

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL RUS 11/2020

30 December 2020

Excellency,

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We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 44/5 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged attempted killing and poisoning of Mr. Alexei Anatolievich Navalny.

We wish to recall that, on 18 August 2020, we issued a communication to your Excellency's Government on the same issue and we are grateful for the reply received.

Mr. Alexei Anatolievich Navalny, a Russian national, is a politician, lawyer, and an anti-corruption activist. In 2008, he founded the Union of Minority Shareholders, which works to protect the rights of minority shareholders and has brought lawsuits against some of Russia's largest corporations. In 2010, Mr. Navalny created "RosPil", a project aimed at exposing corrupt practices in Government procurement processes. In 2011, he created the Anti-Corruption Foundation (FBK), which today is considered Russia's premier anti-corruption organization. Because of his work, Mr. Navalny reportedly has been repeatedly prosecuted. For instance, in 2017 he was convicted of fraud in a case that the European Court of Human Rights would later call "arbitrary and manifestly unreasonable." The sentence also meant Mr. Navalny was precluded from running for the Russian presidency in 2018. Today, Mr. Navalny faces another criminal investigation while his bank account has been frozen, as has that of his Anti-Corruption Foundation.

According to the information received:

It is alleged that while in the town of Tomsk, Siberia, Mr. Navalny was subjected to an attempted killing from exposure to a prohibited chemical substance, Novichok. Detailed information is contained in annex I, which is an integral part of this communication.

On a flight from Tomsk to Moscow, on 20 August 2020, it is alleged that Mr. Navalny started experiencing worsening symptoms, including sweating profusely and feeling something, that he described as "beyond pain". He reportedly went to the restroom to wash his face and then, after a short time, approached a flight attendant and told him he had been poisoned and was dying.

He lay down, allegedly hallucinating, and ultimately lost consciousness. The plane's pilot diverted the flight to Omsk and made an emergency landing.

It is reported that a diagnosis of suspected organophosphate poisoning was made immediately on his examination in Omsk, first by an emergency team and then by other medical staff. Mr. Navalny was placed on a ventilator and administered atropine; life-saving treatments vital in the first 24 hours. Analyses carried out in Omsk by non-OPCW approved laboratories did not confirm the initial diagnosis or identify the poison. However, five OPCW-approved laboratories (such as located in Germany, France, and Sweden) later did, returning the same finding that the poison was Novichok. On 6 October, the OPCW itself confirmed, based on samples sent to two laboratories designated by the Director-General, that Mr. Navalny has been exposed to a toxic chemical acting as a cholinesterase inhibitor, whose biomarkers are similar to Novichok.

It is reported that the Russian authorities purportedly developed the first Novichok compounds and that Russia is described as manufacturing the substance for offensive, as opposed to defensive, purposes. It is further alleged to be highly unlikely that the substance would be developed by a non-State actor and that only the Russian State has developed, apparently stored and used Novichok. It is further reported that the compound used against Mr. Navalny is a novel form of Novichok, suggesting further development of the toxic substance, although the time frame for that is unknown.

It is further alleged that traces of Novichok were reportedly found in his Tomsk hotel room and that Mr. Navalny was poisoned through his skin and clothes. Mr. Navalny was allegedly under intensive Government surveillance while in Tomsk, making it unlikely that any third party could have administered such a poison without the knowledge of the Russian authorities. It is further reported that the Russian Government controls most of the evidence in this case, including access to many of the witnesses; the CCTV tapes from Mr. Navalny's hotel; the clothes he was wearing when he succumbed to the poison, and his medical records from his treatment in Omsk.

It is also alleged that numerous others engaged in political activities in opposition to the Russian Government both within and outside of Russia, or who were exiled from the country, have been killed or have been victims of attempted killings. It is further reported that Russian law has been amended in 2016 to permit President Putin to authorize the extra-judicial killing abroad of individuals accused of being 'extremists,' a term defined broadly, inclusive of 'those slandering the individual occupying the post of president of the Russian Federation'.¹

Without prejudging the allegations set forth above and in annex I to date but subject to any clarification your Excellency's Government may wish to provide, it appears that your Excellency's Government violated the right to life protected by article 6 of the International Covenant on Civil and Political Rights (ICCPR or Covenant)²,

¹ Steven Eke, "Russian Law on Killing 'Extremists' Abroad," BBC News, 27 November 2006, <http://news.bbc.co.uk/2/hi/europe/6188658.stm>.

² Your Excellency's Government signed the ICCPR on 18 March 1968 and ratified it on 16 October 1973.

ratified by the Russian Federation in 1976, and article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)³; the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established by article 7 of the ICCPR, article 3 of the ECHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Russian Federation in 1987; and the right to freedom of opinion and expression, protected by article 19 of the ICCPR and article 10 of the ECHR. In this connection, I would like to refer your Excellency's Government to annex II, an integral part of this letter, which provides further detail on some of the main international norms and standards that appear to be contravened by these allegations.

We are concerned that, if proven, these allegations constitute a violation of your Excellency's Government obligations to respect the right to life. According to the allegations, at the time of the chemical weapon attack, Mr. Navalny was under intensive surveillance of your intelligence agencies, making it very unlikely that third parties could act without their knowledge, while Novichok is a chemical weapon developed by your Excellency's Government. The right to life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict or other public emergency. Arbitrary deprivation of life includes the intentional and often premeditated use of lethal State force outside of the judicial process, killings often referred to as extra-judicial executions.⁴

We are concerned that the allegations, if correct, would also indicate that your Excellency's Government has failed to fulfill its obligations to prevent or protect against arbitrary killings by non-State actors. The duty to protect the right to life "requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence."(GC 36, para. 23). We are concerned that the allegations indicate that your Excellency's Government failed to recognize a risk of harm to Mr. Navalny,⁵ even though it knew or should have known that Mr. Navalny was a prominent critic and anti-corruption who had been the target of numerous attacks. Since your Excellency's Government allegedly had Mr. Navalny under heavy surveillance, it was within the Government's power to protect Mr. Navalny from attack including by preventing attempted poisoning by any third party.

We are further concerned that the allegations, if correct, would indicate that Mr. Navalny, rendered powerless, was poisoned with Novichok whose use seeks to inflict pain and suffering on the victim, and to instill fear in others, but with official deniability. Given its characteristics, we are concerned that Novichok may be inherently cruel, inhuman or degrading. The use of this uncommon deadly compound both may amount to a form of torture or at a minimum, to cruel, inhuman or degrading treatment and as such a violation of the prohibition against torture, or cruel, inhuman or degrading treatment.

³ Your Excellency's Government signed the European Convention on 28 February 1996 and ratified it on 5 May 1998.

⁴ A/HRC/41/CRP.1, para. 195.

⁵ IACHR, *Jessica Lenahan (Gonzales) v. USA*, 2011

If confirmed, these allegations would also constitute a violation of the rights to freedom of opinion and expression, protected by article 19 of the ICCPR and article 10 of the ECHR. The State is under negative obligations to refrain from restricting the right to freedom of expression, other than in a manner compatible with the requirements under articles 19 (3) of the ICCPR.⁶ The State also has positive obligations to exercise due diligence to prevent violations being committed by third parties.⁷ States parties are required to take effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Given the identity and the role of the victim, the attempted killing and poisoning of Mr. Navalny also represents a broader attack on the collective right of the public in the Russian Federation to access information.⁸ Under no circumstances can an attack on a person, including arbitrary arrest, threats to life and killing, be compatible with article 19.⁹

Furthermore, the use of Novichok may involve the responsibility of your Excellency's Government under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), ratified in 1987. Your Excellency's Government has the obligation not to use chemical weapons, such as Novichok, to destroy all chemical weapons in its territory, and to prevent the use of chemical weapons by non-State actors, including by effectively prohibiting illicit trafficking in the substance.¹⁰ Even a single use of a chemical weapon on a single individual constitutes a violation of the CWC.¹¹ The use of Novichok within Russia against Mr. Navalny would constitute evidence of a failure to meet these obligations. Indeed, the CWC also obligates your Excellency's Government to locate on its territory and destroy the source of Novichok used against Mr. Navalny.

We wish to emphasize that your Excellency's Government has an obligation to conduct an independent, impartial, prompt, thorough, effective, credible and transparent investigation of the above-mentioned allegations. In the event that a violation is found, full reparation must be provided to the victim and his family, including, in view of the particular circumstances of this case, adequate measures of compensation, rehabilitation and satisfaction. States are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

We further wish to emphasize that these allegations, if confirmed, may subject officials within your Excellency's Government to criminal liability, both for participating in or ordering attempted murder or for failing to ensure that subordinates do not engage in these actions. The responsibility of high-level officials is not a derivative form of criminal responsibility. There is individual criminal responsibility for a superior's own role in permitting gross violations of international criminal law to occur or for failing to investigate or punish those violations, or to prevent their recurrence.¹² In this instance, given reports of repeated threats and attacks on Mr.

⁶ See *Id.* para. 6

⁷ See Human Rights Committee, General Comment No. 31 (2004), para. 8; Human Rights Committee, General Comment No. 34 (2011) para. 7; Human Rights Committee, General Comment No. 36 (2018) para. 21.

⁸ <https://unesdoc.unesco.org/ark:/48223/pf0000261372>

⁹ HRC, General Comment No. 34, para 23.

¹⁰ CWC, articles I and VII; UNSC Res. 1540 (2004).

¹¹ Statement from the OPCW Director-General on Allegations of Chemical Weapons Use Against Alexei Navalny, 3 September 2020, <https://www.opcw.org/media-centre/news/2020/09/statement-opcw-director-general-allegations-chemical-weapons-use-against>.

¹² *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 261 (individual criminal

Navalny, and evidence pointing at your Excellency's Government as the responsible party, superior officials may have been on notice of these criminal acts and thus are themselves liable if they failed to take action to prevent their recurrence.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any additional investigation carried out by your Excellency's Government since your reply of 26 October.
3. Please provide further details of the investigative measures highlighted in your 26 October reply, such as the results of the interviews, review of CCTV recordings from the hotel, forensic examinations?
4. Please inform us whether you will be willing to release to Mr. Navalny his medical records and the cloths that were collected from him when he was first admitted in Omsk hospital?
5. Please inform us whether your Excellency's Government will be willing to release all records of any investigation it has done to date?
6. Please provide details on the extent of surveillance by the Russian authorities of Mr. Navalny, and the legal justification for it. Please explain when the surveillance started, if it has a temporal restriction, and who has access to surveillance reports or to the units and/or individuals conducting the surveillance.
7. Please indicate which measures will be taken to ensure Mr. Navalny's life is no longer threatened when he decides to return to the Russian Federation.
8. Please indicate which guarantees can the Russian authorities provide to protect Mr. Navalny's right to freedom of expression.
9. Please provide information on all ongoing criminal and civil investigations against Mr. Navalny, his family or the FBK.
10. Please detail the steps taken by Russia to identify all production and storage facilities for Novichok and to destroy all forms of Novichok?

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

responsibility if superior did not "prevent crimes from being committed by his subordinates or, where applicable, punish them").

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their reoccurrence. We particularly call on your Excellency's Government to ensure that, when Mr. Alexei Navalny decides to return to the Russian Federation, he and his family are granted the protection required to prevent any future attempts to his life, and that his right to freedom of expression be fully respected. In view of the urgency of the situation and the international implications, we also call on your Excellency's Government to request or allow an independent international investigation into the chemical attack against Mr. Navalny and his attempted killing.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.



Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions



Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

ANNEX I – ALLEGED FACTS

According to the information received:

A. Timeline of the alleged poisoning

Mr. Navalny's visit to Tomsk

In mid-August 2020, Mr. Navalny and six colleagues travelled to Novosibirsk to film video content about corruption of local United Russia politicians and to support the strategy of “smart voting” in upcoming local elections. United Russia is the governing political party of Russia. Mr. Navalny and his colleagues arrived in Novosibirsk on 13 August 2020. During the evening of 14 August 2020, they met with local volunteers of the Anti-Corruption Foundation (FBK) and spent the following two days filming.

In the afternoon of 17 August 2020, Mr. Navalny and his team departed Novosibirsk for Tomsk by car. The drive was about three and a half hours long. Around the mid-point of the trip, traffic control stopped their cars and asked for passports. The police recorded the names of Mr. Navalny and his colleagues. They arrived in Tomsk between 19:00 and 20:00 local time. The team checked-in at the Xander hotel, which had been pre-booked 1.5 weeks before the trip under different names. Mr. Navalny stayed in room 239. Mr. Navalny and his six colleagues did not switch their hotel rooms. Furthermore, per protocol established for protection purposes, no one ever entered his room. If, for example, someone had to give some documents to Mr. Navalny, they would send him a message and then meet in a corridor outside of his room. In Tomsk, Mr. Navalny's team also rented an apartment for filming purposes. After arrival, Mr. Navalny and his team had a meeting with local residents at the local FBK office. They then went to check shooting locations, accompanied by three local volunteers, and returned to the hotel at around 22:00. All of them, 10 in total, had dinner at the hotel. Mr. Navalny went to bed at around 23:00. During the time spent in Tomsk, Mr. Navalny was reportedly followed by local police and members of the Federal Security Service (FSB).

