

**REPORT BY H.E. AMBASSADOR MARÍA TERESA INFANTE
FACILITATOR OF THE SUB-WORKING GROUP ON NON-STATE ACTORS
OF THE OPEN-ENDED WORKING GROUP ON TERRORISM****SUMMARY OF INTERSESSIONAL WORK
(14 March – 11 July 2016)****INTRODUCTION¹**

1. Since its establishment in October 2015, the Sub-Working Group on Non-State Actors (hereinafter the “SWG”) has been well supported by States Parties and the Technical Secretariat. I am pleased that delegates have been actively and openly engaged in all the issues and, as a result, the SWG has become an effective mechanism for raising ideas and concepts, exchanging views and experiences, all with the aim of producing concrete action.
2. As Facilitator of the SWG, I have summarised its inter-sessional work since the time my previous report (EC-81/WP.1, dated 22 February 2016) was tabled at the Open-Ended Working Group on Terrorism meeting held on 14 March 2016. The SWG has used the framework established by the series of topical discussion papers issued by the Technical Secretariat in 2015² related to legal accountability, prevention and response measures to undertake its work. This framework also forms the main structure of my report.
3. I had the honour to participate in OPCW Day (2 – 4 May 2016), as a panel member addressing the theme of chemical safety and security. I noted that, at its foundation, the Chemical Weapons Convention has always been an instrument for global security. The underlying premise has been that States Parties surrender their chemical weapons arsenals in exchange for assurances that other States Parties can provide it with assistance and protection from the use or threat of use of chemical weapons. Since the Convention entered into force in 1997, the OPCW has worked very hard, and been very

¹ For the sake of brevity, I refer you to the introduction in my previous progress report (EC-81/WP.1, dated 22 February 2016 and Corr.1, dated 17 March 2016) as it provides a more thorough history and background of the Sub-Working Group on non-State actors and its relationship with the Executive Council’s Open-Ended Working Group on Terrorism.

² The three Secretariat papers issued in chronological order were: “The Chemical Weapons Convention and Accountability of Non-State Actors – Discussion Paper,” (S/1254/2015, dated 9 March 2015); “Measures to Prevent Hostile Use of Toxic Chemicals by Non-State Actors – Discussion Paper,” (S/1291/2015, dated 26 June 2015); “Ensuring an Effective Response to the Hostile Use of a Toxic Chemical – Discussion Paper” (S/1325/2015, dated 6 November 2015)



successful, in providing the world with a measure of security by reducing the threat of chemical weapons use by a State. However, as we are all aware, we face the re-emergence of chemical weapons by non-State actors; and while conceptually this includes individuals, private organisations and companies, today's context compels us to focus on terrorists. So, the concept of "chemical security" is not new, but it does require us to consider it in a different way.

GENERAL OPERATION

4. The SWG held two substantive meetings on 6 June and 15 June 2016, with discussions covering all three topical areas of legal accountability, preventive and response measures.
5. The SWG continued to be open to delegations of all States Parties. I am pleased that the SWG meetings are very well attended, and that delegates are engaged in open and frank discussions. In addition, I am also pleased with offers from delegations to either bring experts from their capitals to participate in the discussions, or for delegates stationed here in The Hague to make presentations representing their capital's views. I believe this practice has benefitted the SWG, and I encourage this practice to continue.

PROGRESS AND STATUS OF WORK

Measures to Prevent the Hostile Use of Toxic Chemicals by Non-State Actors

6. I appreciate the continued efforts of the Technical Secretariat to stimulate our discussions, and for putting forth ideas and concepts for the SWG to consider. In the inter-sessional period, the Secretariat issued two discussion papers for the SWG's consideration.³ Both papers explored the potential for the OPCW to enhance its role in supporting global chemical security in a manner that is fully consistent with the Convention. For instance, all measures taken under Article VI would contribute significantly to preventing non-State actors from accessing toxic chemicals when fully implemented. Also, new initiatives were put forth, such as the establishment of an international chemical-security stakeholders' network and the provision of targeted chemical-security assistance to States Parties.
7. It has become clear that the SWG's discussions on "preventive measures" would not be complete without considering the perspective of the chemical industry at large. Industry's view is vitally important as they are a key stakeholder in implementing any State led initiative, and they are on the "front-line" of denying non-State actors access to materials or technology. The transnational nature of large companies also makes it clear that there are limitations to individual State initiatives. At the other end of the spectrum, and as already discussed previously by the SWG as an important area for the OPCW, small and medium size companies need to have sufficient capacity in terms of financial resources and expertise to adequately address the issue of chemical security.

