

**NOTE BY THE TECHNICAL SECRETARIAT****THE CONTRIBUTION OF ARTICLE VI TO STATES PARTIES' EFFORTS TO
COUNTER TERRORISM****INTRODUCTION**

1. The purpose of this paper is to set out ways in which Article VI of the Chemical Weapons Convention (hereinafter “the Convention”) and the associated processes, mechanisms, and information contribute to counter-terrorism efforts. In doing so, it proposes new approaches that the Technical Secretariat (hereinafter “the Secretariat”) and States Parties could take to support the full implementation of Article VI, taking advantage of existing mechanisms. The proposals made in this paper in most cases equally apply to other, non-State actors—such as organised criminal groups—which might seek to use chemical agents for purposes prohibited by the Convention.

**MEASURES THAT CONTRIBUTE TO COUNTER-TERRORISM UNDER
ARTICLE VI**

2. Article VI provides a legal framework and an operative mechanism for States Parties to control toxic chemicals, their precursors, and the facilities that produce them. Specifically, paragraph 2 of Article VI requires that “[e]ach State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under this Convention.” This requirement flows from the Convention’s comprehensive prohibitions, including the definition of chemical weapons set out in subparagraph 1(a) of Article II.
3. Article VI therefore contains a very broad obligation, one that goes beyond the requirements of the current verification regime, in that it requires “necessary measures” to be put in place for all “toxic chemicals and their precursors”, not just those listed in the Verification Annex. Article VII further clarifies that the national implementation of the Convention requires each State Party to, inter alia, prohibit natural or legal persons in its jurisdiction or on territories under its control from carrying out any activities prohibited to a State Party by the Convention, and not to permit any activity prohibited by the Convention in any place under its control.
4. In requiring States Parties to put in place “necessary measures”—which may include legislative, administrative, or other measures—Article VI therefore represents a potentially significant contribution to States Parties’ efforts to prevent chemical terrorism. The nature of such “necessary measures” is largely left by the Convention



to the discretion of each State Party, particularly as they relate to chemicals and facilities which are not subject to the Convention's verification regime. But there may be a number of such chemicals—such as chlorine—which are of concern from a counter-terrorism standpoint; Article VI nevertheless creates an obligation to control them.

5. The Article VI verification regime helps to operationalise this obligation by requiring that certain toxic chemicals, precursors, and associated facilities—as set out in the Convention's Annex on Implementation and Verification (hereinafter “the Verification Annex”)—be declared to the Organisation and be subject to on-site inspection. In this way, the full implementation of the Article VI verification regime assists States Parties in countering terrorism, as set out in the Annex to this paper, by:
 - (a) providing a legal framework for the regulation of high-risk toxic chemicals;
 - (b) facilitating the monitoring by States Parties of certain types of chemicals and activities, by subjecting these chemicals and activities to verification measures; and
 - (c) allowing each State Party to have a general overview of its imports and exports of scheduled chemicals.
6. The activities of the Secretariat, in carrying out its verification functions, also play a role in this area, including through assistance and training provided to States Parties in evaluating declarations, in monitoring transfers, and in conducting on-site inspections.

PROPOSED ADDITIONAL MEASURES

Measures that could be taken by the Technical Secretariat

7. The OPCW is in a unique position, drawing on its accumulated expertise in implementing the Convention's current verification regime and on the broad membership of the Organisation, to use and develop its capacity to offer advice and assistance on chemical terrorism risks to interested States Parties at the national level. Key measures to be considered in this context could include:
 - (a) the facilitation of an exchange of best practices between States Parties on the full implementation of Article VI as a contribution to countering the threat of chemical terrorism;
 - (b) the preparation and publishing of a compendium of best practices in chemical security, along with implementing guides; and
 - (c) the establishment of an OPCW chemical security assistance team, which would operate upon request from individual States Parties. Such a team would be charged with reviewing and making recommendations with regard to the requesting State Party's national arrangements, including legal and regulatory measures relating to toxic chemicals of concern, physical protection, and trade/transfer controls. The recommendations produced could be used in order to assist States Parties, dovetailing with existing programmes under Article VII, in developing stronger domestic regulation and oversight. This

could be achieved through direct training offered by the OPCW, or by pairing two countries with a similar sized chemical industry to share skills, with the OPCW taking on a coordinating role.