On 18 August 2020, Mr. Navalny realized that he did not have enough clean clothes. Because he could not figure out how to use the laundry bag in his room, he left his dirty clothes on his bed, and asked the reception to collect them for laundry. The clothes were washed and returned to Mr. Navalny the next day. He and his team does not recall if he wore any of the washed clothes the next day. Mr. Navalny is reportedly in the habit of having his clothes washed while traveling to avoid carrying dirty laundry. Most of 18 August was spent shooting video content about United Russia politicians at eight different locations in Tomsk. The day concluded with an interview with the former mayor of Tomsk. The filming went smoothly. Upon returning to the hotel, the team had dinner and went to sleep.

On 19 August 2020, Mr. Navalny spent all day filming. The work began by shooting on the roof of FBK's regional office and continued at different locations in Tomsk. Due to the heavy schedule, Mr. Navalny had no time to eat until late in the evening. He and the team had sushi for dinner, which was allegedly awful and full of

fat. After the dinner, Mr. Navalny and the team visited the local FBK office to meet with volunteers. Subsequently, he decided to go swimming in Tomi River, per his tradition to swim in the rivers of the cities he visits. He elected to do so at the Kaftanchikovo village, some twenty kilometers south of Tomsk. Mr. Navalny and the team arrived at Kaftanchikovo at approximately 22:00. After swimming for about ten minutes, he drove back with his team and returned to the hotel at around 23:00. At the hotel, Mr. Navalny wanted to have a drink at the bar. He asked for a bloody mary but a seemingly inexperienced bartender did not have the right ingredients. Mr. Navalny settled for a Negroni. The cocktail was mixed poorly, and Mr. Navalny did not finish it after the first sip. Feeling hungry, Mr. Navalny asked if there was anything in the mini bar. The bartender said that there was only chocolate, which Mr. Navalny did not eat. Back at his room, Mr. Navalny prepared his suitcase, except for his clothes for the next day. It is allegedly his habit to wear track clothes while traveling, which is what he did on this occasion. He put some water near his bed. He realized that he had left his backpack in the restaurant. He texted his assistant, who brought it and passed it on to him from the corridor.

Flight to Moscow

Mr. Navalny and some members of his team were due to return to Moscow on a S7 Airlines flight No. 2614 from Tomsk to Moscow. On 20 August 2020, Mr. Navalny's schedule reportedly unfolded as follow.

After waking up, Mr. Navalny took a shower during which he used soap and shampoo. He put gel in his hair and used a few other of his personal toiletries. He separated his dirty clothes from his clean clothes. Before leaving the hotel room, he drank from a water bottle in his room. He was the first one to reach the hotel lobby but was soon joined by his assistant and press secretary. The three departed for the airport by taxi at around 06:00. On the way, the taxi driver said that he did not have enough gas and stopped by a station to fill-up.

At the airport, it took forty minutes for Mr. Navalny and his colleagues to pass through security, which they thought was unusually long. Afterwards, Mr. Navalny bought local sweets, placed them in a backpack and proceeded to the airport café. He and his colleagues ordered a tea, a cappuccino and bottled water. A waitress brought the tea and the cappuccino but forgot the water. Mr. Navalny drank the tea and his press secretary drank the cappuccino. Subsequently, Mr. Navalny and his colleagues took a bus to board the plane and took at least one picture with his followers. He and his colleagues were the last people to enter the plane.

Mr. Navalny took a window seat and took out his laptop to watch something during the flight. He put on Rick and Morty, as per a habit of watching cartoons during take-off. After viewing the cartoon for approximately 21 minutes, Mr. Navalny reported feeling cold sweat run down his forehead. He thought then that something was very wrong. He closed his laptop and asked his press secretary for a napkin to wipe-off what he thought had become a "river" of sweat. His condition was worsening, and he also began to feel something which he described as "beyond pain." He then asked his press-secretary to talk to him hoping this would help him to concentrate his mind on something. However, Mr. Navalny could not focus on his colleague's words. He felt a wave of something unfamiliar coming over him. At this point, service on the plane

began and a flight attendant was pushing a cart towards Mr. Navalny. At first, Mr. Navalny wanted to ask for something to drink but then felt that going to the restroom to wash his face would be more helpful. As the flight attendant was blocking the path to the restroom, he asked to be allowed through.

In the restroom, Mr. Navalny washed his face and then sat down for a minute, thinking that he may feel better. He however realized that he would not be able to stand up so he spent approximately ten minutes in the bathroom before being able to leave. Weeks later, he would describe the experience as being kissed by a dementor, a creature from J.K. Rowling's Harry Potter. In the novel, the kiss is not painful, but life exits the body of the victim.

After exiting the restroom, Mr. Navalny approached the flight attendant in the kitchen of the plane and told him that he had been poisoned and was about to die. He then laid down. The attendant and the rest of the crew asked what was wrong, if Mr. Navalny's had heart pain, and other similar questions. He was allegedly moaning as if he was hallucinating, not as if he was in pain.¹³ Mr. Navalny lost consciousness shortly afterwards.

Emergency plane landing and arrival at the hospital in Omsk

Flight crew found a paramedic on board who provided first aid to Mr. Navalny. However, as his condition continued to deteriorate, the pilot decided to make an emergency landing at the closest airport, which was in Omsk. The pilot reportedly requested permission for an emergency landing at the Omsk airport at 8:25. After the authorization to land was given, five minutes prior to the landing, a traffic controller notified the pilot that the airport in Omsk was being evacuated due to a bomb threat. Afterwards, in a statement released in October 2020, Russian authorities confirmed that a false bomb threat had caused the airport in Omsk to be evacuated and that an investigation on whether this was related to the presence of Mr. Navalny in the area was being undertaken.

An ambulance was waiting for Mr. Navalny at the foot of the plane. Two paramedics provided aid and swiftly diagnosed him with poisoning from a heavy dose of a sedative drug, explaining the hallucinations. The ambulance thus departed for the toxicology center at Omsk Hospital No. 1. Mr. Navalny's press secretary accompanied him in the ambulance. His other team member remained at the airport to collect the suitcases and then went to the hospital by taxi.

Following their arrival at the hospital, medical staff reassured the team that Mr. Navalny will recover, but that they needed to conduct some tests, which may take about two hours. However, approximately forty minutes later, a doctor informed Mr. Navalny's press secretary that Mr. Navalny was in a coma and placed on a ventilator. Upon request from Mr. Navalny's colleagues, the hospital called the police so that the poisoning of Mr. Navalny could be reported. Police arrived at the hospital around 12 noon. They interviewed Mr. Navalny's colleagues and asked to check his suitcase. The team rejected such a request. Upon her arrival at the hospital, after 6:00 pm, Yulia Navalny (Mr. Navalny's wife) allowed them to search the suitcase, which

¹³ <https://www.youtube.com/watch?v=9W1jR5u2M7k>

also contained Mr. Navalny's computer and mobile phone. The police returned all items checked following the search but requested to take Mr. Navalny's suitcase. Mr. Navalny's wife declined to hand over the suitcase. The police did take the clothes Mr. Navalny was wearing when he arrived at the hospital and never returned them.

Treatment and Diagnosis in Omsk hospital

It is submitted that quick initial treatment is crucial to save lives in cases of poisoning. Had the pilot of S7 Airlines flight No. 2614 decided to fly back to Moscow, for instance, rather than attempt an emergency landing in Omsk, this could have been fatal for Mr. Navalny. Similarly, the initial treatment received by Mr. Navalny at the hospital in Omsk may well have saved his life too. It may not have been optimal but sufficient to keep him alive. It is reported that Mr. Navalny was given 3 mg of atropine, put into an induced coma and on a ventilator within 10 minutes of his admission¹⁴, which allowed his brain to be properly oxygenated. It remains unclear whether atropine was inoculated intravenously continuously (the recommended treatment). Atropine was stopped within 24 hours. It is alleged he may have been subsequently treated with propofol.

Mr. Navalny was treated for suspected organophosphate poisoning when he first arrived in the hospital, even though he reportedly exhibited atypical symptoms. Only when the initial lab tests returned negative for toxic substance did the team of medical doctors considered other diagnosis.

It is indicated that Mr. Navalny was officially diagnosed with carbohydrate metabolism disorder (primary diagnosis) and chronic pancreatitis and impairment of exocrine and endocrine functions, acute condition (secondary diagnosis). Tests reportedly showed that Mr. Navalny's blood levels were six times higher than the norm for amylase, sugar and serum lactate; twice the normal level of leukocytosis, and the maximum level of acetonuria. In addition, alcohol (0.2 ppm) was found in the urine. It is alleged that before this episode in the plane, Mr. Navalny had no pre-existing medical conditions, except a slight arterial hypertension.

Irrespective of the absence of positive tests results in Omsk, scientific reports indicate that clinical signs of poisoning by nerve agents can include leukocytosis and acetonuria.¹⁵ These agents can also produce hyperamylasemia and hyperglycemia.¹⁶ Furthermore, some experts have reportedly indicated that Mr. Navalny's atypical symptoms could have resulted from poisoning with a mixture of two components or could be due to the manner of poisoning (e.g. through Mr. Navalny's skin and clothes), which would have complicated the diagnosis.

It is further alleged that the Omsk hospital laboratories, as well as the Moscow Medical Center for Forensic Medicine, which reportedly conducted the toxicological

¹⁴ <https://meduza.io/en/feature/2020/08/28/we-re-in-the-business-of-saving-lives-get-it> Mr. Navalny was already in a coma when he was admitted but they put him in an induced coma.

¹⁵ J.E. Ryan, "Treatment of cholinesterase inhibitor poisonings," University of Nebraska Medical Center, 1964.

<https://digitalcommons.unmc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1050&context=mdtheses>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7303096/>

¹⁶ S. Wiener and R. Hoffman, Nerve Agents: A Comprehensive Review, *J. Intensive Care Med* 2004; 19: 22-37.

tests on Mr. Navalny's blood and urine would not have been able to conduct the proper tests for Novichok poisoning because they are not designated laboratories by the Organisation for the Prohibition of Chemical Weapons (OPCW) and that they are not properly equipped to carry out the specialized analyses required to identify prohibited chemical weapons.

Mr. Navalny's evacuation to Germany

When Yulia Navalny (Alexei Navalny's wife) arrived at the hospital in Omsk on 20 August 2020, after 18:00, she met with doctors, including the lead toxicologist handling the case, who told her that Mr. Navalny was in a critical condition. They then took her to Mr. Navalny's room, which he shared with four other patients. She stayed there for 15 minutes.

Yulia Navalny determined that he should be moved to another hospital to receive the treatment she believed he needed. Just after 20:00, it was reported that Chancellor Merkel of Germany and President Macron of France had offered to treat Mr. Navalny in their respective countries. Mr. Navalny's colleagues researched the best facilities in Europe for chemical poisoning and agreed then that he should be transferred to the *Charité* Hospital in Berlin, Germany. Arrangements were made quickly, including the preparation of a medical plane to transfer Mr. Navalny from Omsk to Berlin.

Earlier in the afternoon, at approximately 15:00, Mr. Dmitry Peskov, President Putin's press-secretary, had released a statement wishing Mr. Navalny well, "just as he would to any Russian citizen". He noted that no special briefing on the case had been prepared for President Putin.

In the early morning of 21 August 2020, following a long Concilium, the medical team treating Mr. Navalny concluded that he was not in a condition to be transferred abroad as he was too unstable. The information was communicated to Yulia Navalny. For the remaining of the day, Yulia Navalny sought relentlessly to get updated information about her husband's conditions from the medical practitioners but faced little cooperation and received incomplete information. The situation prompted Yulia Navalny to issue an official plea to President Putin, demanding that her husband be allowed to be evacuated to Germany. At around 14:00, the European Commission as well called on Russia to allow Mr. Navalny to be transferred to Berlin. Mr. Putin later in the day confirmed that, after receiving Yulia Navalny's request, he personally approved Mr. Navalny's transfer to Berlin, despite the existence of an ongoing criminal investigation against him.

