

II. Use of novichok agents

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The Skripal case: Update on the assassination attempt in the United Kingdom using a toxic chemical

After 10 months of recuperation, Wiltshire police officer Detective Sergeant Nick Bailey returned to active duty on 15 January 2019. Bailey and another police officer had come into contact with a toxic chemical that was later identified as a member of the novichok family when they searched the Salisbury home of Sergey Skripal in March 2018.¹

About a week after Bailey's return to duty, on 21 January 2019 the European Union placed the two Russian nationals charged with carrying out the attack, known by their aliases Alexander Petrov and Ruslan Boshirov, on a European sanctions list.² The list also included Igor Olegovich Kostyukov and Vladimir Stepanovich Alexseyev, the head and deputy head, respectively, of the GRU, the Main Intelligence Directorate of the Armed Forces of the Russian Federation. This was the first set of listings under the new EU sanctions regime focusing on chemical weapons since its adoption in October 2018.³

Continuing its investigation of the Skripal poisonings, Bellingcat—an investigative research network that uses open sources and social media—linked a third Russian military intelligence officer to the attack.⁴ He was identified as Denis Sergeev, who Bellingcat suggested 'was likely in charge of coordinating the Salisbury operation'.⁵ This claim led to media reports that the Skripal poisoning was 'part of a coordinated and ongoing campaign to destabilize Europe, executed by an elite unit inside the Russian intelligence system skilled in subversion, sabotage and assassination'.⁶

Shortly before the one-year anniversary of the Skripal attack, on 1 March the British Department for Environment, Food and Rural Affairs announced the completion of Operation Morlop, the specialist decontamination work at the 12 sites across Salisbury and Amesbury.⁷ During the operation, military

¹ Wiltshire Police, 'Update: Latest on the Counter Terrorism Policing investigation into Novichok poisonings', [n.d.].

² Council of the European Union, 'Chemical weapons: The EU places nine persons and one entity under new sanctions regime', Press release, 21 Jan. 2019.

³ Council of the European Union, 'Chemical weapons: The Council adopts a new sanctions regime', Press release, 15 Oct. 2018.

⁴ Rakuszitzky, M., 'Third suspect in Skripal poisoning identified as Denis Sergeev, high-ranking GRU officer', Bellingcat news, 14 Feb. 2019.

⁵ Bellingcat Investigation Team, 'The GRU globetrotters: Mission London', Bellingcat news, 28 June 2019.

⁶ Schwirtz, M., 'Top secret Russian unit seeks to destabilize Europe, security officials say', *New York Times*, 8 Oct. 2019.

⁷ British Department of Environment, Food and Rural Affairs (DEFRA), 'Clean-up work completed in Salisbury', Press release, 1 Mar. 2019.

personnel, including the Joint Chemical, Biological, Radiological and Nuclear Task Force, and specialist contractors worked for ‘13 000 hours in protective clothing’ and collected ‘around 5000 samples—ranging from samples taken from ambulances and cars to chairs and pieces of plaster’, which were then analysed at the Defence Science and Technology Laboratory at Porton Down.⁸ The approach taken was ‘precautionary’.⁹

Two days later on 3 March, the eve of the anniversary of the poisonings, the then British Defence Secretary Gavin Williamson announced 11 million pounds of additional funding for measures to bolster the UK’s response to chemical attacks.¹⁰ The range of measures included: ‘developing plans to deploy drones and robots into potentially hazardous areas’; ‘boosting the Defence Science and Technology Laboratory’s ability to analyse substances, by investing in new technical capabilities’; and ‘keeping the UK at the forefront of medical advances to combat the effects of chemical agents’.¹¹

The then prime minister, Theresa May, visited Salisbury the following day to mark the first anniversary of the attack. Her visit included meeting the father of Dawn Sturgess (the deceased Amesbury victim) and her partner Charlie Rowley (the other Amesbury victim). Sturgess’s father told *The Guardian* newspaper that ‘it was the first time that someone from the government had spoken directly to the family’, adding: ‘She couldn’t give me any more information about what happened but it was reassuring that people [at] that level are thinking of us.’¹²

