
Conference on Disarmament

29 March 2016
English
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Letter dated 28 March 2016 from the Permanent Representative of the Russian Federation addressed to the Secretary-General of the Conference on Disarmament transmitting an explanatory note and the text of elements of the draft international convention for the suppression of acts of chemical terrorism

I have the honour to transmit herewith texts of the draft international convention for the suppression of acts of chemical terrorism and explanatory note.

I would be grateful if you could issue and circulate these papers to all members of the Conference as an official document of the Conference on Disarmament.

(Signed) Alexey **Borodavkin**
Ambassador
Permanent Representative

GE.16-05053 (E) 120416 130416



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Explanatory note

I. Relevance of the initiative

1. The issue of chemical terrorism is extremely topical today in the light of the increasing occurrences of not only toxic industrial chemicals, but also fully-fledged chemical warfare agents being used by militants of Islamic State in Iraq and the Levant and other terrorist groups in the Middle East. There are reports of terrorist groups gaining access to infrastructure that could be used to produce chemical weapons, including on an industrial scale. Such actions are becoming increasingly widespread, systematic and transboundary. Chemical terrorism has already become a fact of life that can affect any State and demands that the international community take decisive and urgent steps on the basis of clearly defined and comprehensive international norms.

2. It should be emphasized that the Russian initiative is not aimed just at the short-term goal of combating chemical terrorism in a specific region. References to the developments in the Middle East are simply an example that proves how urgent this issue is. The convention we propose, which will, even in the most favourable scenario, take quite some time to be developed and brought into force, should be comprehensive, long-term and global and should not focus on any particular region of the world.

II. Legal rationale for the initiative

3. When it comes to chemical terrorism, there are gaps in modern international law that impede the efficient fight against it.

4. There is no convincing evidence of the existence of any norms of international customary law that explicitly prohibit the use of chemical weapons by non-State actors and, in particular, qualify such actions as an international crime.

5. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the Chemical Weapons Convention) places a rather limited number of obligations on its States Parties with regard to criminal prosecution of persons involved in activities that it prohibits. The provisions of the Convention do not meet today's demands and standards in the field of counter-terrorism.

6. This state of play has been referred to time and again in discussions within the working group on counter-terrorism operating under the auspices of the Organization for the Prohibition of Chemical Weapons (OPCW) since 2001 and its subgroup dealing with the relevant legal aspects. The undertaking to never under any circumstances: "develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone", set forth in the Convention, applies to States Parties only. The same is true for the fundamental requirement not to use chemical weapons in any circumstances.

7. Thus, the Chemical Weapons Convention does not set any express prohibition on non-State actors gaining access to chemical weapons and using them. Such a prohibition is only implied in its article VII (1) (a), which obliges each State Party to ban non-State actors on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited under the Convention and to put in place criminal punishment for such illegal activity.

8. Recent developments have shown that terrorists and terrorist groups often use toxic chemicals, such as chlorine and chlorine-containing chemicals, pesticides and various chemical fertilizers meant for diverse industrial and domestic purposes, as chemical weapons. None of these chemicals are included in the Chemical Weapons Convention Annex on Chemicals. As a rule, there is no due control over their circulation, end use, consumers or intermediaries in their acquisition. However, cases are already known of such chemicals being used to rig explosive devices and as improvised means of delivery for chemical weapons during hostilities in the Middle East.

9. Moreover, international cooperation under the Convention is limited to interaction between States Parties, although specific contacts, including between various international organizations and institutions engaged in international counter-terrorism efforts, are gaining more significance.

10. The implementation of the Convention has revealed a number of shortcomings in its provisions which were impossible to foresee while the treaty was being developed. In particular, we mean conflict situations when chemical weapons are controlled or possessed by a State Party and there is a need to take action in order to prevent them from falling into the hands of non-State actors. Another example: again, in a conflict situation, a State Party or a State which is not a Party expresses its readiness to place its chemical weapons under international control to prevent them from being seized by terrorists. Finally, the Convention does not provide a clear answer to the question of what to do with chemical weapons recovered from terrorists. Taking into account the experience gained, the international community should establish practical and efficient cooperation mechanisms for addressing these issues.

11. Amending the Convention to address the existing deficiencies is not the best option, mainly owing to its complicated amendments mechanism. Specifically, according to its article XV, simply convening an Amendment Conference requires the support of 64 States Parties. The consent of 97 participants is required for the adoption of an amendment, provided that no State casts a vote against it, and, for it to come into force, it must be approved or ratified by all the States that voted for it.

12. We deem it appropriate to preserve the integrity of the Chemical Weapons Convention and address the issue of combating chemical terrorism through a stand-alone legally binding instrument.

13. International humanitarian law, by its nature, is applicable only in situations of armed conflict and contains special requirements regarding non-State actors who could be subject to its norms, thus precluding its applicability to broad categories of terrorist activities.