On the same day, the European Court of Human Rights received a request for an interim measure on behalf of Mr. Navalny. The Court granted the measure later in the evening, requesting the Russian authorities to authorize Mr. Navalny's transfer to Germany for treatment and to hand over his medical file to his wife. It is alleged that to this day neither Mr. Navalny nor his family have been given access to his medical records from the Omsk Hospital.

At 16:25, the chief medic of Omsk Hospital declared that Mr. Navalny will remain at the Russian hospital until he stabilizes. At 18:44, the deputy chief medic of

the Omsk Hospital announced that Mr. Navalny's condition was stable enough and that his transfer to Berlin was authorised. However, his evacuation did not take place on this evening but was delayed to the following morning, allegedly for a number of bureaucratic and administrative reasons.

The medical plane with Mr. Navalny on board departed for Berlin at 07:49 on 22 August 2020. Also on board were the German medical crew and Yulia Navalny. She had with her Mr. Navalny's suitcase, and some items collected by his team from his hotel room. It is alleged that the only medical file provided by the Omsk emergency hospital to the German team of medical doctors that came to evacuate him was a short, hand-written report.

Treatment at Berlin Charité University Hospital

Upon his transfer to Charité – Universitätsmedizin Berlin, Alexei Navalny was treated for severe poisoning with a cholinesterase inhibitor, a condition diagnosed based on his initial clinical signs. On 24 August 2020, the Charité Hospital of Berlin declared that “[f]ollowing his admission, Mr. Navalny underwent extensive examination by a team of Charité physicians. Clinical findings indicate poisoning with a substance from the group of cholinesterase inhibitors. The specific substance involved remains unknown, and a further series of comprehensive testing has been initiated. The effect of the poison – namely, the inhibition of cholinesterase in the body – was confirmed by multiple tests in independent laboratories.”¹⁷ Mr. Navalny was treated with the antidote atropine, an oxime and a range of other interventions¹⁸. An oxime can potentially remove poison from the enzyme, irrespective of the kind of poison used. Atropine can reverse a number of symptoms and clinical signs, such as low heart rate and excessive sweating.¹⁹

B. Diagnosis and scientific investigation into Mr. Navalny's poisoning

Novichok clinical signs

Novichok is a cholinesterase inhibitor which blocks the action of the enzyme acetylcholinesterase (AChE). When nerve cells transmit signals to each other, they do so by releasing neurotransmitters into the synapse. Acetylcholine is a key neurotransmitter and AChE is an enzyme released to stop the neurotransmitter and to allow the nerves to reset. Different nerve agents can affect different neurotransmitters: Novichok attaches itself to AChE and inhibits its action. As a result, the nerves become overstimulated and eventually stop working. This can ultimately cause seizures, stop a

¹⁷https://www.charite.de/en/service/press_reports/artikel/detail/statement_by_charite_clinical_findings_indicate_alexei_navalny_was_poisoned/

¹⁸ Novichok nerve agent poisoning, www.TheLancet.com, 22 December 2020

¹⁹ Atropine works on a part of the receptors, whereas Oxime works specifically on nerve receptors. Atropine prevents the acetylcholine, the neurotransmitter, from binding to the nerve cells and activating them. In other words, it stops the overstimulation. It does not address the reduction of AChE by the nerve agent. For that reason, oximes can be given to patients to remove the inhibitor from the AChE. Different oximes work for different nerve agents and can themselves cause significant side effects. <https://www.sciencemediacentre.org/expert-reaction-to-statement-from-charite-universitatsmedizin-berlin-hospital-that-alexei-navalny-may-have-been-poisoned-with-a-substance-from-the-group-of-cholinesterase-inhibitors/>

person's breathing and lead to death.²⁰ The most severe and potentially lethal clinical result is respiratory paralysis due to effects on the diaphragm and, perhaps, on the respiratory centers of the brain stem. Contact with liquid nerve agent is said to produce localized sweating and fasciculation, which can spread to involve whole muscle groups.²¹ It is alleged that the time during which symptoms develop is influenced by the route of exposure.

Novichok can apparently be applied in aerosol or liquid form or be converted into "a 'dusty' formulation by absorbing liquid droplets onto a solid carrier like talc, silica gel, fuller's earth or pumice."²² It is unknown how persistent Novichok agents are, once applied, in terms of remaining a contact hazard or creating an inhalation hazard upon vaporization. It is reported that the Novichok agent was environmentally persistent in Salisbury when used to poison the Skripals.²³ The UK decontaminated a total of nine "potentially contaminated" sites²⁴, a process that took several months. At least one expert has indicated that Novichok stability as a powder means that it "can be hidden and stored much more easily than classical nerve agents"²⁵. It is reported that there are many factors that are difficult to control when using Novichok or nerve agents. Among them is the accurate determination of dosage as it may vary from one individual to another depending on weight, state of health, and the modalities of how the poison enters the body. In the case of Mr. Navalny, it is alleged that Novichok may have been administered through his clothes and skin.

Scientific investigation into Mr. Navalny's poisoning

In Germany, the toxicological tests on Mr. Navalny's samples to determine the source of the poisoning were conducted by the Bundeswehr Institute of Pharmacology and Toxicology, an OPCW approved scientific institute. On Sunday morning, the morning of 23 August, the scientists are said to have received the first blood and urine samples of Alexei Navalny. They are said to have conducted an initial analysis to exclude conventional nerve agents and pesticides. By using a mass-spectrometer, scientists were able to determine that the compound that had produced Mr. Navalny's symptoms was structurally similar to the Novichok compounds listed on the Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention. It is alleged that the Novichok's concentration in Mr. Navalny's samples was extremely low, just above the level where it would no longer have been detectable. The tests were repeated several times to double-check the results. On 2 September 2020, the German Government announced that toxicological tests had provided "unequivocal proof" that Mr. Navalny had been poisoned with a nerve agent from the Novichok group²⁶.

²⁰<https://www.sciencemag.org/news/2020/09/how-german-military-scientists-likely-identified-nerve-agent-used-attack-alexei-navalny>

²¹ J. Allister Vale, Timothy C. Marrs OBE & Robert L. Maynard CBE (2018) Novichok: a murderous nerve agent attack in the UK, *Clinical Toxicology*, 56:11, 1093-1097

²² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039123/>

²³ J. Allister Vale, Timothy C. Marrs OBE & Robert L. Maynard CBE (2018) Novichok: a murderous nerve agent attack in the UK, *Clinical Toxicology*, 56:11, 1093-1097

²⁴ <https://www.jstor.org/stable/pdf/resrep10901.10.pdf>

²⁴ <https://www.gov.uk/government/news/clean-up-work-underway-in-salisbury-in-next-phase-of-recovery>

²⁵ <https://www.sciencemag.org/news/2020/09/how-german-military-scientists-likely-identified-nerve-agent-used-attack-alexei-navalny>

²⁶ <https://www.bundesregierung.de/breg-en/news/statement-by-the-federal-government-on-the-navalny-case-1781882>

On 4 September 2020, sealed blood samples of Mr. Navalny were sent to Swedish Defense Research Agency CBRN Laboratory (Chemical, Biological, Radioactive and Nuclear Substances), also an OPCW-approved institute, with the capacity to analyze and create reference substances of Novichok independently. On 14 September 2020, the Swedish laboratory also confirmed the presence of Novichok in Mr. Navalny's samples, stressing this was "unequivocal".²⁷ Another OPCW-approved laboratory based in France, also confirmed the same finding.

In September 2020, the Government of Germany also referred to the Organisation for the Prohibition of Chemical Weapons (OPCW) to elicit technical assistance, under subparagraph 38(e) of article VIII of the Chemical Weapons Convention. On 6 September 2020, an OPCW technical assistance team reportedly visited the Charité Hospital in Berlin, witnessed and supervised blood and urine sampling conducted by the hospital staff under their direct supervision, maintained the samples under OPCW chain of custody and transported them to the OPCW Laboratory. On 11 September 2020, the OPCW Laboratory sent the samples to two laboratories designated by the OPCW Director-General for the analysis of biomedical samples. The laboratories found that Mr. Navalny had been exposed to a toxic chemical with similar structural characteristics to Novichok: *"The results of the analysis by the OPCW designated laboratories of biomedical samples collected by the OPCW team and shared with the Federal Republic of Germany confirm that the biomarkers of the cholinesterase inhibitor found in Mr Navalny's blood and urine samples have similar structural characteristics as the toxic chemicals belonging to schedules I.A.14 and I.A.15 that were added to the Annex on Chemicals to the Convention during 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."*²⁸

It is submitted that the Novichok compound found in Mr. Navalny's blood and urine samples constituted a different, possibly novel version, of the Novichok compound previously identified and included under Schedule 1 of the Convention against Chemical Weapons. According to the OPCW Technical Secretariat, the "biomarkers identified are contained in the classified report of the Secretariat."²⁹ The Novichok identified would purportedly be in an isolated, pure form with no impurities that could be traced to a particular country of origin.

Allegations on the source of poisoning

It is alleged that an extremely low concentration of nerve agent was found on the exterior of a water bottle taken from Mr. Navalny's hotel room in Tomsk. There was no official chain of custody for this bottle, although members of Mr. Navalny's

²⁷ "All neurotoxins react with proteins in the blood and it is in the proteins that one can find the substance that has poisoned the person. Simply put, you try to "fish up" these proteins from the blood. Then the test is prepared to be able to run it with a special technology that is abbreviated LC-MSMS. A kind of spectroscopic method for analyzing a pattern. These patterns are unique, each subject has a special pattern, which makes it possible to say that in this case it was Novitjok, says Åsa Scott, head of department at FOI's CBRN laboratory in Umeå." <https://nord.news/2020/09/14/swedish-researchers-navalny-was-poisoned-by-novitjok/>

²⁸ <https://www.opcw.org/media-centre/news/2020/10/opcw-issues-report-technical-assistance-requested-germany> (Emphasis added).

²⁹ <https://www.opcw.org/sites/default/files/documents/2020/10/s-1906-2020%28e%29.pdf>

team reportedly had control over the items taken from his room at all times. In any event, the concentration of nerve agent found on this bottle was so low that German scientists concluded that it was not toxic and was likely not the source of the poisoning. It is alleged that Mr. Navalny was poisoned through skin contact and his clothes.

C. Novichok Then and Now

The origins and development of Novichok

It is alleged that, during the 1970s and 1980s, the Soviet Union developed a new class of "fourth generation" nerve agents³⁰, known by the name "novichok" ("newcomer"), at the State Scientific Research Institute for Organic Chemistry and Technology (GosNIIOKhT), in Moscow. The Russian Federation reportedly continued this development.³¹ The first three versions, "substance-33", "A-230" and "A-232", were unitary agents produced using an organophosphate structural backbone while later agents were thought to be binary. A binary nerve agent means that "two inert substances ... are combined prior to delivery to create the active nerve agent". The precursor agents are stable and likely to last a long time. These are far easier to transport in their precursor form. The first known binary newcomer agent, Novichok-5, "was synthesized off the base structure of A-232". Novichok-7 was synthesized off the base structure of A-234, and Novichok-# was synthesized off Substance 33.³² According to scientists purportedly involved in their development, hundreds of Novichok agents were synthesized although only Substance-33, A-230, A-232, A-234, Novichok-5, and Novichok-7 are known to be weaponized³³. It is alleged that a form of Novichok, possibly A-234, was used to poison the Skripals and others in 2018.³⁴ More than 100 compounds fall into the Novichok category,³⁵ although it is not known how many have been weaponized. It is reported that the first binary Novichok agent to receive approval from the Soviet military was 5 to 8 times more toxic than VX³⁶, the most toxic of the older nerve agents.³⁷

³⁰ "Nerve agents are a group of highly toxic organophosphorus compounds developed, first, in Germany in the late 1930s and 1940s and, after World War II, in many other countries. They are related to organophosphorus pesticides though they have a very much higher human acute toxicity than commonly used pesticides. The best investigated nerve agents include tabun, sarin, soman and VX". J. Allister Vale, Timothy C. Marrs OBE & Robert L. Maynard CBE (2018) Novichok: a murderous nerve agent attack in the UK, *Clinical Toxicology*, 56:11, 1093-1097, DOI: [10.1080/15563650.2018.1469759](https://doi.org/10.1080/15563650.2018.1469759)

³¹ A. E. Smithson, *The United States, Russia, and Chemical Weapons Disarmament: Choices Ahead*, Stimson Center 1995, <https://www.jstor.org/stable/pdf/resrep10901.10.pdf>

³² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039123/>

³³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039123/>

³⁴ S. Costanzi and G. D. Koblenz, "Controlling Novichoks after Salisbury: revising the Chemical Weapons Convention schedules," <https://www.tandfonline.com/doi/full/10.1080/10736700.2019.1662618>

