

Novi-whats and the Chemical Weapons Convention

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Novi-whats and the Chemical Weapons Convention

Between furious accusations, numerous questions, references to literary classics and TV shows, diplomatic expulsions, leaked recordings of telephone calls and government statements about a cat and two guinea pigs, it is easy to become distracted by the drama surrounding the poisoning of Sergei and Yulia Skripal and Police Sergeant Nick Bailey in Salisbury on 4 March. Each twist and turn is grimly fascinating to observe, but amid this drama there appears to lurk the suggestion that the scope of the Chemical Weapons Convention (CWC) can be reduced to the lists of chemicals contained within one of its annexes. This is not the first time such an idea has been raised - nor is it likely to be the last -

but following events in Salisbury, as well as in Malaysia, Syria and Iraq, it has become ever more important to push back against this pernicious misreading of the treaty.

Novi-whats?

Toxic chemicals are being used for hostile purposes with alarming frequency. In the Salisbury incident, the agent used has been identified by scientists at Porton Down as a member of the Novichok class of agents¹. The finding was confirmed through the analysis of environmental and biomedical samples by one of the Organisation for the Prohibition of Chemical Weapons' (OPCW) designated laboratories².



Is the Novichok road closed to the OPCW? ©CBRNe World

The open source literature about this series of agents is relatively modest and what is known largely comes from former participants in the Soviet chemical warfare programme, particularly Vil Mirzayanov. From this literature, we can surmise that Novichok or 'newcomer' is the name given to a series of next generation chemical warfare agents developed by the Soviets, and later the Russians, as part of the Foliant programme. Speculation about the objectives for developing these agents includes that they were designed to "defeat Western detection and protection measures"³ and be more readily hidden "within a legitimate commercial industry" so as to circumvent international controls.⁴ At least five Novichok class agents are referenced in the open literature⁵, including no less than two binary agents, Novichok-7 which is purportedly 10 times more lethal than Soman and Novichok-5 supposedly five to eight times more effective than VX.

The first news relating to the Novichok agents appeared in 1991 when Mirzayanov published an article in a Russian newspaper decrying environmental safety hazards emanating from their development that had just "begun at full speed" at his workplace.⁶ In September the following year, he co-authored a similar article with Lev Fedorov in which further details were provided. These included the identity of the institute where the "new toxic agent was created" ('GSNIIOKhT') and the suggestion that field tests had been conducted at a facility near Nukus in Uzbekistan.⁷ It was this article which influenced the first report in Western media, with Will Englund of the Baltimore Sun describing the new agents as "highly lethal binary nerve agents".⁸

Novichoks and chemical disarmament

Looking back, the timing of the revelations seems unfortunate. The 1991 article did not receive the attention we might now wish it had, and the 1992 articles came after the draft Chemical Weapons Convention (CWC) had been finalised and accepted by the UN general assembly.⁹ But in terms of the Salisbury incident it doesn't matter when we first became aware of them because Article II of the CWC is very clear: all toxic chemicals and their precursors are chemical weapons except where they are intended for "purposes not prohibited under this convention."¹⁰ Defining toxic chemicals as "[a]ny chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals", purpose is the criterion by which the convention defines a chemical weapon. Sometimes referred to as the general purpose criterion, this purpose based definition ensures the convention cannot be overtaken by technological change. As Robinson noted in 1996, the convention applied "to weapons that were still secret, such as the much vaunted Russian Novichoks, and even to toxic chemicals yet undiscovered".¹¹

Accordingly, Mirzayanov's suggestion, which has been echoed in the contemporary debate, that "if a weapon is not listed, then it cannot legally be banned, to say nothing

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of being controlled”¹² is a misreading of the convention. The lists being referenced are the three schedules of chemicals which were negotiated to “facilitate practical verification measures.” Novichoks do not appear in the schedules and so remain absent from the declarations. In part, this is because revelations about them came after the negotiations had concluded and because Russia denied developing them. This remains the Russian position, as shown in various statements including one from their delegation to the OPCW’s executive council: “No research and development or experiments were conducted under the Novichok code name within the Russian Federation”¹⁴. A government representative in Moscow stated: “I want to make it perfectly clear that Russia has not produced any toxic agents other than those it has declared under the CWC in 1997.”¹⁵

Linking Novichoks to the matter of declarations of scheduled chemicals can easily lead to confusion for those unfamiliar with the text, as to whether Novichoks are covered by the CWC. But the convention is unequivocal: such agents are covered. These lists, and the declarations which come from them, have nothing to do with the scope of the convention and indeed, so as not to leave doubt, the relevant annex states “these schedules do not constitute a definition of chemical weapons.”¹⁶

Wider context

Attempting to privilege the schedules over the purpose based definition of chemical weapons - or create a distinction between “chemicals as weapons” and “chemical weapons” - best serve the interests of those seeking to

undermine collective efforts towards a world free of chemical weapons. In these troubling times, the Salisbury poisoning, the assassination in Malaysia and the apparent normalisation of chemical weapons use in Syria are elevating perceptions about the threats posed by chemical weapons and provide renewed impetus for chemical defence activities and institutions.

