
FEDERAL REPUBLIC OF GERMANY**Working Paper****Proposals on "Prohibition of Transfer" and
"Permitted Transfers" in a future CW agreement**

A number of proposals have been submitted to the Working Group on Chemical Weapons regarding prohibition of the transfer of chemical weapons and super-toxic lethal chemicals and their key precursors as well as on the related questions of "permitted transfers". These proposals were reflected in the report on the 1983 session of the Working Group.

The discussion of these elements of a convention should be intensified. The following observations should serve to clarify and develop the proposals so far tabled.

I

1. In addition to the prohibition of the development, production and stockpiling of chemical weapons and the obligation to destroy such weapons and their production facilities, a future CW convention must contain a ban on the transfer of chemical weapons. It must provide for the direct or indirect prohibition of the transfer of any chemical weapon to contracting and non-contracting parties. That sort of prohibition is necessary for the period between the entry into force of a convention and the destruction of all chemical weapons.
2. The concluding report on the 1983 session of the Working Group on Chemical Weapons does not yet contain any formulation of such a provision which all Working Group members accept. Nevertheless, it has been agreed that the fundamental undertaking to ban the transfer of chemical weapons should be included in the scope of prohibition imposed by the future CW convention (CD/416 Annex I, I A, 2 a), supplemented by the corresponding ban on acquisition of chemical weapons from external sources.

It also stipulated that the initial declaration is to contain a certification that the transfer of chemical weapons has ceased (CD/416, Annex I, II A, 1 a V).

3. The concluding report envisages an exception to the transfer ban permitting the transfer of chemical weapons between States parties by mutual agreement for purposes of elimination (CD/416, Annex I, III C, 1 a).

Such an exception is useful since it allows a State party to have its chemical weapons destroyed in the destruction facility of another party, thereby avoiding the costly construction of its own facility.

II

1. The Working Group on Chemical Weapons has not yet been able to reach a final decision on how to approach the question of the transfer of super-toxic lethal chemicals and their key precursors.

The concluding report envisages the total prohibition of the transfer of such chemicals and their key precursors to non-parties (CD/416, Annex I, III C, 2 a) and a limitation of transfers between parties (CD/416, Annex I, III C, 2 b). This element of a future convention is important and needs to be regulated.

Proposals have been submitted to the Working Group on the basis and scope of the limitations to be undertaken by States parties. These proposals differ both on the question of which chemicals are to be covered by a transfer ban and with regard to the assigned purpose and the quantitative limitation of transfers of such chemicals.

2. Any provision prohibiting the transfer of super-toxic lethal chemicals and their key precursors must take account of the following two principles

- it must not circumvent the fundamental prohibition of the development, production and stockpiling of chemical weapons, and
- it must not impose undue restrictions on international trade in chemical products.

These principles have not been adequately respected in all of the proposals for transfer limitations submitted to the Working Group on Chemical Weapons.

3. In its concluding report, the Working Group assumed from the start that only super-toxic lethal chemicals and their key precursors can be subject to a transfer ban and may hence be the object of an exempting provision (CD/416, Annex I, III C, 2 a).

Proposals that prohibition of transfer be extended to other chemicals especially to those which are categorized under the headings "other lethal chemicals" or "other harmful chemicals", should not therefore be pursued. The extension of a transfer ban beyond super-toxic lethal chemicals and their key precursors would inevitably draw in chemical products which play an important role in the civilian sector, thereby leading to the imposition of an undue restriction on international trade in chemical products.

4. Fundamental to the formulation in a CW convention of a transfer ban and a provision on permitted transfers is the question which chemical products should be regarded as key precursors of super-toxic lethal chemicals.

In the view of the Federal Republic of Germany, chemicals should be defined as key precursors only if

- they have a particular significance to the relevant provisions in a CW convention,
- they constitute characteristic chemical compounds at the final technological reaction stage for the production of super-toxic lethal chemicals, and
- they are not used, or are used in minimal quantities, for permitted purposes.

This definition strictly limits the range of chemicals which might be covered by a transfer ban and a provision on permitted transfers. The chemicals concerned, and those which do not entirely match the definition but whose inclusion as key precursors is unanimously considered to be absolutely essential, should be set forth in a list. To avoid inflexible specifications and to enable subsequent developments to be taken into account, the list would have to be revised periodically.

5. A transfer ban should cover only key precursors of super-toxic lethal chemicals which match the above definition. Permitted transfers between States parties should relate to the same key precursors. International trade in chemical products, though, would only remain unaffected if this definition were strictly applied.

So that the range of chemicals subject to the transfer ban can be more precisely defined and limited, it is advisable that a further differentiation be made between protective-purpose transfers of super-toxic lethal chemicals and their key precursors and permitted-purpose transfers, an option envisaged in the concluding report (CD/416, Annex I, III C, 2 b).

In this way super-toxic lethal chemicals and their key precursors which are transferred for protective purposes would be covered by the prohibition of transfers. Since they are not commercially available, such chemicals would in any case only be produced in the military sector and thus under government jurisdiction and on government responsibility. It was proposed in the Working Group that special small-scale facilities be built for the production of these chemicals (CD/416, Annex I, III A, 1b).

6. Permitted transfers of super-toxic lethal chemicals and their key precursors for protective purposes will not be possible in unlimited quantities. A limit is constituted by the view of the Working Group that the production of such chemicals must not exceed one metric ton. It is therefore appropriate to limit transfers to the same quantity. A quantitative transfer limit should not be lower than the permitted production level, since this would be tantamount to discrimination against those States parties which do not themselves produce super-toxic lethal chemicals and their key precursors or which wish to renounce such production.

7. Control of permitted transfers of super-toxic lethal chemicals and their key precursors is necessary. Such a transfer to another State party should be communicated to the Consultative Committee or its executive organ, if appropriate in an annual summary report of all transfers, including chemical names, quantities and destinations of the transferred products (CD/416, Annex I, III C, 2 c).

III

Proposal

1. The CW convention should provide for the comprehensive prohibition of transfers of all chemical weapons as well as all super-toxic lethal chemicals and their key precursors. A list of these key precursors should be included in the convention as an annex. It should contain only chemicals which are not used or have only minimal application in the civilian sector.

2. For States parties permitted transfers of chemical weapons should be envisaged for the sole purpose of destroying such weapons.

With regard to the transfer of super-toxic lethal chemicals and their key precursors for protective purposes, permitted transfers between States parties should be limited to the allowed production level. Transfers must be notified to the Consultative Committee or its executive organ.

3. The CW convention should therefore contain the following provisions
- the transfer to anyone, directly or indirectly, of any chemical weapons shall be prohibited. By mutual agreement chemical weapons may be transferred between parties for the sole purpose of the destruction of such weapons.
 - The transfer to anyone, directly or indirectly, other than another party, of any super-toxic lethal chemical or its key precursor (listed in an annex) produced or otherwise acquired for permitted purposes shall be prohibited. Allowed transfer of substances for protective purposes between parties to the convention shall be limited to the aggregate quantity of one metric ton.
 - Notification to the Consultative Committee of any transfer of such super-toxic lethal chemicals or their key precursors shall be required.