Also marking the first anniversary, Deputy Assistant Commissioner Dean Haydon, the Senior National Coordinator for Counter Terrorism Policing, said that the investigation into the poisoning was continuing.¹³ Haydon used the occasion to appeal for any further information, especially in relation to the perfume box and bottle that had been recovered from Rowley’s address. He commented that the police could not ‘account for the whereabouts of the bottle, nozzle or box between the attack on the Skripals on 4 March and when Charlie Rowley said he found it on Wednesday, 27 June’.¹⁴

The following month, on 6 April, Rowley met with the Russian ambassador to the United Kingdom, Alexander Yakovenko.¹⁵ Despite Yakovenko outlining ‘in detail the Russian view on what had happened in Salisbury and

⁸ Haynes, D., ‘Novichok attack: Skripal house to be brought back as home’, *Sky News*, 1 Mar. 2019.

⁹ DEFRA (note 7).

¹⁰ British Ministry of Defence, ‘Defence Secretary announces £11 million boost to chemical defences’, Press release, 3 Mar. 2019.

¹¹ British Ministry of Defence (note 10).

¹² Morris, S. and Bannock, C., ‘PM meets father of novichok victim Dawn Sturgess’, *The Guardian*, 5 Mar 2019.

¹³ Haydon, D., ‘Salisbury: Investigation continues one year on’, Update on Salisbury and Amesbury Investigation, British Counter Terrorism Policing, Mar. 2019.

¹⁴ Haydon (note 13).

¹⁵ Russian Embassy in the UK, ‘Ambassador Yakovenko meets Charlie Rowley’, Photo report, 7 Apr. 2019.

Amesbury’, Rowley later told the press that the meeting ‘had not changed his view on Russia’s involvement’.¹⁶

The following month, on 21 June, Rowley revealed in an interview additional details about how Sturgess was exposed to the novichok agent. He described the bottle and pump as being ‘packaged separately in hard plastic’:

‘It was a thick plastic. You couldn’t tear it. It was tough. I remember having to use a kitchen knife.’ As he attached the pump to the bottle, Rowley pressed the nozzle down. ‘It released on to me. I rinsed it off. It had an oily texture and next to no smell. I did mention [the lack of smell] to Dawn. She just carried on and gave it a spray, thinking nothing of it.’¹⁷

The Pre-Inquest Review into the death of Dawn Sturgess was listed to begin on 16 January 2019. Following two requests from the Crown Prosecution Service to relist the date, on the basis that there was ‘an ongoing criminal investigation and that a person(s) may be charged with a homicide offence’, the senior coroner for Wiltshire and Swindon, David Ridley, set a new date of 18 October 2019.¹⁸ Michael Mansfield QC, representing the Sturgess family, had urged the coroner to hold the inquest under the terms of Article 2 of the European Convention on Human Rights which would allow the scope of the inquest to be widened to consider ‘how and in what circumstances’ Sturgess died. The coroner released his preliminary view on this issue in September, in a letter which set out the scope and provisional agenda for the inquest, including that he did not consider Article 2 was engaged.¹⁹ The provisional agenda and scope were not accepted by all interested parties.²⁰ At the time of writing, the Pre-Inquest Review is adjourned to allow for a judicial review of the scope.²¹

Technical change to the schedules to the Chemical Weapons Convention

On 14 January 2019, the 62nd Meeting of the Executive Council of the Organisation for the Prohibition of Chemical Weapons (OPCW) considered

¹⁶ Rowley states, ‘I liked the ambassador but I thought some of what he said trying to justify Russia not being responsible was ridiculous. I’m glad I met him and feel I did find out some things I didn’t know before. But I still think Russia carried out the attack.’ See Quinn, B., ‘Man poisoned after novichok attack meets Russian ambassador’, *The Guardian*, 7 Apr 2019.

¹⁷ Morris, S. and Bannock, C., ‘Novichok victim: “We’re being kept in the dark”’, *The Guardian*, 21 June 2019.

¹⁸ Wiltshire and Swindon Coroner’s Court, News updates: Coroner’s decision, ‘Ruling in relation to the application of Article 2, European Convention on Human Rights and Scope’, Case no. 1380/18, 20 Dec. 2019, para. 2.

¹⁹ Wiltshire and Swindon Coroner’s Court (note 18), para. 3.

