



BRIEFING PAPER

Number 08258, 26 March 2018

The Chemical Weapons Convention

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This short briefing paper looks at the Chemical Weapons Convention in the context of the attack in Salisbury in March 2018.

What is the Chemical Weapons Convention?

In 1993, the [Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction](#) (Chemical Weapons Convention) was signed. It came into force in 1997. The Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. States Parties, in turn, must take the steps necessary to enforce that prohibition in respect of persons (natural or legal) within their jurisdiction. The UK is a State Party.¹ See: [What is a Chemical Weapon?](#) OPCW factsheet for an explanation of the definitions of chemical weapons.

The CWC was the first treaty in history to ban the development, production, stockpiling, transfer and use of an entire category of weapons and to lay down a strict verification regime to ensure compliance and monitor production of chemicals that could potentially be diverted for use in weapons.

Under the treaty States Parties are required to declare all past chemical weapons activities; submit regular declarations about the production, processing and consumption of certain dual-use chemicals and allow routine inspections by the Organisation for the Prohibition of Chemical Weapons. The treaty also required the destruction of existing stockpiles by no later than 29 April 2012.²

The CWC has three Schedules, each with different levels of control. Schedule 1 contains chemicals that are the most controlled, like nerve and blister agents.

¹ The Chemical Weapons Convention builds upon and extends the provisions of the 1925 [Geneva Protocol](#), which banned the use of chemical and biological weapons in war. However, some States that signed the 1925 Protocol have not signed or ratified the Convention – including Syria.

² Both the United States and Russia missed the 2012 deadline for the destruction of their respective chemical weapons stockpiles. Subsequent agreements have allowed for the extension of that deadline to 2020 for Russia and 2023 for the United States. In September 2017 Russia declared that its chemical weapons stockpile had been destroyed.

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The provisions of the CWC were translated into British law by the *Chemical Weapons Act 1996*. The UK's instrument of ratification was deposited with the UN on 13 May 1996.³ The UK completed the destruction of its chemical weapons stockpile in 2007.⁴ Under Section 33 of the Act, the Government presents an annual report on the operation of the Act. The most recent was published on 26 October 2017: [Annual report for 2016](#). The CWC UK National Authority is responsible for implementing the Act in the UK, its Crown Dependencies and Overseas Territories and is based in the Department for Business, Energy and Industrial Strategy (BEIS). Guidance on the CWC for the UK, and a full list of associated legislation, is available on [Gov.uk](#). The Government may prosecute companies or individuals if they do not comply with the Act and some examples are included on the Gov.uk webpage.

The Convention is 181 pages long, including the annexes which details the chemicals involved and the implementation and verification regime.

What is the Organisation for the Prohibition of Chemical Weapons (OPCW)?

Compliance with the CWC is robustly monitored by the Organisation for the Prohibition of Chemical Weapons (OPCW), and its Executive Council, based in The Hague. The OPCW is responsible for verifying destruction programmes, inspecting all military facilities and civilian plants producing chemicals that could be used for armaments and carrying out routine monitoring and random checks on other civilian chemical installations. In 2016, for example, the OPCW conducted nine routine inspections in the UK, predominantly at industrial facilities, and at the Defence Science and Technology Laboratory at Porton Down.⁵

The CWC also provides for a "challenge inspection" by the OPCW if there are doubts over compliance by any State Party. Ultimately issues can be referred to the UN General Assembly and the UN Security Council.

The OPCW comprises three main bodies: a Conference of State Parties that meets annually; a 41-member Executive Council⁶ and a Secretariat that assists the other two bodies and carries out the verification measures of the CWC. In addition to the annual sessions of the Conference of State Parties, a review conference is held every five years to review the operation of the CWC.

It is for the OPCW to verify the validity of a State Party's declaration, which is then the subject of a report to the Executive Council and the Conference of States Parties.

The OPCW website has a range of factsheets on the Convention and the work of the OPCW: [OPCW.org](#)

The role of the OPCW in response to an alleged chemical attack

Every State Party to the CWC has the right to request assistance from the OPCW in any of the following circumstances:

- 1 The State Party considers chemical weapons to have been used against it

³ For more information on the treaty and the UK process of ratification, see Library Research Paper 95/116, *The Chemical Weapons Bill*, 21 November 1995.

⁴ Foreign Affairs Committee, *Global security: non-proliferation, response of the Secretary of State for Foreign and Commonwealth Affairs*, Cm7692, Session 2008-09

⁵ "[Annual Report for 2016 on the operation of the Chemical Weapons Act 1996](#)", Department for Business, Energy and Industrial Strategy, 5 November 2017

⁶ 41 members who are elected by the Conference of State Parties to serve two-year terms.

