

IV. Use of novichok agents

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This section focuses on developments related to novichok agents in 2020. It provides a short update on the ongoing investigation into the 2018 poisonings in the United Kingdom; discusses the technical changes made to the Schedule of the 1993 Chemical Weapons Convention (CWC); reviews a new instance of alleged use in the poisoning of Alexei Navalny; and highlights civil society investigations into the Russian novichok programme.¹

Coronial investigation into Salisbury poisoning

On 17 March 2020, the family of Dawn Sturgess, who died from novichok poisoning linked to the Salisbury attack in 2018, sought a judicial review of the December 2019 coroner's decision not to investigate the responsibility of Russian officials other than the two Russian nationals known by the aliases Alexander Petrov and Ruslan Boshirov for her death, or the source of the novichok.² At the hearing held on 14–15 July 2020, counsel for the family argued that the coroner had erred in his reasons for limiting the scope of the inquest and that there was 'acute and obvious public concern not merely at the prima facie evidence that an attempt was made on British soil by Russian agents to assassinate Mr Skripal' but also because this assassination attempt involved 'a prohibited nerve agent exposing the population of Salisbury and Amesbury to lethal risk.'³ Lord Justice Bean and Mr Justice Lewis found that the claim for judicial review 'must succeed, the ruling must be quashed and the case remitted to the Senior Coroner'.⁴

Technical change to Schedule 1 to the Chemical Weapons Convention

On 7 June 2020, the technical change to the Schedule to the CWC entered into force. This technical change had been adopted by consensus at the 24th Conference of the States Parties (CSP) to the Organisation for the Prohibition of Chemical Weapons (OPCW) in 2019.⁵

¹ On the CWC see section V in this chapter; and annex A, section I, in this volume.

² *R (GS) v H.M. Senior Coroner for Wiltshire and Swindon*, [2020] EWHC 2007 (Admin), para. 23. On the 2018 novichok attack see McLeish, C., 'The Skripal case: Assassination attempt in the United Kingdom using a toxic chemical', *SIPRI Yearbook 2019*.

³ *R (GS) v H.M. Senior Coroner for Wiltshire and Swindon* (note 2), para. 88.

⁴ *R (GS) v H.M. Senior Coroner for Wiltshire and Swindon* (note 2), para. 84.

⁵ OPCW, Conference of the States Parties, 'Technical change to Schedule 1(a) of the Annex on Chemicals to the Chemical Weapons Convention', Decision, C-24/Dec.4, 27 Nov. 2019; and OPCW, Conference of the States Parties, 'Changes to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention', Decision, C-24/Dec.5, 27 Nov. 2019.

The addition of the four new entries to Schedule 1—two large families of novichok agents (entry 13 and 14), a single additional novichok agent (entry 15) and two families of carbamate agents (entry 16)—has the effect of subjecting them to the CWC verification regime and declaration requirements. This means, among other things, that any state party operating or intending to operate a single small-scale facility for the production of these chemicals must provide the OPCW Technical Secretariat with a detailed description of the facility and its location, and must also notify the Secretariat of the presence of these newly scheduled chemicals in ‘other facilities for protective purposes . . . and other facilities for research, medical or pharmaceutical purposes’. For existing ‘other Schedule 1 facilities’, initial declarations are to be provided not later than 30 days after entry into force, and inspections under Article VI of the CWC will take place as soon as possible after declarations.⁶

The OPCW director-general told states parties at the 94th Session of the Executive Council that the Secretariat stands ready to assist states parties with implementing these changes and preparing for their initial declarations relating to anticipated annual production for calendar year 2021, which were due by 2 October 2020.⁷

The poisoning of Alexei Navalny

On 20 August 2020, it was reported that Russian opposition figure Alexei Navalny had fallen ill during a flight from the Siberian city of Tomsk to Moscow. The plane made an emergency landing and Navalny was admitted to Omsk Ambulance Hospital No. 1. The following day, French President Emmanuel Macron and German Chancellor Angela Merkel expressed their readiness to provide assistance in terms of healthcare or asylum to Navalny and his family.⁸ The Cinema for Peace Foundation, a German non-governmental organization, also announced that it was sending ‘an air ambulance with medical equipment and specialists with which Navalny can be brought to Germany’.⁹ The European Court of Human Rights also indicated a series of interim measures ‘to be enforced without delay’ on the treatment Navalny was receiving and his fitness for transfer to Germany.¹⁰

⁶ OPCW, Technical Secretariat, ‘Guidance for states parties on Article VI declaration obligations and inspections following entry into force of changes to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention’, Guidance note, S/1821/2019/Rev.1, 14 Jan. 2020, paras 6 and 24.