Measures that could be taken by States Parties

8. From a counter-terrorism perspective, certain toxic chemicals are likely to be more relevant than others. In this regard, recent alleged and confirmed instances of the use of chemical weapons have involved three chemicals: sarin, sulfur mustard, and chlorine. States Parties may therefore seek to increase, as a priority, the monitoring of the pathways towards the use and production of those chemicals.
9. Chlorine is not a scheduled chemical and does not fulfil the Convention's definition of a discrete organic chemical (DOC). As such, the Convention's verification measures do not cover chlorine, although (as set out in paragraphs 3, 4, and 5 above) the general obligation in Article VI does apply to chlorine as a toxic chemical. In this regard, the monitoring of chlorine could be carried out on a national level in accordance with Article VI. While the fact that chlorine is produced annually in an amount of over 50 million tonnes as an industrial commodity chemical may render the feasibility of stringent measures uncertain, States Parties may wish to consider an exchange of best practices on how to operationalise the requirements of Article VI, from a counter-terrorism standpoint, with regard to chlorine.
10. With regard to sarin and sulfur mustard, there are specific steps, aimed at monitoring the precursors of those chemicals, that may be taken alongside Article VI verification measures. The OPCW has accumulated a significant knowledge base on synthetic routes leading to the production of those chemicals. As a result, the Organisation is able to identify their most likely precursors, the most important of which are listed in Schedules 2 and 3 of the Convention.
11. In order to reduce the risk of diversion of precursors of sarin and sulfur mustard by non-State actors, measures designed to increase the global monitoring of those precursors could be taken by States Parties with the support and involvement of the OPCW. Such measures may include:
 - (a) Review of aggregate national data declaration requirements: As there are no detailed requirements (apart from those set out in decision C-7/DEC.14, dated 10 October 2002) with regard to the submission of aggregate national data (AND), States Parties may consider the provision of more detailed information when declaring the AND of the precursors of sarin and sulfur mustard. States Parties could, for example, submit information about facilities and individual traders that are not individually declared under Article VI but whose activities are taken into account for the elaboration of the AND.
 - (b) Use of the Secure Information Exchange system to notify sensitive transfers: The Secure Information Exchange (SIX) system could be used to facilitate the establishment of a notification mechanism for transfers of precursors of sarin and sulfur mustard (the principle could be the same as for Schedule 1 transfer notifications but with more flexible implementation). It should be emphasised that such a mechanism would fall outside the scope of the current provisions of Article VI. SIX could also be used to support other counter-terrorism aims,

such as using the system to notify the OPCW of security incidents involving scheduled chemicals and for communication with regard to risk assessments.

- (c) Introduction of end-use certificates: An end-use certificate could be required for any transfer relating to the aforementioned precursors (the same approach as that taken for the transfer of Schedule 3 chemicals to States not Party).

Annex: The Contribution of the Implementation of Article VI Verification to Counter-terrorism Efforts

Annex

THE CONTRIBUTION OF THE IMPLEMENTATION OF ARTICLE VI VERIFICATION TO COUNTER-TERRORISM EFFORTS

	Contribution of States Parties	Current Contribution of the Technical Secretariat	Relevance to Counter-terrorism
Identification of declarable chemicals.	<ol style="list-style-type: none"> 1. Identify which chemicals are subject to the Convention. 2. Apply measures needed to ensure they are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited. 	<p>Supports implementation by:</p> <ol style="list-style-type: none"> 1. Maintaining the Declarations Handbook and databases of declarable chemicals. 2. Supporting decisions of the policy-making organs. 3. Commissioning advice from the Scientific Advisory Board. 	States Parties are required to identify relevant chemical activities. These measures can be utilised to keep the chemicals involved out of the hands of non-State actors.
Declaration of chemicals and facilities.	<ol style="list-style-type: none"> 1. Declare chemicals. 2. Declare facilities that produce, process, or consume scheduled chemicals or unscheduled DOCs. 	<p>Supports implementation by:</p> <ol style="list-style-type: none"> 1. Facilitating National Authorities' declarations. 2. Providing assistance and training to National Authorities. 3. Evaluating declarations. 4. Assisting National Authorities in identifying declarable activity. 	Accurate and complete declarations help States Parties monitor declarable chemicals and facilities in their jurisdiction.

	Contribution of States Parties	Current Contribution of the Technical Secretariat	Relevance to Counter-terrorism
Declaration of imports/exports of specific chemicals.	<ol style="list-style-type: none"> 1. Declare import/export of toxic chemicals and precursors. 2. Prohibited by the Convention to make transfers to States not Party to the Convention. 	<p>Supports implementation by:</p> <ol style="list-style-type: none"> 1. Facilitating declarations. 2. Cross-checking AND concerning transfers and informing States Parties regarding discrepancies. 3. Training customs authorities in order to raise awareness and improve skills to identify illicit trade in chemicals. 	Accurate and complete declarations by all States Parties provide a means to identify a possible diversion of chemicals for prohibited activities.
On-site verification by OPCW inspectors at declared facilities.	States Parties subject facilities to Article VI inspections by the OPCW.	<ol style="list-style-type: none"> 1. Conducts on-site inspections, and sampling and analysis of chemicals on or off site. 2. Compares inspection results with information from declarations. 3. Informs each State Party of its on-site inspection results. 4. Proposes verification regime improvements to the policy-making organs. 	On-site inspections provide assurance that the declarations are complete and accurate.