



RUSSIAN FEDERATION

ON MEASURES TO PREVENT CHEMICAL TERRORISM

The Chemical Weapons Convention (hereinafter “the Convention”) prohibits the States Parties from using chemical weapons. It obligates States to take measures at a national level prohibiting both natural and legal persons anywhere on their territory or under their jurisdiction from undertaking any activity prohibited by the Convention.

In fact, this document requires that the development, production, acquisition, stockpiling, transfer, and use of chemical weapons be qualified by States Parties as a criminal offence. This also means the prohibition of aiding, encouraging, or inducing anyone in any way to engage in any activity contradictory to the Convention.

In particular, the Convention prescribes taking the following measures on a national level:

- ensuring the possibility of an effective investigation into terrorist activity related to chemical weapons and criminal prosecution of said activity;
- facilitating the universality of the Convention;
- developing cooperation among States Parties to ensure compliance with the stipulated bans;
- implementing in full the provisions of Article VI aimed at preventing the uncontrolled acquisition, transfer, and use of toxic chemicals as a means of terrorist attack;
- boosting the preparedness of the Organisation for the Prohibition of Chemical Weapons (hereinafter “the Organisation”) to provide effective and timely assistance to the victims of the use of chemical weapons by terrorist groups, non-State actors, or other perpetrators as stipulated in Article X of the Convention.

Chemical Terrorism should be seen as a real and persistent threat that requires adopting adequate and timely measures.



The international community faces a situation in which organised terrorist groups are capable of posing a threat to the entire world and security, destabilising the situation within States, and provoking local and inter-regional conflicts.

The problem of chemical terrorism is also altogether critical in light of the repeated use by ISIS fighters and other terrorist groups in the Middle East not only of industrial toxic chemicals, but fully-fledged chemical warfare agents. There is information that terrorists have access to an infrastructure that could be used to create chemical weapons. This activity is becoming greater in scale, and more systemic and transborder in nature. Chemical terrorism has already become a reality requiring decisive, prompt actions from the international community based on clearly defined and comprehensive international norms.

The Organisation is one of the multilateral disarmament mechanisms in the fight against the threat of chemical terrorism. It should make its contribution to the prevention thereof in line with its relevant authorities and mandate, as set out in the Convention.

The Convention contains an altogether limited set of obligations for States Parties to ensure the criminal prosecution of those who have engaged in activity prohibited by the Convention. Furthermore, the regime of the Convention does not fully meet today's requirements and tasks in the field of counter-terrorism.

The Convention does not fully encompass aspects of countering chemical terrorism, primarily within the context of carrying out its non-proliferation obligations at the national level. This has been noted repeatedly in discussions within the Organisation's Open-Ended Working Group on Terrorism and its sub-group on the legal aspects of said problem. It is to the States Parties that the obligations set out in the Convention to never "develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone" are addressed. This also concerns the fundamental requirements not to use chemical weapons under any circumstance.

At the same time, the Convention does not contain any provisions that would directly prohibit access to chemical weapons or the use thereof by non-State actors. This ban stems only from paragraph 1(a) of Article VII of the Convention, according to which States are obligated to prohibit natural and legal persons anywhere on their territory or any other place under their jurisdiction as recognised by international law from undertaking any activity prohibited under the Convention, including enacting penal legislation with respect to such activity.

Furthermore, the Convention does not contain any clear-cut provisions with regard to the use of toxic chemicals as chemical weapons. Article II of the Convention states that toxic chemicals do not fall under the definition of "chemical weapons" when intended for purposes not prohibited by the Convention and as long as the types and quantities are consistent with such purposes. It should be emphasised that this provision concerns scheduled chemicals that fall directly under the Convention.

However, as practice has shown in recent years, toxic chemicals widely used for industrial and household purposes are often used by terrorist groups and individual terrorists as chemical weapons. For example, chlorine and chemicals with chlorine content, pesticides, and various chemical fertilizers, which according to the Convention's definition are not

chemical weapons and are not on the Schedules. As a rule, there is no control in place over the turnover, end use, or the buyers and intermediaries purchasing these chemicals. At the same time, cases of the use of said chemicals as fillings for improvised explosive devices in military actions in the Middle Eastern region, in particular Syria and Iraq, are widely known.

The Convention does not establish any specific mechanism of international cooperation among law enforcement agencies for the purpose of countering chemical terrorism. In particular, there are no procedures defined for the provision of legal assistance, no obligations are in place for the investigation of information that is received, or to ensure the extradition or presence of a wanted person for the purposes of criminal prosecution.

Furthermore, international cooperation under the Convention is limited to collaboration between States Parties. At the same time, contacts with relevant international organisations and agencies involved in transborder counter-terrorism efforts are also needed.

The standards of customary international law prohibiting the use of chemical weapons by non-State actors and particularly those that qualify such actions as an international crime are not clearly defined, if they exist at all.