³⁵ J. Allister Vale, Timothy C. Marrs OBE & Robert L. Maynard CBE (2018) Novichok: a murderous nerve agent attack in the UK, *Clinical Toxicology*, 56:11, 1093-1097

³⁶ Vil S. Mirzayanov, "Dismantling the Soviet/Russian Chemical Weapons Complex: An Insider's View," in A. E. Smithson, V.S. Mirzayanov, R. Lajoie and M. Krepon, "Chemical Weapons Disarmament in Russia: Problems and Prospects," Report No. 17, The Henry L. Stimson Center, October 1995, https://www.stimson.org/wp-content/files/file-attachments/Report17_1.pdf

³⁷ "Nerve agents (predominantly tabun) were employed by Iraq in the Iran-Iraq war in 1984-1988 and against that country's own Kurdish population in 1988 in the Al-Anfal Campaign. The cult movement Aum Shinrikyo released the nerve agent Sarin in Japan on 11 occasions in 1994-1995, including in the Tokyo subway attack 20 March 1995. Sarin was also released in Ghouta, Syria in August 2013 when 1400 people were killed. In April 2017, sarin was used again in an attack on Khan Sheikhoun, in

Allegations of hidden development

The use of binary agents reportedly permitted the Soviet Union, and then the Russian Federation, to pursue their research on nerve agents “under the guise of legitimate commercial chemical production of agricultural chemicals.”³⁸ According to former employees of GosNIIOKhT, “[i]nspectors would have a difficult time uncovering this covert Soviet chemical weapons program since no outsiders knew that these new chemical agents even existed.”³⁹ It is alleged that several chemical structures “purported to be lower potency Novichok agents have been published in the scientific literature with the intention of masking the Novichok program as a pesticide research program”.⁴⁰ It is further alleged that “in the last decade, Russia has produced and stockpiled small quantities of Novichoks.”⁴¹

Novichok and the Convention on chemical weapons

Following the poisoning of Mr. Sergei Skripal and his daughter Yulia Skripal, and the killing of Dawn Sturgess, in November 2019, in Salisbury, United Kingdom, certain Novichok compounds were added to the Chemical Weapons Convention’s Schedule 1A, in one of the first major changes to the treaty since it was agreed in the 1990s.⁴² All 193 Member States of the treaty eventually adopted the decision by consensus.

The inclusion of a chemical agent on the CWC list of Schedule 1 substances imposed an obligation on Member States to declare and destroy those specific agents. Schedule 1 chemicals have “little or no use for purposes not prohibited” by the CWC⁴³ and are banned except in “limited amounts” for “research medical, pharmaceutical and

northern Syria, that killed more than 80 civilians. VX was used as a weapon of killing in Osaka on 2 December 1994 and on 13 February 2017 when Kim Jong-nam, the estranged half-brother of the North Korean ruler, Kim Jong-un, was killed at Kuala Lumpur International airport after his face was smeared with the agent.” J. Allister Vale, Timothy C. Marrs OBE & Robert L. Maynard CBE (2018) Novichok: a murderous nerve agent attack in the UK, *Clinical Toxicology*, 56:11, 1093-1097

³⁸ Vil S. Mirzayanov, “Dismantling the Soviet/Russian Chemical Weapons Complex: An Insider’s View,” in A. E. Smithson, V.S. Mirzayanov, R. Lajoie and M. Krepon, “Chemical Weapons Disarmament in Russia: Problems and Prospects,” Report No. 17, The Henry L. Stimson Center, October 1995, https://www.stimson.org/wp-content/files/file-attachments/Report17_1.pdf.

³⁹ Ibid. Much of the information on Novichok’s development has been reported by Vil S. Mirzayanov, who reportedly was Chief of the Department of Counteraction against Foreign Technical Intelligence at GosNIIOKhT and who now lives in the United States. “In October 1991 and January 1992, Mirzayanov and Lev Fedorov, an activist who is president of the Union of Chemical Safety, went public with disclosures that the new weapon was under development.” https://www.washingtonpost.com/wp-srv/inatl/longterm/coldwar/wasteside1.htm?tid=a_classic-iphone&no_nav=true.

⁴⁰ P.R. Chai, B.D. Hayes, T.B. Erickson, and E.W. Boyer, “Novichok agents: a historical, current, and toxicological perspective,” *Toxicol Commun.* 2018; 2(1): 45-48, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6039123/>

⁴¹ OPCW Executive Council Meeting: 18 April update on the use of nerve agent in Salisbury, <https://www.gov.uk/government/speeches/opcw-executive-council-meeting-18-april-update-on-the-use-of-a-nerve-agent-in-salisbury>

⁴² <https://www.opcw.org/sites/default/files/documents/2019/11/c24dec04%28e%29.pdf>

⁴³ CWC, Schedule 1.

protective purposes.”⁴⁴ It is further reported that this inclusion did not mean that Novichok was not prohibited before 2019 as a chemical weapon or that other forms of Novichok are currently not prohibited. The schedules to the Convention list chemicals for which States have specific declaration and verification requirements. Article II of the Convention defines chemical weapons as all toxic chemicals and their precursors, except where they are intended for uses not prohibited under the Convention. A toxic chemical means “all” chemicals which can “cause death, temporary incapacitation or permanent harm to humans or animals”.⁴⁵

Who could own and know how to use Novichok?

Other than for purposes of characterizing the agents for protective and defensive purposes (e.g. for diagnosis purposes), there appears to have been no reported development of Novichok by any countries besides the Russian Federation.

Scientists in Iran purportedly developed analogs of A-242 in order to characterize these compounds⁴⁶ and add mass spectral data to the OPCW’s Central Analytical Database. A small amount of agent A-230 was also claimed to have been synthesized in the Czech Republic in 2017 for the purpose of obtaining analytical data to help defend against these novel toxic compounds⁴⁷. Germany allegedly got a sample from the Russian Federation in the 1990s⁴⁸.

There has been one alleged use of Novichok within the Russian Federation by non-State actors, resulting in the killing of a banker and his secretary. In this case, the Novichok had been purportedly obtained from a scientist who worked for a State laboratory and was professionally involved in the development of the agent. According to a report by Novaya Gazeta and the Organised Crime and Corruption Reporting Project (OCCRP), hundreds of lethal doses were given or sold to violent criminals in 1994 and 1995.⁴⁹ However, while buying a Novichok nerve agent on the black market may be theoretically possible, the Russian authorities have not reported any use of Novichok by non-State actors on the Russian territories since the aforementioned case of the banker killing was brought to trial. In addition, any buyer of such a substance would need to have a great technical expertise to handle it, so as to be able to verify whether it was too old to be used, whether the chemical agents were still active, whether the compound is stable since not all variants of the Novichok compound are stable. In other words, such buyers would have to have in-depth knowledge on the nature of the chemical agent and on how to disseminate it. Further, the use of the Novichok is reportedly very complicated and dangerous. Those who used it to poison Mr. Navalny

⁴⁴ OPCW Ensuring Preparedness, <https://www.opcw.org/work/ensuring-preparedness>; S. Costanzi and G. D. Koblenz, “Controlling Novichoks after Salisbury: revising the Chemical Weapons Convention schedules,” <https://www.tandfonline.com/doi/full/10.1080/10736700.2019.1662618>

⁴⁵ CWC, article II(1)(a) and article II(2)(a).

⁴⁶ S. Costanzi and G. D. Koblenz, “Controlling Novichoks after Salisbury”; See S.E. Hosseini, H. Saeidian, A. Amozadeh, M.T. Naseri and M. Babri, “Fragmentation Pathways and Structural Characterization of Organophosphorus Compounds Related to the Chemical Weapons Convention by Electron Ionization and Electrospray Ionization Tandem Mass Spectrometry,” *Rapid Communications in Mass Spectrometry*, 5 October 2016.

⁴⁷ https://en.m.wikipedia.org/wiki/Novichok_agent.

⁴⁸ <https://www.reuters.com/article/us-britain-russia-chemicalweapons-german/wests-knowledge-of-novichok-came-from-sample-secured-in-1990s-report-idUSKCN1IH2HC>

⁴⁹ <https://www.occrp.org/en/investigations/7905-novichok-has-already-killed>

must have been very familiar with it to avoid their own contamination. Such an expertise can reportedly only be found within and amongst State actors, most particularly Russian scientists and officials operating and working for Russian laboratories associated with Novichok and would be unlikely to be possessed by non-State actors within Russia.

D. Motives behind the poisoning of Mr. Navalny

Mr. Navalny is allegedly often described by Russian medias as President Putin's "opponentist," and is a staunch critique of the Russian Government. He has repeatedly and publicly denounced the corruption of individuals closely associated with the current Government of the Russian Federation. Mr. Navalny has built a huge audience on social media, including through videos of his investigation into corruption which go quickly viral, and he has organized the largest protests reportedly held in the Russian Federation in recent years. It is alleged that, for almost a decade now, Mr. Navalny has been subjected to numerous restrictions, harassment, surveillance, criminal sanctions, physical attacks, including poisoning, carried out by or with the complicity of Russian authorities.

An alleged pattern of attacks and poisoning against Mr. Navalny

On at least two occasions before the attempted Novichok poisoning of August 2020, Mr. Navalny was the victim of attacks involving the use of poison or chemical substances.

On 27 April 2017, Mr Navalny was attacked with 'brilliant green' dye, presumably mixed with some acid, thrown at his face. It resulted in a chemical burn to the eye which caused a loss of sight of 80%, and a subsequent need for a complicated surgery. The incident was videotaped and, while the identity of the attacker was clearly visible, no charges were brought against him. Prior to this incident, Mr. Navalny had been attacked with a similar green dye on a number times, during his presidential campaign tour.

On 28 June 2019, Mr. Navalny developed an allegedly severe allergic reaction while at the Moscow temporary detention jail. He was hospitalized and medically examined. However, no test results could establish the causes of his allergic reaction. Furthermore, the Russian authorities allegedly refused to conduct an investigation into this incident or to disclose CCTV footage, which could presumably show whether anyone un-authorized had entered Mr. Navalny's cell. According to his personal doctor, Mr. Navalny's symptoms were those of a poisoning.

Mr. Navalny and his supporters have also reportedly been victims of numerous physical attacks carried out by non-State actors. These attacks have allegedly not been thoroughly investigated or not investigated at all. Further, some of them were also allegedly carried out with police officers just standing by without intervening

On 17 May 2016, for instance, a group of approximately a dozen men dressed up as Cossacks attacked Mr. Navalny and other employees of the Anti-corruption Foundation near the airport in Anapa, about 1,500 kilometers south of Moscow. On this

occasion, the police allegedly did not act to prevent or stop the attack, which resulted in one person seriously wounded.

During election time, campaigners for Mr. Navalny and Mr. Navalny himself have also allegedly faced numerous attacks by so-called ultra-nationalist groups and activists. These included vandalization of offices, damage to equipment and cars, physical assaults, and throwing eggs, liquids and other items. These attacks usually took place at airports, railway stations or public places where Mr. Navalny was expected to be.

An alleged pattern of surveillance

Over the last decade, it is submitted that Mr. Navalny has been under intensive surveillance by Russian security agencies, as recognised by the Russian president himself⁵⁰. It is reported that surveillance intensified ahead of public events, such as rallies and protests that Mr. Navalny attended.

It is reported that, during 2019, Mr. Navalny was also under surveillance carried out by people who openly admitted that they worked for individuals who had been the subjects of Mr. Navalny's videos and reports on corruption. This was typically done through 2 or 3 young men at a time walking closely behind him and filming him. Their attitude appeared to be provocative, as if they were trying to instigate a fight or an argument. This kind of surveillance was carried out for most of 2019 after the FBK published the results of its investigation into a businessman's school catering business.

It is further reported that during his mission in Siberia, in August 2020, Mr. Navalny was under intensive surveillance by a team including medical doctors and chemical weapons specialists operating out of NII-2, the FSB Criminalistics Institute.

Alleged attacks on Mr. Navalny's credibility

It is alleged that President Putin and his press secretary, Mr. Dmitry Peskov continue to refuse to call Mr. Navalny by name, instead using euphemisms like "the person you mentioned", "that citizen", "convicted oppositionary" or "the man whom the court has repeatedly recognized as a criminal."

Russian state-controlled mass media frequently accuse Mr. Navalny of working with and for foreign powers, including foreign secret services, such as the FBI, the CIA, the MI6 or others. For instance, on 10 April 2016, Russia-1 TV channel broadcasted a film allegedly accusing Mr. Navalny of working for the CIA under the codename "Agent Freedom".

