject to processes of obsolescence, replacement and modification.”<sup>21</sup> They argue that “norm death can be misdiagnosed when failing to recognize that norms are embedded in wider structures and that compliance is not the only indicator of norm strength.”<sup>22</sup> The different norms against CW that are bundled together in the CWC clearly form such a wider structure. Hence, the assumption would be that those norms, including the non-transfer and international cooperation norms have been fairly robust. This, however, does not preclude the possibility that they have been interpreted differently, what Orchard and Wiener have labelled “interpretive contestation”,<sup>23</sup> or that they have been modified over time. As Percy and Sandholtz elaborate, such modification can result in norms becoming “more (or less) specific, broader (or narrower) in scope, and more (or less) qualified by exceptions.”<sup>24</sup>

<sup>15</sup> Orchard and Wiener, “Introduction”, 2024, p.7.

<sup>16</sup> Ibid., p.8.

<sup>17</sup> Alexander Kelle, “The International Regime Prohibiting Chemical Weapons and Its Evolution”, in N. Hynek, O. Ditych and V. Stritecky (eds.), *Regulating Global Security. Insights from Conventional and Unconventional Regimes*, Cham, Switzerland: Palgrave Macmillan, 2019, pp.115-141.

<sup>18</sup> Alexander Kelle, “The CWC at 25: from verification of chemical-weapons destruction to attribution of their use”, in *The Nonproliferation Review*, 2021, 28 (4-6), pp.319-336, DOI: 10.1080/10736700.2023.2180234.

<sup>19</sup> Orchard and Wiener, “Introduction”, 2024, p.4.

<sup>20</sup> See for example Ryder McKeown, “Norm Regress: US Revisionism and the Slow Death of the Torture Norm”, in *International Relations*, 2010, 23 (1), pp.5-25 and Diana Panke and Ulrich Peterson, “Norm Challenges and Norm Death: The Inexplicable?”, in *Cooperation and Conflict*, 2016, 51 (1), pp.3-19.

<sup>21</sup> Sarah V. Percy and Wayne Sandholtz, “Why Norms Rarely Die”, in *European Journal of International Relations*, 2022, 28 (4), pp. 934-954, quote on p.934.

<sup>22</sup> Ibid., p.936.

<sup>23</sup> Orchard and Wiener, “Introduction”, 2024, p.4.

<sup>24</sup> Percy and Sandholtz, “Why Norms Rarely Die”, 2022, p.943.

Moving beyond individual norms, such as the non-transfer and international cooperation norms in the CW prohibition regime, these can be, or appear to be, mutually exclusive. In such cases of norm conflict, Rüländ and Welsh argue, actors' response strategies can be grouped into five categories.<sup>25</sup> These are consistent prioritisation of one norm over the other, norm replacement, norm reconciliation, conflict denial, and ad hoc responses.<sup>26</sup>

In order to both trace the modification (or stability) of the non-transfer and international cooperation norms of the CW prohibition regime over time, and identify approaches by states parties to deal with the conflict between the non-transfer and the international cooperation norms, the following subsections of the paper will put the interpretation and implementation of these norms in the context of the overall evolution of CWC implementation. They will provide a snapshot of developments at the OPCW, covering the process leading up and culminating in the subsequent CWC Review Conference, concluding with an assessment of norm interpretation, modification (or otherwise) and the strategies employed to manage the norm conflict.

### 3 Evolving Norm Contestation Since CWC Entry-Into-Force

#### 3.1 Transfers and International Cooperation from CWC Entry-Into-Force to the First Review Conference in 2003

The first few years of CWC implementation were dominated by issues related to ensuring the operation of a new international organization – the OPCW – with a particular focus on verifying the destruction of CW stockpiles declared by CW possessor states. In addition, verification under Article VI of the CWC, so-called industry verification commenced in stages. Adding to the complexity of the task, the OPCW encountered severe financial problems in the years 2001-2002, which was also partially responsible for the dismissal of the first OPCW Director-General, only one year into his second four-year term of office.<sup>27</sup>

In addition to the generic normative guidepost in CWC Article I that states parties should not transfer chemical weapons to anyone, neither directly nor indirectly, different parts of the CWC's verification annex contains additional rules and procedures related to the transfer of scheduled chemicals.<sup>28</sup> Part VI of the verification annex prohibits the transfer of Schedule 1 chemicals to non-state parties and establishes stringent criteria according to which such chemicals may be transferred from one state party to another. Part VII of the annex allows for a transition period of three years after the CWC's entry-into-force during which Schedule 2 chemicals may be transferred to non-state parties if an end-use certificate is provided by the recipient state. Such transfers were no longer permitted from 29 April 2000 onwards. Part VIII of the verification annex establishes transfer guidelines for Schedule 3 chemicals similar to the ones for Schedule 2 during the above mentioned grace period, i.e. their transfer requires the issuance of an end-use certificate by the recipient state if it is not a CWC state party. Furthermore, CWC states parties gave themselves the option to agree on other measures in this context based on five years of implementation experience.<sup>29</sup> However, "April 2002 came and went without any additional trade-restricting measures being agreed upon."<sup>30</sup>

<sup>25</sup> Anchalee Rüländ and Jennifer Welsh, "Understanding and Resolving Norm Conflict", in Phil Orchard and Antje Wiener (eds.), *Contesting the World*, 2024, pp.43-63.

<sup>26</sup> Ibid., pp.45-51.

<sup>27</sup> On the latter see Ralf Trapp, "The First Ten Years" in Kenyon and Feakes (eds.), *The Creation of the Organization for the Prohibition of Chemical Weapons*, 2007, pp.261-289, especially pp.266f.

<sup>28</sup> See <https://www.opcw.org/chemical-weapons-convention/annexes>.

<sup>29</sup> Ralf Trapp, "Verification Annex, Part VI", in Krutzsch, Myjer and Trapp (eds.), *The Chemical Weapons Convention*, 2014, pp.575-590 and Trapp, "Verification Annex, Parts VII to IX", *ibid*, pp.591-616.

<sup>30</sup> Alexander Kelle, "CBW Export Controls: Towards Regime Integration?", in D. Joyner (ed.), *Non-Proliferation Export Controls. Origins, Challenges, and Proposals for Strengthening*, Aldershot: Ashgate, 2006, pp.101-118, quote on p.107.