⁷ OPCW, Executive Council, ‘Opening statement by the Director-General to the Ninety-fourth Session of the Executive Council (full version)’, EC-94/DG.24, 7 July 2020, paras 58–59.

⁸ Didili, Z., ‘Merkel, Macron offer asylum, protection to Russia’s Navalny’, *New Europe*, 21 Aug. 2020.

⁹ ‘Foundation says it is sending plane for Russia’s Navalny’, Reuters, 20 Aug. 2020.

¹⁰ European Court of Human Rights, ‘The Court grants an interim measure in favour of Aleksey Navalny’, Press release, ECHR235(2020), 21 Aug. 2020.

The next day, 22 August, the head physician at the hospital in Omsk where Navalny was being treated, Alexander Murakhovsky, announced that a ‘working diagnosis’ for Navalny’s sickness was ‘metabolic disorder’; he also indicated that a chemical had been found on the politician’s skin and clothing.¹¹ The Omsk Regional Office of the Russian Ministry of Internal Affairs later expanded on this, explaining that ‘a chromatographic study showed the presence of the substance 2-ethylhexyl diphenyl phosphate’ (a low toxicity industrial chemical with widespread use).¹² The same day, Navalny was transported to Charité university hospital in Berlin, where he was promptly diagnosed as having been subject to ‘poisoning with a substance from the group of cholinesterase inhibitors’.¹³ At this time the hospital stated that the specific substance was ‘unknown’.¹⁴

After the announcement by Charité, Chancellor Merkel called on Russia to investigate the poisoning and hold any perpetrators to account.¹⁵ Russia, having conducted pre-investigation checks on 20 August, announced on 27 August that it had found ‘no evidence of deliberate criminal actions . . . that would make it possible to qualify this incident under criminal law’.¹⁶ The chief toxicologist of the Omsk Region asserted that Russian medical authorities did not find cholinesterase inhibitors in Navalny’s blood.¹⁷

The following week, on 2 September, Germany announced that testing of samples from Navalny had found ‘unequivocal proof’ of a novichok nerve agent.¹⁸ These findings were later confirmed by laboratories in France and Sweden.¹⁹ A German Government spokesperson, Steffen Seibert, urged the Russian Government ‘to explain itself’ and indicated that Germany would ‘inform its partners’ in the European Union (EU) and the North Atlantic

¹¹ [The main diagnosis of Navalny called metabolic disorder], Interfax, 21 Aug. 2020 (in Russian); and European Chemicals Agency, ‘Substance infocard: 2-ethylhexyl diphenyl phosphate’, 16 Feb. 2021.

¹² [Industrial chemical found in Navalny’s body], Interfax, 21 Aug. 2020 (in Russian).

¹³ Charité Universitätsmedizin Berlin, ‘Statement by Charité: Clinical findings indicate Alexei Navalny was poisoned’, Press release, 24 Aug. 2020.

¹⁴ Charité Universitätsmedizin Berlin (note 13). Navalny remained in a medically induced coma until 7 Sep. and was eventually discharged from hospital on 23 Sep. Charité Universitätsmedizin Berlin, ‘Seventh statement by Charité—Universitätsmedizin Berlin: Alexei Navalny discharged from inpatient care’, Press release, 23 Sep. 2020.

¹⁵ Nienaber, M. and Nasr, J., ‘Merkel tells Russia to investigate suspected poisoning of Kremlin critic’, Reuters, 24 Aug. 2020.

¹⁶ ‘No elements of crime found during checks into Navalny’s hospitalization, says authority’, TASS, 27 Aug. 2020.

¹⁷ See e.g. ‘No cholinesterase inhibitors found in Navalny’s blood in Omsk clinic, says expert’, TASS, 24 Aug. 2020; and ‘Doctors in Omsk did not use special anti-novichok therapy in Navalny case’, TASS, 8 Sep. 2020.

¹⁸ Seibert, S., ‘Erklärung der Bundesregierung im Fall Nawalny’ [Statement by the Federal Government in the Navalny case], German Cabinet, Press release no. 306, 2 Sep. 2020.

¹⁹ Borrell, J., ‘Russia: Poisoning of Alexei Navalny’, Speech at the European Parliament plenary session, 15 Sep. 2020. See also Swedish Defence Research Agency (FOI), ‘FOI confirms German results on novichok’, Press release, 15 Sep. 2020.

