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Non-Proliferation of Weapons of Mass Destruction – A Critical Analysis of Role Played by Customs in National Security

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Abstract

India has raised concerns at the United Nations concerning the potential misuse of biological agents as weapons emphasizing the escalating threat posed by the emerging technologies. In the recent statement, India underscored the potential threat posed by terrorist groups and other non-state actors gaining access to *Weapons of Mass Destruction (WMDs)* due to the advancement in technology. This highlights the evolving nature of security challenges in the face of rapid technological developments. It reflects a broader awareness within the international community of the importance of anticipating and mitigating emerging threats, particularly those related to WMDs. The call for attention at the United Nations underscores the urgency of collaborative efforts to strengthen the global security frameworks and enhance preparedness against unconventional security threats. Hence this study examines the intersection of the customs and weapons of mass destruction and the pivotal role played by the customs agencies in implementing and enforcing the international agreements aimed at non-proliferation. This study delves into the multifaceted responsibilities of customs,challenges faced by authorities in balancing security imperatives with the facilitation of international trade. It examines the importance of enhancing customs capabilities, promoting information sharing, and fostering international cooperation to effectively address the evolving threats posed by WMD proliferation through the comprehensive analysis of case studies and best practices.

Keywords- Weapons, Mass Destruction, Customs, Security.

1. Introduction

During April 2004, the United Nations Security Council passed a resolution (Gasca, José Javier De La, 2004), urging governments across the world to initiate measures, including enacting exclusive laws, to ensure that terrorists or any other non-state actors do not acquire, proliferate or use any nuclear, chemical or biological weapons, which are generally classified as Weapons of Mass Destruction (WMD). The said resolution was passed after a lot of deliberation to decide on such a resolution, after having identified the calamities that WMDs can cause to the human kind, the property as well as the *flora and fauna* of the larger area. WMDs have been defined by the United Nations as *"atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above* (United Nations General Assembly, Prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons, 1997) *"*. According to the Department of Homeland Security (DHS) of the US, *Weapon of mass destruction is a nuclear, radiological, chemical, biological, or other device that is intended to harm a large number of people* (Weapons of mass destruction | homeland security., n.d.). The capacity of the WMD to cause large-scale destruction of property coupled with death in huge numbers is a reason grave enough for nations to consider the very presence of the same in the hands of an enemy country. It has been recognized that the implementation of such a resolution can happen only with full cooperation and assistance at the international level. Therefore, the United Nations called for the common commitment of all the countries to

achieve the goals of the resolution, to rescue humankind from the threat of terrorism as well as Weapons of Mass Destruction (WMD). In addition to the mass deaths of all living beings, WMDs could make the life of future generations miserable, owing to the side effects that may persist for decades or even centuries, including long-lasting environmental damage, radiation contamination, and genetic mutations, creating a legacy of suffering and instability that transcends generations.

Therefore, the consequences of the proliferation of WMD could pose great challenges to the security of nations, leading to regional imbalances. Under the circumstances, the aforementioned resolution of the UN assumes a lot of importance. In the spirit of the resolution, India enacted the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (Act No. 21 of 2005) on 6th June 2005.

The Act provides for the prohibition of export of *any material, equipment or technology, if it is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or their missile delivery systems* (The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005). In addition to imprisonment up to three years, the law provides for imposing a penalty of upto Rs. 20 lakhs for any unauthorized export of any such item. Since the primary responsibility of regulating export of any goods and/or technology lies with Customs, the Customs assumes an important role in ensuring the non-proliferation of WMD, especially if the international entry/ exit points are utilized for moving the items that can be used for the manufacture of WMDs.

