

**Geneva, 20 November-8 December 2006**

Agenda item 10

**Review of the operation of the Convention  
as provided for in its article XII**

## **INFORMATION ON COMPLIANCE WITH THE CONVENTION**

**Submitted by Ukraine**

### **Article I**

1. Ukraine signed the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) on 10 April 1972 and ratified it on 21 February 1975.
2. Ukraine wholeheartedly supports the principles and purposes of the Convention.
3. Ukraine has never developed, produced, stockpiled or otherwise acquired or retained:
  - (i) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
  - (ii) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

### **Article II**

4. This article does not apply to Ukraine, as it possesses none of the agents, toxins, weapons, equipment or means of delivery specified in article I.

### **Article III**

5. Ukraine fully subscribes to article III of the Convention, and consequently it has never transferred to any recipient whatsoever, directly or indirectly, nor in any way assisted, encouraged or induced any State, group of States or international organizations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of the Convention.

6. On 21 April 2005 Ukraine became a member of the Australia Group export control regime, the purpose of which is to exercise controls over the export of dual-use materials, equipment and technologies which can be used in manufacturing chemical and biological weapons.

7. The legal basis for State export control consists of the Constitution, laws, acts of the President and Cabinet of Ministers, other legislative and regulatory acts, and also international treaties by which the Verkhovna Rada has agreed to be bound.

8. The legislation on export control includes the following legislative and regulatory acts:

- (i) Act No. 549-IV, of 20 February 2003, on State control over international transfers of military and dual-use goods;
- (ii) Act No. 959-XII, of 16 April 1991, on foreign trade activities;
- (iii) The Criminal Code;
- (iv) The Code of Administrative Offences;
- (v) Presidential Decree No. 1265, of 27 December 2001, on the State Export Control Service;
- (vi) Presidential Decree No. 1265 [sic], of 17 April 2002, on issues relating to the State Export Control Service;
- (vii) Presidential Decree No. 861, of 15 July 1999, on the procedure for establishing (withdrawing) restrictions on the export of goods in accordance with Ukraine's international obligations;
- (viii) Regulations on State export control in Ukraine, adopted by Presidential Decree No. 117, of 13 February 1998;
- (ix) Cabinet of Ministers Decision No. 767 of 15 July 1997 approving regulations governing the procedure for conducting expert analyses in the sphere of export control;
- (x) Cabinet of Ministers Decision No. 125 of 4 February 1998 approving regulations governing the procedure for State monitoring of negotiations to draw up foreign trade agreements (contracts) for international transfers of military and dual-use goods;
- (xi) Cabinet of Ministers Decision No. 1807 of 20 November 2003 approving the procedure for State control of international transfers of military goods;
- (xii) Cabinet of Ministers Decision No. 86 of 28 January 2004 approving the procedure for State control of international transfers of military goods;

- (xiii) Cabinet of Ministers Decision No. 838 of 8 June 1998 approving regulations governing the procedure for granting entities engaged in foreign trade the right to export and import military goods and goods containing information that constitutes a State secret;
- (xiv) Cabinet of Ministers Decision No. 920 of 27 May 1999 approving regulations governing the procedure for the provision of safeguards and State monitoring of obligations regarding the use, for declared purposes, of goods subject to State export control.

9. In the interests of Ukraine's national security and compliance with its international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery and restriction of transfers of conventional weapons, regulations on State export control in Ukraine were adopted under Presidential Decree No. 117 of 13 February 1998. The regulations establish a procedure for State control of international transfers of weapons, military and specialized technology and certain types of raw material, inputs, equipment and technology which could be used to manufacture them.

10. Among the principles of State export control policy referred to in the Act on State control over international transfers of military and dual-use goods are the binding force of the obligation to fulfil Ukraine's international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery, to establish State control of international transfers of military and dual-use goods and also to implement measures to prevent such goods from being used for terrorist and other illegal purposes.

11. The preamble specifies that the Act regulates State control of international transfers of military and dual-use goods in order to protect Ukraine's national interests and ensure that it complies with its international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery.