Treaty Organization (NATO) of the findings and ‘discuss an appropriate joint reaction’.²⁰ Accordingly, the EU high representative for foreign affairs and security policy, Josep Borrell, stated that the EU condemned the poisoning ‘in the strongest possible terms’ and that it was ‘essential’ for Russia to investigate ‘thoroughly and in a transparent manner the assassination attempt’.²¹ The 27 EU member states issued a declaration the following day.²² Statements also followed from, among others, the North Atlantic Council and the foreign ministers of the Group of Seven (G7) countries.²³

Two days later, on 4 September, Germany requested technical assistance from the OPCW under Article VIII subparagraph 38(e).²⁴ The Technical Assistance Visit (TAV) Team deployed to Germany on 5 September and the next day, ‘blood and urine sampling was conducted by the hospital staff under the direct supervision and continuous visual observation of the team members’.²⁵ On 11 September, and upon receipt of a request from Germany, the samples were sent to two designated laboratories for analysis.²⁶ The results of the analysis were reported by the Technical Secretariat in a public summary as follows:

The results of the analysis of biomedical samples conducted by the OPCW designated laboratories demonstrate that Mr Navalny was exposed to a toxic chemical acting as a cholinesterase inhibitor. The biomarkers of the cholinesterase inhibitor found in Mr Navalny’s blood and urine samples have similar structural characteristics to the toxic chemicals belonging to schedules 1.A.14 and 1.A.15, which were added to the Annex on Chemicals to the Convention at the Twenty-Fourth Session of the Conference of the States Parties in November 2019. This cholinesterase inhibitor is not listed in the Annex on Chemicals to the Convention.²⁷

The day before the release of the public summary of the TAV investigation, the OPCW released a statement that it had also received a request from Russia to ‘consider’ dispatching staff to Russia ‘in order to cooperate with Russian experts’, and that the OPCW director-general had responded with

²⁰ Seibert (note 18).

²¹ Borrell, J., ‘Russia: Statement by High Representative/Vice-President Josep Borrell on the poisoning of Alexei Navalny’, European External Action Service, Press release, 2 Sep. 2020.

²² Council of the European Union, ‘Russia: Declaration of the High Representative on behalf of the EU on the poisoning of Alexei Navalny’, Press release, 3 Sep. 2020.

²³ North Atlantic Treaty Organization, ‘Statement by the North Atlantic Council on the poisoning of Alexei Navalny’, Press release no. (2020) 071, 4 Sep. 2020; and British Foreign, Commonwealth and Development Office, ‘Russia: G7 Foreign Ministers’ statement on Navalny poisoning’, Press release, 8 Sep. 2020.

²⁴ OPCW, Technical Secretariat, ‘Summary of the report on activities carried out in support of a request for technical assistance by Germany (Technical Assistance Visit-TAV/01/20)’, Note by the Technical Secretariat, S/1906/2020, 6 Oct. 2020, para. 1.

²⁵ OPCW, S/1906/2020 (note 24), paras 2–3.

²⁶ OPCW, S/1906/2020 (note 24), para. 4.

²⁷ OPCW, S/1906/2020 (note 24), para. 5 The particular novichok used to poison Navalny was not a scheduled chemical: its chemical structure was different from that of the classes of novichok that had recently been added to Schedule 1.

an assurance of readiness and ‘sought further clarification . . . on the type of expertise contemplated’.²⁸ In December, at the request of Russia, the correspondence between the OPCW Technical Secretariat and the Russian delegation on this matter, dated between 1 October and 21 December, was published on the OPCW’s public website.²⁹ The correspondence included an indication from the Russian delegation on 16 December that they did not wish the requested TAV team to proceed.³⁰

Shortly after the OPCW confirmed that Navalny had been exposed to a toxic chemical acting as a cholinesterase inhibitor, the EU imposed travel bans and asset freezes on six Russian individuals and an entity allegedly involved in the poisoning.³¹ The sanctions fell under the EU’s 2018 sanctions regime that focuses on chemical weapons.³² The same day, the UK announced that it would also apply the same sanctions through its own ‘autonomous UK Chemical Weapons sanctions regime’, which would come into force following its departure from the EU.³³

Civil society activities

At the end of October 2020, Bellingcat—a non-governmental investigative network—released the results of a year-long investigation with partners on the Russian novichok programme. The investigation’s main findings include the identification of the St Petersburg State Institute for Experimental Military Medicine of the Russian Ministry of Defence and the Scientific Center Signal as the lead institutes, since 2010, in the continued research, development and weaponization of the Soviet-era novichok programme. Bellingcat claimed that the work of these two institutes had ‘stayed out of the focus of Western intelligence services’.³⁴ The investigation also obtained information suggesting ‘close coordination’ between these two institutes and ‘a secretive sub-unit of Military Unit 29155 of Russia’s military intelligence,

²⁸ OPCW, ‘OPCW responds to Russian Federation request regarding allegations of chemical weapons use against Alexei Navalny’, News, 5 Oct. 2020.