A month earlier, on 15 March 2016, Mr. Navalny had a short meeting with a delegation of the European Council headed by former Swedish Prime Minister, Mr. Carl Bildt, who had come to Moscow to participate in the Valdai Discussion Club. Two weeks later, on 28 March 2016, Russian news website Life.ru published a "shocking" article, claiming that Mr. Navalny had held a secret meeting with "prominent Russophobes" and "ideologists of the Ukrainian revolution".

⁵⁰ President Putin Press Conference, 17 December 2020.

In October 2019, news agency RIA FAN published an article claiming that Mr. Navalny was addicted to cocaine, citing the “leaked correspondence” between his daughter Daria and a friend of her as their source.

Mr. Navalny has been repeatedly accused of using FBK’s money for personal purposes, including luxurious lifestyle and vacation trips. When talking about the FBK, critiques refuse to believe that the organization exists on voluntary donations from Russian citizens and claim that its income comes from either illegal means or foreign governments and agencies keen on weakening Russia.

On 17 December 2020, the President of the Russian Federation has also accused Mr. Navalny of working for the intelligence agencies of the US.

An alleged pattern of criminal and administrative sanctions against Mr. Navalny

It is alleged that over the last decades Mr. Navalny has been the victim of politically motivated actions to silence him as a political opponent. A notable instance was the 2017 decision by the Russian Electoral Commission to reject his candidacy on the basis of a conviction in a trial in Russia that had been found by the European Court to be in contravention of the European Convention on Human Rights. As a result of the decision of the Electoral Commission, Mr. Navalny is precluded from public office until 2028. Another example of the politically motivated action by State organs appears to be that taken against the FBK, which included, as detailed below, mass searches, seizures of property and closure of bank accounts of Mr. Navalny, his association and people affiliated with him. It should be noted that FBK was designated as a foreign agent under a law which the UN Special Procedures have criticised on multiple occasions for being used to silence dissent. Other alleged examples are detailed below.

On 5 December 2011, Mr. Navalny took part in protests against the State Duma elections of 4 December and was arrested and detained overnight. The day after, on 6 December 2011, he was convicted for administrative offences (disobeying a lawful order of the police) and sentenced to 15 days’ administrative detention.⁵¹

In the course of 2012, Mr. Navalny was arrested and convicted for participating in an un-authorized public gathering and convicted under breach of procedure for conducting public assemblies and disobeying a lawful order on seven separate occasions, namely once on 5 March 2012; twice on 8 May 2012; once on 9 May 2012; once on 27 October 2012 and twice on 24 February 2012.⁵² On 4 December 2012, a criminal investigation was opened against Mr. Navalny and his brother for fraud against

⁵¹ Subject of ECtHR, *Navalnyy and Yashin v. Russia*, app. no 76204/11, judgment of 4 December 2014, in which the Court found violations by Russia of the rights to peaceful assembly (article 11, ECHR), fair trial (article 6, ECHR), liberty (article 5, ECHR), freedom from inhuman or degrading treatment or torture (article 3, ECHR), and effective remedies (article 13 in conjunction with article 3, ECHR).

⁵² Subject of case before the Grand Chamber of ECtHR, *Navalnyy v Russia* [GC], apps. nos. 29580/12, 36847/12, 11252/13 et. al. judgment of November 2018 in which the Grand Chamber found a violation of the rights of peaceful assembly (article 11, ECHR) and of liberty (article 5, ECHR). In addition it also found a violation of article 18 of the European Convention on Human Rights in that restrictions to the aforementioned rights had been imposed for ulterior motives.

two companies; on 20 December 2012 charges were brought against them for fraud and money laundering.

On 20 March 2013, Mr. Navalny and a business partner were indicted of fraud (the so-called 'Kirovles case'). On 18 July 2013, they were convicted; Mr. Navalny was sentenced to 5 years' imprisonment in a correctional colony. Due to public pressure, the sentence was overturned on the following day, and changed to a suspended sentence.⁵³

On 30 December 2014, Mr. Navalny and his brother were convicted of money laundering and of defrauding the two companies. Mr. Navalny was given a suspended sentence of 3 and a half years, a fine of 500,000 rubles and an order to pay damages to one of the companies (approximately 4.5 million rubles). He was held under house arrest for 10 months.⁵⁴

In June 2017, Mr. Navalny was arrested, along with others, during a public assembly protesting corruption. He was sentenced to 30 days imprisonment for violating the rules governing the organization of demonstrations. On 23 June 2017, Mr. Navalny was declared ineligible for the presidential elections of March 2018 by the Russian Central Electoral Commission due to his previous convictions for fraud and embezzlement, in 2013, even though the European Court of Human Rights had found the trial to have been unfair. The exclusion of Mr. Navalny from running for public offices lasts until 2028. In September 2017, Mr. Navalny was arrested by the police as he left his home on his way to a campaign meeting in the provinces. No reason was given for his arrest; he was eventually released. In October 2017, Mr. Navalny was sentenced by the Moscow court to 20 days in detention for calls to participate in an unauthorized public event.

In January 2018 Mr. Navalny was arrested by the police after joining his supporters gathered in Moscow to demonstrate in favour of the boycott of the March presidential elections. In May 2018, Mr. Navalny was sentenced by the Moscow Tverskoy District Court for organizing an unauthorized demonstration on 5 May against President Putin. He was sentenced to 30 days detention. In July 2018, Mr. Navalny's application for a candidacy for the Moscow municipal elections was rejected. On 25 August 2018, Mr. Navalny was sentenced to 30 days in detention for having called for a boycott of the March presidential elections earlier that same year. Upon his release from prison on 24 September 2018, he was arrested and detained again for having called for a demonstration against the reform raising the retirement age. In October 2018, after his release from 50 days of detention, Mr. Navalny was subjected to a new judicial investigation for "defamation", in relation to alleged events dating back to 2016. In November 2018, Mr. Navalny was arrested at the Russian border and prevented from leaving the country. He was on his way to Strasbourg, France, to attend a hearing at the European Court of Human Rights on several applications he had brought against the

⁵³ Subject of case before ECtHR, *Navalnyy and Ofitserov v. Russia*, in which the Court found a violation of the right to fair trial (article 6, ECHR) and of the prohibition of punishment without law (article 7, ECHR).

⁵⁴ Subject of case before ECtHR, *Navalnyy v. Russia*, app. nos. 29580/12 and 4 others. In relation to these actions, on 15 November 2018, the European Court for Human Rights found violations of the rights to liberty (article 5, ECHR) and expression (article 10, ECHR). The Court also found a violation of article 18 of the ECHR, in that restrictions to the aforementioned rights had been imposed for ulterior motives

Russian Federation. The prohibition to leave the country was not based on any reason. Eventually Mr. Navalny was told that the reason for stopping him was the non-payment of a fine. On 15 November 2018, after having paid the amount requested, he was granted permission to leave the country in order to appear before the European Court of Human Rights.

On 3 August 2019, during a protest for the admission of independent candidates to the Moscow City Duma elections, the Investigative Committee of the Russian Federation published a press release on the initiation of a case concerning the FBK. As reasons for the opening of the case, the Investigative Committee claimed that unidentified persons and employees of the FBK, acting as a group of persons by prior conspiracy, received cash from unidentified third parties which they knew were acquired by criminal means. Consequently, more than 300 searches were carried out at the FBK's Headquarters, on FBK's employees, volunteers and Mr. Navalny's relatives. More than 290 bank accounts of private individuals and legal entities were blocked, including the personal accounts of Mr. Navalny, his wife, their children, and elderly relatives. On 9 October 2019, the FBK was classified as a 'foreign agent' under the 'foreign agents' law. This decision was reportedly based on the receipt of funds by the FBK from a foreign source on 6 August 2019, notably the same day the FBK bank account was frozen. On this, it should also be noted that the FBK was designated as a foreign agent under a law which the United Nations Special Procedures criticized on multiple occasions for being used to silence dissent. On 16 December 2019, the Moscow Arbitration Court ruled to recover a total of 87,604,461 rubles from Mr. Navalny, the FBK and another individual (29,201,487 rubles from each) for disseminating information about the poisoning of children in Moscow schools. On 27 August 2020, the bailiff of the Federal Bailiff Service for Moscow took control of Mr. Navalny's bank accounts.

It is alleged that investigation, prosecution, and conviction were ostensibly carried out for criminal offences, but the purpose appears to have been to retaliate against him for his political opposition, or to threaten and discourage him from participating in public affairs, organizing public rallies and carrying out his anti-corruption reporting and exposure of prominent political figures and their allies. Support for this conclusion can be found in the decisions of the European Court of Human Rights.

In *Navalnyy v. Russia*, the Grand Chamber of the Court summarised that “there is converging contextual evidence corroborating the view that the authorities were becoming increasingly severe in their response to the conduct of [Mr. Navalny], in the light of his position as opposition leader”.⁵⁵ The claim of violation of article 18 of the ECHR in the case concerned the “alleged persecution [of Mr. Navalny], not as a private individual, but as an opposition politician committed to playing an important public function through democratic discourse”.⁵⁶ The Grand Chamber found “it established beyond reasonable doubt that the restrictions imposed on [Mr. Navalny] [...] pursued an ulterior purpose within the meaning of article 18 of the Convention, namely to suppress that political pluralism which forms part of “effective political democracy”

⁵⁵ *Navalnyy v. Russia*, para. 172

⁵⁶ *Id.*, para. 174

governed by “the rule of law”, both being concepts to which the Preamble to the Convention refers”.⁵⁷

In *Navalnyy v. Russia* (no 2), the Court found that the measures taken against Mr. Navalny with regard to the house arrest imposed in 2014 were not only contrary to his right to freedom of expression but were implemented for the ulterior purpose of suppressing political pluralism.⁵⁸ In other words, the motivations behind these repeated attacks were not only to violate the human rights of an individual but to knock out a political opponent. That motivation, taken together with a long history of persecution and prosecution by the State, created a hostile environment in which human rights violations against Mr. Navalny gained increasing severity over the years.

E. Russia’s response to the allegations of attempted killing and poisoning

On 26 October 2020, the Russian federation informed the Special Rapporteurs of the investigative steps they were taking in response to the alleged poisoning of Mr. Navalny. While we are grateful to the authorities for the information provided, it is alleged that these fails to amount to an effective investigation into the poisoning and attempted killing of Mr. Navalny.

Investigatory steps

On 25 August 2020, Mr. Peskov, President Putin’s press-secretary, announced that there was no basis to launch an investigation into Mr. Navalny’s poisoning until the substance that forced Mr. Navalny into a coma was determined.⁵⁹ On 27 August 2020, the Ministry of Interior for Siberia announced it was conducting a pre-investigation in connection with Mr. Navalny’s hospitalization.⁶⁰ The same day, Russian Federation’s Prosecutor General announced that there were no signs of a crime in connection to Mr. Navalny’s hospitalization.⁶¹

It is alleged that the authorities have failed to complete the so-called pre-investigation phase and therefore failed to move to a fully-fledged effective criminal investigation. On 4 September 2020, the Basmany Regional Court of Moscow rejected a complaint filed by the FBK’s alleging that the authorities had failed to investigate Mr. Navalny’s poisoning, in violation of articles 30, 105 and 277 of the Criminal Code of Procedure. Likewise, the Tomsk transport police, tasked with conducting a pre-investigation⁶² into Mr. Navalny’s poisoning, did not complete the process within the required 30 days. FBK’s lawyers sought court orders to force the Tomsk authorities to open a criminal investigation into Mr. Navalny’s poisoning.⁶³ However, on 18 September 2020 and on 16 October 2020, the Kirov Regional Court in Tomsk issued

⁵⁷ Id., para. 175

⁵⁸ ECtHR, *Navalnyy v. Russia* (No. 2), app. no. 43734/14, Judgment of 9 April 2019.

⁵⁹ https://meduza.io/news/2020/08/25/kreml-ne-nashel-povoda-dlya-ugolovnogo-rassledovaniya-otpravleniya-navalnogo?utm_source=website&utm_medium=push&utm_campaign=browser_news

⁶⁰ <https://xn--90antjiff.xn--b1aew.xn--p1ai/news/item/20975789/>

⁶¹ <https://tass.ru/proisshestiya/9305203>

⁶² The Russian Code of Criminal Procedure mandates a pre-investigation to be completed by the relevant authorities within thirty days of learning that a crime may have been committed. The pre-investigation seeks to establish if a criminal investigation should be opened.