However, despite the devastating effects of the WMD, it appears that there are not enough studies conducted in India, when compared to the position of leading nations across the world, which has resulted in lack of awareness among the general public, including the law enforcing agencies. It is observed that the Central Board of Indirect Taxes and Customs (CBIC) has issued notifications in this regard, explaining the details pertaining to the Export Controls as well as the compliance requirements to be fulfilled by the exporters. Further, the National Academy of Excise, Customs and Narcotics (NACIN), Kanpur has published study material pertaining to WMD and dual goods, with a view to creating awareness in this regard among the business community as well as Customs officers (NACIN, Export Control System in India and Role of Customs officers, (n.d.). The importance of the study can be ascertained from the lack of resources, literature and adequate studies resulting in lack of compliance level as well as the effectiveness of law enforcement. Therefore, a detailed study of the WMDs, their delivery system, the dual use of the ingredients used for producing the WMDs and the devastating effects of the proliferation of WMDs need to be undertaken. During this study, the researcher has focused on the movement of goods across the borders, that could be utilized for producing different WMDs, and the mechanism to address the threat for national security due to the movement of dual use goods or goods that can be utilized to produce WMDs also, through the borders of the country. The objectives of this research in the context of the Indian scenario, is to (i) understand the significance of Customs in curtailing proliferation of WMDs across the countries (ii) to spread awareness regarding WMD and their dual usage with malicious intentions and to (iii) provide suggestions and recommendations to combat the nefarious proliferation of WMDs in view of national security.

2. Research Methodology

For the study, exploratory research methodology was used for the collection of data. While the existing material on the subject was browsed through by pursuing various journals, articles, books, and other written material available.

3. Weapons of Mass Destruction - Dual use and their ramifications

As per the United Nations Office for Disarmament Affairs, weapons of mass destruction can be primarily classified into three categories viz. Biological, Chemical, and Nuclear weapons. Weapons of Mass Destruction (WMDs) and their

ramifications extend beyond their immediate effect. Weapons of Mass Destruction (WMDs) are capable of creating catastrophic effects, thereby jeopardizing the balance of nature as well as killing millions of people. These destructive armaments which encompass nuclear, chemical and biological weapons have profound consequences that reverberate through multiple dimensions. The consequences of use of these types of WMDs are briefly discussed as follows:

3.1. **Biological WMDs-** Biological warfare agents are microorganisms that cause diseases in human beings, such as viruses, bacteria, fungi, etc. Examples of biological warfare agents are botulinum toxin, anthrax, plague, etc. which cause a challenge to the public health of the society and would result in a large number of deaths. In the case of Biological WMDs which are capable of secondary transmissions, even interaction with affected individuals could be fatal. Biological WMDs could also result in generations of people falling prey to various kinds of diseases.

3.2. **Chemical WMDs-** Chemical WMDs are comparatively easy to produce. The toxicity of the ingredients of such chemical weapons are very severe and the poisonous chemicals of the WMDs could make the lives of the remaining in the surroundings miserable for years together. One of the classic examples of dual goods can be the chemical named 'Chlorine' which is quite familiar in almost every household and is widely used for industrial purposes as well. But it is learned that the innocuous-looking 'Chlorine' can be used as a chemical weapon too (Preventing the re-emergence of chemical weapons. (n.d.). The Chlorine, if used in a destructive manner, could result in a 5% kill rate.

3.3. The use of nuclear-based WMDs results in the release of huge amounts of explosive energy, and in producing high temperatures and radiation. The catastrophic consequences of nuclear WMDs are etched into the collective conscience of entire humanity through the sobering examples of Hiroshima and Nagasaki, where citizens of those cities bore enduring burdens for generations. The effects of a nuclear WMD can differ, based on whether the technology used is fission or fusion, the place of detonation – on the surface, air, underwater, underground etc (Nuclear weapon—Radiation, fallout, destruction | Britannica. (n.d.). When a nuclear WMD is detonated, a fireball is generated, wherein the temperature produced is about 100 million degrees Celsius (War, I. of M. (US) S. C. for the S. on the M. I. of N., Solomon, F., & Marston, R. Q., 1986)., which is much more than the temperature in the center of the sun. The energy released by such a kind of temperature could devastate the entire living beings and property, in addition to destabilizing nature.

The components of chemical and biological warfare have the potential to impact the human nervous system and lead to disruptions in psychological equilibrium. Further, the advent of Global Positioning System (GPS) technologies, which can be categorized under 'dual-use technology', has significantly improved the quality of life for humanity. Nowadays, GPS is widely employed in various industries, aiding farmers in crop harvesting, assisting seafarers and aircraft pilots in effective navigation, and facilitating emergency response mechanisms by pinpointing location needs. However, it is crucial to acknowledge the potential scope of this technology's application. The GPS technology also enables a person with *mala fide* intentions to identify important infrastructure and installations such as bridges, airports, prominent scientific and research institutions, etc., which could be leveraged for planning destructive actions against such institutions or infrastructure. Furthermore, targeting GPS systems could result in catastrophic effects in the modern world - potentially disrupting essential functions such as weather forecasting, digital television, ATMs, credit card transactions, railway and flight reservations etc. (Experts warn about vulnerabilities of u. S. GPS to cyber terrorists—CBS San Francisco, 2021). Similarly, laser technology, drone technology, thermal imaging technology, night vision technology, etc. also fall into the category of dual-use technologies (Smith, M., 2022)