Research related to protection is regarded as a permitted purpose under the CWC, and rightly so. Through wider initiatives that seek to improve understanding of potential chemical weapons threats, however, there also exists the potential that alluring new agents may be stumbled upon, which could exploit areas of constructive ambiguity found within the text of the convention. Like Novichoks, such agents are unlikely to appear on the schedules, which makes it imperative that there is a robust countering of the apparent “pernicious ignorance”¹⁷ embodied in list based understandings of the scope of the CWC.

With the fourth review conference taking place later this year, states parties need to collectively reaffirm the broad scope of the convention as articulated in Article II. At this current juncture with chemical weapons being used with growing frequency and divisions apparent in the OPCW’s decision making bodies, this might not seem a priority. However, unless states are able to reach a shared understanding about what is, and isn’t, a chemical weapon, and what is, and isn’t, permitted under the convention, efforts to prevent the re-emergence of chemical weapons can surely be unravelled.

1. See for example Hansard col 620, vol 637 12th March 2018
 2. OPCW S/1612/2018 12th April 2018
 3. Proliferation: Threat and Response, January 2001 <http://www.dtic.mil/dtic/tr/fulltext/u2/a387177.pdf>
 4. Proliferation: Threat and Response, January 2001 <http://www.dtic.mil/dtic/tr/fulltext/u2/a387177.pdf> see also Smithson, *A Toxic Archipelago* Stimson Centre Report no 32 December 1999 p9
 5. See FBIS –JPRS Report- Proliferation Issues, <http://www.dtic.mil/dtic/tr/fulltext/u2/a333017.pdf> ; Fedorov, L. A. (1994). Chemical Weapons in Russia: History, Ecology, Politics. *Journal of Ecological Policy* via http://fas.org/nuke/guide/russia/cbw/jptac008_194001.htm
 6. Mirzayanov, V “[Inversion]” *Kuranty* (Moscow), 10 October 1991, p 4.
 7. Mirzayanov V and L Fedorov “[Scandal – Poisoned Policy]” *Moskovskiye Novosti* no 38 20th September 1992 p16.
 8. Englund, W “Ex-Soviet Scientists Says Gorbachev’s Regime Created New Nerve Gas in ‘91,” *Baltimore Sun*, 16 September 1992, A3.
 9. CD/1173 3rd September 1992
 10. Article II. 9 defines permitted purposes as: (a) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; (b) Protective purposes, namely those

purposes directly related to protection against toxic chemicals and to protection against chemical weapons; (c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; (d) Law enforcement including domestic riot control purposes.

11. Robinson, J. P. P. (1996). Implementing the Chemical Weapons Convention. *International Affairs*, 72(1), 73–89.

12. Chemical Weapons Convention Bulletin, September 1994 Page 16

13. Walker J “The origins of the CWC schedules and industry verification regime: the concept of risk”, in Mashhadi, H et al (eds) *Seminar on the OPCW’s contribution to security and the non proliferation of chemical weapons* OPCW 2011.

14. Russian Federation statement to the 87th meeting of the Executive Council, EC-87/NAT.23 14th March 2018

15. Viktor Kholstov, Director of the Centre for Analytical Research on Chemical and Biological Weapon Conventions during *Briefing by Director of the Foreign Ministry Department for Non-Proliferation and Arms Control Vladimir Yermakov*, Moscow, March 21, 2018

16. Chemical Weapons Convention Annex on Chemicals Part B

17. Robinson, J. P. P. (2012). Difficulties facing the Chemical Weapons Convention. *International Affairs*, 2(2008), pp.223–239.



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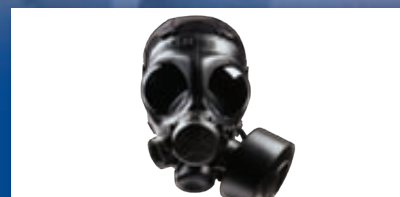
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