14. The Rome Statute of the International Criminal Court, which regards “employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices” as a war crime, has not been ratified by 69 States Parties to the Chemical Weapons Convention. Its norms cannot be considered universal. Besides, it applies only in situations of international armed conflict. The Kampala Amendment, which extends the Court’s jurisdiction over internal conflicts, has been ratified by only 30 States but, even for those countries, the norms of the Rome Statute are not applicable to violations of internal order and emergence of tension that do not constitute an armed conflict.

15. Certainly, United Nations Security Council resolution 1540 is an important universal instrument in the field of non-proliferation of chemical weapons. While it touches on the issues of illegal trafficking in chemical materials and their means of delivery, it, nevertheless, only addresses the implementation of national measures with the aim of preventing chemical weapons or their components from falling into the hands of terrorists. It contains general provisions requiring the States not to assist non-State actors to gain

access to chemical weapons and their means of delivery, to have effective laws to prevent non-State actors from acquiring chemical weapons and their means of delivery and to have effective internal control over chemical weapons, their means of delivery and related materials.

16. Thus, in the context of Security Council resolution 1540, there is a need to single out the most dangerous category of non-State actors, i.e. terrorists, in whose hands chemical weapons and the above-mentioned substances could cause real damage.

17. Besides, resolution 1540 does not cover the current situation, in which terrorists are attempting to acquire such weapons and facilities for their manufacture. The new convention could close such serious gaps by including not only chemical weapons, but also hazardous and toxic chemicals, which lie outside the scope defined by the resolution as materials linked to weapons of mass destruction.

18. Security Council resolution 1540 furthermore does not exclude the elaboration and adoption of international treaties aimed at its effective implementation. Moreover, such treaties could be particularly valuable in certain cases (one recent example is the Additional Protocol to the Convention on the Prevention of Terrorism of the Council of Europe to address the phenomenon of foreign terrorist fighters, adopted in implementation of United Nations Security Council resolution 2178 (2014)).

19. Some partners express the view that the existing gaps could be closed by elaborating and adopting a new Security Council resolution as a follow-up to resolution 1540. We do not consider this to be the best option. Firstly, the very “genre” of a resolution does not make it possible to resolve all the issues existing in this field. Secondly, addressing disarmament, non-proliferation and counter-terrorism issues through a Security Council resolution should not become standard practice. It would be more acceptable, efficient and democratic to develop appropriate agreements and decisions through the combined efforts of all interested States in negotiations on the proposed convention.

20. The International Convention for the Suppression of Terrorist Bombings of 15 December 1997, is another legal instrument that concerns chemical weapons. However, its scope is limited: firstly, to the use of “a lethal device”; secondly, to the specified locations in which such a device is used; and thirdly, to the intent to cause death, serious bodily injury or extensive destruction of a place, facility or system. In contrast, the scope of application of the new convention proposed by the Russian Federation would not be limited by such restrictions. We could also include other specific provisions, e.g. related to the management of chemical weapons seized from terrorists.

21. It is also noteworthy that the existence of the above-mentioned 1997 Convention did not prevent States from agreeing on the separate International Convention for the Suppression of Acts of Nuclear Terrorism in 2005. This precedent is also applicable to the challenge of preventing acts of chemical terrorism.

22. The new convention on chemical terrorism could incorporate the best practices laid down in the international instruments in the field of counter-terrorism which have been approved within the last decade. Specifically, it would be appropriate to set out: provisions related to the specification in criminal law of the actions covered by its scope of application; a definition of its jurisdiction; the appropriate level of legal response; and implementation of the principle of *aut dedere aut judicare*.

23. Summing up, we can claim with certainty that contemporary international law does not fully cover all the issues related to the fight against chemical terrorism. It would be logical and appropriate to settle them through the proposed convention.

III. Disarmament dimension of the initiative

Choice of forum: the Conference on Disarmament in Geneva

24. The new topic for negotiations proposed by the Russian Federation is certainly not related solely to disarmament. However, it definitely has a disarmament dimension. It would be right to say that it lies at the intersection of disarmament, non-proliferation and anti-terrorist efforts.

25. In the case of chemical terrorism, one can speak with a high degree of confidence about the danger of unchecked and large-scale accumulation of arms not by States, which are actors in arms control, disarmament and non-proliferation, but by non-State actors which have the goal of undermining stability and security on global level as well as in specific States and regions. In fact, we are seeing the emergence of new players in the arms race. The acquisition by Islamic State in Iraq and the Levant of industrial capacity for the production of chemical weapons in areas under its control bears witness to this fact.

26. Moreover, such a build-up of arms prohibited by an international convention clearly undermines the non-proliferation regime because such arms may be supplied through clandestine networks not only to other unstable countries or regions, but also to other continents. Its recipients could be existing terrorist organizations cells or entities sympathetic to terrorists.