In terms of practical measures related to the non-transfer norm, CWC states parties during the first few years of CWC implementation sought to solve the question of low concentrations of scheduled chemicals in mixtures, including their transfer. To this end, the OPCW Conference of the States Parties (CSP) in 2000 and 2001 adopted relevant decisions for the transfers of Schedule 2 and Schedule 3 chemicals, respectively. At CSP-5 in May 2000 states parties decided that “products containing one percent or less of a Schedule 2A or 2A\* chemical; ... products containing 10 percent or less of a Schedule 2B chemical; and ... products identified as consumer goods packaged for retail sale for personal use or packaged for individual use”<sup>31</sup> would be exempt from restrictions when transferred to a non-state party. Similarly, CSP-6 in May 2001 agreed to not require end-use certificates for “products containing 30 percent or less of a Schedule 3 chemical [and] products identified as consumer goods packaged for retail sale for personal use, or packaged for individual use.”<sup>32</sup>

In contrast to the largely technical nature of these measures, Ralf Trapp notes that “the way in which Article XI of the CWC was to be implemented was probably the single most controversial issue of CWC implementation after the EIF”,<sup>33</sup> i.e. the treaty’s entry-into-force. The two groups of CWC states parties – members of the Australia Group on the one hand, and several developing states that were members of the Non-Aligned Movement (NAM) on the other – holding largely contrarian views on the compatibility of export controls with the operationalization of the international cooperation norm expressed in Article XI had not changed their views. Members of the Australia Group continued to regard their coordinated export controls as supporting the Article I obligation, not to assist in the development and production of chemical weapons. Developing states continued to critique the continuation of Australia Group export controls as incompatible with CWC Article XI 2(c).<sup>34</sup> At the practical implementation level, the OPCW Technical Secretariat took a list of potential international cooperation projects produced during the PrepCom phase and started to develop an “ICA [international cooperation and assistance] portfolio for the OPCW based on experience gathered, feedback about their usefulness from States Parties, and comments received in every year’s programme and budget negotiations.”<sup>35</sup> Some of the programme activities established during the early years of CWC implementation have withstood the test of time and are still conducted successfully today, such as the OPCW Associate Programme.<sup>36</sup> Notwithstanding such practical progress, states parties were unable to reach general agreement on the implementation of Article XI.

Not surprisingly, states parties’ entrenched positions on international cooperation and the compatibility of transfer restrictions with obligations assumed under the CWC were reiterated during the general debate of the First CWC Review Conference (RevCon 1), with some states parties expanding on their positions with related national papers. The United Kingdom, for example, submitted a national paper elaborating specifically on export controls. Making reference to both the general obligations in Article I and the specific requirements of the CWC annex, the UK took a broad-based view concluding that 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.”<sup>37</sup> Australia, in its national statement, noted that international cooperation activities “should receive an appropriate allocation of the Organisation’s resources. The quality of

<sup>31</sup> OPCW, *Decision: Implementation of Restrictions on Transfers of Schedule 2 and Schedule 3 Chemicals to and from States Not Party to the Convention*, document C-V/DEC.16, The Hague, 17 May 2000, p.2.

<sup>32</sup> OPCW, *Decision: Provisions on Transfers of Schedule 3 Chemicals to States Not Party to the Convention*, document C-VI/DEC.10, The Hague, 17 May 2001, p.2.

<sup>33</sup> Trapp, “The First Ten Years” in Kenyon and Feakes (eds.), 2007, p.284.

<sup>34</sup> See Marten Lak and David Faraday, “Article XI: Economic and Technological Development”, in Krutzsch, Myjer and Trapp (eds.), *The Chemical Weapons Convention*, 2014, pp.351-363.

<sup>35</sup> Trapp, “The First Ten Years” in Kenyon and Feakes (eds.), 2007, p.285.

<sup>36</sup> See <https://www.opcw.org/resources/capacity-building/international-cooperation-programmes/associate-programme>, last accessed 13 December 2024.

<sup>37</sup> The United Kingdom of Great Britain and Northern Ireland, *The Role of Export Controls in the Implementation of the Chemical Weapons Convention*, document RC-1/NAT.12, The Hague: OPCW, 29 April 2003, p.2.

the outputs achieved with these resources would be significantly enhanced by the development of guiding principles for determining specific projects to be undertaken.”<sup>38</sup> In addition, Australia submitted a national paper on customs classification systems as a tool to enhance implementation of the non-transfer norm.<sup>39</sup>

In contrast, some NAM states parties to the CWC, as well as China emphasized the importance of international cooperation and that more concrete and in-depth cooperation had yet to occur in order to fully implement CWC Article XI. Along these lines, Indonesia asserted that international cooperation and assistance “constitutes the highest political relevance to the objectives of the CWC” and that “disregarding this important aspect is tantamount to undermining the interests of developing countries.”<sup>40</sup> China called the steps undertaken by the OPCW technical secretariat “commendable”, but noted that “substantive work is yet to begin.”<sup>41</sup> Similarly, Nigeria, on behalf of the African Group expressed its appreciation for the international cooperation activities undertaken and suggested that the RevCon should “take a fresh look at the mechanics of how this Organization can be made responsive to the spirit of Article XI”, including an increase in the budgetary allocation for international cooperation activities.<sup>42</sup> The African Group also called for “a decision on the procedure for implementing Article XI in order to provide the Technical Secretariat with strategic guidance to further develop and implement international programmes.”<sup>43</sup>

Some of these positions are clearly reflected in the RevCon1 report, such as the “need to develop guiding principles to be applied when determining international cooperation programmes. [...] The Council should elaborate such guidelines [...], and apply them when evaluating both reports by the Secretariat on existing programmes, and proposals it makes for new ones.”<sup>44</sup> However, for the biggest part the differing interpretations of the non-transfer and international cooperation norms at display led RevCon 1 to reiterate CWC treaty text and use generic language in relation to both normative guideposts. The RevCon 1 report notes for example that the “complete and effective prohibition of the [...] transfer [...] of chemical weapons, [is] an essential safeguard against the future use of chemical weapons” and that the CWC “has set new standards for ... international cooperation in the chemical field for purposes not prohibited by the Convention”<sup>45</sup> On the practical matter of transferring scheduled chemicals to non-CWC states parties, RevCon-1 “urged all States Parties to fully and effectively implement [...] the prohibitions on any such transfers of Schedule 1 chemicals and, since 29 April 2000, of Schedule 2 chemicals.”<sup>46</sup> Concerning Schedule 3 transfers the conference “concluded that all States Parties should take the necessary measures to ensure

<sup>38</sup> Australia, *Statement by HE Mr Peter Hussin, Ambassador and Permanent Representative of Australia to the OPCW*, The Hague, 28 April 2003, p.2.

<sup>39</sup> Australia, *Australia’s Experience in Tracking Systems for International Trade in Chemicals Listed in the Chemical Weapons Convention’s Schedules of Chemicals*, document RC-1/NAT.29, The Hague: OPCW, 9 May 2003.

<sup>40</sup> Indonesia, *Statement by H.E. Mohammad Yusuf, Ambassador and Permanent Representative of the Republic of Indonesia to the OPCW*, The Hague, 29 April 2003, p.2.

<sup>41</sup> People’s Republic of China, *Position Paper*, document RC-1/NAT.1, The Hague: OPCW, 15 April 2003, p.6.

<sup>42</sup> African Group, *Statement by Her Excellency Dr. Olatokunbo Awolowo Dosumo, Coordinator of the African Group of States Parties to the First Review Conference*, The Hague, April 2003, p.4.