The UN Security Council, while discussing and passing resolution 1540, was particularly concerned that the efforts to prevent the proliferation of WMDs should not come in the way of peaceful use of such materials and

technology, and the cooperation among the countries for the purpose. At the same time, it has to be ensured that peaceful purposes are not used as camouflage by unscrupulous elements or terrorists. In international shipments, it cannot be guaranteed that the goods transported always conform to the specifications mentioned in the accompanying documents.

Working for the non-proliferation of Chemical WMDs in coordination with the UN, the Organisation for Prevention of Chemical Weapons (OPCW) conducted a study among the 193 member countries, in order to find out the availability of Chemical Weapons with the state authorities. Various countries declared the Chemical Weapons used in the name of "Riot Control Agents" detailed as follows:

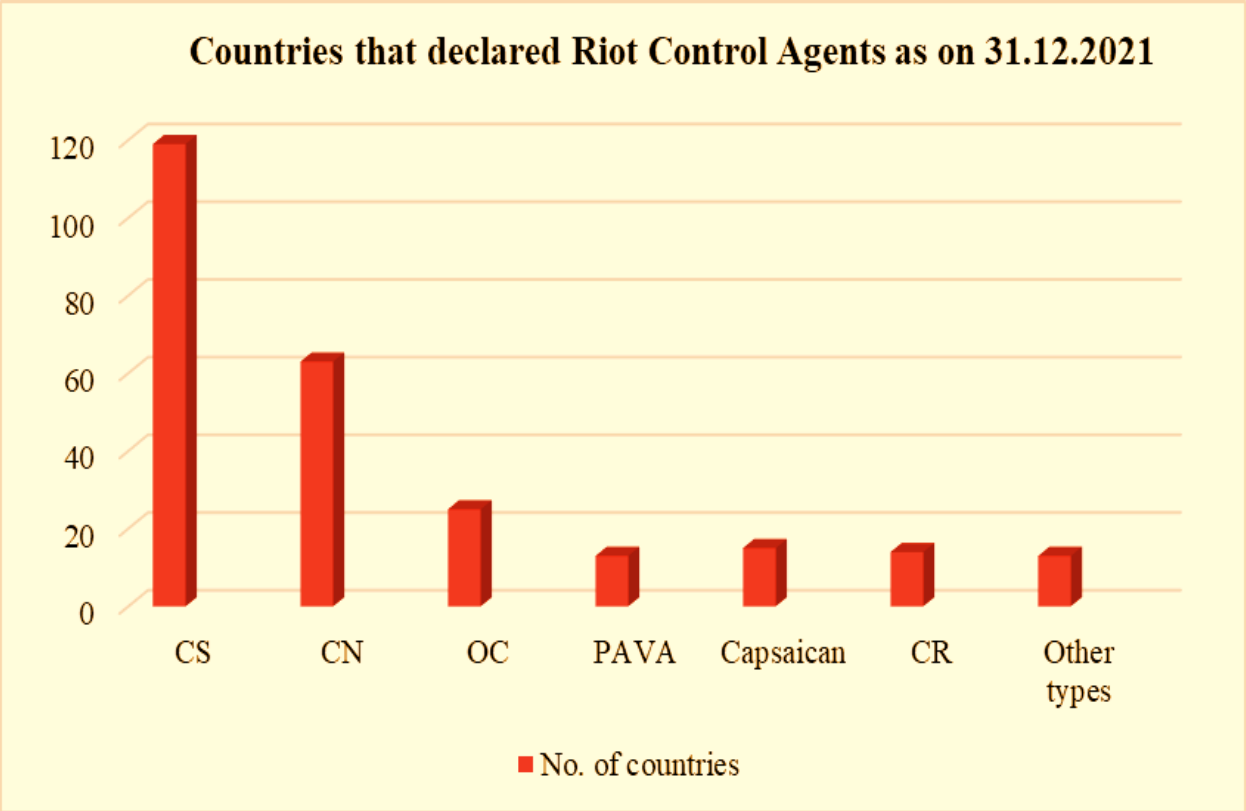

Figure – 1- Countries that declared riot control agents as on 31.12.2021

(CS : o-chlorobenzylidene malonitrile, CN : chloroacetophenone, OC : oleoresin capsicum, PAVA : pelargonic acid vanillylamide, Capsaicin : natural compounds of capsicum plants, CR : dibenzoxazepine)

The declaration of such weapons by the states also instills a sense of responsibility in the concerned countries to be responsible while using such chemicals, and not to misuse the same for undesirable activities or for war purposes.