27. Therefore, terrorism involving weapons of mass destruction is increasingly becoming a disarmament issue and neglecting it would undermine the instruments that prohibit and ban the proliferation of such weapons and would, in essence, undermine international security and stability. We must recognize that greater access by non-State actors to the components of chemical weapons is weakening the regime of the Chemical Weapons Convention and other instruments related to chemical disarmament.

28. Another aspect of the convention that is related to disarmament would be that chemical weapons and equipment for their production confiscated from terrorists (it is difficult to estimate their possible scale) would have to be destroyed. This would require meticulous work on the disarmament provisions of this international agreement.

29. It goes without saying that a whole range of international fora could be suitable hosts for the drafting of a convention on the suppression of acts of chemical terrorism. However, we prefer the Conference on Disarmament in Geneva.

30. From the very beginning, the Conference's agenda (in the 1978 Decalogue, which summed up the results of the first Special Session of the United Nations General Assembly Devoted to Disarmament) included the issue of chemical weapons, without specifying whether it meant State-owned weapons or weapons in the hands of non-State actors.

31. We should recall that the agenda contained not only disarmament issues, but also many other aspects related to upholding international security in general. In particular, the first agenda of the forum (CD/12) adopted by the Committee on Disarmament (the predecessor to the Conference) in spring 1979 not only included the issues of nuclear and chemical disarmament and conventional arms, but also provided for discussion of other "collateral" measures in the field of arms control, including confidence-building measures and effective methods for verifying compliance with disarmament obligations. That document remained unchanged until the Chemical Weapons Convention was signed.

32. Thus, under its original mandate, the forum was authorized to address a wide range of topical issues related to arms control and non-proliferation. Today, any in-depth

examination of such issues is impossible without taking account of international counter-terrorism efforts.

33. Moreover, the Chemical Weapons Convention itself was drafted in the context of the Conference. It would, therefore, only be logical in the current situation to close the gaps that exist in respect of chemical terrorism within the context of the Conference on Disarmament as well.

34. Another fundamentally important point is that our proposal to draft a convention on the suppression of acts of chemical terrorism is also intended to revitalize the Conference on Disarmament itself where, for almost two decades, the Member States have been unable to agree on a programme of work. Since the late 1990s, none of the combinations of the traditional Conference agenda items has been conducive to consensus. In this regard, there is a need for a new topical issue which could rally the Member States of the Conference on Disarmament. We consider a convention for the suppression of acts of chemical terrorism to be such an issue. The advantage is that it does not affect the interests of any State and could, therefore, play a consolidating role. In this respect, it differs positively from other Conference agenda items that have each had their opponents at this stage.

35. The continuing search for a compromise within the traditional agenda could certainly be an alternative to the approach we propose, but experience shows that it could last forever without producing any results. In this regard, we hope for a favourable consideration of the Russian proposals by all the partners concerned both about the future of the Conference on Disarmament and the growing terrorist-related chemical threat.

36. We consider our initiative as an invitation to all Member States of the Conference on Disarmament to begin the process of negotiation. We believe that an effective legally-binding instrument on this issue can be developed only through the joint efforts of all participating States. We do not regard the proposed elements as exhaustive. Undoubtedly, many partners will be able to come up with other ideas worthy of attention in the course of this joint endeavour. In this context, we take note of the suggestion that it is desirable that the convention cover both chemical and biological terrorism. This may be worth considering. Indeed, developed over 40 years ago, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention) addresses counter-terrorism to an even lesser extent than the Chemical Weapons Convention. In particular, it does not contain a direct ban on the use of biological weapons. The 1925 Geneva Protocol does not fully fill that gap, since it applies to States rather than non-State actors. Besides, the Biological Weapons Convention does not qualify acts of biological terrorism as an international crime, and its provisions on national implementation were, for obvious reasons, compiled without due regard to the terrorism threats that have emerged recently.

37. Taking this into account, we have decided to support the proposal put forward by some States to widen the scope of the draft convention to cover acts of bioterrorism. We are thankful to the authors of this idea which, in our view, would give our initiative even greater “added value”, both with respect to countering the threats of terrorism related to weapons of mass destruction and for the purpose of recommencing negotiations at the Conference on Disarmament in full accordance with its mandate.