⁶³ <https://www.bbc.com/russian/features-54836696>

decisions refusing to open a criminal investigation. The head of the transport police of Tomsk rejected both refusals on the same day the court issued them, thus allowing the Tomsk police to restart the 30 count to close the pre-investigation. The Tomsk Region's branch of the Russia's Customer Protection Agency also allegedly promised to conduct a pre-investigation into the events occurred at the airport.

The Government of the Russian Federation indicated in a reply to an earlier communication that the pre-investigation included "a series of verification and investigative measures", in the course of which "more than 100 persons were questioned, including doctors and medical staff at the hospital in Omsk, emergency medical service workers, members of the flight crew and air passengers, employees of the airport services, cafes, hotels and restaurants and persons who were with Mr. Navalny in Tomsk. More than 50 inspections of the scene of the incident and items were carried out and forensic examinations were ordered and conducted for more than 500 sites." The outcome of these "investigative measures" was that "There was no evidence that a third party had willfully committed criminal acts against A.A. Navalny."⁶⁴

Request by Russian Federation Concerning the Identification of Novichok

The Russian authorities have sent six requests to the competent authorities in Germany, France, and Sweden requesting assistance in the investigation, including "in the form of interviewing A.A. Navalny, the doctors in Germany who treated him and persons who accompanied him" and "to obtain copies of the documents concerning the examination and treatment in Berlin, expert studies of the biological samples and items and the results of the toxicology tests carried out in France and Sweden." Thus far, the competent authorities of these three countries have seemingly refused to cooperate. These requests appear all to be directed at questioning the conclusion that Mr. Navalny was poisoned by a form of Novichok. There do not appear to be any requests for assistance in investigating the alleged poisoning itself.

Positions of the Russian Government and Denials

On 6 November 2020, the Ministry for Foreign Affairs of the Russian Federation issued a chronology of the case of Mr. Navalny.⁶⁵ According to it, Mr. Navalny, referred to as a Russian blogger, needed emergency medical aid on 20 August 2020, which he was given so that his life was no longer in danger. He was then allowed to be transferred to Germany, despite being under an ongoing criminal investigation. At that point, according to the chronology, a "hysterical anti-Russian campaign begins in the West," which makes the Ministry believe that the events had been long planned. The Ministry reportedly accused Germany, France and Sweden of claiming that Mr. Navalny had been poisoned with Novichok, without providing any evidence. Furthermore, according to the Ministry, requests for evidence from the Prosecutor General of the Russian Federation, dated 27 August 2020, 14 September 2020 and 25 September 2020, addressed to the German authorities, had been ignored.

⁶⁴ We are grateful to the Russian authorities for their reply to our initial communication regarding investigatory steps in response to the allegation of poisoning.

⁶⁵ https://www.mid.ru/web/guest/organizacia-po-zapreseniu-himiceskogo-oruzia/-/asset_publisher/km9HkaXMTium/content/id/4415769

Similar requests to France and Sweden, dated 18 September 2020, had likewise also been ignored.

On 28 September 2020, the Prosecutor General of the Russian Federation addressed another request to the German authorities. The German authorities responded with a refusal to cooperate as per Mr. Navalny's request.

The authorities of the Russian Federation also criticized the OPCW for failing to include in its report the chemical formulas that would explain the nature of Mr. Navalny's poisoning. In their statement, when referring to the poisoning, Russian authorities used quotation marks, calling the incident an amateurishly staged performance aimed purely to further sanction Russia, which remains committed to rejecting certain rules imposed on it at the expense of its national sovereignty, international law, and common sense.

On 2 September 2020, the Ministry of Foreign Affairs of the Russian Federation announced that the conclusions of Charité Hospital of Berlin that Mr. Navalny had been poisoned by Novichok was an information campaign against the country and not grounded on facts.⁶⁶ The Ministry spokeswoman stated that any evidence had to be shared with the Russian authorities, accusing the German counterparts of failing to do so. On 3 September 2020, the Chairman of the Russian Duma declared that if Mr. Navalny's condition would worsen in Germany then the Russian Federation could not exclude the possibility that the German authorities had been attempting to conduct a negative campaign against Russia.⁶⁷

On 5 September 2020, the Ministry for Foreign Affairs of the Russian Federation issued a statement, decrying claims that Novichok was developed in Russia, and accusing countries members of the North Atlantic Treaty Organization (NATO), including the United States of America, of producing some fifty patents for poisons in the Novichok family.⁶⁸ The following day, on 6 September 2020, it accused Germany of using Mr. Navalny's case to discredit the Russian Federation. The statement added that Germany never responded to the request of the Russian Prosecutor General issued on 27 August 2020 to share medical data and other chemical-related evidence.⁶⁹

The Government of the Russian Federation has also accused Germany and other countries of being responsible for the poisoning. On 16 December 2020, President Putin stressed that the FSB had kept Mr. Navalny under surveillance because he worked for American intelligence⁷⁰.

F. Trends and patterns of targeted killings and attempted targeted killings over time

It is alleged that the poisoning and attempted killing of Mr. Navalny, along with the lack of investigation and the denying narratives of the Government of the Russian Federation, are part of a larger trend, ongoing over several decades, of arbitrary killings

⁶⁶ <https://www.interfax.ru/russia/724320>

⁶⁷ <http://duma.gov.ru/news/49408/>

⁶⁸ https://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4318709

⁶⁹ https://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4329721

⁷⁰ Press Conference, 17 December 2020.

and attempted killings, including through poisoning, by the Russian authorities of journalists, critics and dissidents and are consistent with the overall pattern of associated modus operandi. Such killings and/or attempted killings have reportedly occurred both within the Russian Federation and extraterritorially, including, but not limited to, in States members of the European Union. Where independent investigations were conducted outside Russia, such as in the United Kingdom, Germany, Montenegro, and Bulgaria, it was found that Russian state officials had been involved.

It is further reported that these many cases share many key features in common. The discernible patterns across the cases are in the following:

- *Profile of those targeted*
The pattern is that of intimidation, silencing and actual elimination of those who are in political opposition to the Government and/or whose commercial or alleged criminal activity or connections are counter to the interests of the authorities. Journalists, human rights activists, dissidents, and opposition leaders have been targeted but so too have some commercial actors whose interests do not align with those of the authorities as well as former intelligence officers.
- *Prior harassment, surveillance and intimidation, escalating in severity over time*
Surveillance of daily activities, cyberattacks including on private email systems, verbal threats including from high level officials of security agencies, physical assault of known associates: in each case, some or all of those acts are reported to have occurred to the victim, prior to the perpetration of a life-threatening assault and where death did not ensue, continuing thereafter.
- *More than one life-threatening attack*
A fatal attack is only rarely the first attack, and only rarely is a survivor of a first life threatening attack, the victim of only one attack. Those subjected to poisoning who survive the first assault are likely to be subjected to poisoning again, perhaps with a matter of weeks. Although the substances used are potentially lethal, a failure to kill in first dosage may not be a failure per se. In a number of cases, the first poisoning appears to be a sinister warning. With many victims also aware of the fate of others similarly targeted, the initial non-fatal attack leaves them in dread of subsequent attempts. However, there is also a wider audience for these acts it seems, leaving others already subject to intimidation, also fearful of what future assaults may bring.
- *Place of attack*
The attacks all occurred in civilian settings, perpetrated in the setting of the targets' daily lives: at their homes, in their workplaces, in restaurants and cafes, in their motor vehicles and notably in the course of air travel - seemingly with the intention of inhibiting immediate access to emergency medical care.
- *Methods of attacks: Use of chemical weapons and other poison*
Some of the recent attacks involve the use of a distinctive poison including radioactive isotope such as polonium 210 or a nerve agent such as Novichok, both of which are prohibited substances, or an unspecified organophosphate. In previous decades, chemicals used have included arsenic, potassium cyanide, scopolamine, thallium and other substances such as atropine, barbiturates, chloral hydrate, paraldehyde and Warfarin. Combinations of two or more

substances may also be used, which further complicates diagnosis and tracing.⁷¹

- *The posing also of grave, indiscriminate risk to others*
In all instances, life threatening consequences were also posed indiscriminately to others, including to the targeted victim's family members, co-workers, and those who happened to be on the scene (e.g. general public, police, crime scene investigators), who were contaminated by the toxic substance.

It is further alleged that these patterns and the legal and political context lend greater credibility to the allegations regarding the poisoning and attempted killing of Mr. Navalny. Such patterns and context are reportedly constitutive of a clandestine system with the mandate, the plans, policies, resources and techniques, to carry out this alleged crime.

- *Legal arsenal*
It is reported that there are a number of laws granting Russian authorities the power to conduct increased surveillance and impose censorship, against individuals questioning the integrity of the Russian nation" or deemed "extremist", with extremism defined very broadly. In addition, legislation was adopted in 2006 granting the Russian President the authority to use the country's armed forces and special services outside Russia's borders to combat terrorism and extremism. While such powers are not unique to Russia, the very broad definition of terrorism and extremism adopted is a matter of serious concern, with the terms applicable to "those causing mass disturbances, committing hooliganism or acts of vandalism," as well as "those slandering the individual occupying the post of president of the Russian Federation". The law requires the President to seek the endorsement of the Federation Council to use regular armed forces outside Russia, but the President may deploy FSB security forces at his own discretion (A/HRC/14/24/Add.6).
- *Involvement in the attacks of official organs and decision makers of the State*
It is alleged that state agents, specifically from the Main Intelligence Directorate (GRU) and the FSB were actively involved.
- *State officials' public speculations about a fatal or attempted fatal attack*
It is alleged that Russian officials have speculated publicly and on occasion at length on these killings and attempted killings, in ways which amount to misinformation, false rumors, unfounded accusations and distortions of facts.
These communication tactics have been deployed even in the face of overwhelming evidence to the contrary. It further appears to be a State practice or policy designed not only to obstruct the course of justice but to publicly warn any and all who may be at cross purposes with the State that no one is safe; that none is beyond the reach of the Russian State, either at home or abroad.

⁷¹https://www.cia.gov/library/center-for-the-study-of-intelligence/kentcsi/vol19no3/html/v19i3a01p_0001.htm

- *Systemic failure to investigate in good faith and obstruction of independent investigations*

There are few instances of killings, including by poisoning under these circumstances, in which a subsequent criminal case has been opened and pursued to the point of public trial before the courts. It appears that the only exhaustive independent investigations are those conducted outside the country. In contrast, the Russian Federation appears to have a policy of obstructing independent and impartial investigation. In almost all cases in which state agents are the primary suspects, it has failed to conduct good faith independent investigation, and mounted instead a concerted campaign of misinformation designed to frustrate accountability and distort public perception.

Where investigations of killings and attempted killings have been undertaken, they are often slow; enjoy little cooperation from authorities; are characterized by reports that critical evidence has been lost or destroyed while witnesses, such as experts assisting at autopsies, report being intimidated or forced to give particular evidence.

Reports of authorities' attempts to spoil the course of justice are not been confined to Russia's own territories but include operations apparently designed to frustrate international efforts for accountability. It has been alleged that Russian officials have attempted to interfere with investigation carried out by international agencies such as the OPCW and have involved such as abuses of the Schengen visa arrangements.

- *Systemic promotion of impunity*

The Russian authorities allegedly have deliberately shielded the perpetrators of these violations from accountability. Not only have they deliberately frustrated investigation, but they also deliberately destroyed evidence; refused extraditions; granted the perpetrators effective legal immunity from domestic prosecution; and, in some instances, have gone so far as to award them high honors for their "services" to the Russian state.

Where court cases were heard, in a number of instances state officials were either not arraigned at all or were acquitted. Non-state accused were more frequently sentenced to long custodial sentences.

ANNEX II – LEGAL CONCERNS

Without prejudging the above-mentioned allegations, we wish to express concern that, if confirmed, they would be in violation of the right to life protected by article 6 of the International Covenant on Civil and Political Rights (ICCPR or Covenant)⁷², ratified by the Russian Federation in 1976, and article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁷³; the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established by article 7 of the ICCPR, article 3 of the ECHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Russian Federation in 1987; and the right to freedom of opinion and expression, protected by article 19 of the ICCPR and article 10 of the ECHR. Furthermore, the use of Novichok strongly suggests that your Excellency's Government failed to abide by the terms of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), ratified in 1987. We wish to emphasize that Your Excellency's Government has an obligation to conduct an independent, impartial, prompt, thorough, effective, credible and transparent investigation on the above-mentioned allegations. In the event that a violation is found, full reparation must be provided to the victim and his family, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction. States are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

A – Failure to respect Mr. Navalny's life

The right to life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict or other public emergency. It is a norm of *jus cogens*, and it is protected by international and regional treaties, customary international law and domestic legal systems. The “preservation of this right is one of the essential functions of the state and numerous provisions of national legislations establish guarantees to ensure the enjoyment of this right.”⁷⁴ This responsibility to respect the right to life applies extraterritorially, at a minimum to those under the effective control of the State.⁷⁵ The right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life. The second and more procedural component is the requirement of proper investigation and accountability wherever there is reason to believe that an arbitrary deprivation of life may have taken place.⁷⁶

States are required to respect the right to life “by law”: “Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law.”⁷⁷ The “notion of ‘arbitrariness’ is not to be fully equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of

⁷² Your Excellency's Government signed the ICCPR on 18 March 1968 and ratified it on 16 October 1973.

