INTRODUCTORY NOTE TO UNITED NATIONS SECURITY COUNCIL RESOLUTION 2298

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Introduction

On July 22, 2016, the UN Security Council unanimously adopted Resolution 2298 supporting efforts by the Organisation for the Prohibition of Chemical Weapons (OPCW) to remove chemical weapons from Libya and facilitate their destruction in another country.[1] This resolution was critical to the international effort to prevent chemical weapons in Libya from being at risk of acquisition by members of the so-called Islamic State operating in Libya.

Background

As part of renouncing weapons of mass destruction, Libya acceded to the Chemical Weapons Convention (CWC) in 2004.[2] Libya started a chemical weapons program in the 1980s and had capabilities to produce chemical weapons by the 1990s.[3] Libya refused to join the CWC after it was opened for signature in 1993. Its accession to the CWC in 2004 meant Libya had to destroy its chemical weapons, including stockpiles of precursor chemicals.[4] The OPCW declared in May 2014 that Libya had destroyed all its Category 1 chemical weapons.[5]

However, unrest in Libya following the Security Council-authorized military intervention in 2011[6] prevented the Libyan government from making progress on destroying stockpiles of Category 2 chemical weapons.[7] Further, the overthrow of the regime of Muammar Qadhafi resulted in the discovery of previously undisclosed stockpiles of chemical weapons.[8] Instability in post-intervention Libya and the weakness of government authorities created concerns that nonstate actors in Libya might gain access to poorly secured chemical weapons and attempt to use them.

This concern grew urgent as, in late 2014, the Islamic State began operating in Libya, including by gaining control of territory in and around the city of Sirte in 2015.[9] Islamic State attacks near sites storing stockpiles of Category 2 chemical weapons alarmed officials in Libya and other countries, such as the United States.[10] As 2015 ended and 2016 began, the threat of the Islamic State gaining access to these stockpiles grew,[11] and Libya started reaching out to the OPCW and other countries for help in addressing this problem.[12]

The Removal of Chemical Weapons from Syria as a Template

The CWC prohibits states parties from transferring chemical weapons to anyone.[13] However, in resolving the crisis triggered by the use of chemical weapons in Syria in 2013, the United States and Russia, supported by the OPCW and the Security Council, crafted a strategy under which Syria acceded to the CWC and transferred chemical weapons out of its territory for destruction elsewhere.[14] Implementing this strategy required decisions from the OPCW Executive Council[15] and the Security Council[16] to provide a legal basis for Syria to transfer chemical weapons to other countries that agreed to destroy them.[17]

Although the Syrian situation in 2013 and the Libyan context of 2016 are different, Libya and countries concerned about the Islamic State gaining access to Libyan stockpiles of chemical weapons saw the strategy for Syria as relevant for addressing the Libyan problem. In handling the Syrian situation, the OPCW made clear that its decisions reflected the extraordinary circumstances in Syria and, thus, created no precedent for the future.[18] Even so, what was done in Syria provided a way to confront dangers in Libya associated with terrorists gaining access to chemical weapons.

Security Council Resolution 2298

In Resolution 2298, the Security Council exercised its powers under Chapter VII of the UN Charter to support removing Libya's remaining chemical weapons from the country and having them transported for destruction elsewhere. First, the Security Council endorsed the OPCW Executive Council's decision made two days earlier requesting the OPCW Director-General develop a modified plan for the destruction of Libya's remaining chemical weapons.[19] This endorsement strengthened the legal basis for Libya to transfer its remaining chemical weapons outside

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its territory for destruction. Neither the OPCW Executive Council nor the Security Council expressly discussed removing these weapons from Libya, an outcome reflecting the need to avoid drawing too much attention to the strategy being devised.[20]

Second, the Security Council decided to authorize UN member states to "acquire, control, transport, transfer and destroy chemical weapons identified by the Director-General of the OPCW, consistent with the objective of the Chemical Weapons Convention, to ensure the elimination of Libya's chemical weapons stockpile in the soonest and safest manner."[21] This decision provided other countries with the legal basis to receive, transport, and destroy the Libyan chemical weapons.[22] The language used is identical to the Security Council's decision in 2013 authorizing UN member states to participate in the transfer of chemical weapons out of Syria for destruction.[23]

The Security Council also used the resolution to remind UN member states of their obligations under Resolution 1540[24] to "take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery" into the hands of nonstate actors.[25] The Libyan government worked with the OPCW to remove its remaining chemical weapons from its territory in order to prevent terrorists from getting access to them. The need for this approach reflected Libya's inability to establish effective domestic controls over its chemical weapons, but Libya's willingness to work with the OPCW to prevent terrorist access demonstrated its commitment to the objective of Resolution 1540.