<sup>43</sup> Idem.

<sup>44</sup> OPCW, *Report of the First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention 28 April – 9 May 2003*, document, RC-1/5, The Hague: OPCW, 9 May 2003, p.27.

<sup>45</sup> RC-1/5, p.4.

<sup>46</sup> RC-1/5, p.19.



the full implementation of the Convention's requirement for end-use certification by recipient States not Party [and] requested the Council to continue working towards an early resolution" of outstanding issues.<sup>47</sup>

In sum, the period leading up to and including RevCon 1 saw unchanged interpretations of the non-transfer and international cooperation norms by (groups of) states parties already put forward during CWC negotiations. While implementation of the non-transfer norm was left to CWC states parties, the OPCW Technical Secretariat had begun implementing international cooperation activities. Additional agreements, however, on whether other measures in relation to Schedule-3 transfers to non-states parties were necessary, or how a strategic framework for international cooperation activities should look were not reached during this first phase of CWC implementation. The response strategies employed to address the norm conflict between non-transfer and international cooperation norms thus fall into the categories of norm prioritization, with states parties sticking to their respective positions, and some form of conflict denial by those arguing that transfer restrictions in the form of export controls are compatible with the non-proliferation obligations undertaken. Also noteworthy are clear signs of a modification of the content of the international cooperation norm: while the CWC treaty text in Article XI 1 contains an obligation, "not to hamper" international cooperation, several NAM states have sought to selectively emphasize provisions contained in Article XI 2 to "actively promote" such cooperation.

### **3.2 The Period Leading up to and Including the Second CWC Review Conference in 2008**

Following RevCon-1 CWC implementation continued to be dominated by concerns with implementation of the disarmament norm. CWC provisions foresaw the complete elimination of declared CW stockpiles 10 years after the treaty's entry into force, i.e. by 29 April 2007. Against the background of several CW possessor states missing intermediate deadlines along the way, it was clear that the "final" destruction deadline would not be met by the states concerned, and that they would have to request the extension of five years foreseen in Part IV (A) of the CWC Verification Annex. Extension requests were approved by the Conference of States Parties in late 2006.

Given the attention to destruction issues, little progress was achieved in relation to the non-transfer norm as it pertains to Schedule 3 transfers to non-state parties. As noted by Trapp in 2014, the "issue has come up several times in regular sessions of the Conference, but no such 'other' measures have yet been adopted. It remains unclear what they could be, short of an outright prohibition of transfers."<sup>48</sup> This assessment retains its validity more than a decade later.

Concerning international cooperation for peaceful purposes, decisions were taken at two regular CSP sessions in 2005 and 2007.<sup>49</sup> Neither of those contained a consensual interpretation of the international cooperation norm and its implementation. Instead they sought to move towards full implementation of Article XI through a series of largely procedural and administrative steps to be taken by the OPCW Technical Secretariat and member states. While the decisions kept the international cooperation norm on the agenda of both Executive Council and Conference of the States Parties, they did not achieve greater clarity regarding norm interpretation and implementation.

During the general debate of the Second CWC Review Conference (RevCon 2) in April 2008, Cuba, on behalf of the NAM and China, reiterated the group's long-standing criticism of the Australia Group's interpretation of the non-transfer norm, and expressed their "strong [belief] that undue restrictions amongst States Parties on exchange of technology, materials and equipment for

<sup>47</sup> Idem.

<sup>48</sup> Ralf Trapp, "Verification Annex, Parts VII to IX", in Krutzsch, Myjer and Trapp (eds.), *The Chemical Weapons Convention*, 2014, pp.591-616, quote on p.608.

<sup>49</sup> See OPCW, *Decision: Full Implementation of Article XI*, document C-10/DEC.14, The Hague: OPCW, 11 November 2005; and OPCW, *Decision on the Full Implementation of Article XI*, document C-12/DEC.10, The Hague: OPCW, 9 November 2007.

peaceful purposes are contrary to the letter and spirit of the Convention, affect its long term viability and jeopardize the trust that exists amongst States Parties. In this context, we call for the removal of such undue restrictions for the full implementation of Article XI.”<sup>50</sup> This was echoed by the South African statement, which reiterated the country’s commitment to “promoting and supporting the non-proliferation of weapons of mass destruction, [...] whilst at the same time also ensuring that control measures do not become means whereby developing countries are denied access to advanced technologies required for their own development.”<sup>51</sup> Iran’s national statement noted that only 32% of CWC states parties had reported national legislation consistent with their obligation, “not to maintain among themselves any restrictions which might hamper their economic and technological development.”<sup>52</sup> Thus, from the Iranian perspective did CWC states parties not only have to bring their export control systems into line with CWC provisions, they also need to stop transferring Schedule 3 chemicals to non-state parties. According to OPCW annual reports referenced, “96% of schedule 3 transfers are headed to Israel”, a signatory state, but not a full member of the OPCW.<sup>53</sup> This stood in stark contrast to the practically absent engagement by Western CWC States Parties with issues related to transfer controls during the general debate of RevCon 2.

Concerning the interpretation of the international cooperation norm, Cuba noted that the “Heads of State or Government of the NAM [...] reiterated their call on the developed countries to promote international cooperation through the transfer of technology, material and equipment for peaceful purposes in the chemical field.”<sup>54</sup> Canada noted that a “robust program of international cooperation and assistance (ICA) activities is a key element of overall CWC implementation” and emphasized that the “effective quadrupling of expenditures on ICA program activities since 2002 underlines the importance attached by States Parties to these activities.”<sup>55</sup>

References to the non-transfer and international cooperation norms in the RevCon 2 report show a clear emphasis on the latter. In addition, the prioritization of fostering international cooperation over avoiding to hamper states parties’ economic development suggests a reordering of the priorities as expressed in the sequence of obligations contained in CWC Article XI.<sup>56</sup> Given the continued absence of guiding principles for the implementation of Article XI, references to economic and technological development in the RevCon 2 report are largely based on CWC treaty text. Where the report does acknowledge positive developments, such as the increased budget for the Technical Secretariat ICA program, this is balanced by a reference to the larger number of states parties to be addressed under this program, and the resulting need for “adequate funding”. The report also stresses “the importance of a focussed and well-evaluated programme of international cooperation and assistance to the promotion of the object and purpose of the Convention as a whole.”<sup>57</sup> In relation to the non-transfer norm, the RevCon 2 report merely reproduces language from Article 2 (c) to (e) and “called upon the States Parties to fully implement these provisions of the Convention.”<sup>58</sup>

In sum, RevCon 2, much like its predecessor five years earlier, did not contribute to a resolution of the norm conflict between the non-transfer and international cooperation norms. In general, the

<sup>50</sup> Cuba, *Non-Aligned Movement Joint Statement at the Second Special Session of the Conference of States Parties to review the Operation of the Chemical Weapons Convention*, The Hague, 8<sup>th</sup> April 2007 [sic], p.3.