²⁰ Wiltshire and Swindon Coroner’s Court (note 18) para. 5.

²¹ Griffin, K., ‘Inquest hearing into death of Novichok victim Dawn Sturgess pushed back’, *Salisbury Journal*, 30 Jan. 2020.

the joint proposal made by Canada, the Netherlands and the United States on 16 October 2018. The proposal was designed to ensure that novichok agents, including the one used in the Salisbury incident, were listed in Schedule 1 (as chemical warfare agents) to the Chemical Weapons Convention (CWC).²²

The OPCW director-general delivered his report on the potential financial, administrative and budget implications of the decision, if it were to be adopted, to states parties on 10 January, four days before the 62nd meeting.²³ The report stated that the OPCW Technical Secretariat (the Secretariat) did not expect a significant increase of inspections at Schedule 1 facilities as a result of adoption, although additional requirements might be needed for training and capacity building for relevant Secretariat staff and to incorporate the relevant information into OPCW support programmes.²⁴

Taking the floor on the matter, Ambassador Paul van den Ijssel of the Netherlands (the host country) affirmed the importance of the credibility of the CWC and the OPCW, before arguing that adding the two proposed chemical families—which he described as ‘military-grade, extremely toxic chemicals’ with ‘no known use for purposes not prohibited’—‘strongly reinforces’ that credibility.²⁵ Romania on behalf of the European Union concurred, welcoming the ‘timely submission’ of the proposal and encouraging its recommendation.²⁶

However, Ambassador Alexander Shulgin of the Russian Federation noted in his statement his disappointment that the technical change was ‘limited to just two families’ despite Russia having ‘submitted extensive material (over 300 pages) specifying several hundreds of chemical compounds’.²⁷ He suggested that the ‘additional information’ submitted by Russia was ‘not

²² OPCW, Fourth Review Conference, United States, ‘Statement by HE Ambassador Kenneth D. Ward, Permanent Representative of the United States of America to the OPCW, at the Fourth Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention’, RC-4/NAT.7, 22 Nov. 2018, p. 3; and OPCW, Fourth Review Conference, Canada, ‘Statement of Canada to the Fourth Review Conference, Delivered by Ambassador Sabine Nölke, Permanent Representative’, 22 Nov. 2018. For a summary and other details of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC), see annex A, section I, in this volume.

²³ OPCW Executive Council, ‘Financial, administrative and programme and budget implementation of the follow-up activities related to the adoption of the Joint proposal under item 3 of the provisional agenda of the 62nd Meeting of the Executive Council’, Report by the Director-General, EC-M-62/DG.2, 10 Jan. 2019.

²⁴ OPCW Executive Council, EC-M-62/DG.2 (note 23), paras 5–6.

²⁵ OPCW Executive Council, the Netherlands, ‘Statement by HE Ambassador Paul van den Ijssel, Permanent Representative of the Kingdom of the Netherlands to the OPCW, at the Sixty-second Meeting of the Executive Council’, EC-M-62/Nat.3, 14 Jan. 2019, p. 1.

²⁶ OPCW Executive Council, Romania, ‘Statement by the European Union concerning the “Joint Proposal by Canada, the Netherlands, and the United States of American for a Technical Change to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention” (S/1682/2018, dated 25 October 2019)’, EC-M-62/Nat.1, 14 Jan. 2019.

²⁷ OPCW Executive Council, Russian Federation, ‘Statement by HE Ambassador A. V. Shulgin, Permanent Representative of the Russian Federation to the OPCW, at the Sixty-second Meeting of the Executive Council’, EC-M-62/NAT.4, 14 Jan. 2019, p. 1.

taken into account by the Technical Secretariat' and therefore considered 'this limited initiative to be politically motivated'.²⁸

The meeting 'considered and adopted, by consensus' the decision to recommend a change to Schedule 1 as per the proposal by Canada, the Netherlands and the United States. The Russian Federation disassociated itself from that consensus.²⁹

With regard to the series of five proposals submitted by the Russian Federation for a technical change to Schedule 1 (received on 30 November 2018), the Secretariat issued its evaluation on 29 January 2019, followed quickly by two corrigenda.³⁰ On 18 February 2019, the director-general issued a note on the financial, administrative, programme and budget implications of the follow-up activities related to the adoption of the proposal.³¹