Conclusion

Security Council Resolution 2298 helped pave the way for the successful removal of Libya's remaining chemical weapons from that troubled country and their secure transport by Danish and British vessels to Germany, where they will be safely destroyed.[26] In adopting the resolution, the Security Council effectively exercised its powers to safeguard international peace and security, advanced the CWC's disarmament and nonproliferation objectives, and contributed to ensuring terrorists never get their hands on chemical weapons in Libya.[27]

ENDNOTES

1 S.C. Res. 2298 (July 22, 2016).

2 *Member State – Libya*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS [OPCW], https://www.opcw.org/about-opcw/member-states/member-states-by-region/africa/member-state-libya/ (last visited Nov. 21, 2016).

3 *Libya: Chemical*, NUCLEAR THREAT INITIATIVE, http://www.nti.org/learn/countries/libya/chemical (last updated Apr. 2015) [hereinafter NUCLEAR THREAT INITIATIVE].

4 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction arts. I(2), II(1), Sept. 3, 1992, 1974 U.N.T.S. 45 [hereinafter CWC].

5 *Libya Completes Destruction of Its Category 1 Chemical Weapons*, OPCW (Feb. 4, 2014), https://www.opcw.org/news/article/libya-completes-destruction-of-its-category-1-chemical-weapons. Under the CWC, Category 1 chemical weapons are chemical agents (and munitions filled with such agents) that have been used as chemical weapons or that have few or no peaceful uses (Schedule 1 chemicals). *Brief Description of Chemical Weapons*, OPCW, https://www.opcw.org/about-chemical-weapons/what-is-a-chemical-weapon (last visited Nov. 21, 2016) [hereinafter *Brief Description of Chemical Weapons*].

6 S.C. Res. 1973 (Mar. 17, 2011).

7 NUCLEAR THREAT INITIATIVE, *supra* note 3. Under the CWC, Category 2 chemical weapons are primarily chemicals that serve as precursors for Schedule 1 chemicals and that have some peaceful uses in industry (Schedule 2 chemicals). *Brief Description of Chemical Weapons*, *supra* note 5.

8 NUCLEAR THREAT INITIATIVE, *supra* note 3.

9 David D. Kirkpatrick, Ben Hubbard, and Eric Schmitt, *ISIS' Gap on Libyan City Gives It a Fallback Option,* N.Y. TIMES, Nov. 29, 2015, at A1.

10 Missy Ryan & Greg Jaffe, *As ISIS Closed In, A Race to Remove Chemical-Weapon Precursors in Libya*, WASH. POST, (Sept. 13, 2016), https://www.washingtonpost.com/world/national-security/as-isis-closed-in-a-race-to-remove-chemical-weapon-precursors-in-libya/2016/09/13/85094326-78f7-11e6-beac-57a4a412e93a_story.html.

11 In Iraq and Syria, the Islamic State used chemical weapons, a track record that informed concerns about its access to chemical weapons in Libya. See Eric Schmitt, *ISIS Used Chemical Arms at Least 52 Times in Syria and Iraq, Report Says,* N.Y. TIMES, Nov. 22, 2016, at A9.

12 OPCW Dec. EC-M-51/DEC.1 (Feb. 24, 2016) (noting receipt of communications from Libya and "[n]oting with concern the security situation in Libya and the threat of the remaining chemical weapons stocks falling into the hands of non-State actors").

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13 CWC, *supra* note 4, art. I(1)(a).

14 U.S. Dep't of State Press Release, Framework for the Elimination of Syrian Chemical Weapons (Sept. 14, 2013), http://www.state.gov/r/pa/prs/ps/2013/09/214247.htm.

15 OPCW Dec., EC-M-33/DEC.1 (Sept. 27, 2013); OPCW Dec., EC-M-34/DEC. 1 (Nov. 15, 2013).

16 S.C. Res. 2118 (Sept. 27, 2013).

17 *See* Walter Krutzsch, Eric Myjer & Ralf Trapp, *Issues Raised by the Accession of Syria to the Chemical Weapons Convention*, *in* THE CHEMICAL WEAPONS CONVENTION: A COMMENTARY 699 (Walter Krutzsch, Eric Myjer & Ralf Trapp, eds. 2014) (analyzing the legal importance of the OPCW Executive Council's decisions and Security Council resolution 2118).