- 2 The State Party considers riot control agents to have been used against it as a method of warfare
- 3 The State Party considers itself to be threatened by actions prohibited by the Convention taken by another country

A request for assistance must be submitted to the Director-General with substantiating information. The Director-General is responsible for initiating an investigation within 24 hours of receiving a request to establish facts relevant to the request and the type and extent of assistance and protection needed. The investigation is to be completed within 72 hours and a report submitted to the Executive Council.

The OPCW is charged with responding, whenever requested, to an alleged chemical attack on a State Party by, among other things, coordinating assistance from States Parties that can provide it. Under the Convention, States Parties undertake to provide assistance through the OPCW. This can be in the form of financial assistance (to the Voluntary Fund for Assistance) or physical assistance – for example in providing training, personnel or equipment.⁷

The attack in Salisbury

On 4 March 2018 two individuals, Sergey and Yulia Skripal, were taken seriously ill in the city of Salisbury. On 8 March the Foreign and Commonwealth office informed the OPCW Technical Secretariat that they had fallen ill following exposure to a nerve agent. On 12 March the Prime Minister gave a [statement](#) in which she confirmed the substance used was a military-grade nerve agent of a type developed by Russia, part of a group of agents known as ‘Novichok’ agents. The Prime Minister said it is “highly likely that Russia was responsible” for the attack. The Foreign Secretary asked Russia to provide to the OPCW immediate, full and complete disclosure of the Novichok programme to the OPCW by the end of 13 March.

By coincidence the OPCW is holding one of its regular Executive Council meeting between [13-16 March 2018](#). The UK [addressed](#) the meeting on 13 March. Repeating the Government’s conclusions, as outlined in the Prime Minister’s statement, the Permanent Representative of the UK to the OPCW said:

The stark conclusion is that it is highly likely that Russia, a fellow State Party to the Chemical Weapons Convention and fellow member of this Executive Council is implicated in chemical weapons use, whether by failure to control its own materials or by design.

The Russian Permanent Representative responded in a [statement](#) to the Council on 13 March. The Russian Ambassador described the UK’s “unfounded accusations” as “absolutely unacceptable”. The Ambassador said the UK should avail itself of the procedures provided for in Article IX(2) of the Convention and made it clear the Convention allows for 10 days for a receiving State to reply, describing the UK’s demand for a response within 24 hours as “absolutely unacceptable”.

The Prime Minister updated the House of Commons on 14 March. The Prime Minister said there is no alternative conclusion other than that the Russian state was culpable:

The Russian Government have provided no credible explanation that could suggest that they lost control of their nerve agent, no explanation as to how this agent came to be used in the United Kingdom, and no explanation as to why Russia has an undeclared chemical weapons programme in contravention of international law.

⁷ [“Assistance and Protection Against Attack with Chemical Weapons”](#), OPCW, factsheet 8, 3 November 2014

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The Prime Minister said the Government had informed the OPCW about Russia's use of this nerve agent "and are working with the police to enable the OPCW to independently verify our analysis."

In his response, the Leader of the Opposition, Jeremy Corbyn, asked if the Government had made a formal request for evidence from the Russian Government under article IX(2) of the Chemical Weapon Convention.⁸

Requesting information from Russia

[Article IX](#) of the [Convention](#) set out the provisions relating to allegations of non-compliance and the procedures for consultation, cooperation and fact finding. In summary it makes the following provisions:

- States Parties are obliged to consult and cooperate, either directly among themselves, through the Organisation for the Prohibition of Chemical Weapons (OPCW) or other international frameworks such as the UN, on any matter relating to the convention and the implementation of its provisions (article IX (1))
- States Parties "should, whenever possible, first make every effort to clarify and resolve, through exchanges of information and consultations among themselves... any matter which may cause doubt about compliance... or which gives concerns about a related matter which may be considered ambiguous" (article IX (2))
- A State Party which receives a request from another State Party for clarification on any matter shall provide the requesting State, as soon as possible, but no later than 10 days after the request, with information that is sufficient to answer the doubt or concern raised along with an explanation of how the information provided resolves the matter (article IX (2))
- Article IX (3) states that "A State Party shall have the right to request the Executive Council to assist in clarifying any situation which may be considered ambiguous or which gives rise to a concern about the possible non-compliance of another State Party". Upon receipt of a request for clarification from the OPCW the State Party concerned has a further 10 days to provide information to the OPCW.