<sup>51</sup> South Africa, *Statement by Mr. Xolisa Mabongo, General Debate of the 2<sup>nd</sup> Review Conference of the Chemical Weapons Convention*, The Hague, 8 April 2008, p.2.

<sup>52</sup> Iran, *Statement by H.E. Bozorgmehr Ziaran, Ambassador and Permanent Representative of the Islamic Republic of Iran to the OPCW before the Second Review Conference of the CWC*, The Hague, 8 April 2008, p.5.

<sup>53</sup> *Ibid.*, p.4.

<sup>54</sup> Cuba, *Non-Aligned Movement Joint Statement*, p.1.

<sup>55</sup> Canada, *Statement of Canada, Second Review Conference of States Parties to the Chemical Weapons Convention, delivered by H.E. Ambassador Jim Wall*, The Hague 8 April 2008, p.4.

<sup>56</sup> See OPCW, *Report of the CWC Second Review Conference*, document RC-2/4, The Hague: OPCW, 18 April 2008, paragraph 9.7, p.6

<sup>57</sup> *Ibid.*, paragraphs 9.115 and 9.116, p.25.

<sup>58</sup> *Ibid.*, paragraphs 9.113 and 9.114, p.25.

former received much less attention than the latter. In addition to the generic reaffirmation that CWC states parties continue to feel bound by the obligations under Article I, which includes the prohibition to transfer CW, the RevCon report contains a repetition of treaty text, obliging states parties to ensure the compatibility of their national trade regulations with the CWC, as formulated in Article XI 2 (e). In contrast, the international cooperation norm received much more attention, both by a number of developing states parties, and in the RevCon report. In essence, NAM states parties to the CWC seem to have perceived the conflict between international cooperation and non-transfer norms as much more salient with the promotion of the international cooperation norm being the preferred course of action to resolve the norm conflict. Judging by the sheer volume of report language devoted to this norm and the prioritization of active promotion of international cooperation over ensuring that CWC implementation does not hamper economic and technological development, the strategy seems to have been effective at the rhetorical level.

### **3.3 The Period Leading up to and Including the Third CWC Review Conference in 2013**

Overall, CWC implementation during the five-year period leading up to the Third CWC Review Conference (RevCon 3) continued to be dominated by the destruction of declared CW stockpiles. The extended final destruction deadline foreseen in the CWC approached in April 2012, and was not met by three possessor states (Libya, the Russian Federation and the United States of America). Also in 2012 first reports of CW use in Syria, a non-CWC state party at the time emerged and began to absorb increasing amounts of time and attention of CWC states parties and the OPCW.

This notwithstanding, some progress on implementation of the international cooperation norm was made by the Conference of the States Parties in late 2011. The decision on an agreed framework for the full implementation of Article XI identifies a set of measures for the OPCW and states parties to implement this provision of the treaty “in a balanced way”.<sup>59</sup> The measures fall into the following four categories:

“National capacity-building for the research, development, storage, production, and safe use of chemicals for purposes not prohibited under the Convention [...]

Promoting networking and exchange among scientific communities, academic institutions, chemical-industry associations, non-governmental organisations, and regional and international institutions [...]

Enhancing the effectiveness of current international-cooperation programmes of the OPCW [...]

Measures by States Parties and the OPCW to facilitate States Parties’ participation in the fullest possible exchange of chemicals, equipment, and scientific and technical information relating to the development and application of chemistry, in accordance with the provisions of the Convention”<sup>60</sup>

The decision also stipulates that these measures should be funded in the first instance through the regular OPCW budget, which may be supplemented by voluntary contributions from states parties. It also requests the Council to provide guidance on the implementation of the decision and establishes a reporting requirement for the Technical Secretariat to each annual session of the Conference. Noteworthy is the absence of any concrete references in the decision for states parties to review their export control legislation. In this context, only some generic reference to Article XI implementation that should avoid hampering economic and technological development of states parties was included. How some more concrete measures in this area could look was elaborated in

<sup>59</sup> Maarten Lak and David Faraday, “Article XI: Economic and Technological Development”, in Krutzsch, Myjer and Trapp (eds.), *The Chemical Weapons Convention*, 2014, pp.351-363, quote on p.361.

<sup>60</sup> OPCW, *Decision. Components of an Agreed Framework for the Full Implementation of Article XI*, document C-16/DEC.10, The Hague: OPCW, 1 December 2011, pp.2-4.

the report of the advisory panel on the future priorities of the OPCW, headed by former Swedish ambassador Rolf Ekeus.<sup>61</sup>

During the general debate at RevCon 3 the EU statement acknowledged the importance of Article XI as “an integral part of the Convention” and noted that in “the past decade the European Union has contributed over EUR twelve million to help achieve its goals, in addition to the many individual voluntary contributions made by its Member States.”<sup>62</sup> Similarly, the US stated that “Article XI’s call for cooperation in the peaceful uses of chemistry is of great importance to all States Parties. We all need this Article—we all own this Article.”<sup>63</sup> The US also noted “the 10% year-over-year increase in the regular budget for Article XI”, which it had complemented by a contribution of “more than USD 550,000 for developing best practices in chemical safety and security across the globe.”<sup>64</sup> The US also reaffirmed its readiness to carry out the “Conference of the States Parties decision, reached in December 2011, on components for an agreed framework.”<sup>65</sup> Going beyond these characterizations of Article XI, the NAM plus China asserted that “each and every article of the Convention bears the same value and significance,” noted that the Article XI decision taken by the Conference in late 2011 “constitutes an important step towards the full implementation of this article” and stated “their firm conviction that a plan of action is the best tool to ensure the full implementation of Article XI as a fundamental pillar of the Convention.”<sup>66</sup> In a separate statement Iran, on behalf of the NAM, set out a detailed proposal for such an action plan. Main elements of the plan included inter alia “to guarantee the implementation, [...] of the decisions taken by the policy-making organs of the OPCW in regard to Article XI at national, bilateral, regional and multilateral levels, [...] concrete national measures to promote technology transfer and international cooperation in the field of chemistry, especially for developing countries [and] “to review by all States Parties their national regulation on international exchange and transfer, in order to ensure its consistency with the objectives and provisions of Article XI.”<sup>67</sup> Non content with calling on states to review their export control laws and regulations, the NAM proposed that “as a part of the plan of action, a committee should be established in order to review transfer denials among the States Parties of chemicals, tools, lab equipment, and technical and scientific information for purposes not prohibited under this Convention.”<sup>68</sup>

As summarized by Lak and Faraday, RevCon 3 “did not add new programme content or policy guidance to the framework adopted by the CSP in 2011. It reinforced the agreements reached heretofore.”<sup>69</sup> Numerous references in the RevCon 3 report “focused on strengthening the agreed framework as contained in C-16/DEC.10, encouraging cooperation and coordination, [...] more thorough evaluation [...] and a number of practical steps.”<sup>70</sup> Although the report reiterates the expectation that states parties should review their national export laws and regulations, which is treaty language and thus unlikely to be objected by any state party, none of the farther reaching NAM proposals, such as establishing a committee for the review of transfer denials, found their way

<sup>61</sup> OPCW, *Report of the Advisory Panel on Future Priorities of the Organization for the Prohibition of Chemical Weapons*, document S/951/2011, The Hague: OPCW, 25 July 2011, see the summary in Lak and Faraday, 2014, p.362.

