
Conference on Disarmament

18 August 2016
English
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Letter dated 3 August 2016 from the Permanent Representative of the Russian Federation addressed to the Secretary-General of the Conference on Disarmament transmitting the texts of elements of the draft international convention for the suppression of acts of chemical and biological terrorism and the attached addendum

I have the honour to transmit herewith the texts of elements for a draft international convention for the suppression of acts of chemical and biological terrorism and the attached addendum.

I would be grateful if you would issue and circulate them to all members of the Conference as official documents of the Conference on Disarmament.

Thank you for your cooperation.

(Signed) Alexey Borodavkin
Ambassador
Permanent Representative

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Elements of the draft international convention for the suppression of acts of chemical and biological 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, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972 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 at the national level to prevent nuclear, chemical and biological weapons, their means of delivery, as well as related materials falling into the 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 in all its forms and manifestations,

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

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 and biological terrorism and for the prosecution and punishment of their perpetrators,

Have agreed as follows:

Article 1

For the purposes of this Convention

1. “Chemical weapon” means the following, together or separately:
 - (a) Toxic chemicals and their precursors, except in situations where they are intended for non-prohibited purposes, provided the types and quantities thereof correspond with such purposes;
 - (b) 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;
 - (c) Any equipment specifically designed or applied for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

2. “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.

3. “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.

4. “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.

5. “Non-prohibited purposes” means:

(a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) Protective purposes, in particular those directly related to protection against toxic chemicals and chemical weapons;

(c) Military purposes unrelated to the use of chemical weapons and independent of the use of the toxic properties of chemicals as a means of warfare;

(d) Law enforcement purposes, including domestic riot control.

6. “Biological weapon” means:

(a) Microbial or other biological agents, whatever their origin or means of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

(b) Weapons, equipment or means of delivery designed for the use of such agents for hostile purposes or in armed conflict.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person intentionally uses a chemical weapon or a biological weapon to carry out an act intended to cause death or serious bodily injury to any person, or to cause substantial damage to property or the environment, 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 carry out or to abstain from carrying out 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) Intentionally demands chemical weapons or biological 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 paragraph 1, 2 or 3 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 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 paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and be made either with the aim of furthering the general criminal activity or purpose of the group, or in the knowledge of its intention to commit the corresponding offence or offences.

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 the 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 such 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 or biological 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 (OPCW). 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 carry out or abstain from carrying out 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 human rights international law.

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 biological weapons or equipment for their production held by terrorists.

2. (Procedures for the destruction of such chemical weapons and biological weapons and of the equipment for their production shall be drawn up during the course of negotiations, duly taking into account the existing international obligations of States in this field.)

3. Each State Party may request and receive assistance from other States and relevant international organizations in the destruction of the chemical weapons or biological weapons and their production equipment referred to in paragraph 1.

4. International transparency measures in regard to the removal of chemical weapons or biological weapons and their production equipment from the possession of terrorists and their destruction (are subject to elaboration during the course of negotiations).

Article 15

(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 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

(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. 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.)²

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

¹ The Executive Council, a policymaking organ of the Organization for the Prohibition of Chemical Weapons (OPCW), 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 developed by OPCW. 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 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.

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 this 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 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, through the Secretary-General of the United Nations or wherever appropriate, in accordance with the procedures set out in the Chemical Weapons Convention, with the participation of the Director-General of the OPCW Secretariat and, if necessary, with the involvement of other international bodies and organizations, to ensure the effective implementation of this Convention, including by means of exchanges of best practices, with the aim of developing optimum standards for the physical protection of chemical production facilities and biological and biotechnical facilities.

Article 21 bis

If an act subject to this Convention is perpetrated on the territory of a State Party, it shall have the right to request from other States or groups of States, or from existing specialized international bodies or organizations, specifically such as OPCW, the International Criminal Police Organization-INTERPOL and others, assistance in carrying out the investigation to establish the facts of the case, and if necessary, may update the United Nations Security Council and other States Parties on the results of its investigation (the modalities of such investigation are subject to elaboration during negotiations).

Article 22

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of 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.

Article 24

1. This Convention shall enter into force on the thirtieth day following the date of deposit (with the depositary) of the fifteenth instrument of ratification or of acceptance, approval or accession.
 2. For each State ratifying, accepting or approving this Convention or acceding to it after the deposit of the fifteenth instrument of ratification or of acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or of acceptance, approval or accession.
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