Elements of the draft International Convention for the Suppression of Acts of Chemical Terrorism

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling that the General Assembly of the United Nations has repeatedly condemned methods and practices of terrorism, wherever and by whomever committed, as well as all actions contrary to the principles and objectives of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993 and the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925,

Taking into account United Nations Security Council resolution 1540 (2004) under which States shall take all necessary measures on national level to prevent nuclear, chemical and biological weapons, their means of delivery, as well as related materials falling into hands of non-State actors,

Recognizing the right of all States to use the achievements in the field of chemistry for peaceful purposes and exclusively for the benefit of mankind,

Deeply concerned about the worldwide escalation of acts of terrorism,

Noting that acts of chemical terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Being convinced of the urgent need to enhance international cooperation between States and interaction with international structures in devising and adopting effective and practical measures for the prevention of acts of chemical terrorism and for the prosecution and punishment of their perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention:

- (a) “Chemical weapons” means the following, together or separately:
 - (i) Toxic chemicals and their precursors;
 - (ii) Munitions and devices, specifically designed or used to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
 - (iii) Any equipment specifically designed or applied for use directly in connection with the employment of munitions and devices specified in subparagraph (b).
- (b) “Toxic chemical” means:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of

whether they are produced in chemical production equipment, used in munitions or elsewhere.

(c) “Precursor” means:

Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

(d) “Key component of binary or multicomponent chemical systems” (hereinafter referred to as “key component”) means:

The precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

(e) “Riot control agent” means:

Any chemical not listed in the Chemical Weapons Convention Annex on Chemicals, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally uses a chemical weapon to carry out an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. Any person also commits an offence if that person:

(a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 of the present article; or

(b) Demands unlawfully and intentionally chemical weapons by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraphs 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraphs 1, 2 or 3 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraphs 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is found in the territory of that State and no other State has a basis under article 8, paragraphs 1 or 2 of this Convention, to

exercise jurisdiction, except that the provisions of articles 7, 11, 13, 17, 18 and 19 shall, as appropriate, apply in those cases.

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 5

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its national law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. States Parties shall cooperate by:
 - (a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;
 - (b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in article 9 in respect of the commission of the offences set forth in article

2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or its protection against chemical weapons.

4. States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the Organization for the Prohibition of Chemical Weapons. Such authorities and liaison points must be accessible on a continuous basis.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

Article 9

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person in respect of whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 8, paragraphs 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with or visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 8, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 11

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 12

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 8, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 14

1. A State Party shall take action in any place under its jurisdiction or control to seize, with the aim of destruction, any chemical weapons or equipment for their production held by terrorists.
2. “Destruction of chemical weapons” means a process by which chemicals are converted in an essentially irreversible way to a form unsuitable for production of chemical weapons, and which in an irreversible manner renders munitions and other devices unusable as such.
3. A State Party shall determine how it shall destroy chemical weapons set forth in paragraph 1 of the present article, except that the following processes may not be used: dumping in any body of water, land burial or open-pit burning.
4. Each State Party shall decide on methods to be applied for the destruction of the chemical weapons production equipment referred to in paragraph 1.
5. Each State Party may request and receive assistance from other States and relevant international organizations in the destruction of the chemical weapons and production equipment referred to in paragraph 1.
6. International transparency measures in regard to the removal of chemical weapons and their production equipment from the possession of terrorists and their destruction are subject to elaboration during the course of negotiations.

Article 15

1. The provisions of this article shall apply to chemical weapons and their production equipment that in conflict situations come into the possession and/or control of a State Party on the territory of another State.¹
2. The guidelines to prevent their falling into the hands of non-State actors, including a mechanism of transparency and international cooperation will be drafted during the course of negotiations.

Article 16

1. The provisions of this article shall apply to chemical weapons and their production equipment that a State Party, on whose territory or under whose control they are located, in conflict situations wishes to transfer under international control.
2. The guidelines to prevent their falling into the hands of non-State actors, including a mechanism of transparency and international cooperation are subject to elaboration during the course of negotiations.²

¹ The Executive Council, a policy-making organ of the Organization for the Prohibition of Chemical Weapons, in 2009 decided that the said situations are not foreseen by the Chemical Weapons Convention. In this connection, the Executive Council decided (paragraph 5.17 of document EC/58/9, dated 16 October 2009) to develop “guidelines, which would in future be read together with the Convention, for the security and destruction of chemical weapons that come into the possession and/or control of a State Party or States Parties in situations not foreseen by the Convention, including conflict situations and otherwise”. No such document was drafted as part of the Convention. Moreover, it is certainly preferable to address this problem through a legally-binding agreement rather than “guidelines” “to be read together” with the Chemical Weapons Convention.

² Developing such a mechanism is justified by the existing gaps in the Chemical Weapons Convention in this regard. As a result, the international community had to elaborate the appropriate decisions ad

Article 17

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 18

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 19

1. A person who is being detained or is serving a sentence in the territory of one State Party and whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions

hoc in a crisis situation. For example, it pertains to the situation in Syria and it can be related to the situation in Libya after 2011.

anterior to his or her departure from the territory of the State from which such person was transferred.

Article 20

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 21

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention, including through the exchange of best practices for the purpose of developing appropriate standards in the field of physical protection of chemical production facilities.

Article 22

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign non-intervention in the domestic affairs of other States.

Article 23

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.