With the invention of the energy that could be released by nuclear material and the testing of a nuclear bomb by the United States on 16th July, 1945, the global community has understood the necessity to reign in the unbridled development of nuclear weapons in the larger interest of humankind across the globe. According to the latest estimates (Davenport, K. (2023, June), nine countries in the world possess nuclear weapons that are powerful enough to devastate the entire globe.

Figure – 2 Global Nuclear Warhead Inventory 2023

Concerning the Biological WMDs, it appears that there is no codified, authentic data, since most of the countries are reluctant to declare the information in this regard.The proliferation of WMD can be broadly understood as "*the transfer and export of nuclear, chemical or biological weapons, their means of delivery and related materials*" (Financing of proliferation—Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism—WWW. COE. INT. (n.d.). Proliferation is a broad and incremental process, which includes diffusion of dual-use technology and material, and could result in long-term benefits to the recipients of such technology and material[14]. The matter pertaining to the proliferation of such weapons has attracted the attention of the international community several years ago and the various conventions held in this regard have been identifying measures to detect and prohibit such proliferation.

When it comes to the discussion on the procurement of WMDs, one should be conscious of the State actors as well as the non-state actors. This study is limited to the proliferation of WMDs by non-state actors. For a non-state actor, procuring a Weapon of Mass Destruction would never be an easy task. Therefore, the easier method of having possession of WMD is to produce the same using the material and technology that could be available in the market, domestic or international (Ritcheson, P. L., 1997).

One of the methods the proliferation happens is by utilizing the dual-use goods and technologies clandestinely in the trade ecosystem. The international trade system is vulnerable to various risks and is prone to misuse by organized criminal gangs and terrorists as well as terror financiers. The complexities associated with enormous international trade and foreign exchange transactions, coupled with limited resources at the disposal of Customs authorities to detect suspicious transactions give rise to such exploitation of the trade route for proliferation of WMDs (Trade-based money laundering. (n.d.). Though the governments have designed Export Controls for the counter proliferation of WMD as well as the technology related thereto, it is a challenging task for the government machinery to implement the same. Technically developing resistance to useful antibiotics, the knowledge or technology to make various vaccines ineffective,

etc. are examples of the intangible nature of dual-use technology or knowledge. The evolving technology in the area and the technology transfers that happen are intangible and therefore, the non-proliferation can be ensured only by maintaining the highest levels of compliance.

4. Deterrents available and required

One of the basic assumptions of deterrent theory under the law is that awarding punishment for an offense will inculcate fear in a person against doing an act that is prohibited or is illegal.

Further, the severity of the punishment can be inversely proportional to the probability of the commission of a crime and directly proportional to the reduction in criminal activities (The relationship between stringency of law and deterrence in crime., n.d.). Along with the severity of punishment, the probability of arrest as well as the probability of conviction in the case also affects the chances of commission of the offense to a certain extent. Thet of a person is never a punishment and is not mandatory, generally everyone is afraid of arrest primarily due to the loss of reputation, and would like to keep away from the activities that would result in arrest. In addition to the fact that fundamental rights are curtailed when a person is arrested, the social stigma attached to the arrest is what makes people wary of arrest. Therefore, if there is a general awareness that the commission of a particular offense will attract severe punishment or that for the commission of such an offense he can be arrested, there is a high probability that an individual would think twice, before committing an offense. Further, if it is ensured that an offender would get convicted for committing an offense, the chances of a decrease in crimes would be more.