Due to its nature, international humanitarian law is only applied in armed conflict situations and stipulates that non-State actors must meet certain requirements to fall under these standards, thus ruling out the application of this field of law to a broad category of terrorist activity.

Of course, United Nations Security Council resolution 1540 (2004) is an important universal tool in the field of chemical weapons non-proliferation. While it addresses questions concerning the unlawful movement of chemical materials and the means of their delivery, it nevertheless focuses on the application of national measures to prevent chemical weapons and the components thereof from falling into the hands of terrorists. Furthermore, the resolution does not encompass the situation today, which has developed due to terrorist attempts to gain access to these types of weapons and the corresponding production capacities on the territories they control. It seems as though these serious gaps could be bridged by a new convention on the suppression of acts of chemical terrorism, the development of which was an idea that has already been proposed by the Russian Federation.

An important tool related to chemical terrorism is the International Convention for the Suppression of Terrorist Bombings, dated 16 December 1997. However, the scope of this document is limited, first to the use of a "lethal device"; second, to specific places of use; and third, to evidence of intent to kill, maim, or cause considerable damage to the facilities specified in that convention. Meanwhile, the scope of action of the new convention that we have proposed would not be limited by said criteria. It could set out other special rules, for example handling chemical weapons confiscated from terrorists.

The option to enter changes to the Convention in order to bridge the gaps relating to chemical terrorism would not likely be optimal, primarily due to the complex mechanism for adopting amendments to the Convention. In particular, according to Article XV, support from 64 States Parties is required just to convene a Conference to consider amendments. To adopt them, the agreement of 97 participants is required, given that none of the States vote against

the amendments; and then for them to come into force, they must be adopted or ratified by all that voted for the amendments.

With this in mind, and in the interests of maintaining the integrity of the Convention, it appears that the best route to resolving this problem would be through a standalone legally binding instrument.

We suggest that such a document focused on chemical terrorism could incorporate the newer provisions included in the international instruments that have been adopted in recent years in the field of counter-terrorism. It could include provisions on the criminalisation of acts that fall within its scope, demarcation of jurisdiction, the appropriate level of legal response, implementation of the "extradite or prosecute" principle, and a mechanism for cooperation with law enforcement agencies, among other things.

We note with regret that despite the counter-terrorism measures that have been taken starting in 2001, the cooperation among the States Parties to the Convention in this field over the past four to five years leaves a lot to be desired for a number of reasons.

The situation involving the Syrian Arab Republic is indicative of this.

In 2013, Syria acceded to the Convention. Damascus made the requisite declarations under Article III of the Convention. With the assistance of a number of countries, the existing stockpiles of chemical weapons and the former production facilities were destroyed.

This event was well received by the international community. In late 2013, the Organisation was awarded the Nobel Peace Prize.

However, in late 2012 and early 2013, certain branches of the so-called "moderate opposition"—and more often than not extremist-minded forces associated with terrorist organisations—began to actively orchestrate provocations with the use of chemical weapons in order to discredit the legitimate Syrian Government.

These included not only toxic household chemicals, but sarin, which likely made it onto Syrian territory via Iraqi extremists.

The fact that a number of States Parties to the OPCW support—including financially—extremist-minded NGOs such as the "White Helmets", for example, who used fabricated chemical incidents to attempt to discredit the legitimate Syrian authorities, gives rise to deep concern and regret.

At the same time, it has repeatedly been proven that the video materials of the "White Helmets" contain staged chemical attacks attributed to Syria's Government troops.

We are forced to state that normal, day-to-day negotiations within the Organisation have been replaced with increased levels of politicised polemics on the Syrian problem. The peaceful, focused, and effective work of the Organisation, which bore productive fruit, has almost completely ceased. Certain States Parties, flagrantly trampling upon the foundations of the

OPCW, will resort to any tricks to find a reason to launch and develop military action on Syrian territory.

A clear example of aggression against the sovereign Government, bypassing the Charter of the United Nations and its Security Council, were the strikes launched on Syrian territory in April 2017 (by the United States) and April 2018 (by the United States, France, and Great Britain).

Separate deals began among different States Parties within the Organisation, in spite of a common understanding and implementation of the requirements set out in the Convention, in order to satisfy their own geopolitical ambitions.

That, for example, is what happened with the chemical weapons allegedly detected by the United States and Great Britain on the territory of Iraq in the amount of 5,000 units of munitions, including those purchased from terrorists. However, the documents submitted on this matter by the aforementioned countries were selective. In violation of the provisions of the Convention, information was submitted based on definitions that are not from the Convention, such as “seized chemical weapons” and “destruction of terrorist weapons in line with the objectives of the Convention”. Instead of helping the Government of Iraq submit the requisite declarations under the Convention, all information was submitted to the Organisation in a way circumventing the Government of that country.

