

**Replies and Comments:**

**Noëlle Quénivet**

For comments:

Noelle.Quenivet@ruhr-uni-bochum.de  
0049.234.3227956

**On the web**

<http://www.ifhv.de/>

**Focus**

**Article II.1(a)**

““Chemical Weapons” means the following, together or separately: (a) 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;”

**Article II.7**

““Riot Control Agent” means: Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”

**Article II. 9(d)**

“ “Purposes Not Prohibited Under this Convention” means: (d) Law enforcement including domestic riot control purposes”

**The use of gas for law enforcement purposes:  
the hostage crisis in Moscow**

On October 23, 2002 a group of about 50 Chechens seized a Moscow theatre and held hundreds of people hostage, threatening to shoot their captives and blow up the building if Russian security forces amassed outside the theatre attacked. Their demand, that the operations mounted by the Russian army in Chechnya cease, was not taken into account by the authorities who, from the outset, declared that they would not negotiate.

The crisis finished when special troops stormed the theatre using gas in order to incapacitate the hostage-takers and hence prevent the setting off of a massive explosion that might have killed all the hostages. Up to 50 Chechens were killed as well as 119 theatregoers. All but two of the hostages died during and after the raid from the effects of an unidentified sleep-inducing gas. The refusal of the Russian authorities to disclose the composition of the chemical raised the suspicion of the international community. On October 30, 2002 the Russian Health Minister Yuri Shevchenko admitted that it was based on the powerful opiate fentanyl. Fentanyl works on the brain's pain receptors and is used both for general anaesthesia and light sedation, as well as in treating cancer patients.

The main issue at stake is whether the gas and its usage are allowed by the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, to which Russia is a party. The treaty bans all forms of lethal gas and strictly monitors chemical components.

It does nevertheless allow for the use of some chemical agents for “law enforcement including domestic riot control purposes” under article II.9(d). If one considers that the hostage crisis was not part of the conflict in Chechnya (in which common article 3 applies), then the raid in Moscow can be characterised as a law enforcement operation.

For the substance to be considered a permissible “riot control agent” according to article II.7, the chemical should not be listed in the annex and should not produce long-lasting sensory irritation or disabling physical effects. The Russian authorities officially declared that none of the chemical substances which might have fallen under the jurisdiction of the convention were used. This statement has been supported by arm control experts. As for the absence of long-lasting effects, the lethal consequences on the hostages must call into question the legality of the use of the chemical product. The counter-argument is that the only important criterion for determining the legality of a chemical weapon as a “riot control agent” is that it is not mentioned in the list prohibiting certain components.

Such an argument cannot be sustained if one takes into account article II.1(a) which specifies that toxic chemicals can only be used as long as the types and quantities are consistent with the law enforcement purpose. Yet, what is meant by “types and quantities” has unfortunately never been well defined. Even the use of the well-established proportionality principle (at least in international humanitarian law and in human rights law) is not of much help because the number of deaths (about 15% of the hostages died of the negative effects of the fentanyl) does not point to a clear breach of this principle. But, that being said, caution should be used before applying the proportionality principle as there are no guidelines as to how the expression “types and quantities” shall be understood.

To conclude, the Moscow hostage crisis reveals the deficiencies of the law enforcement section of the treaty and particularly of article II.9(d) of the Chemical Weapons Convention.

**Responsibility**

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**