<sup>62</sup> Ireland, *Statement on Behalf of the European Union Delivered by H.E. Jacek Bylica, Principle Adviser and Special Envoy for Non-Proliferation and Disarmament of the European External Action Service, at the Third Review Conference*, document RC-3/NAT.50, The Hague: OPCW, 8 April 2013, p.4.

<sup>63</sup> United States of America, *Statement by Rose E. Gottemoeller, Acting Under Secretary for Arms Control and International Security, at the Third Review Conference*, document RC-3/NAT.45, The Hague: OPCW, 9 April 2013, p.3.

<sup>64</sup> Ibid., p.3f.

<sup>65</sup> Ibid., p.4.

<sup>66</sup> Islamic Republic of Iran, *Statement on Behalf of the Member States of the Non-Aligned Movement that are States Parties to the Chemical Weapons Convention and China. Position Paper*, document RC-3/NAT.8, The Hague: OPCW, 8 April 2013, p.6.

<sup>67</sup> Islamic Republic of Iran, *Statement on Behalf of the Member States of the Non-Aligned Movement that are States Parties to the Chemical Weapons Convention and China. Proposal for a Plan of Action on the Full Implementation of Article XI of the Chemical Weapons Convention*, document RC-3/NAT.13, The Hague: OPCW, 8 April 2013, p.3.

<sup>68</sup> Ibid., p.4.

<sup>69</sup> Lak and Faraday, „Article XI“, p.362.

<sup>70</sup> Ibid, p.362f.

into the RevCon report. Likewise, the NAM interpretation that all CWC Articles carry the same weight is not reflected in this consensual outcome document.

In sum, the norm conflict between the non-transfer and international cooperation norms has largely been dealt with at the level of norm implementation. States often criticized for their national export control policies have sought to demonstrate their buy-in and financial contributions to the realization of the international cooperation norm through Article XI. In essence, their strategy focused on conflict denial, perhaps best exemplified by the above quote from the US general debate statement, referring to the ownership of Article XI by all CWC states parties. In contrast, the consistent prioritization of the international cooperation norm by the NAM and China, while elevating the salience of international cooperation, has not led to a broad based support by CWC states parties for their more ambitious demands, including the establishment of a committee for the review of transfer denials. This proposal, if realized, would amount to a norm modification in that it would strip CWC states parties of their sovereign decision-making powers concerning the transfers of chemicals, equipment and related knowledge.

### **3.4 The Period Leading up to and Including the Fourth CWC Review Conference in 2018**

The period between RevCon 3 and Fourth CWC Review Conference (RevCon 4) in 2018 saw an unprecedented effort by the OPCW and its member states to dismantle the Syrian chemical weapons program and investigate numerous allegations of CW use in Iraq, Malaysia, Syria, and the United Kingdom. After an initial cooperative period in addressing these issues pertaining to Syria, from 2015 onwards relations between those states (mostly Western) continuing to push for thorough investigations and attribution of CW use and those trying to shield Syria from continued scrutiny (most vocally Russia and Iran) became increasingly confrontational.<sup>71</sup> This resulted in the polarization of OPCW membership, which in the Executive Council and Conference of States Parties on several occasions had to resort to decision-making by voting, including on important matters, such as the establishment of a new attribution mechanism under the CWC.<sup>72</sup>

This notwithstanding, a group of CWC states parties kept the debate about implementation of the non-transfer and international cooperation norms alive during the inter-RevCon period. More specifically, such references can be found in the statements made and papers submitted to the regular sessions of the CSP. For example, in late 2016 Kenya expressed the African Group's conviction "that the adoption of an action plan for the full, effective and non-discriminatory implementation of Article XI is paramount and cannot be excluded."<sup>73</sup> At the same CSP session Venezuela on behalf of the NAM presented a slightly modified version of the Article XI action plan the group had put forward before. In one of the more notable changes, the plan does no longer call for a committee to review transfer denials. Instead, in such instances "the Conference of the States Parties or, by its request, the Executive Council shall decide on establishing a mechanism for resolving disputes."<sup>74</sup> Given the contested nature of the proposal, the conference report merely reflected that the NAM and China had submitted a position paper.<sup>75</sup>

General debate statements at RevCon4 by NAM CWC states parties and China were largely confined to a repetition of the previously presented interpretations of the supposedly non-CWC compliant

<sup>71</sup> Hanna Notte, "The United States, Russia, and Syria's chemical weapons: a tale of cooperation and its unravelling", in *The Nonproliferation Review*, Vol.27, No.1-3, 2020, pp.201-224.

<sup>72</sup> Alexander Kelle, "The CWC at 25: from verification of chemical-weapons destruction to attribution of their use", in *The Nonproliferation Review*, Vol.28, No.4-6, 2021, pp.319-336.

<sup>73</sup> *Statement by the Group of African States Parties to the Chemical Weapons Convention Delivered by Kenya's Permanent representative, H.E. Ambassador Rose Makena Muchiri to the Twenty First Session of the Conference of the States Parties*, The Hague, 28 November 2016, p.3.

<sup>74</sup> Venezuela, *Position Paper by the Member States of the Non-Aligned Movement that are States Parties to the Chemical Weapons Convention and China*, document C-21/NAT.45, The Hague: OPCW, 1 December 2016, p.3.

<sup>75</sup> See OPCW, *Report of the Twenty-First Session of the Conference of the States Parties, 28 November – 2 December 2016*, document C-21/5, The Hague: OPCW, p.12.

implementation of Article XI by some developed states parties with national export control measures in place. Most vocal in this regard was Iran, asserting that “the facts on the ground seem to reflect disappointment, and objectives of Article XI are not materialized in a full and effective manner so far.”<sup>76</sup> It also departed from the usual practice of not naming other states parties in their criticism by calling out members of the Australia Group for export controls which in Iran’s view “are not in line with the provisions of the Article.”<sup>77</sup> Venezuela, on behalf of the NAM, reiterated the call for an Article XI action plan based on the paper presented to the CSP in late 2016.<sup>78</sup> In contrast to these formulaic repetitions of long-standing positions by NAM CWC states parties and China, practically none of the Western and other developed states, e.g. those participating in the Australia Group, treated the non-transfer and international cooperation norms as important issues to cover in their national or group statements. Instead, as exemplified in the EU statement, they emphasized that

