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Review article

Incapacitating chemicals – Risk to the purpose and objectives of the Chemical Weapons Convention?

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ABSTRACT

Current trends in the use of military force are influenced by the tendency to minimize casualties and material losses. As a result, from the beginning of the 1990s, a new category of weapons appeared; the so-called “non-lethal” weapons, which are able temporarily to disable personnel from combat action (preferably without permanent consequences to their health, to the operation of other non-destructive combat material, or to their tactical and technical characteristics), and to protect the environment without limiting desired negative consequences to the enemy's national economy. However recent documents of the Organisation for the Prohibition of Chemical Weapons consider the term “non-lethal chemical weapons” inappropriate and do not recommend its use in connection with international conventions. Therefore these chemicals are classified as “less-than-lethal”, “less-lethal” or “temporarily incapacitating agents” by law experts. NATO defines an incapacitating chemical as “A chemical agent which produces temporarily disabling conditions which (unlike those caused by riot control agents) can be physical or mental and persist for hours or days after exposure to the agent has ceased. Medical treatment, while not usually required, facilitates a more rapid recovery”. The Chemical Weapons Convention includes a comprehensive definition of toxic chemicals which covers all types of lethal and incapacitating (“non-lethal”) chemicals, but the term “incapacitating chemicals” is neither defined in the Chemical Weapons Convention nor otherwise used. There are a lot of potentially exploitable agents which could be placed in this group of chemicals and new agents continue to emerge.

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Introduction

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, is the first comprehensive mechanism for the destruction of this entire category of weapons of mass destruction and at the same time makes provision for the verification procedures of this obligation. The Organisation for the Prohibition of Chemical Weapons (OPCW) was established in order to implement the requirements arising from the Convention and was located in the Hague. The main objectives of the OPCW are first of all the monitoring and verification of existing chemical weapons and their production facilities, then the non-proliferation and destruction of chemical weapons. These activities require also non-proliferation involving the monitoring of the chemical industry including cross-border movement of chemicals which are relevant to the Convention [1].

The Convention established for its main objective the destruction of the entire chemical weapons arsenals by at the latest date the 29th April 2012. Although this main objective has not been met, many positive results were achieved in the area of chemical disarmament from the entry into force of the Convention on the 29th April 1997.

Six States Parties – Albania, India, South Korea, Libyan Arab Jamahiria, the Russian Federation and the United States of America – declared a total 71,195,086 metric tonnes of chemical weapons, of which 69,429,003 metric tonnes were Category 1 chemical weapons (nerve agents and blister chemical warfare agents and key nerve agent's precursors). 1,766,083 metric tonnes of Category 2 chemical weapons (all other chemical warfare agents and precursors of chemical weapons Category 1) and 8,680,079 of munitions and containers. As at the 31st March 2013 a total of 55,474 metric tonnes (80% of the declared amount) of chemical warfare Category 1 had been destroyed and 919,931 metric tonnes (52.09 of the declared amounts) of Category 2 chemical weapons [21,22,23]. 43 of the 70 declared chemical weapons production facilities had been destroyed and 21 facilities had been converted for facilities for peaceful purposes. Destruction of old and abandoned chemical weapons is continuing successfully as well. The process of the destruction of the chemical weapons in detail is the subject of several more recent publications [2,3].

The question of the position of incapacitating chemicals in the Convention's system is not new [4] and it has already been the subject of many professional discussions during the preparation of the Convention text alone. Switzerland accelerated the discussion on this topic during the Second Review Conference of States Party to the OPCW in the year 2008 [5] as a consequence of the use of such weapons by Russian security forces in October 2002 during an attempt to rescue approximately 800 hostages which were held captive by armed Chechen rebels, as a consequence of this attack 120 persons were killed [6]. During the last three years different international forums, above all the experts' meetings (two organized by the International Committee of the Red Cross, ICRC, in the years 2010 and 2012, one organized by the organisation VERIFIN in Spiez in the year 2011) have held discussions about toxic chemicals applicable for law enforcement pur-

poses [7–9]. These discussions were focused on new toxic chemicals with an incapacitating effect which could be developed, produced or used in consequence of advances in science and technology. This could obscure the distinction between use for law enforcement purposes and use as a method of warfare and so undermine the purpose and objectives of the Convention.

This issue is important not only in the international framework but also for the Czech Republic. It has been mentioned together with the Russian Federation and the United States of America as states which are carrying out research into incapacitating chemicals and possible devices for their delivery [10]. Some publications regarding problems of the so-called “non-lethal chemical weapons” have in the few past years [11,12] drawn attention to the risks in the development of incapacitating chemicals in the light of their possible misuse, and changes in the perception of these problems make it appropriate and timely to return to this issue.

Incapacitating chemicals – scope of definitions and basic information

In the effort for unification and explanation of notions in this area it is fundamental to define “non-lethal chemical weapons”. It is possible to use the term “non-lethal weapons” in the event that they are intended as “weapons which are explicitly designed and developed to incapacitate or repel personnel, with a low probability of fatality or injury, or to disable equipment, with minimal undesired damage or impact on the environment” [13].

However in all recent documents, the term “non-lethal chemical weapons” is considered absolutely inappropriate and in any case the OPCW do not recommend its use in connection with the Convention. Any chemical agent is toxic and only the amount of the received dose determines its lethality. Therefore chemicals are classified as “less-than-lethal” or “less-lethal” by some law experts.

The term “incapacitating chemicals” is understood variously and depends on the context in which it is used. No consensus exists among specialists and policymakers as to whether or not an effort should be made to integrate any definition of “incapacitating chemicals” into the context of a definition set in the present Convention. The basis of the Convention is a definition of “chemical weapons”, which is based on the notion of “toxic chemical”. It defines this subsequently as “Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to human or animals”. Conversely “chemical weapons” are defined as: “Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes”. This Article II of the Convention is otherwise known as the General Purpose Criterion. States Parties can use toxic chemicals for so-called purposes 'not prohibited' under the Convention, where law enforcement, including domestic riot control, purposes fall as well. It is necessary to emphasize that “incapacitating chemicals” are covered under the definition of “toxic chemicals” by the Convention and thus are determined as chemical weapons if they are used for this purpose.

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