12. Article 4 indicates that one of the principles of State export control policy is the binding force of the obligation to fulfil Ukraine's international obligations regarding non-proliferation of weapons of mass destruction and their means of delivery, implement measures to prevent such goods from being used for terrorist and other illegal purposes, and cooperate with international organizations and foreign States in the sphere of State export control with the aim of strengthening international security and stability, including preventing the proliferation of weapons of mass destruction and their means of delivery.

13. Article 10 sets forth State export control procedures designed to prevent the proliferation of weapons of mass destruction and their means of delivery. According to this article, export control procedures may in some cases be applied even to goods which do not appear on the export control lists (the so-called "catch-all" principle).

14. As an example, if the central authorities responsible for export control receive information that there is an intention or likelihood that goods of any kind not appearing on the

control lists will be used, in their country of end use, in developing, manufacturing, stockpiling, testing, repairing, servicing, modifying, modernizing, operating, managing, storing, detecting or identifying weapons of mass destruction and their means of delivery, or in their proliferation, those authorities have to notify the State Export Control Service, which may apply State export control procedures to the goods in question.

15. State export control also applies to the export or temporary export of goods not appearing on the control lists if the goods are being exported or temporarily exported from Ukraine to a State against which a full or partial embargo on the supply of such goods has been imposed by a United Nations Security Council resolution, by another international organization or by national legislation.

16. As the authority responsible for State export control, the State Export Control Service is required by article 6 of the Act to assist with activities connected with international transfers of goods or to limit or ban such activities where there are grounds to believe that the goods are connected with weapons of mass destruction or are intended for the production of such weapons or their means of delivery, or where there are no adequate safeguards (obligations) regarding the end use of the goods.

17. By Cabinet of Ministers Decision No. 86 of 28 January 2004, the Procedure for State control of international transfers of dual-use goods was adopted. The Procedure defines the features of State control over international transfers of dual-use goods, specifically goods which can be used to produce biological or toxin weapons, regardless of the circumstances of supply, the nature of the contracts, the customs regime or other aspects of the transfer.

18. The Procedure applies to all entrepreneurs in Ukraine registered with the State Export Control Service as entities undertaking international transfers of goods and engaged in export, import, transit or any other form of foreign trade activity, including manufacturing and science and technology.

19. The Procedure therefore excludes the possibility of international transfers of dual-use goods which could be used by non-State actors to produce weapons of mass destruction or their means of delivery.

20. In accordance with the provisions of this Procedure, and also of the Procedure for State control of international transfers of military goods approved by Decision No. 1807 of the Cabinet of Ministers of 20 November 2003:

It is prohibited to export individual goods to countries against which the United Nations Security Council has imposed an embargo on the export of such goods, and also in the event that expert analyses in the area of State export control indicate that there are grounds to believe that they are intended for:

- The production of weapons of mass destruction or their means of delivery;
- Use for terrorist or other illegal purposes;

- Use in activities connected with the production of nuclear explosive devices or in activities connected with the nuclear fuel cycle which are not under IAEA safeguards;
- Use in activities connected with the acquisition, production, stockpiling or use of pathogenic agents (pathogens) and toxins as biological and toxin weapons or their components.

### **Lists of dual-use goods**

21. Lists of dual-use goods that may be used to produce a biological weapon are set forth in annex 5 of the Procedure for State control of international transfers of dual-use goods.

22. Goods included in the lists that are transported across the customs borders of Ukraine are subject to mandatory customs clearance in accordance with the procedure established under the legislation of Ukraine.

### **Article IV**

23. Ukrainian legislation prohibits individuals and legal entities from engaging in activities in violation of article I of the BWC.

### **Liability for the proliferation of weapons of mass destruction**

24. Liability for violation of the laws concerning State control of the non-proliferation of weapons of mass destruction is governed by the Act on State control over international transfers of military and dual-use goods (section IV, Prevention of violations and liability in the area of State export control), the Criminal Code, and also the Code of Administrative Offences (arts. 188 and 212).

