



NOTE BY THE TECHNICAL SECRETARIAT

**THE IMPLEMENTATION OF ARTICLE VI AS A CONTRIBUTION
TO COUNTERING CHEMICAL TERRORISM**

DISCUSSION PAPER

Introduction

1. In paragraph 4 of its decision EC-86/DEC.9 (dated 13 October 2017), entitled “Addressing the Threat Posed by the Use of Chemical Weapons by Non-State Actors”, the Executive Council (hereinafter “the Council”) underscored “the obligation of each State Party under paragraph 2 of Article VI of the Convention to ‘adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used’ for purposes not prohibited under the Convention”. In paragraph 5 of the same decision, the Council expressed “the fundamental importance of full and effective implementation by each State Party of the obligations contained in paragraphs 1 and 2 of Article VII of the Convention, including with respect to addressing the threat posed by the use of chemical weapons by non-State actors”.
2. EC-86/DEC.9 was not the first decision in which the Council has addressed the threat of non-State actors and terrorism. In its decision EC-XXVII/DEC.5 (dated 7 December 2001), entitled “The OPCW’s Contribution to Global Anti-Terrorist Efforts”, the Council first considered this issue, recognising in paragraph 1 of the decision that “the full and effective implementation of all provisions of the Convention is in itself a contribution to global anti-terrorist efforts”. In paragraph 2 of the same decision, the Council stressed 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).
3. As set out in the Director-General’s annual Notes on the status of the OPCW’s contribution to global anti-terrorism efforts (the latest of which is EC-87/DG.17, dated 23 February 2018), the approach of the Technical Secretariat (hereinafter “the Secretariat”) to countering the threat of chemical terrorism has continued to be based on the fundamental importance of full and effective national implementation of all provisions of the Chemical Weapons Convention (hereinafter “the Convention”). In the fourth preambular paragraph of its decision EC-86/DEC.9, the Council confirmed the continuing validity of this approach, and provided further guidance in this regard



both to States Parties and to the Secretariat on the basis that “the development, production, acquisition, possession, stockpiling, retention, transfer, and use of chemical weapons by non-State actors poses a fundamental threat to the object and purpose of the Convention and to the achievement of a world free of chemical weapons”.

4. Both EC-XXVII/DEC.5 and EC-86/DEC.9 placed particular emphasis on the implementation of Articles VI, VII, and X in the context of countering the threat posed by non-State actors (the latter decision placed rather less emphasis on Articles IV and V, given the more advanced stage of stockpile destruction at the time of its adoption). The purpose of this paper is to provide further input to States Parties’ consideration of how their implementation of Article VI reinforces their efforts to prevent the use of chemical weapons by non-State actors. In line with paragraph 11 of EC-86/DEC.9, which requested the Secretariat to consider what types of cooperation and assistance it could provide, inter alia, in countering chemical terrorism as it relates to chemical weapons, this paper proposes some initial steps that the Secretariat could take in supporting those efforts.

Implementation of Article VI as a central contributor to preventing chemical terrorism

5. In 2016, the Secretariat published a paper entitled “The Contribution of Article VI to States Parties’ Efforts to Counter Terrorism” (S/1387/2016, dated 19 May 2016). That paper, which was presented and discussed in the Sub-Working Group on Non-State Actors of the Open-Ended Working Group on Terrorism, focused on several factors related to the implementation of Article VI. In the paper, it was noted that the core obligation in paragraph 2 of Article VI, namely that States Parties must take the “necessary measures” to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited by the Convention, applies to all toxic chemicals and their precursors, whether such chemicals are listed in the Convention’s Annex on Chemicals or not. In other words, the implementation of the verification regime set out in Article VI for scheduled chemicals and associated facilities is only one component of Article VI compliance. Such compliance also encompasses a broad obligation related to both scheduled and non-scheduled chemicals, any of which can be of concern from a counter-terrorism standpoint.
6. By requiring States Parties to adopt “necessary measures” to control the use of toxic chemicals and their precursors, the Convention establishes an end result, in particular for unscheduled chemicals not subject to the verification regime, which States Parties are bound to do everything in their power to achieve (within their territories or places under their jurisdiction or control). However the Convention leaves States Parties free to decide how they will achieve that result.¹

¹ See, for example, the discussion on the role of Article VI in *The Chemical Weapons Convention: A Commentary*, W. Krutzsch, E. Myjer, J. Herbach, R. Trapp (eds), Oxford University Press, 2014, p. 174.