⁷³ Your Excellency's Government signed the European Convention on 28 February 1996 and ratified it on 5 May 1998.

⁷⁴ A/37/564, para. 22

⁷⁵ General Comment No. 36, para. 63. A/HRC/41/CRP.1, para. 193.

⁷⁶ A/HRC/41/CRP.1, para. 194.

⁷⁷ General Comment No. 36, para. 12

predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality.”⁷⁸ Arbitrary deprivation of life includes the intentional and often premeditated use of lethal State force outside of the judicial process – killings often referred to as extra-judicial executions.⁷⁹ An arbitrary killing and attempted arbitrary killing against a specific group or individual ignore state obligations to ensure due process and constitutes a violation of the fundamental right to life, as well as a violation of the rule of law. Moreover, the wider impact that an intentional targeted killing has on society is an element that may distinguish these acts from other violations of the right to life.

International jurisprudence has emphasised that the prohibition against arbitrary deprivation of life may come into play even if a person whose right to life was allegedly breached did not die. In particular, use of force by State agents which does not result in death may disclose a violation of article 2 of the European Convention for Human Rights, if the behaviour of the State agents, by its very nature, puts the applicant’s life at serious risk even though the latter survives⁸⁰. In cases concerning applicants who survived a potentially lethal attack by non-State actors, the European Court for Human Rights has adopted a similar approach to the one taken in respect of cases concerning use of force by State agents (*Yotova v. Bulgaria*, § 69).

We are concerned that the allegations, if confirmed, would constitute violation of the prohibition on the arbitrary deprivation of life and would constitute an extrajudicial killing by State agents, one of the gravest human rights violations. At least five OPCW-approved laboratories returned the same Novichok finding. There is overwhelming evidence that at the time of the chemical weapon attack, Mr. Navalny was under constant surveillance of your Excellency’s Intelligence agencies who were tracking Mr. Navalny’s every movements, in Tomsk and elsewhere, a fact acknowledged by the highest level of your Excellency’s Government. This makes it very unlikely that third parties could act without the knowledge of your Excellency’s Government. We are also concerned that allegations point to clear evidence that Novichok is a chemical weapon developed by your Excellency’s Government, requiring extreme care and knowledge in its administration, of the kind which is found amongst State chemical laboratories experts: “ordinary criminals might have been expected to use a more straightforward, less sophisticated means of killing.”⁸¹

We are concerned that the alleged pattern of numerous incidents, presenting analogous modus operandi, and repeated over decades, if correct, may be indicative of a practice or system and not just to repeated isolated incidents or exceptions⁸². Russia’s apparent repeated systemic practice is relevant in assessing the responsibility of your Excellency’s Government for Mr. Navalny’s attempted murder. A repeated practice, such as the use of signature poisons, is probative in determining whether the State bears responsibility for another similar attack.⁸³ Allegations suggest that as in other cases,

⁷⁸ Ibid.

⁷⁹ A/HRC/41/CRP.1, para. 195.

⁸⁰ *Makaratzis v. Greece* [GC], § 55; *Soare and Others v. Romania*, §§ 108-109; *Trévalec v. Belgium*, §§ 55-61

⁸¹ Owen Litvinenko Inquiry Report.

⁸² *Ireland v United Kingdom*, (1979-80) 2 ECHR 25, para. 159.

⁸³ See, e.g., US Federal Rules of Evidence, Rule 404(b) (allowing evidence of other crimes or events to show, inter alia, motive, opportunity, intent, preparation, plan or knowledge); A/HRC/WGAD/2018/52

Mr. Navalny was engaged in activities disfavored by the Government. He was exposing hidden wealth of individuals associated with your Excellency's Government and he was encouraging and advising political candidates in local elections. As in other cases, Mr. Navalny was poisoned by a signature compound, this time Novichok, one unlikely to be used by a non-State actor or another Government. As in other reported cases, the attempted killing of Alexei Navalny has been followed by inaction by your Excellency's Government, with either no criminal investigation or *de minimus* efforts, and by your Excellency's Government statements attacking the credibility of the victim.

B - Failure to Protect Mr. Navalny's Life

We are concerned that the allegations, if correct, would indicate that your Excellency's Government has failed to fulfill its obligations under article 6 of the ICCPR and article 2 of the ECHR to protect against arbitrary killings by non-State actors or by rogue officials, and prevent such attempts on people's life. The obligation to protect includes establishing by law adequate institutions and procedures for preventing deprivation of life. State parties are under a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life (GC36, para. 21).

The European Court of Human Rights ("ECHR") interpreted the protection of the right to life as imposing a duty on government authorities "to take appropriate steps to safeguard the lives of those within its jurisdiction" and "to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual."⁸⁴ This principle has been translated to require authorities to take all reasonable measures to avoid a real and immediate risk to life of which they had or ought to have knowledge, a question which could only be answered in the light of all the circumstances of any particular case.

Applied generally, the duty to protect the right to life "requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include human rights defenders, officials fighting corruption and organized crime, humanitarian workers, journalists, prominent public figures, witnesses to crime, and victims of domestic and gender-based violence and human trafficking" (GC 36, para. 23).

The duty to respect and ensure the rights of the Covenant entails a positive obligation to prevent attacks by all actors, including non-State actors (CCPR/C/21/Rev.1/Add.13). In its General Comment No. 31, the Human Rights Committee stated that there is a positive obligation on States to ensure the protection of the rights contained in the Covenant against violations by private persons or entities, which includes the duty to take appropriate measures to prevent, investigate, prosecute and punish those responsible and repair the damage caused by private persons or entities (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

(noting a pattern in Iran of targeting foreign nationals for detention, a pattern in which the particular detention fell).

⁸⁴*Osman v. The United Kingdom*, ECHR Case No. 87/1997.871/108 (1998) at 32-33.

We are concerned that your Excellency's Government should have recognised a risk of harm to Mr. Navalny or his family members⁸⁵ and ought to have known that Mr. Navalny remained a likely target of attempts to his well-being or life. The allegations indicate that Mr. Navalny was a prominent critic of the President of the Russian Federation and of people close to him. He had been a target of attacks, including by known groups and individuals opposed to his work and critiques, and remained a likely target. While in Tomsk and throughout his trip to Siberia, he was under heavy surveillance, conducted in real-time by security officials. We are therefore concerned that given its continuous monitoring of his movements, your Excellency's Government had the means to identify threats to his life, in real time, and to protect Mr. Navalny. Yet, Mr. Navalny was the victim of a brazen attempt to his life, requiring extensive planning and organisation, of the kind authorities' officials on the ground should have been able to identify. Their failure to do so might indicate at the very least an alleged failure to act diligently to protect Mr. Navalny.

We are further concerned that such failure would be further compounded and confirmed by the Government's failure to meet its obligations under the CWC and UNSC Res. 1540 (2004), as described below. These provisions mandate the required precautionary measures to prevent the use of chemical weapons, including for the purpose of preventing a chemical weapon attack like the one conducted against Mr. Navalny.

C. Failure to investigate

We remind your Excellency that the duty to investigate is central to upholding the right to life.⁸⁶ It asserts the inviolability and inherent value of the right to life through mechanisms of accountability, while simultaneously promoting remedies where violations have occurred. To this end, the duty gives practical effect and worth to a State's obligations to respect and protect life. The alleged violation of the right to freedom of expression also entails a general duty to investigate and provide effective remedies, regulated under article 2 (3) of the ICCPR. A violation will entail the duties to cease the unlawful act, to provide restitution, compensation and just satisfaction.⁸⁷ It further entails procedural obligations. For example, the Human Rights Committee has highlighted a duty to conduct effective investigations into attacks against individuals for exercising their right to freedom of expression.⁸⁸

In line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP4). The

⁸⁵IACHR, *Jessica Lenahan (Gonzales) v. USA*, 2011

⁸⁶ ECtHR, *McCann and others v. United Kingdom*, Judgment (Grand Chamber), 27 September 1995, para. 161; IACtHR, *Montero-Aranguren and others (Detention Center of Catia) v. Venezuela*, Judgment, 5 July 2006, para. 66; African Commission on Human and Peoples' Rights (ACHPR), General Comment No. 3 on the Right to Life, November 2015, paras. 2, 15; Human Rights Committee, General Comment No. 31, paras. 15 and 18; The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017.

⁸⁷ See HRC General Comment No. 31.

⁸⁸ HRC, General Comment No. 34 (2011), para. 23.

Council added that this includes the obligation “to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions.” The consequences of a failure to investigate are extremely serious, including the violation of the right to life; the continuation of policies and practices which may impact on the right to life; and the perpetuation of a range of violations and bad practices because of the veil of ignorance or secrecy surrounding them.

It is alleged that your Excellency’s Government controls most of the evidence in this case, including many of the witnesses, the CCTV tapes from Mr. Navalny’s hotel, the clothes he was wearing when he succumbed to the poison, medical samples and his medical records from his treatment in Omsk. Accordingly, should your Excellency’s Government deny that it targeted Mr. Navalny, it bears the burden of proving its innocence. Shifting the burden of proof is appropriate under international human rights law in circumstances such as these. The European Court for Human Rights has underlined that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant’s allegations. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. If the authorities then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn⁸⁹. The allegations, if confirmed, show that the use of a prohibited chemical took place in Russia, at the hands of Russian officials, who applied the poison to Mr. Navalny’s clothes. Such clothes have been taken by the authorities and have not been released since.

As stated by the Human Rights Committee, in “cases where the allegations are corroborated by evidence submitted by [the complainant] and where further clarification of the case[] depends on information exclusively in the hands of the State party, the Committee may consider the author’s allegations as substantiated in the absence of satisfactory evidence and explanation to the contrary submitted by the State party.”⁹⁰ If a “State party fails to cooperate with the relevant treaty body in providing information about [the complainant’s] allegations, the burden of proof is often effectively reversed.”⁹¹ Even without shifting the burden of proof, where the crime “is characterized” by the “attempt to suppress all information”, one should consider “indirect and circumstantial” evidence, “taken together with their logical inferences” and “in the context of the widespread practice” – here the apparent practice of repeated killings.⁹²

⁸⁹ *Varnava and Others v. Turkey* [GC], § 184).

⁹⁰ *Bousroual v. Algeria* (992/01), § 9.4.

⁹¹ Part II, Procedures of the Human Rights Committee and the Committee against Torture, p. 87; see generally O. Claude, “A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence,” *Intercultural Human Rights Law Review*, Vol. 5, 407-462 (2010).

⁹² *Blake Case*, 2998 Inter-Am. Ct. H.R. (ser.C), No. 36, para. 49 (Jan. 24, 1998).

D - Failure to respect the right to freedom of expression

If confirmed, these allegations would also constitute a violation of the right to freedom of opinion and expression, protected by article 19 of the International Covenant on Civil and Political Rights as well as article 10 of the European Convention on Human Rights. Russia is a party to both treaties. Article 19 (1) requires protection of the right to hold opinions without interference. The Covenant permits no exception or restriction to it.⁹³ The right to freedom of expression is enshrined in article 19 (2) and includes “the right to seek, receive and impart information and ideas of all kind, regardless of frontiers” and in any media. The rights recognised under article 19 of the ICCPR entail different types of obligations for the State. It entails negative obligations to refrain from restricting the right to freedom of expression, other than in a manner compatible with the requirements under articles 19 (3) of the ICCPR.⁹⁴ The right also entails positive obligations on the part of the State to exercise due diligence to prevent violations being committed by third parties.⁹⁵ States parties are required to take effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Under no circumstances can an attack on a person including arbitrary arrest, threats to life and killing be compatible with article 19.⁹⁶

The European Court of Human Rights has found violations of a wide range of human rights of Mr. Navalny in four different cases, and in two of them concluded that action by the State against Mr. Navalny was motivated by his political objectives and aimed to suppress political pluralism.