25. In accordance with article 24 of the Act on State control over international transfers of military and dual-use goods, offences in the area of State export control include:

- (i) Conduct of activities relating to international transfers of goods without obtaining a licence, safeguards conclusion or document under the established procedure;
- (ii) Conduct of international transfers of goods on the basis of licences, safeguards conclusions or documents obtained by submitting counterfeit documents or documents containing inaccurate information;
- (iii) Conclusion of foreign trade agreements (contracts) concerning international transfers of any goods or participation in their implementation in any way other than as specified by the Act on State control over international transfers of military and dual-use goods if the exporter becomes aware that such goods may be used by a foreign State or foreign business for the purpose of producing weapons of mass destruction or their means of delivery;

- (iv) Conduct of international transfers of goods even though the exporter has become aware that the goods will be used for other purposes or by other end-users than those specified in the foreign trade agreement (contract) or related documents on the basis of which the licence, safeguards conclusion or international import certificate was obtained;
- (v) Deliberate concealment of information relevant to the decision on whether to grant licences, safeguards conclusions or international import certificates;
- (vi) Conduct of international transfers of goods in violation of the conditions specified in the licences, safeguards conclusions or international import certificates, including after making changes to the foreign trade agreement (contract), without the consent of the designated export control authority, concerning the names and identifying information of exporters, importers, brokers and end-users and also the descriptions of goods, end-use requirements and submission of the relevant safeguards documents;
- (vii) Conduct of negotiations concerning the conclusion of foreign trade agreements (contracts) on the export of military goods, as well as dual-use goods, in respect of the supply of which a partial embargo has been imposed on the foreign State concerned, without obtaining authorization from the designated export control authority;
- (viii) Failure to submit or late submission of reports and relevant documents to the designated export control authority concerning the outcome of the negotiations specified in subparagraph 8 of this article, and also concerning international transfers of military and dual-use goods actually carried out on the basis of licences or certificates obtained, and also on the use of such goods for their declared purposes;
- (ix) Obstruction of the performance of the official duties of staff of the designated export control authority and other State bodies involved in State export control during the performance of their official duties, or failure to comply with legitimate requests by such persons;
- (x) Unwarranted refusal to provide information and documents requested by the designated export control authority or other competent State agencies involved in State export control or the deliberate falsification or concealment of such information and documents;
- (xi) Deliberate destruction of documents relating to the conclusion or execution of foreign trade agreements (contracts) on the conduct of international transfers of goods on the basis of which licences, safeguards conclusions or international import certificates were received before the end of the period during which they are required to be retained under article 22 of the Act on State control over international transfers of military and dual-use goods.

26. Article 25 of this Act establishes the liability of legal entities involved in international transfers of goods for violation of the requirements of the law in the area of export control specified in article 24 (paras. 1-11 cited above).

27. The designated export control authority imposes fines for violations by legal entities involved in international transfers of goods, as follows:

Under paragraphs 1, 2 and 3: 150 per cent of the value of the goods which were involved in the relevant international transfer;

Under paragraphs 4, 5 and 6: 100 per cent of the value of the goods which were involved in the relevant international transfer;

Under paragraphs 7 and 11: 1,000 times the individual income tax exemption limit;

Under paragraph 8: 500 times the individual income tax exemption limit;

Under paragraphs 9 and 10: 100 times the individual income tax exemption limit.

28. This article also provides that the designated export control authority, besides imposing the aforementioned fines, may revoke or suspend the licence, safeguards conclusion or international import certificate for the conduct of international transfers of goods which it granted to such exporter or revoke its registration with the authority as an entity authorized to conduct international transfers of goods.

### **Criminal liability for the proliferation of weapons of mass destruction**

29. Any development, production, stockpiling or use of weapons of mass destruction stems from the decisions and actions of individuals, whether they are officials, private businessmen, weapons experts or terrorists. However, the international conventions prohibiting such weapons have almost no provisions on individual liability. States are therefore faced with the need to introduce appropriate provisions in their legislation to establish criminal liability for activities linked with the proliferation of weapons of mass destruction.