7. The question of which measures are “necessary” is to be determined by the State Party. The assessment must be made in the light of a State’s specific national context, including its security situation; the types and quantities of toxic chemicals present in or transiting through its jurisdiction; the state of development of its chemical industry; and so on. These determinations may also vary over time. In an age of increasing concerns about the possibility of chemical terrorism, the question of which measures are necessary to ensure that toxic chemicals and their precursors are not used for prohibited purposes is one that may bear revisiting.
8. As noted above, paragraph 2 of Article VI of the Convention sets out the end goal of those necessary measures: “that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within [a State Party’s] territory or in any other place under its jurisdiction or control for purposes not prohibited under this Convention”. Achieving this goal will likely involve a range of steps. A number of relevant legislative, administrative, or other measures may already be in place in most States Parties. Some of them may have been adopted independently of Convention-implementation efforts, based on national safety and security concerns. They may serve the purpose laid down in Article VI equally well. However, it is important to note that the implementation of such measures will in many cases be entrusted to stakeholders that have little or no exposure to the Convention.
9. Possible examples of such “necessary measures” include policies to ensure the security and to limit the risk of diversion of vulnerable chemicals (such as chemicals or precursor chemicals that may likely be used by non-State actors), including declaration and reporting requirements, codes of practice, export controls, and so forth. In this context, the essentially preventative nature of Article VI implementation as a key contributor to countering chemical terrorism and enhancing national security becomes clear.
10. When considering the potentially very broad range of measures that support Article VI implementation, the range of international frameworks (for example, in the areas of customs, safety, and protection of the environment) relating to chemicals should also be borne in mind. Implementation of the Convention does not occur in isolation, and in a counter-terrorism context should be considered to form part of a mutually reinforcing web of measures, both national and international in origin, that contribute to preventing acts of chemical terrorism.

The role of the Technical Secretariat

11. The role of the Secretariat in supporting States Parties’ implementation of paragraph 2 of Article VI of the Convention is governed by subparagraph 38(e) of Article VIII, which requires the Secretariat to “[p]rovide technical assistance and technical evaluation to States Parties in the implementation of the provisions of this Convention, including evaluation of scheduled and unscheduled chemicals”. The aforementioned paragraph 11 of EC-86/DEC.9 also offers clear guidance in this regard.
12. With respect to the implementation of the verification regime set out under Article VI for scheduled chemicals and facilities, the Secretariat’s verification activities are well

established and understood. Moreover, through its international cooperation and assistance programmes based on Articles VII, X, and XI, the Secretariat provides States Parties with a range of complementary services ranging from training courses to e-learning modules, through guidelines and handbooks, to bespoke consultations and advice.

13. However, the Secretariat's role in supporting States Parties in implementing "necessary measures" under Article VI has historically been very limited. This is likely to be the consequence of several factors, including the need to focus scarce Secretariat resources on supporting the implementation of the verification regime, as well as the fact that there is no standard metric for what constitutes the "necessary measures" required by Article VI.
14. In promoting this aspect of Article VI implementation, the Secretariat's role could primarily focus, in the initial stages, on two key aspects:
 - (a) the sharing of national best practices among States Parties, bearing in mind that there is no "one size fits all" approach; and
 - (b) assistance in carrying out the national risk and threat assessments essential for the development of the measures necessary to implement Article VI.

Sharing of best practices

15. There is undoubtedly a very large body of existing State Party practices in implementing the "necessary measures" required by Article VI. The sharing of these practices, under OPCW auspices, would contribute substantially to the implementation of paragraph 10 of EC-86/DEC.9, which requests the Secretariat to "enhance its capacity-building programmes that facilitate the sharing of chemical safety and security best practices among States Parties, on a voluntary basis, to help counter the threat posed by the use of chemical weapons by non-State actors". It would also highlight the broad range of measures that States Parties to the Convention could employ to achieve its goals.
16. The Secretariat has already begun a process designed to collect and disseminate chemical safety and security best practices (see, for example, the report on "Needs and Best Practices on Chemical Safety and Security Management"),² which could be built upon through a more active process of research and analysis, with a particular focus on Article VI implementation measures. This process could involve the convening of a group of experts, drawn from key stakeholders in the chemical life cycle and representing geographical diversity, to draft voluntary best practice guidelines. Dissemination of the resulting products could be achieved through a dedicated section of the OPCW website and through the Organisation's capacity-building programmes.

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https://www.opcw.org/fileadmin/OPCW/ICA/ICB/OPCW_Report_on_Needs_and_Best_Practices_on_Chemical_Safety_and_Security_ManagementV3-2_1.2.pdf

Risk and threat assessments

17. With regard to risk and threat assessments, the OPCW could provide to States Parties, at their request, assistance in carrying out the national risk and threat assessment required to determine the measures necessary to implement Article VI of the Convention. First steps in this regard have successfully been made as part of the OPCW Programme to Strengthen Cooperation with Africa on the Chemical Weapons Convention, under which the Secretariat has assisted States Parties in carrying out similar assessments, the results of which form the basis for further capacity building.
18. The modalities of such assistance could be described through a follow-up concept paper, to be discussed by States Parties. It is likely that in the short term, the Secretariat would need to work with outside experts to deliver such assistance; in the medium to long term, the Secretariat could seek to build up in-house expertise in this area.

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