It has been observed that, as technology advances, the benefits of the technology are equally reaped by the anti-national nefarious elements too. To help the trade, the Department of Customs has automated many of the functions, including filing of Shipping Bill/ Bill of Entry etc. The manual verification of the goods that are imported or that are going to be exported are done away with, to a large extent, limiting the physical examination only based on the system direction as per the risk management system (RMS). However, it is observed that the smugglers have been taking advantage of these facilities. In a case detected by the Customs Department, a chemical that could be used as missile propellant was declared to the department as a harmless chemical, and the same was being transmitted through a certain port of India (Directorate of Revenue Intelligence, Smuggling in India Report 2019-2020, 2020). The chemical which was notified in the SCOMET (Ministry of Commerce and Industry, Annual SCOMET Updates 2020 Amendment in Appendix 3 (Special Chemicals, Organism, Materials, Equipment and Technologies) list was identified by the department and the said item was seized and legal action was initiated. SCOMET items are dual-use items having the potential for both civilian applications as well as for weapons of mass destruction, and therefore they are restricted items (Varanasi, S., Chatterjee, S. et.al. 2019). In another similar incident, a consignment of high technology equipment which is meant to be for a missile program of the destination state was being carried in a ship.

The item was declared as “same bottom cargo” and the same was concealed in the ship. Since the equipment was notified under the list of’ SCOMET items, the department intercepted the item and initiated legal action. These are cases which come under the Strategic Trade Control Enforcement (STCE). There are three major Export Control regimes to which India is a signatory, viz. Wassenaar Arrangement, Missile Technology Control Regime (MTCR) and the Australia Group. According to this regime, India is expected to make sure that its borders as well as the trade through its borders are not used for any illegal trade in dual use goods and technologies or proliferation thereof. Accordingly, legal action is initiated by the department whenever such cases are noticed. While the Customs Act takes care of the movement of such goods across the borders, the Government of India has enacted the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, in order to prohibit unlawful activities, particularly in connection with WMDs and their systems of

delivery, and to punish those who contravene the provisions thereof. This Act was enacted to pronounce the commitment of India as a Nuclear Weapon State, not to assist or encourage any other country to produce nuclear weapons, or to transfer such weapons or devices. This Act provides for monetary penalties as well as imprisonment as a deterrent against any unlawful activities pertaining to WMDs. Thus, the legal provisions available in this regard as of date appear to be adequate to act as deterrents for the proliferation. However, the legislation enacted should be complemented by executive actions to enforce the legal provisions.

5. Legal provisions for non-proliferation.

In order to ensure the non-proliferation of the WMD, India has enacted the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (Act No. 21 of 2005) on 6th June, 2005. In addition to the provisions mentioned in the act for taking care of the situations in different parts of the country, the Act also provides for prohibition of export of dual-use technology as well as goods. With regard to punitive punishments for violations of the provisions of the Act, the Act provides for imprisonment of the violator for three years as well as for a monetary penalty amounting up to twenty lakhs. In India, policy pertaining to international trade, import as well as export, is governed by the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act) and the Foreign Trade Policy (FTP) formed thereunder.

Subsequent to the resolution 1540 of the United Nations and in view of implementing the decisions thereof in India, the FTDR Act was amended during the year 2010 to incorporate a new Chapter IV-A, which included regulating the export of goods which are used for peaceful purposes, but which can also be utilized for producing Weapons of Mass Destruction (Guidelines for Export of SCOMET items, 2009). It is also seen that India had issued a notification No. 37 (RE-2012)/2009-2014, dated 14.03.2013, under the strength of the FTDR Act. vide which a Special Chemicals, Organisms, Materials, equipments and Technologies (SCOMET) list was published. The list contains the details of items which have applications of both civilian requirements as well as weapons of mass destruction. The list is published to ensure that the items mentioned in the said list are exported only after obtaining a license issued in this regard by the DGFT, unless it is specifically provided otherwise.

Further, all the goods involved in the imports and exports pass through the Customs in India and are cleared in accordance with the provisions under Customs Act, 1962. Therefore, whenever there is a movement of dual use goods, or goods mentioned in the SCOMET list, across the borders, special attention is accorded to such movements. Action under the Customs Act, 1962 is initiated by the Customs department when any contravention is observed in this regard. This is in addition to the action that can be initiated under the provisions of the WMD Act.

6. Role of Customs

The role of Customs assumes a lot of importance when the goods, which can be used for peaceful purposes as well as to make WMDs, move across the borders. The movement of goods mentioned in the list of special SCOMET (Speciality Chemicals, Organisms, Materials, Equipment and Technologies) items (Report of the OPCW on the implementation of the convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction in 2021, 2022) is closely monitored at the exit-entry points of the country. It is important for the Customs Officers to update themselves about the dual-use items and to keep their eyes and ears open, in the interest of the nation, whenever there is a movement of any such goods in connection with the international business. In the era of liberalization, wherein the Customs encourages voluntary compliance by all concerned in the trade transactions, while simultaneously making efforts for enforcing border controls, has been emphasizing the importance of security of the supply chain and safety of the goods involved.