³ "The OPCW's Role in the Field of Chemical Security – Discussion Paper" (S/1395/2016, dated 13 June 2016); and "The Contribution of Article VI to States Parties' Efforts to Counter Terrorism," (S/1387/2016, dated 19 May 2016)

8. With the importance of industry in mind, the SWG heard from Mr Karlheinz Schnaegelberger, Vice-President, Merck KGaA, who provided the perspective of the International Council of Chemical Associations (ICCA) and Responsible Care. As the OPCW has exchanged letters of cooperation with the ICCA in 2015, I believe Mr Schnaegelberger's participation was a useful way for the SWG to be initiated in this area, especially in the context of non-State actors. I look forward to continue hearing from the ICCA, in particular about its Security Code and Responsible Care. I would also welcome input from other representatives of the global chemical industry, which would make sure we have a comprehensive view from "industry" as an important stakeholder group.

Ensuring an Effective Response to the Hostile Use of Toxic Chemicals

9. States Parties responded positively to the establishment of a swift and comprehensive capability to assist a State Party in responding to a chemical attack, and that the formation of such a capability was a step in the right direction for the OPCW. This capability had been outlined in the Secretariat's note, entitled "Establishment of a Rapid Response Assistance Team," (S/1381/2016, dated 10 May 2016). The Secretariat also indicated they are refining operational details, such as the mechanism for the granting of privileges and immunities for the team before deployment, and will keep States Parties apprised of such refinements when they are made.

Legal Accountability of Non-State Actors

10. The national experience shared by Mrs Setsuko Kawahara, Minister, Permanent Representation of Japan to the OPCW, in her presentation entitled "Chemical Terrorism in Japan and Japan's Counter-measures – 21 years after the Tokyo Subway Sarin Gas Attack," was very well received by the SWG. Many valuable lessons and experiences were shared that covered all aspects of the SWG's work in terms of prevention and response measures, and legal accountability - certainly more lessons and experiences than I can capture in my progress report. I decided to report their experience under the legal topic as it very much underscores the importance of national legislation. In particular its vital role in criminalising all activities prohibited under the Convention, especially those activities that precede the hostile use of chemical weapons on innocent victims.
11. In keeping with the emphasis on national legislation, the Technical Secretariat provided a focused look at their "National Legislation – Implementation Kit for the Chemical Weapons Convention." While this kit has been widely available to States Parties for a number of years, it was useful to understand which legal provisions in national legislation have a more direct bearing on addressing the issues raised by non-State actors.
12. In terms of the legal questionnaire that I issued to States Parties in March 2016, and which was requested to be completed by the end of June, I am pleased to report that a number of States Parties have responded from most regional groups. These responses will be of invaluable help to the SWG as it progresses in its work on legal issues. It may even help to move forward the legal recommendations, based on converging views, which were summarised in my previous report. I would urge those States Parties that have not yet responded, to do so by the end of July. This would allow the

Secretariat to compile and analyse those responses so that the SWG may take full benefit of this information as its work progresses.

CONCLUSIONS

13. The SWG meetings have shown the value in having both States Parties and the Secretariat actively engaged and cooperating in identifying what more the OPCW can do within its existing mandate. Insofar as contributing to combatting chemical terrorism, the SWG discussions have confirmed that there are areas of the Convention that could be further explored and used to contribute to global anti-terrorism efforts. Also, just as one State Party alone cannot address the threat of terrorism, there is not one measure or action that can be taken to address terrorism. With this in mind, there is much the SWG needs to consider in the course of its discussions.
14. I have summarised the following conclusions based on the work of the SWG thus far:
 - (a) The SWG should continue its discussions, and in doing so, keep in mind the aim of achieving concrete results. The SWG's work in the area of legal accountability is in progress, and Article VII appears to not yet been utilised to its full effect as a tool to investigate and prosecute non-State actors. I therefore encourage States Parties to engage their capital fully in this area as the SWG moves forward on the legal recommendations outlined in my previous report. As noted previously, I urge those States Parties that have not yet responded to the questionnaire to do so by end of July 2016.
 - (b) The SWG could benefit from consolidating its discussions so far on the topic of prevention. A number of areas were identified previously in the SWG's meeting on this topic earlier in the year, and in the two SWG meetings held in June 2016. I suggest that the Secretariat consolidate our discussions, and propose text for possible recommendations. These possible recommendations may then be discussed at a future SWG meeting in the next inter-sessional period.
 - (c) Notwithstanding the above, the topic of the OPCW's role in chemical security is perhaps at the core of the OPCW work. I propose that States Parties provide feedback on the Secretariat's latest paper on this topic, i.e. "The OPCW's role in the field of chemical security," (S/1395/2016) by the beginning of September for discussion at a SWG meeting at that time.
 - (d) As we have seen since the SWG's establishment in October 2015, the sharing of national experience from Spain, the United States of America, the United Kingdom of Great Britain and Northern Ireland, France, Japan, and from experts from academia, industry, and regional organisations such as EUROJUST, have shown to be vitally important in grounding our discussions in practical realities. In this regard, I strongly encourage the participation of experts from all regions so that the SWG can formulate its recommendations in a comprehensive manner.