
Conference on Disarmament

22 March 2016

English

Original: English/Russian

Letter dated 16 March 2016 from the Permanent Representative of the Russian Federation addressed to the Secretary-General of the Conference on Disarmament transmitting a Russian initiative on an international convention for the suppression of acts of chemical terrorism

I have the honour to transmit herewith an explanatory paper regarding the Russian initiative on an international convention for the suppression of acts of chemical terrorism.

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

(Signed) Alexey Borodavkin
Ambassador
Permanent Representative

GE.16-04620 (E) 010416 050416



* 1 6 0 4 6 2 0 *

Please recycle 

Explanatory paper regarding the initiative of the Russian Federation on an international convention for the suppression of acts of chemical terrorism

1. The Russian Federation proposes for consideration by the Conference on Disarmament in Geneva the idea of formulating an international convention for the suppression of acts of chemical terrorism.

I. Relevance of the initiative

2. The issue of chemical terrorism is extremely topical today in the light of the increasing occurrences of use of not only toxic industrial chemicals, but also standard chemical warfare agents 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. Such actions are becoming increasingly widespread, systematic and transboundary. Chemical terrorism has already become a fact of life and demands that we take decisive and urgent steps on the basis of strictly defined and comprehensive international norms.

II. Legal rationale for the initiative

3. 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 or, in particular, qualify such actions as an international crime.

4. The Chemical Weapons Convention (CWC) 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 CWC do not meet today's demands and standards in the field of counter-terrorism.

5. International humanitarian law, by its nature, applies only to armed conflicts and contains special requirements in respect of any non-State actors who could be covered by its norms, precluding its applicability in the case of a wide range of terrorist activities.

6. The Rome Statute of the International Criminal Court (ICC), which regards "employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices" as a war crime, is ratified by only 69 CWC States Parties. Its norms cannot be considered as universal. Besides, it applies only to international armed conflicts. The Kampala Amendment, which extends ICC jurisdiction to internal conflicts, has been ratified by only 30 States. But even for those countries, the ICC norms are not applicable to cases of violation of internal order and emergence of tension that are not regarded as armed conflict.

7. Certainly, United Nations Security Council resolution 1540 is an important universal instrument in the field of non-proliferation of chemical weapons. While it addresses the issue of illegal trafficking of chemical materials and their means of delivery, it also focuses on the implementation of national measures with the aim of preventing chemical weapons or their components from falling into the hands of terrorists. However, the resolution does not cover the current situation, with terrorists attempting to gain access to such weapons and related production facilities on territories that are under their control. We believe that the new convention could bridge such serious gaps.

8. The International Convention for the Suppression of Terrorist Bombings (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 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.

9. The option of introducing amendments to CWC to close the existing gap is not practical, mainly owing to the complicated amendments mechanism. Specifically, under article XV of the Convention, the support of 64 States Parties is required simply to convene an Amendment Conference. Adoption then requires the agreement of 97 participants and the absence of any votes against it and, for the amendment to come into force, it must be approved or ratified by all States that voted for it. Given that, and in the interests of preserving the integrity of CWC, we believe it necessary to address this matter through a stand-alone legally binding instrument.

10. A new convention in relation to chemical terrorism could incorporate the ideas laid down in the international instruments addressing counter-terrorism that have been approved in the past decade. Specifically, it would be appropriate to set out provisions related to the criminalization 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*.

III. Choice of forum: the Conference on Disarmament in Geneva

11. It goes without saying that there are many specialized international fora that could be suitable hosts for the drafting of a convention on the suppression of acts of chemical terrorism.

12. In giving preference to the Conference on Disarmament in Geneva, we recognize that, from the very beginning, that forum’s agenda included not only the issue of disarmament per se, but also many other aspects related to upholding international security in general. In particular, the forum’s first agenda (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, such as confidence-building measures and effective methods for verification of compliance with disarmament obligations. That document remained unchanged until the signing of CWC. Thus, the forum’s original mandate authorized it 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.

13. Moreover, CWC 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 in the context of the Conference on Disarmament as well.

14. Our initiative belongs equally to the fields of disarmament, non-proliferation and counter-terrorism. While non-proliferation is one dimension of combating chemical terrorism, disarmament is clearly another. If terrorists were to gain access to the production facilities, infrastructure and chemicals needed to produce such weapons, it would be only a matter of time before their production, proliferation and use occurred. Given the transboundary nature and ever-growing level of the terrorist threat, the targets and scale of resultant terrorist attacks could eventually go beyond what we have seen until now. They

could become even more inhuman and large-scale, and include provocation and punitive measures against persons considered to be undesirable or dissidents.

15. Moreover, greater access by non-State actors to chemical weapons components is already weakening the regime of CWC and other instruments that touch, in whatever way, on chemical disarmament.

16. Another important point is that our initiative to draw up a convention on the suppression of acts of chemical terrorism can revitalize the Conference on Disarmament itself, where for almost two decades the Member States have been unable to agree on a programme of work in the field of arms control and non-proliferation. The negotiations on a new convention would, in our view, serve as a source of compromise and a unifying issue for all, and could indeed help steer the Conference out of its protracted stalemate.

17. The Russian Federation calls upon the Member States of the Conference on Disarmament to give most careful consideration to this initiative and support it strongly. We look forward to the closest collaboration on the elements of the future convention.