Therefore, when it comes to the transactions in dual-use goods, it becomes the duty of the Customs officer to meticulously verify the documents and declarations pertaining to such

consignments and to make sure that the import or export, as the case may be, happens only for genuine purposes. It is important to monitor the country to which such goods are exported in the case of exports and the country from which it is imported, in the case of import of such goods, along with keeping an eye on the importer/ exporter and their activities. Underscoring the importance of Customs in the matter, the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW), in cooperation with the World Customs Organisation (WCO) has been conducting various intensive training programmes for the Customs Officers in the field across different parts of the world in order to enhance their knowledge about toxic chemicals and the skills to effectively monitor the international trade in such items, mainly in the interest of national security (The Customs Act, Act No. 52 of 1962, 1962). The secretariat also developed programmes that could help the Customs officers to identify the most traded scheduled chemicals based on the Harmonized System (HS) of nomenclature.

In addition to keeping a watch on the movement of goods, the Customs officers have an important role in detecting the Trade Based Money Laundering (TBML), used by many criminal gangs to finance the terrorist activities. The TBML is nothing but moving the proceeds of crime in the guise of trade transactions, thereby legitimizing the source of the amount. TBML is resorted by the unscrupulous elements in the trade by misrepresenting the price, quantity or specification of the goods trade, depending on the situation (Bauer, S., & Bromley, M., 2019). Only a Customs officer well versed with the market of such goods can detect such goods *prima facie.* However, more often than not, data analytics technology is used by Customs to unearth such activities. The fact that the Customs takes the smuggling of dual goods or SCOMET items quite seriously, is manifested in the provision which denies the facility of compounding to offenses under the Customs Act related to such goods.

7. Examination of Goods by the Customs Officers

Traditionally, when the goods are transported internationally, the same are examined by the Customs officers, based on the declared specifications. However, in view of ease of doing business and for trade facilitation, presently examination is limited to the documents submitted and the physical examination happens based on the selection of consignment by the Risk Management System (RMS) software.

However, *"electronic risk profiling alone is not sufficient to identify illegal shipments but must be complemented by human analysis to be effective"* (India export control information., n.d.). While extensive data analysis coupled with application of mind as well as human intelligence can result in detection of misdeclaration of goods transported internationally, the transportation of innocuous looking dual use goods in the name of genuine business is susceptible to nefarious activities, unless the end user of such goods is identified by the concerned authorities. Since it is mandated by law that the importer or exporter of dual use goods, or the goods falling under the SCOMET list published by the DGFT, should obtain a separate license in this regard, the Customs officers can easily identify the goods, based on the nature of license mentioned in the documents. Further, all applications for such licenses are closely scrutinized by the Inter-ministerial Cooperation Group (IMCG) ((India export control information., n.d.) formed for this purpose (Schelven, N. van. (2019). However, in order to maintain a balance between following the WTO requirements of ease of doing business, and protection of national security by ensuring movement of non contraband goods, especially that can be used for producing and proliferating WMDs, it is important for the Customs officers to develop their skills in risk profiling, collating information through interagency intelligence sharing, etc. Further, it is a good practice to appoint "Speciality Advisory Experts" for different fields, as implemented by the Netherlands, who can be contacted by the

Customs Officers in the field, in case of emergencies (Punishing acts of WMD proliferation: More easily said than done | SIPRI. (2009, May 28).