²⁹ OPCW Technical Secretariat and Russian Permanent Representative to the OPCW, Correspondence, 1 Oct–21 Dec. 2020.

³⁰ Russian Permanent Representative to the OPCW, Letter to HE Mr Fernando Arias, Director-General of the Technical Secretariat of the OPCW, 16 Dec. 2020, unofficial translation, in Correspondence (note 29), p. 5, para. 7.

³¹ Council Implementing Regulation (EU) 2020/1480 of 14 Oct. 2020 implementing Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons, *Official Journal of the European Union*, L341, 15 Oct. 2020.

³² Council of the European Union, ‘Chemical weapons: The Council adopts a new sanctions regime’, Press release, 15 Oct. 2018.

³³ British Foreign, Commonwealth and Development Office, ‘UK sanctions Alexey Navalny’s poisoners’, Press release, 15 Oct. 2020.

³⁴ Bellingcat Investigation Team, ‘Russia’s clandestine chemical weapons programme and the GRU’s Unit 29155’, Bellingcat News, 23 Oct. 2020.

the GRU'.³⁵ Previous Bellingcat investigations had linked members of this unit to the poisoning attempts on Emilian Gebrev in Bulgaria in 2015 and Sergey and Yulia Skripal in the UK in 2018.³⁶

In December, Bellingcat also released the results of an investigation with partners CNN, *Der Spiegel* and *The Insider*, which it claims contains data that 'directly links the August 2020 poisoning of Navalny to Russia's domestic security services', that is, to the Federal Security Service (FSB).³⁷ A timeline of the evidence and note on the investigation's methodology was also released.³⁸ Findings include that 'FSB operatives from a clandestine unit specialized in working with poisonous substances shadowed Navalny during his trips across Russia' since 2017 and that it is possible that there were earlier attempts to poison him.³⁹ The report identified seven operatives of this clandestine unit that it said was involved in following Navalny.

A further release from Bellingcat, in late December 2020, concerned validation of key elements of a 49-minute conversation between Alexei Navalny, who was posing as a fictitious aide to the head of Russia's Security Council, and Konstantin Kudryavtsev, one of the previously identified members of the FSB clandestine unit that apparently followed him.⁴⁰ According to Bellingcat, during the telephone call Kudryavtsev told Navalny a number of important details about the poisoning attempt, including that Alexey Alexandrov and Ivan Osipov were the main perpetrators and that Kudryavtsev had been instructed to travel to Omsk to process Navalny's clothing, including his underwear, which was described as having 'the highest concentration' of poison.⁴¹ The FSB dismissed the telephone call as 'a planned provocation . . . the implementation of which would not have been possible without . . . support of foreign special services'.⁴²

³⁵ Bellingcat Investigation Team (note 34).

³⁶ Bellingcat Investigation Team, 'The Dreadful Eight: GRU's Unit 29155 and the 2015 poisoning of Emilian Gebrev', Bellingcat News, 23 Nov. 2019; and Bellingcat Investigation Team, 'Third Skripal suspect linked to 2015 Bulgaria poisoning', Bellingcat News, 7 Feb. 2019.

³⁷ Bellingcat Investigation Team, 'FSB team of chemical weapon experts implicated in Alexey Navalny novichok poisoning', Bellingcat News, 14 Dec. 2020.

³⁸ See Bellingcat Investigation Team, 'Timeline of movements, phone calls, and actions taken by Team 9 and by Alexey Navalny's team', Dec. 2020; and Bellingcat Investigation Team, 'Hunting the hunters: How we identified Navalny's FSB stalkers', 14 Dec. 2020.

³⁹ Bellingcat Investigation Team (note 37).

⁴⁰ Bellingcat Investigation Team, "'If it hadn't been for the prompt work of the medics': FSB officer inadvertently confesses murder plot to Navalny", Bellingcat News, 21 Dec. 2020.

⁴¹ Bellingcat Investigation Team (note 40).

⁴² 'Navalny's so-called investigation into his poisoning a provocation, FSB says', TASS, 22 Dec. 2020.