“Ending use and preventing impunity for the use of chemical weapons must be at the centre of our efforts and deliberations during the Fourth Review Conference. In the face of serious breaches of the non-use norm since the Third Review Conference by State and non-State actors [...] concrete measures are urgently needed to hold perpetrators to account and prevent further erosion of the non-use norm.”<sup>79</sup>

Proven and alleged cases of CW use in Syria and elsewhere were ultimately responsible for RevCon 4 being unable to agree on a consensual final report. Instead, the RevCon Chairperson issued a report of the proceedings of the conference, covering both procedural aspects of the RevCon as well as substantive issues of CWC implementation.<sup>80</sup> The rather moderate language both in taking stock of Article XI implementation and in formulating guidance for its enhanced implementation demonstrate that the efforts of a group of NAM CWC states parties and China to insert their interpretation of the non-transfer and international cooperation norms as expressed in Article XI have been unsuccessful. Although not specified in the Chairperson’s report, the substantive paragraphs covering economic and technological development and related international cooperation and assistance measures were not among the stumbling blocks preventing consensus.<sup>81</sup> In sum, from the perspective of many developed states, the magnitude of challenges to the non-use norm and ongoing efforts to ensure accountability had further reduced the salience of the norm conflict between the non-transfer and international cooperation norms. The NAM and China, on the other hand continued with their long-standing prioritization of the international cooperation norm, albeit without gaining much traction among the larger community of CWC states parties.

<sup>76</sup> Islamic Republic of Iran, *Full, Effective and Non-Discriminatory Implementation of Article XI*, document RC-4/WP.7, The Hague: OPCW, 12 November 2018, p.1

<sup>77</sup> Idem.

<sup>78</sup> Venezuela, *Statement on Behalf of the Member States of the Non-Aligned Movement that are States Parties to the Chemical Weapons Convention and China*, document RC-4/NAT.73, The Hague: OPCW, 23 November 2018.

<sup>79</sup> Austria, *Statement on Behalf of the European Union Delivered by Mr. Jacek Bylica, Special Envoy for Disarmament and Nonproliferation*, document RC-4/NAT.23, The Hague: OPCW, 21 November 2018.

<sup>80</sup> OPCW, *Chairperson’s Report of the Proceedings of the Fourth Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons*, document RC-4/3/Rev.1, The Hague: OPCW, 30 November 2018.

<sup>81</sup> Author’s informal conversations with state party representatives and participant observation during plenary sessions of RevCon 4.

### 3.5 The Period Leading up to and Including the Fifth CWC Review Conference in 2023

During the period between the Fourth and the Fifth CWC Review Conference (RevCon 5), issues related to the investigation of several CW use cases in Syria and identification of the perpetrators behind them continued to receive much attention by the OPCW and its member states. Polarization of OPCW membership over Syrian compliance with the provisions of the CWC continued and culminated in a CSP vote in April 2021, stripping Syria of some of its rights as a CWC state party until the OPCW Director-General confirms that the country returns to compliance with the convention.<sup>82</sup> To date, this has not happened. Following the full-scale Russian war of aggression against Ukraine, reports began to emerge about the use of chemical warfare agents and riot-control-agents (RCA) as a method of warfare, both of which are prohibited under CWC Article I. This has further politicized debates at OPCW with Russia denying all allegations and in turn trying to deflect attention by accusing Ukraine and its allies of fabricating such attacks and using CW themselves.<sup>83</sup>

References to the non-transfer and international cooperation norms during RevCon 5 largely repeated long standing positions on transfer controls and international cooperation activities in support of economic and technological development in the area of chemistry. The UK, for example noted in its national statement during the general debate that “international cooperation and assistance are key to implementing the Convention across the globe.”<sup>84</sup> It further highlighted that in this context it is “supporting laboratories in Latin America to achieve the highest levels of proficiency, as well as supporting work in Africa and the Caribbean to boost preparedness and protection.”<sup>85</sup> NAM member states and China presented a less united front than during previous RevCons. The NAM statement presented by Azerbaijan addressed Article XI and its implementation extensively, was largely conciliatory in tone, appreciating the facilitation efforts undertaken in this area, making reference to the 2007 NAM proposal, including the plan of action, and expressing some criticism about the transfer of ICA funds from the OPCW budget to other programmatic areas.<sup>86</sup> A group of NAM states plus China and Russia put forward an additional working paper on promoting international cooperation on peaceful uses of chemistry that was more critical in tone, emphasizing perceived shortcomings in Article XI implementation, contained a detailed list of NAM and China international cooperation proposals that had not been implemented, referred to the continued “excessive and undue restrictions, including unilateral economic coercive measures in obtaining materials, equipment, and technology for peaceful purposes” that some developing states continued to suffer from, and lamented the fact that “no new decisions on implementing Article XI have been adopted by the Conference since 2011.”<sup>87</sup> In order to remedy these problems, the working paper called for a “feasible plan of action [and] a mechanism to review transfer denials.”<sup>88</sup>

<sup>82</sup> OPCW, *Decision: Addressing the Possession and Use of Chemical Weapons by the Syrian Arab Republic*, document C-25/DEC.9, The Hague: OPCW, 21 April 2021.

<sup>83</sup> See the compendium of diplomatic *notes verbales* on the OPCW website at <https://www.opcw.org/media-centre/featured-topics/ukraine>. Although having occurred after RevCon 5, it is worth noting that three instances of RCA use have been confirmed by the OPCW. See OPCW, *Note by the Technical Secretariat: Report of the OPCW Technical Assistance Visits on the Activities Carried Out in Support of a Request by Ukraine (Technical Assistance Visit TAV/05/24 and TAV/01/25)*, document S/2370/2025, The Hague: OPCW, 14 February 2025.

<sup>84</sup> UK Delegation to the OPCW, *UK National Statement to the Fifth CWC Review Conference of the Chemical Weapons Convention by Her Excellency Joanna Roper, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland*, The Hague, n.d., p.3.

<sup>85</sup> *Idem*.

<sup>86</sup> Azerbaijan, *Statement on Behalf of the Members of the Non-Aligned Movement that are States Parties to the Chemical Weapons Convention and China Delivered by H.E. Ambassador Rahman Mustafayev Permanent Representative of the Republic of Azerbaijan*, document RC-5/NAT.10, The Hague: OPCW, p.3f.

<sup>87</sup> Belarus, Bolivia, Burundi, Cambodia, China, Cuba, the Lao People’s Democratic Republic, Malaysia, Nicaragua, Pakistan, the Russian Federation, the State of Palestine, the Syrian Arab Republic, Venezuela, and Zimbabwe, *Promoting International Cooperation on Peaceful Uses Under the Framework of the Chemical Weapons Convention*, document RC-5/WP.10, The Hague: OPCW, 17 May 2023, p.2f.

<sup>88</sup> *Ibid.*, p.4.