30. Thus the Criminal Code of Ukraine contains eight articles which in one way or another are concerned with criminal liability for activities involving the potential proliferation of weapons of mass destruction: article 258 (Terrorist acts); article 261 (Attacks on facilities which contain objects posing an increased risk to the environment); article 321 (Illegal production, manufacture, acquisition, transport, transfer or stockpiling for sales purposes, or sale, of toxic and potent substances); article 326 (Infringement of the rules on handling microbiological or other biological agents or toxins); article 333 (Illegal export from Ukraine of raw materials, inputs, equipment and technology for weapons manufacture, and also military and specialized technology); article 439 (Use of weapons of mass destruction); article 440 (Development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction); and article 441 (Ecocide).

### **Article 258. Terrorist acts**

1. A terrorist act, in other words, the use of a weapon, the causing of an explosion, arson or other acts endangering the life or health of people or causing substantial damage to property or other serious consequences, if such actions were committed for the purpose of impairing public safety, intimidating the population, provoking a military conflict or international complications, or for the purpose of influencing the taking of decisions, or of exerting influence over whether action is taken or not taken by State or local self-government bodies, by officials of those bodies, by citizens' associations or by legal entities, or of drawing the attention of the public to certain political, religious or other views of a guilty party (terrorist), and also of threatening the commission of such acts for the same purpose, shall be punishable by a term of imprisonment of between 5 and 10 years.
2. When the same actions are committed more than once or by prior agreement among a group of persons, or result in substantial damage to property or other serious consequences, they shall be punishable by a term of imprisonment of between 7 and 12 years.
3. The actions referred to in parts 1 and 2 of this article shall, if they result in the loss of human life, be punishable by a term of imprisonment of between 10 and 15 years, or life imprisonment.
4. The creation of a terrorist group or terrorist organization, the leadership of, organization of or participation in such a group, as well as material, organizational or other support for the creation or activity of a terrorist group or terrorist organization, shall be punishable by a term of imprisonment of between 8 and 15 years.
5. A person, other than an organizer or leader, shall be released from criminal liability for an action referred to under paragraph 4 of this article if he or she voluntarily reports such action to a law enforcement body and assists in terminating the existence or activity of a terrorist group or organization or in the exposure of crimes committed in connection with the creation or activity of such a group or organization, if his or her actions do not include elements of another crime.

### **Article 261. Attacks on facilities which contain objects posing an increased risk to [the environment]**

Attacks on any facilities at which radioactive, chemical, biological or explosive materials, substances or items are produced, stored or used or in which they are transported, carried out with the aim of seizing, damaging or destroying such facilities, shall be punishable by a term of imprisonment of between 5 and 12 years.

### **Article 321. Illegal production, manufacture, acquisition, transport, transfer or stockpiling for sales purposes, or sale, of toxic and potent substances**

1. The illegal production, manufacture, acquisition, transport, transfer or stockpiling for sales purposes, or the sale, of toxic or potent substances, other than narcotics,



psychotropic substances or their analogues, and also the illegal production, manufacture, acquisition, transport, transfer or stockpiling for sales purposes, or the sale, of equipment intended for the production or manufacture of toxic or potent substances, where these actions have not been specially authorized, shall be punishable by a fine of up to 50 times the individual income tax exemption limit, or a term of imprisonment of up to three years.

2. Violation of the rules governing the production, acquisition, storage, release, recording, transport or transfer of toxic or potent substances other than narcotics, psychotropic substances or their analogues shall be punishable by a fine of up to 100 times the individual income tax exemption limit, or a term of imprisonment of up to two years.

#### **Article 326. Infringement of the rules on handling microbiological or other biological agents or toxins**

1. Infringement of the rules governing the storage, use, recording or transport of microbiological or other biological agents or toxins, and any other rules related to their handling, where it has presented a risk to human life or a risk of other grave consequences, or caused harm to the health of a victim, shall be punishable by a fine up to 50 times the individual income tax exemption limit, or punitive deduction of earnings for up to two years, or restriction of freedom for up to three years, with or without deprivation of the right to occupy certain positions or engage in certain activities for up to three years.