8. Awareness of Customs Officers

Customs officers primarily come across the goods that move across the borders, particularly through the authorized entry/ exit points. They also come across the technology transfer between different countries, in certain cases. At times, when the smuggling goods are intercepted, they come across the goods that move across the borders illegally or unauthorisedly. In all such cases, it is important for the officers to be aware of the nature of the goods or technology transferred, in the interest of national security as well as revenue of the government exchequer, in addition to public safety. In the case of dual-use goods or technology, any ignorance or dereliction of on the part of such officers could be detrimental for the national security. In spite of all the precautions, it could be challenging for an officer to distinguish between items and technology which are prohibited and which are permitted, especially when it comes to matters pertaining to basic chemical or biological research. Most of the time, the cause for threat or security issue may not be the item as such, but the use to which such items are put (Mitra, A. G., & Sethi, N., 2016). At times, the very same techniques used by the scientists for understanding the life processes with a view to improving the life and health of the human kind could also be used for chemical or biological warfare agents. But in the case of Customs, it becomes necessary to balance between the requirements of national security and trade facilitation. In the era of LPG, the concepts of trade facilitation and ease of doing business have gained momentum, in view of which the trade and business are reposed with more trust by the government and its various enforcement agencies, based on the compliance levels and risk management factors.

However, it is observed that the smugglers have been taking advantage of these facilities. In a case detected by the department, a chemical that could be used as missile propellant was declared to the department as a harmless chemical, and the same was being transmitted through a certain port of India. The chemical which was notified in the SCOMET (Special Chemicals, Organism, Materials, Equipment and Technologies) list was identified by the department and the said item was seized and legal action was initiated. SCOMET items are dual-use items having potential for both civilian applications as well as for weapons of mass destruction, and therefore they are restricted items (Security Council, concerned at threat posed by illicit cross-border trafficking, asks for assessment of un efforts in helping states counter challenges | UN Press. (n.d.). In another similar incident, a consignment of high technology equipment which is meant to be for a missile program of the destination state was being carried in a ship. The item was declared as “same bottom cargo” and the same was concealed in the ship. Since the equipment was notified under the list of’ SCOMET items, the department intercepted the item and initiated legal action. These are cases which come under the Strategic Trade Control Enforcement (STCE). There are three major Export Control regimes to which India is a signatory, viz. Wassenaar Arrangement, Missile Technology Control Regime (MTCR) and the Australia Group. According to this regime, India is expected to make sure that its borders as well as the trade through its borders are not used for any illegal trade in dual use goods and technologies or proliferation thereof. Accordingly, legal action is initiated by the department whenever such cases are noticed. The cases of misuse of dual use goods as discussed above goes to indicate the level of awareness coupled with presence of mind and alertness on the part of the Customs officers who are at the borders as well as authorized entry/ exit points of the country, to clear the goods.

9. Conclusion

It may be observed that the proliferation of Weapons of Mass Destruction is going to be a real threat to national security. It may also be observed that there are sufficient legal provisions to counter the activities related to proliferation, including adequate punishments. There are legislations like Unlawful Activities (Prevention) Act, 1967, the Weapons of Mass Destruction and their Delivery Systems

(Prohibition of Unlawful Activities) Act, 2005 etc. to take care of the activities within the country, while the Customs Act and the various control mechanisms are empowered to initiate action, if any threat of WMDs arise from outside the country, or if there is any attempt of export of terror from the country, there are specific export control systems in place. However, any legislation would be effective only if it is supported by a robust law-enforcing mechanism, bolstered by well-read executives. To identify the dual-use items and technology that could be used for producing the WMDs, the executives at the cutting-edge level should be adequately trained and should be alert. Since this study is focussing on the role of Customs in this regard, the scope is limited to the movement of such goods and technology across borders. The study has revealed that an exclusive Import Export Code (IEC) has to be obtained by any person who would like to trade in dual-use goods internationally, and the movement of goods under such IECs would be closely monitored. It has been revealed that the Customs being the authority to verify the documents related to Imports and Exports and to examine the goods imported and goods to be exported, plays an important role in curtailing proliferation of WMDs across the countries. While the alertness on the part of Customs is absolutely essential in the case of import, to ensure that no goods or technology that would threaten the national security reaches the hands of unscrupulous elements in the country from outside, any laxity on their part during export could tarnish the image of the entire country. The cases discussed in the study have revealed that the Customs and its intelligence wing DRI are adequately equipped to gather intelligence about any such nefarious activities and to initiate appropriate action wherever necessary. However, it is felt that it would be a good idea to prevent such items from reaching the border areas themselves, which could be possible by strategic intelligence sharing with other law enforcement agencies in India as well as with border agencies of neighboring countries. Schengen cooperation with the European Union could be cited as an example for such coordination and control over the transport route at various points. Schengen Area refers to an area consisting of 27 European countries, wherein the movement of people is free, without restrictions such as VISA (Schengen area—The 27 member countries of the Schengen Zone., n.d.).

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