The group working paper also made extensive reference to a 2022 UN General Assembly Resolution on “Promoting International Cooperation on Peaceful Uses in the Context of International Security”, which “urges the countries concerned to lift excessive regulations on developing countries and encourages dialogue and cooperation in this regard.”<sup>89</sup> While this description of the resolution’s content may be accurate, the assertion that this UN resolution “reflects the common position of the international community”<sup>90</sup> appears to be misrepresenting the facts. Adoption of the resolution in the UN First Committee was heavily contested, with not only the resolution itself, but also three of its preambular paragraphs and one operative paragraph (of three) being adopted by a vote. In all of these votes, more than 50 countries voted against the draft resolution or parts of it and around two dozen abstained.<sup>91</sup> A similar voting pattern manifested itself in the General Assembly where less than half of the UN membership voted in favour of the resolution (94 yes, 53 no, 28 abstention, 18 non-voting).<sup>92</sup> Most of the votes against the resolution were cast by member states of the European Union. In its explanation of vote, Czechia noted on behalf of the EU that the “resolution continues to suggest a false dichotomy between peaceful uses of nuclear, chemical and biological materials on one hand, and export control regimes and other non-proliferation measures on the other.”<sup>93</sup> In addition, the EU pointed out “that the main sponsor is a member of export control regimes like the Nuclear Suppliers Group (NSG), which puts the motivation of this initiative into question.”<sup>94</sup>

In any event, CWC RevCon 5 was a short meeting of only one week duration and issues related to violations of the non-use norm were overshadowing debates. Given these framework conditions, a consensual report could not be achieved. As the RevCon marks the culmination point of a longer review process, which in the case of RevCon 5 had started in June 2022, the results of this process as reflected in the report of the Chairperson of the Open-Ended Working Group to prepare RevCon 5 (OEWG-RC) provide some insight into areas of possible consensus language related to the non-transfer and international cooperation norms. Not surprisingly, part A of the report, which contains text for a political declaration RevCon 5 could have adopted, contains only generic language reproducing CWC treaty text on avoiding hampering technological or economic development and reaffirming the desire to promote free trade in chemicals. Part B of the OEWG-RC report covering the review of the operation of the treaty reaffirms the importance of international cooperation and assistance in the larger context of CWC implementation and notes the progress achieved in a number of relevant areas since RevCon 4. In part C on future considerations and recommendations, the report partially reproduces text from earlier RevCon reports, e.g. on the review of national export regulations in order to keep them consistent with obligations under the CWC, but also points to concrete areas in which Article XI implementation could be further strengthened. These include the promotion of “chemistry for non-prohibited purposes, focusing on integrated chemicals management, enhancing laboratory capabilities, and promotion and exchange of chemical knowledge [and] to facilitate the development and exchange of non-binding best practices, guidelines, model regulations, and model laws related to chemical safety and security among States Parties, and to address not only production but also transportation, storage, and disposal of toxic chemicals.”<sup>95</sup>

<sup>89</sup> Ibid., p.3.

<sup>90</sup> Idem.

<sup>91</sup> See United Nations General Assembly, *Promoting international cooperation on peaceful uses in the context of international security. Report of the First Committee*, document A/77/393, New York: United Nations, 10 November 2022.

<sup>92</sup> See *Official Records of the 46<sup>th</sup> Plenary Meeting of the United Nations General Assembly, 77<sup>th</sup> Session*, document A/77/PV.46, New York: United Nations, 7 December 2022, p.78.

<sup>93</sup> Delegation of the European Union to the United Nations in New York, *EU Explanation of Vote – UN General Assembly 1st Committee: Promoting international cooperation on peaceful uses in the context of international security*, New York, 3 November 2022.

<sup>94</sup> Idem.

<sup>95</sup> OPCW, *Working Group for the Preparation of the Fifth Review Conference. Draft Provisional Text*, document RC-5/CRP.1, The Hague: OPCW, 2 May 2023, p.18.



In sum, the period leading up to and including RevCon 5 did not witness any discernible changes in the long-standing and well-known interpretations of the non-transfer and international cooperation norms by the CWC states parties most concerned with these norms. Article XI facilitation was continuing and ICA programs were implemented by the OPCW secretariat with the support of several member states (as exemplified by the UK statement referenced above). This continued incremental progress seems to have been perceived by some NAM states as well as China and Russia as insufficient. These states have therefore engaged in forum shopping by moving the norm conflict into the UN General Assembly and First Committee. As the voting patterns in these fora demonstrate, a change in venue did – not surprisingly – not result in recruiting an overwhelming majority in support of the proposals contained in the resolution. The notion that export controls and other non-proliferation measures represent excessive and undue restrictions and as such are violating the international cooperation norm, was obviously not commanding a consensus among the NAM group of CWC states parties as a whole. Otherwise the separate working paper put forward by China, Russia and a few NAM member states would not have been necessary.

#### **4 Summary and Conclusions: The Contestation of the Non-Transfer and International Cooperation Norms Since CWC Entry-Into Force**

This paper set out to analyse the evolution of norm contestation in the CW prohibition regime regarding the non-transfer and international cooperation norms enshrined in the CWC. Following the typology introduced by Orchard and Wiener, the analysis has focused on different interpretations of the norms and their implementation. The existence and continuation of transfer controls has been a bone of contention between members of the NAM, criticizing such controls, and developed states, many of whom participate in the Australia Group, maintaining that controls are fully compatible with their obligations under the CWC, since the negotiations of the treaty.

During the period between CWC entry-into-force and RevCon 1 in 2003 these interpretations of the non-transfer and international cooperation norms by (groups of) states parties persisted. While implementation of the non-transfer norm was left to CWC states parties, the OPCW Technical Secretariat had begun implementing international cooperation activities. Additional agreements, however, on whether other measures in relation to Schedule-3 transfers to non-states parties were necessary, or on a strategic framework for international cooperation activities were not reached during this first phase of CWC implementation. Also noteworthy are clear signs of a modification of the content of the international cooperation norm: while the CWC treaty text in Article XI 1 contains an obligation, “not to hamper” international cooperation, several NAM states have sought to selectively emphasize provisions contained in Article XI 2 to actively promote such cooperation. The response strategies employed to address the norm conflict between non-transfer and international cooperation norms thus fall into the categories of norm prioritization on part of the NAM and China, and continued conflict denial by those arguing that transfer restrictions in the form of export controls are consistent with the nonproliferation obligations undertaken and compatible with the requirement of Article XI to review their national trade regulations in the chemical field.