18 OPCW Dec., *supra* note 15, ¶ 3(d).

19 S.C. Res. 2298, *supra* note 1, ¶ 1. *See* OPCW Dec., EC-M-52/DEC.1 (July 20, 2016).

20 Ryan & Jaffe, *supra* note 10 (reporting that the U.S. government did not want to draw attention to the unanimous Security Council resolution until the chemical weapons had left Libya).

21 S.C. Res. 2298, *supra* note 1, ¶ 3.

22 *See* OPCW Dec., EC-M-53/DEC.1 (Aug. 26, 2016).

23 S.C. Res. 2118, *supra* note 15, ¶ 10.

24 S.C. Res. 1540 (Apr. 28, 2004).

25 S.C. Res. 2298, *supra* note 1, ¶ 5.

26 Ryan & Jaffe, *supra* note 10 (reporting that the Libyan chemical weapons were loaded on a Danish ship at the Libyan port of Misurata, which was escorted to Germany by Danish and British naval vessels).

27 For an in-depth discussion of the successful effort to remove chemical weapons from Libya, see Audio Tape: Event on Keeping Chemical Weapons Out of the Hands of Terrorists, held by the Center for Strategic and International Studies (Nov. 10, 2016), https://www.csis.org/events/keeping-chemical-weapons-out-hands-terrorists.

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UNITED NATIONS SECURITY COUNCIL RESOLUTION 2298*
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United Nations S/RES/2298 (2016)

Security Council

Distr.: General
22 July 2016

Resolution 2298 (2016)

Adopted by the Security Council at its 7743rd meeting, on 22 July 2016

The Security Council,

Recalling its resolution 1970 (2011) and all its subsequent resolutions on Libya, and support for the Government of National Accord,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

Recalling the objective of the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction (the "Chemical Weapons Convention") to exclude completely the possibility of the use of chemical weapons,

Recalling Libya's accession to the Chemical Weapons Convention in 2004, and the subsequent decisions of the Organization for the Prohibition of Chemical Weapons (OPCW) Executive Council concerning the destruction of Libya's declared chemical weapons, including precursors and notes the need for continued progress in this regard to ensure the complete destruction of Libya's chemical weapons,

Welcoming the decision EC-M-52/DEC.1 of the Executive Council of the Organisation for the Prohibition of Chemical Weapons (OPCW) of 20 July on the "Destruction of Libya's Remaining Chemical Weapons",

Noting a letter dated 16 July from the Libyan National Authority for the Chemical Weapons Convention to the OPCW Director-General informing the Secretariat of the movement of all of its remaining chemical weapons to a storage site in the north of the country, requesting the assistance and support of the Secretariat and States Parties to the Chemical Weapons Convention in ensuring the destruction of Libya's remaining category 2 chemical weapons on an expedited basis, and expressing the intent of Libya to cooperate fully with the OPCW,

Recalling the joint announcement, dated 4 February 2014, by Libya and OPCW on the complete destruction of Libya's category 1 chemical weapons,

Determining that the potential for acquisition by non-State actors of chemical weapons in Libya represents a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Endorses* the decision EC-M-52/DEC.1 of the Executive Council of the OPCW on 20 July requesting the Director-General to assist Libya in developing a modified plan of destruction of Libya's chemical weapons, that will be considered by the Executive Council, along with recommendations from the Director-General for additional measures needed to ensure the expeditious transport, storage and destruction of Libya's chemical weapons and

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expressing the Executive Council's determination to ensure the destruction of Libya's chemical weapons stockpile in a safe and expeditious manner;

2. *Encourages* Member States to assist the Government of National Accord in providing support, including personnel, technical expertise, information, equipment, and financial and other resources and assistance, in coordination with the Director-General of the OPCW, to enable the OPCW to implement the elimination of Libya's category 2 chemical weapons safely and in the soonest practicable timescale;

3. *Decides* to authorize Member States to acquire, control, transport, transfer and destroy chemical weapons identified by the Director-General of the OPCW, consistent with the objective of the Chemical Weapons Convention, to ensure the elimination of Libya's chemical weapons stockpile in the soonest and safest manner, with appropriate consultations with the Government of National Accord;

4. *Requests* the Director-General of the OPCW, through the Secretary- General, to report to the Security Council, on activities related to the implementation of OPCW Executive Council Decision EC-M-52/DEC.1 of this resolution on a regular basis until the destruction of the remaining chemical weapons is complete and verified;

5. *Reminds* Member States of their obligation under Resolution 1540 (2004) that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, and *reaffirms* its decision that Member States shall inform the Security Council immediately of any violation of resolution 1540 including acquisition by non-State actors of chemical weapons, their means of delivery and related materials;

6. *Decides* to remain seized of the matter.

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