The communications by the Permanent Representation of the Russian Federation to the OPCW to the Technical Secretariat (hereinafter “the Secretariat”) with requests to make available all of the materials on this matter were left unanswered.

It cannot be ruled out that these very actions on the part of Great Britain and the United States became the reason that Iraqi sarin, as noted above, is appearing again in terrorist attacks in Iraq and Syria.

The Russian Federation welcomes Secretariat Note S/1387/2016, dated 19 May 2016, regarding the contribution of Article VI to States Parties’ efforts to counter terrorism. However we are forced to note that no measures have been taken to bring order to chemical import-export issues.

It is in this very field over the past six years that we have observed a deviation from the procedures to monitor the import and export of chemicals, as set out in paragraph 3 of Conference decision C-13/DEC.4, dated 3 December 2008. It has become the standard to distort the responsibility of States for the import and export of chemicals subject to control under the Convention.

In particular, this problem is justified by some Secretariat representatives by stating that the European Union, for example, does not have customs borders. At the same time, it is clear that customs borders have nothing to do with this issue.

It is confirmed that the transfer of chemicals from one State to another can be carried out via intermediaries that provide transport services, while importing States register the chemical as having been received from the intermediary. Yet these intermediaries do not have any

production capabilities. The question then arises: how can they be exporters of chemicals and goods? At the same time, the fact that the importer provides its end-user certificate to the party exporting the goods is ignored.

For this reason, the Russian Federation has approached the Secretariat twice: in late 2016 and in early 2017. Only the personal intervention of Director-General A. Üzümcü forced the staff of the Secretariat to review and recognise this problem. Nevertheless, this matter was not reflected in Note EC-87/DG.17 (dated 23 February 2018) by the Director-General.

In this regard, we do not rule out that the scandal involving A Belgian company's shipment of chemical components to Syria—including chemicals that could be used to produce sarin—have the same roots as described above. This also concerns the shipments of chemicals and materials to Syria from companies in the Federal Republic of Germany and the United Kingdom, as well as other countries.

The above facts are flagrant violations of United Nations Security Council resolution 1540 (2004), which contains requirements for all States to adopt the corresponding laws and ensure compliance therewith, in addition to taking effective measures to prevent chemical and bacteriological weapons and the means of their delivery from falling into the hands of non-State actors, particularly for terrorist purposes.

During the Third Review Conference, the need to examine possibilities to further develop cooperation in the field of counter-terrorism was highlighted, as was the need to improve efforts that were already under way with international organisations and agencies engaged in issues concerning the potential threat of chemical terrorism (para 9.145 of RC-3/3*, dated 19 April 2013).

Strategic tasks had been set ahead of the Special Session of the Conference that took place at the OPCW in June 2018: to achieve a better understanding of the threat of terrorism and global vulnerabilities, and to strengthen the role of the OPCW as a global forum for reviewing measures countering the use of chemical weapons by non-State actors. Furthermore, within the framework of the Fourth Review Conference, plans were in place to consider Convention implementation measures to help reduce the threat of terrorism, including the Executive Council (hereinafter “the Council”) decision EC-86/DEC.9, dated 13 October, on non-State actors.

Document S/1622/2018 (dated 8 May 2018) once again confirms the conclusions set out in Council decision EC-XXVII/DEC.5 (dated 7 December 2001) that the “full and effective implementation of all provisions of the Convention is in itself a contribution to global anti-terrorist efforts”. The decision also highlights that “the OPCW’s efforts in this regard should focus on five areas: universality; national implementation (Article VII); the destruction of stockpiles (Articles IV and V); non-prohibited activities (Article VI); and the OPCW’s response capacity regarding requests for assistance and protection (Article X)”. In general, in all of the Secretariat's documents, emphasis is placed on the need to improve its potential and boost readiness to respond in the event that a chemical weapon is used, provide technical assistance, including in line with Article X of the Convention, as well as the need to strengthen its role in conducting investigations of alleged use in line with Article IX and X of the Convention and Part XI of the Verification Annex.

Furthermore, the Organisation does not have any mechanisms in place to prevent terrorist acts involving the use of chemical weapons, since the Convention only contains provisions on providing assistance and protection against the use or the threat of the use of chemical weapons.

In this regard, the Russian initiative to develop an international convention on the suppression of chemical and biological terrorism is altogether relevant.

A convention on the suppression of chemical and biological terrorism could contain a list of preventative measures aimed at preventing terrorist attacks and countering chemical and biological terrorism, establish procedures for providing legal assistance, and define other forms of cooperation. It could also contain provisions on responsibility for any complicit or intermediary role in terrorist activity stipulating the appropriate criminalisation and prosecution at the regional and international levels.

Developing this kind of convention, which would organically complement existing international and legal instruments in the field of the non-proliferation of chemical weapons, including United Nations Security Council resolution 1540 (2004) would make it possible to provide a comprehensive and integral legal framework for resolving tasks related to the prevention of chemical terrorism.

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