RevCon 2, much like its predecessor five years earlier, did not contribute to a resolution of the norm conflict between the non-transfer and international cooperation norms. In general, the former received much less attention than the latter. In addition to the generic reaffirmation that CWC states parties continue to feel bound by the obligations undertaken under Article I, which includes the prohibition to transfer CW, the RevCon report contains a repetition of treaty text, obliging states parties to ensure the compatibility of their national trade regulations with the CWC, as formulated in Article XI 2 (e). The international cooperation norm, in contrast, received much more attention, mostly by a number of developing states parties, and in the RevCon report. In essence, NAM states parties to the CWC seem to have perceived the conflict between international cooperation and non-

transfer norms as much more important with the consistent prioritization of the international cooperation norm being the preferred course of action to resolve the norm conflict. Given the large swaths of report language devoted to this norm and the prioritization of active promotion of international cooperation over ensuring that CWC implementation does not hamper economic and technological development, the strategy seems to have been effective at raising the salience of the international cooperation norm, at least at the rhetorical level.

The norm conflict between the non-transfer and international cooperation norms at RevCon 3 led states often criticized for their national export control policies to emphasize their buy-in and financial contributions to the practical implementation of the international cooperation norm expressed in Article XI. In essence, their strategy focused on conflict denial, perhaps best exemplified by the US general debate statement, referring to the ownership of Article XI by all CWC states parties. In contrast, the consistent prioritization of the international cooperation norm by the NAM and China, while elevating the salience of international cooperation, has not led to a broad based support by CWC states parties for their more ambitious demands, including the establishment of a committee for transfer denials. This proposal, if realized, would amount to a norm modification in that it could strip CWC states parties of their sovereign decision-making powers concerning the transfers of chemicals, equipment and related knowledge.

RevCon 4 in November 2018 was unable to agree on a final report that could have provided an updated consensual interpretation of CWC implementation. Instead, the RevCon Chairperson issued a report of the proceedings of the conference, covering both procedural aspects of the RevCon as well as substantive issues of CWC implementation.<sup>96</sup> This contains rather moderate language both in taking stock of Article XI implementation and in formulating guidance for its enhanced implementation, which demonstrates that the efforts of a group of NAM CWC states parties and China to insert their interpretation of the non-transfer and international cooperation norms as expressed in Article XI have been unsuccessful. Although not specified in the Chairperson's report, the substantive paragraphs covering economic and technological development and related international cooperation and assistance measures were not among the stumbling blocks preventing consensus.<sup>97</sup> In sum, from the perspective of many developed states, the magnitude of challenges to the non-use norm and ongoing efforts to ensure accountability had further reduced the salience of the norm conflict between the non-transfer and international cooperation norms. The NAM and China, on the other hand continued with their long-standing prioritization of the international cooperation norm, albeit without gaining much traction among the larger community of CWC states parties.

As during previous CWC implementation, the period leading up to and including RevCon 5 in May 2023 did not witness any discernible changes in the long-standing and well-known interpretations of the non-transfer and international cooperation norms by the CWC states parties most concerned with these norms. Article XI facilitation was continuing and ICA programs were implemented by the OPCW secretariat with the support of donations by several member states (as exemplified by the UK RevCon 5 general debate statement). This continued incremental progress seems to have been perceived by some NAM states as well as China and Russia as insufficient. These states have therefore engaged in forum shopping by moving the norm conflict into the UN General Assembly and First Committee. As the voting patterns in these fora demonstrate, a change in venue did not result in recruiting an overwhelming majority in support of the proposals contained in the resolution. The notion that export controls and other non-proliferation measures represent

<sup>96</sup> OPCW, *Chairperson's Report of the Proceedings of the Fourth Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons*, document RC-4/3/Rev.1, The Hague: OPCW, 30 November 2018.

<sup>97</sup> Author's informal conversations with state party representatives and participant observation during plenary sessions of RevCon 4.

excessive and undue restrictions and as such are violating the international cooperation norm, was obviously not commanding a consensus among the NAM group of CWC states parties as a whole.

In sum, the norms themselves and the question of a conflict between the non-transfer and international cooperation norms in the CW prohibition regime have been interpreted differently by different (groups of) CWC states parties over the course of the treaty's implementation history. NAM CWC states parties and China are clearly perceiving such a conflict and have managed to keep it on the political agenda via constant norm prioritization, notwithstanding continuous improvements in practical Article XI implementation. In the early CWC implementation phase the NAM and China succeeded in modifying the content of the international cooperation norm by shifting its interpretation from a negative obligation (not to hamper) to a positive one (actively supporting) in terms of norm implementation. NAM criticism of developed states regarding their support for international cooperation and (not) adapting their national transfer regulations and policies has varied over time. More radical proposals, such as the formulation of an Article XI action plan or establishment of a transfer denial committee, at no point had the support of those CWC states parties who would have had to transfer sovereign decision making powers over exports of sensitive materials, technologies or knowledge to such a committee. What is more, the long-standing NAM consensus on such proposals seems to have weakened by the time of RevCon 5 in 2023.

Developed CWC states parties, many of whom participate in the Australia Group, have consistently, but at a much lower level of political rhetoric, supported practical steps to implement CWC Article XI, as highlighted in a number of RevCon general debate statements and practical and financial support of such implementation activities. In general, judging by the references in general debate statements and the number of working papers produced, the developed states accorded a lower priority to this norm conflict and instead emphasized other areas of CWC implementation, such as the general obligations under Article I, with a focus on the non-use norm over the past decade. In general, over the past quarter century Australia Group members have in the CWC context not been very vocal in elaborating on their principled stance towards the non-transfer norm and the assumed norm conflict with the international cooperation norm. As the EU explanation of vote on the occasion of the 2022 UN General Assembly resolution on international cooperation for peaceful uses in the context of international security has highlighted, at least the EU denies the existence of a norm conflict, as it regards the portrayal of the two normative guideposts in this manner as the expression of a false dichotomy. To the extent that the CWC NAM states parties and China decide to continue their rhetoric concerning the non-transfer and international cooperation norms unchanged, conflicting norm interpretations may persist for the foreseeable future.

## **The CBW network for the comprehensive strengthening of norms against chemical and biological weapons (CBWNet)**

The research project CBWNet is carried out jointly by the Berlin office of the Institute for Peace Research and Security Policy at the University of Hamburg (IFSH), the Chair for Public Law and International Law at the University of Gießen, the Peace Research Institute Frankfurt (PRIF) and the Carl Friedrich Weizsäcker-Centre for Science and Peace Research (ZNF) at the University of Hamburg. The joint project aims to identify options to comprehensively strengthen the norms against chemical and biological weapons (CBW).

These norms have increasingly been challenged in recent years, *inter alia* by the repeated use of chemical weapons in Syria. The project scrutinizes the forms and consequences of norm contestations within the CBW prohibition regimes from an interdisciplinary perspective. This includes a comprehensive analysis of the normative order of the regimes as well as an investigation of the possible consequences which technological developments, international security dynamics or terrorist threats might yield for the CBW prohibition regimes. Wherever research results point to challenges for or a weakening of CBW norms, the project partners will develop options and proposals to uphold or strengthen these norms and to enhance their resilience.

The joint research project is being funded by the Federal Ministry of Education and Research for four years (April 2022 until March 2026).

### **About this working paper:**

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