If the requesting State Party considers that clarification to be inadequate it then has the right to request the Executive Council to seek further clarification which could involve the creation of an independent group of experts from the OPCW technical Secretariat to conduct an investigation.

Equally, a State Party (in this case Russia) also has the right to request the Executive Council to clarify a situation which gives rise to concerns about its own possible non-compliance.

UK responsive measures

The Prime Minister laid out a range of responsive measures in her statement of 14 March 2018. These include the expulsion of 23 Russian diplomats and new legislative powers "to harden our defences against all forms of hostile state activity" among other measures.

The UK's Permanent Representative to the OPCW rejected the main tenets of Russia's response when he [updated](#) the Executive Council on 14 March 2018. The Ambassador said: "Article IX does not oblige states which are the victims of chemical weapons to refrain from seeking rapid response to their immediate and urgent concerns". He also argued "there are no provisions in the Convention that require the UK to share its samples collected as part of a criminal investigation with Russia in this type of scenario".

⁸ [HC Deb 14 March 2018](#)

These points were reiterated by the British Ambassador to Russia during [a briefing to the international diplomatic community](#) on 22 March 2018, during which he also provided an explanation of the UK's conclusions regarding responsibility.

On 14 March the UK Government wrote to the OPCW to formally invite them to verify the Government's analysis of the nerve agent used in Salisbury. A team of independent OPCW inspectors arrived in the UK on 19 March with a view to collecting samples, including environmental samples. Those samples will then be despatched for testing to independent international laboratories selected by the OPCW.⁹

What happens next?

Independent testing of the samples taken by the OPCW is expected to take at least 2 weeks before the results are known. A final report will then be submitted to the OPCW Director General who will then disseminate that report to the Executive Council and all States Parties.

Challenge Inspections

With reference to an allegation of non-compliance, under [Article IX](#) of the Convention a State Party can request the Technical Secretariat to conduct a challenge inspection, at short notice, and anywhere in the territory, or under the jurisdiction or control, of any other State Party, including undeclared facilities. States Parties cannot refuse a challenge inspection, regardless of the location at which it is to take place. The Executive Council can block an inspection within 12 hours of receiving the request, if it is deemed to be frivolous, abusive or beyond the scope of the Convention. However, it may only do so with the support of a three quarters majority of Council members, excluding the State Party that is requesting a challenge inspection and the State Party that is the subject of that challenge.

[Part X of the verification annex](#) sets out the detailed guidelines for the conduct of a challenge inspection.

Powers of the OPCW to take action

Under [Article XII](#) of the Convention, it is the Conference of States Parties, and not the Executive Council, that is authorised under the CWC to take measures necessary to ensure compliance with the CWC and to address situations of non-compliance. The Executive Council can require an offending State Party to take remedial action within a specified time, such as the dismantling of a production facility; but it is generally limited in that it can only bring issues to the attention of the Conference and/or make recommendations to the Conference.

Possible measures that the Conference can take include:

- Restriction or suspension of a State Party's rights and privileges under the Convention;
- The recommendation to States Parties of collective punitive measures in conformity with international law and in cases of serious damage to the object and purpose of the Convention.

The specific measures that may be imposed by the Conference are not specified in the CWC. In theory, therefore, it could take any measures, so long as they conform with

⁹ Investigations into the alleged use of chemical weapons are determined by the provisions set out [in Part XI of the verification annex](#) of the CWC.

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international law, except for rescinding OPCW membership of a State Party which is a right guaranteed in Article VIII. Examples of possible measures include:

- Removing the right to vote
- Removing the right to serve on the Executive Council
- Removing the right to participate in the exchange of scientific and technical information
- Exclusion from any OPCW development programmes
- A suspension on the trade in chemicals, as listed in the Annexes to the CWC
- Penalties
- Financial sanctions, for example freezing the assets of individuals

However, it is worth noting that decisions within the Conference on matters of substance are required to be taken, as far as possible, by consensus. If consensus is not possible, any vote is deferred for 24 hours in order to allow for discussion and negotiation. If consensus is still not attained after this period then the decision is taken by a two thirds majority of Members present. Russia is a voting member of the Conference, along with several other countries who have historically allied themselves with Russia.

Whatever is pursued through the OPCW also doesn't stop the UK imposing punitive measures bilaterally or in concert with its allies.

To the UN Security Council?

Cases of particular gravity issues can be referred by the OPCW to the UN Security Council and the UN General Assembly for action. The UNGA can only recommend measures, however, it cannot impose anything, and it cannot authorise a use of force that would otherwise be in breach of the UN Charter.

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