The Executive Council convened on 25 February to consider the Russian proposals. Speaking at the meeting, the deputy permanent representative of the United Kingdom commented that the structures of the first two groups of chemicals proposed were the same as some of those in the joint proposal and so they had 'no substantive objection to their inclusion'.³² The UK also concurred with the Secretariat with regard to groups 3 and 4 (while noting that group 4 'is entirely unrelated to the toxic chemical used in Salisbury') and the view of the Secretariat that group 5 chemicals did not meet the criteria for inclusion in Schedule 1.³³ Ambassador Brandusa Predescu of Romania, speaking on behalf of the European Union, expressed similar views about the group 5 chemicals.³⁴

While there is no publicly available report of the 63rd Meeting of the Executive Council to confirm the outcome, it subsequently became known that the Executive Council did not recommend the adoption of the Russian proposals 'due to disagreements' on whether the chemicals in group 5 were consistent with the guidelines for Schedule 1A.³⁵ In a press conference the

²⁸ OPCW Executive Council, EC-M-62/NAT.4 (note 27), p. 1.

²⁹ OPCW Executive Council, Report of the Sixty-second Meeting of the Executive Council, EC-M-62/2, 14 Jan. 2019, paras 3.10 and 3.11. This was the first time that an Executive Council state party disassociated itself from a consensus decision. However, this is a more common occurrence in other policy-making fora. A state will do this to express its disagreement with the text but will not challenge it by calling for a vote. As a result, the action is largely symbolic.

³⁰ OPCW Executive Council, Opening remarks of the Director-General at the Sixty-third Meeting of the Executive Council (EC-M-63), 25 Feb. 2019.

³¹ OPCW Executive Council, Opening remarks (note 30), p. 1.

³² OPCW Executive Council, United Kingdom, 'Statement by Nicola Stewart, Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the OPCW, at the Sixty-third Meeting of the Executive Council (EC-M-63)', 25 Feb. 2019, p. 1.

³³ OPCW Executive Council, United Kingdom (note 32), p. 2.

³⁴ See OPCW Executive Council, Romania, 'Statement on behalf of the European Union delivered by HE Ambassador Brandusa Predescu, Permanent Representative of Romania to the OPCW, at the Sixty-third Meeting of the Executive Council', EC-M-63/NAT.2, 25 Feb. 2019.

³⁵ OPCW Scientific Advisory Board, 'Summary of the Third Meeting of the Scientific Advisory Board Temporary Working Group on Investigative Science and Technology', SAB-28/WP.3, 4 June 2019, para. 6.10.

day after the 63rd Meeting of the Executive Council, Ambassador Shulgin suggested that the reason the Russian proposals had been rejected was because ‘the US and its closest allies . . . research prohibited chemicals in NATO’s specialized centres’.³⁶ Ambassador Sabine Nölke of Canada rejected this suggestion, stating at the next session of the Executive Council that ‘Through extensive direct consultations with the Russian delegation, we made clear that there was a path to consensus. Instead, the Russian Federation chose to proceed with a decision that it knew would fail.’³⁷ In accordance with Article XV subparagraph 5(d) of the CWC, the decision relating to the Canada–Netherlands–USA proposal opened a 90-day window during which a state party could object to the decision. On 9 April Russia lodged an objection. With regard to the decision not to adopt the Russian proposals, Article XV subparagraph 5(e) states that it shall be taken as a matter of substance by the Conference at its next session. On 9 April Burundi lodged an objection to the Executive Council decision not to recommend the Russian proposal for adoption.³⁸ That meant that the two amendment proposals would be addressed by the 24th Session of the Conference of States Parties in November (see section III, this chapter).

³⁶ Russian Embassy in NL (@rusembassynl), Twitter, 26 Feb. 2019.

³⁷ OPCW Executive Council, Canada, ‘Statement by HE Ambassador Sabine Nölke, Permanent Representative of Canada to the OPCW, at the Ninetieth Session of the Executive Council’, EC-90/Nat.14, 12 Mar. 2019, p. 1.

³⁸ OPCW Scientific Advisory Board, SAB-28/WP.3 (note 35), para. 6.10.