The Human Rights Committee stated that article 19(3) could never be invoked as a justification for muzzling advocacy of multiparty democracy, democratic tenets or human rights, nor, in any circumstance, could an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.⁹⁷ Together with the freedom of opinion, the right to freedom of expression is a prerequisite for every free and democratic society. The Human Rights Committee has affirmed that the free communication of information and ideas about public and political issues is essential, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.⁹⁸

Given the identity and the role of the Alexei Navalny, the allegations of the attempted killing and poisoning of Mr. Navalny, if confirmed, constitutes a broader attack on the collective right of the public in the Russian Federation to access information.⁹⁹ As highlighted by international jurisprudence, the right to freedom of expression is both an individual right and a collective right held by society as a whole

⁹³ HRC, General Comment No. 34, para 9.

⁹⁴ See *Id.* para. 6.

⁹⁵ See Human Rights Committee, General Comment No. 31 (2004), para. 8; Human Rights Committee, General Comment No. 34 (2011) para. 7; Human Rights Committee, General Comment No. 36 (2018) para. 21.

⁹⁶ HRC. General Comment No. 34, para 23.

⁹⁷ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/153/19/PDF/G1315319.pdf?OpenElement>

⁹⁸ HRC, General Comment No. 25; see also *id.* para. 20.

⁹⁹ <https://unesdoc.unesco.org/ark:/48223/pf0000261372>

to seek and receive information. An attack against a journalist, a blogger or a civil society activist or anyone informing the public on matters of public interest is not only a violation of his or her right to expression, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights respectively.

E - Failure to abide by the prohibition against torture, cruel, inhuman or degrading treatment

Article 7 of the ICCPR mandates that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The European Convention on Human Rights reaffirms this prohibition (article 3). Under both the ICCPR and the ECHR, this prohibition is non-derogable (ICCPR, article 4(2), ECHR, article 15(2)). The Convention against Torture likewise prohibits torture, which it defines as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (article 1, para. 1). The Convention requires States to prevent other “acts of cruel, inhuman or degrading treatment” not amounting to torture, similarly inflicted by public officials or with their acquiescence, regardless of the purpose of this treatment (article 16, para. 1). While torture always requires the intentional and purposeful infliction of pain or suffering on a powerless person, other forms of cruel, inhuman or degrading treatment or punishment can also comprise the infliction of pain or suffering without deliberate intention or without instrumentalizing such pain and suffering for a particular purpose.

We are concerned that the allegations, if correct, would indicate that your Excellency’s Government has developed a chemical substance, Novichok, which is known to create serious pain and suffering when used on human being, which may be included in the category of products that are inherently cruel, inhuman or degrading because it is of a nature to inflict pain and suffering, in addition to constituting a prohibited chemical substance and weapon. Given the symptoms associated with Novichok poisoning, such substance also might have the ability to terrorize and intimidate others who might feel they could be next targeted, regardless of whether the poisonings kill.

Novichok poisonings used compounds typically available only to the State, thereby sending an intentional message – but with official deniability – that the State will take action against those who campaign or report against it or who are perceived as disloyal. Mr. Navalny himself was rendered powerless and suffered the distinct and terrifying symptoms of a nerve agent, one of which was the knowledge that he was getting increasingly paralyzed and dying. This use of uncommon deadly compounds to inflict pain and despair and to intimidate all those watching may amount to a form of torture or cruel, inhuman or degrading treatment.

F - The Use of Chemical Weapons and the Failure to Control this Use

The Chemical Weapons Convention (CWC) entered into force on 29 April 1997. 193 States have ratified the Convention, including the Russian Federation. A State member to the CWC is obligated “never under any circumstances” to, *inter alia*, “develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone”, “use chemical weapons”, or “assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party” under the CWC (article I.1). It has the duty to destroy chemical weapons in its jurisdiction and control (CWC, article I.2). It must prohibit any “natural and legal persons anywhere on its territory or in any other place under its jurisdiction” from undertaking the activities prohibited by the Convention and must enact penal legislation enforcing the Convention (article VII). UNSC Res. 1540 (2004) requires a range of measures to ensure that non-State actors cannot acquire, develop or use chemical weapons. These include refraining from providing any support to non-State actors in the development, acquisition or use of chemical weapons, adopting and enforcing effective laws prohibiting non-State actors from developing, acquiring or using chemical weapons, and developing effective measures to prevent proliferation, including effective measures to account for and store chemical weapons and effective policing to prevent illicit trafficking.

The use of chemical weapons is prohibited in both international and non-international armed conflicts.¹⁰⁰ The use of chemical weapons amounts to grave breaches of the Geneva Conventions and war crimes, and it may be prosecuted by the International Criminal Court. The Human Rights Committee has stated, in General Comment No. 36, that “practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields, would also violate article 6 of the Covenant.” (paragraph 64). A weapon prohibited by international humanitarian law and other international treaties is ipso facto prohibited under international human rights law including because of its inherent indiscriminate, disproportionate, cruel, inhuman, degrading and/or torturous nature.

We are concerned that the compound used on Mr. Navalny, a form of Novichok, constitutes a chemical weapon under the CWC: it is a chemical without lawful purposes “which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals” (article II.1 and II.2). In addition to this general prohibition, certain forms of Novichok are listed on Schedule 1 to the CWC, which imposes additional verification measures. The compound found in blood and urine samples from Mr. Navalny has “similar structural characteristics as the toxic chemicals belonging to schedules 1.A.14 and 1.A.15 that were added to the Annex on Chemicals to the Convention during the Twenty-Fourth Session of the Conference of the State Parties in November 2019.”¹⁰¹ Even a single use of a chemical weapon on

¹⁰⁰ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule74

¹⁰¹ Note by the 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), OPCW, 6 October 2020, <https://www.opcw.org/sites/default/files/documents/2020/10/s-1906-2020%28e%29.pdf>.

a single individual constitutes a violation of the CWC: “any poisoning of an individual through the use of a nerve agent is considered a use of chemical weapons” under the CWC.¹⁰²

Your Excellency’s Government declared in September 2017 that it had completed the destruction of its 40,000 tons of chemical weapons. We are concerned that the use of Novichok on Mr. Navalny on the territory of the Russian Federation would suggest that your Excellency’s Government has failed in performing its duties under the CWC and UNSC Res. 1540. The allegation, if confirmed, suggests that a State actor poisoned Mr. Navalny. However, even if a non-State actor poisoned Mr. Navalny in Tomsk, that individual’s ability to gain access to and use Novichok demonstrates a complete failure in State control over this chemical substance, a failure made even more evident by the fact that this form of Novichok is a novel form of the compound – suggesting further development on the territory of the Russian Federation. Denying responsibility and failing to engage in an effective investigation is itself a violation of the CWC and a failure to protect the right to life.

G – State and personal criminal liability

A State is responsible for the acts of any State agents who are involved in targeted killings, regardless of whether the killings were sanctioned by the State. Article 7 of the International Law Commission Draft Articles on the Responsibility of States for Internationally Wrongful Acts provides that the conduct “of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the ... person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.” A State is obligated to take all necessary steps to ensure that its officials do not perpetrate an attack causing an extrajudicial killing or arbitrary deprivation of life.¹⁰³ To prevent such killings, a State must “ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment” and shall “prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out” any such killings.¹⁰⁴ In other words, State officials have an obligation both to control and adequately supervise their officers and to ensure that their own statements cannot be construed, correctly or incorrectly, as encouraging murder.

Clearly, any officials who directly participated in or ordered the poisoning and attempted killing of Mr. Navalny bear criminal responsibility for attempted murder. A critical question is the potential criminal liability of high-level officials – those who are often “most responsible” as the “masterminds or architects” of the crime. The pattern of high-profile killings and attempted killings alleged above makes criminal responsibility of superior government officials inescapable in this case, even if they did not directly order the crime.

¹⁰² Statement from the OPCW Director-General on Allegations of Chemical Weapons Use Against Alexei Navalny, 3 September 2020, <https://www.opcw.org/media-centre/news/2020/09/statement-opcw-director-general-allegations-chemical-weapons-use-against>.

¹⁰³ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989.

¹⁰⁴ 1989 UN Principles, paras. 2-3.

The jurisdiction developed by the International Criminal Court (ICC) and ad hoc tribunals stipulates that superiors can be criminally responsible if there is “the existence of a superior-subordinate relationship”; they “knew or consciously disregarded information which clearly indicated that subordinates were about to commit or had committed criminal acts; and “the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.”¹⁰⁵ The superior/subordinate relationship need not be formal, as long as the superior had “effective control”¹⁰⁶ over the subordinate, and superior officers can be held responsible for subordinates of subordinates.¹⁰⁷ Conversely, superiors whose subordinates are committing crimes upon the orders of even higher-level officials remain responsible for taking reasonable and necessary steps to prevent and punish these crimes.¹⁰⁸

The superior becomes responsible for their inaction “from the point at which he ‘knew or had reason to know’ of the crimes committed”.¹⁰⁹ A superior had reason to know “only if information was available to him which would have put him on notice of offences committed by subordinates.”¹¹⁰

Failure to punish is a crime in and of itself and punishing the crime after the fact does not excuse or eliminate liability for any prior failure to prevent the crime. The response must be “necessary and reasonable” and the thoroughness of any investigation is a factor in deciding whether this obligation has been met.¹¹¹ Effectively, the question is whether the superior “genuinely tried to prevent or punish” the crimes.¹¹² If the superior knows that reporting to authorities is “likely to trigger an investigation that was a sham, such a report would not be sufficient to fulfil the obligation to punish offending subordinates.”¹¹³

The responsibility of high-level officials is not a derivative form of criminal responsibility but instead is designed to impose individual criminal responsibility for a superior’s own role in permitting gross violations of international criminal law to occur or, by failing to investigate or punish those violations, to recur¹¹⁴. Here, repeated killings and attempted killings are alleged, with evidence pointing at your Excellency’s Government as the responsible party. Superior officials have been on notice of these

¹⁰⁵ *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Case No. IT-96-21-T, Judgement, 16 November 1998 (*Čelebići Trial Judgement*), para. 346. Article 28(b)(i) of the Rome Statute; UN Convention on the Protection of All Persons from Enforced Disappearance, article 6(1)(b). The Rome Statute and the UN Convention requires conscious disregard, while the Ad Hoc tribunals use the standard “knew or had reason to know.”

¹⁰⁶ *Čelebići Trial Judgement*, para. 378.

¹⁰⁷ Boas, Gideon et al., *International Criminal Law Practitioner Library: Vol. 1, Forms of Responsibility in International Criminal Law* (Cambridge University Press: Cambridge 2008) at 191.

¹⁰⁸ *Prosecutor v. Popović et al*, Case No. IT-05-88-A, Appeal Judgement, 30 January 2015, para 1931.

¹⁰⁹ *Prosecutor v. Kvočka et al*, Case No. IT-98-30/1-T, Trial Judgement, 2 November 2001, para 317.

¹¹⁰ *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Case No. IT-96-21-A, Appeal Judgement, 20 February 2001, para 241.

¹¹¹ Boas, Gideon et al., *Forms of Responsibility in International Criminal Law*, at 233.

¹¹² *Prosecutor v. Popović et al*, para. 1927.

¹¹³ *Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-A, Appeal Judgement, 19 May 2010, para. 234.

¹¹⁴ *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 261 (individual criminal responsibility if superior did not “prevent crimes from being committed by his subordinates or, where applicable, punish them”).

criminal acts and are themselves liable if they failed to take action to prevent their recurrence.

H. Conclusion

The right to life is at the core of all human rights: no other right can exist without it. If State actors can kill perceived opponents throughout the world, then all people will fear expressing their opinions, engaging in political acts, or exercising any other human rights that might attract the attention of the State. The use of chemical weapons as a means of extrajudicially killing dissidents, journalists, political activists or others, and as a means of terror, compounds this assault on the international order. The CWC was enacted “for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons” (CWC Preamble). The use of chemical weapons poses an “ominous threat” and constitutes a “grave violation” of customary international law.¹¹⁵ It is incumbent on your Excellency’s Government to investigate the crime against Alexei Navalny and identify and punish all those responsible, including at the highest level of the chain of command.

We urge that all necessary interim measures be taken to halt the alleged violations and prevent their reoccurrence. We particularly call on your Excellency’s Government to ensure that, when Mr. Alexei Navalny decides to return to the Russian Federation, he and his family are granted the protection measures they may require to prevent any future attempts to his life, and that his right to freedom of expression be fully respected.

In view of the seriousness of the allegations as they concern the use of a prohibited chemical weapon, and the international implications, we also call on your Excellency’s Government to request or allow an independent international investigation into the chemical attack against Mr. Navalny and his attempted killing.

¹¹⁵ UN Secretary General Ban Ki-moon, Message for Chemical Warfare Remembrance Day, 17 April 2015, <https://www.un.org/press/en/2015/sgsm16672.doc.htm>.