2. Where such acts have caused the loss of human life or other grave consequences, they shall be punishable by restriction of freedom for up to five years, or imprisonment for up to five years, with deprivation of the right to occupy certain positions or engage in certain activities for up to three years.

#### **Article 333. Illegal export from Ukraine of raw materials, inputs, equipment and technology for weapons manufacture, and also military and specialized equipment**

Violation of the rules governing the export from Ukraine of raw materials, inputs, equipment and technology that can be used to manufacture missiles, nuclear, chemical and other types of weapons and military and special equipment shall be punishable by a fine of 100 to 200 times the individual income tax exemption limit or restriction of freedom for up to three years, or imprisonment for up to three years.

#### **Article 439. Use of weapons of mass destruction**

1. The use of weapons of mass destruction that are prohibited by international treaties by which the Ukrainian parliament has agreed to be bound shall be punishable by a term of imprisonment of between 8 and 12 years.

2. When the same act has caused loss of human life or other grave consequences, it shall be punishable by a term of imprisonment of between 8 and 15 years, or life imprisonment.

**Article 440. Development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction**

The development, production, acquisition, stockpiling, sale and transport of weapons of mass destruction that are prohibited by international treaties by which the Ukrainian parliament has agreed to be bound shall be punishable by a term of imprisonment of between 3 and 10 years.

**Article 441. Ecocide**

The large-scale destruction of plant or animal life, the poisoning of the atmosphere or water resources, and any other actions that may cause an environmental disaster shall be punishable by a term of imprisonment of between 8 and 15 years.

**Code of Administrative Offences**

31. Article 188-17 of the Code of Administrative Offences establishes administrative responsibility of individuals and legal entities for non-compliance with legitimate requests by staff of the designated export control authority. Such violations are punishable by a fine of 15 to 20 times the individual income tax exemption limit for individuals and of 20 to 50 times the individual income tax exemption limit for officials.

32. Moreover, in accordance with article 212-14, violations of the legislation on State export control are punishable by a fine of 15 to 20 times the individual income tax exemption limit for nationals and 20 to 50 times the individual income tax exemption limit for officials in the event of:

- (1) Conduct of negotiations concerning the conclusion of foreign trade agreements (contracts) on the export of military goods, as well as dual-use goods, in respect of the supply of which a partial embargo has been imposed on the foreign State concerned, without obtaining authorization from the designated export control authority;
- (2) Failure to submit or late submission of reports and relevant documents to the designated export control authority concerning the outcome of the negotiations referred to in paragraph 1 of this article, and also concerning international transfers of military and dual-use goods actually carried out on the basis of licences or certificates obtained, and also concerning the use of such goods for their declared purposes;
- (3) Deliberate destruction of documents relating to the conclusion or execution of foreign trade agreements (contracts) on the conduct of international transfers of military and dual-use goods on the basis of which licences, safeguards conclusions or international import certificates were received before the end of the period during which they are required by law to be retained.

#### **Article V**

33. Ukraine continuously engages in consultations and cooperation with other States parties in addressing any issues related to the implementation of the provisions of the Convention.

34. Ukraine submits to the United Nations Secretariat each year the requisite statements regarding implementation of the BWC in the context of the confidence-building measures approved by the Second and Third BWC Review Conferences.

35. Ukraine favours the further development and upgrading of machinery for cooperation among States parties under the Convention, and specifically the strengthening of cooperation in such areas as enforcement, information exchange, and also cooperation between national export control authorities.

#### **Article VI**

36. Ukraine has not invoked the provisions of article VI, nor has any other BWC State party invoked its provisions against Ukraine.

#### **Article VII**

37. Ukraine has not received any requests for assistance under article VII, and has not requested assistance under this article.

#### **Article IX**

38. Ukraine ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) on 16 October 1998. Ukraine affirms its commitment to the effective implementation of the CWC.

#### **Article X**

39. Ukraine cooperates bilaterally and multilaterally with other BWC States parties in order to promote the exchange of equipment, materials and scientific and technological information for the use of biological agents and toxins for peaceful purposes.

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