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SWP Comment

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Chemical Weapons Attacks: The End of Anonymity

Organisation for the Prohibition of Chemical Weapons to Identify Perpetrators

Oliver Meier

On 27 June 2018, the majority of Chemical Weapons Convention (CWC) States Parties adopted a decision to expand the mandate of the Organisation for the Prohibition of Chemical Weapons (OPCW). The additional tasks include providing information on who is using chemical weapons in Syria. The decision was adopted by majority vote. It paves the way for The Hague-based organisation to later identify or, at least, create the conditions for the identification of those responsible for chemical weapons attacks. It also strengthens chemical weapons control because the OPCW will now hopefully be able make reliable statements on who is responsible for the continuing use of chemical weapons. However, it also [risks politicising the Technical Secretariat and is likely to further complicate preparations for the CWC's Fourth Review Conference](#), taking place from 21–30 November 2018.

On 29 May 2018, the United Kingdom, with the support of ten other states (including Germany), [requested a Special Session of the Conference of CWC States Parties](#). London argued that treaty member states “have a responsibility to act” in the face of blatant violations of the prohibition of chemical weapons.

Chemical warfare agents have not only been used since 2012 in the Syrian civil war but also more recently in politically motivated attacks on individuals. For example, the half-brother of North Korean leader Kim Jong Un [was assassinated on 13 February 2017 at Kuala Lumpur airport with the VX nerve agent](#).

Then, on 4 March 2018, former Russian spy Sergei Skripal and his daughter Yulia were [poisoned in Salisbury](#), United Kingdom [by a substance belonging to the family of Novichok agents](#). London accuses Russia of being responsible for the attack. [The German government, as well as other Western partners, also consider it very likely that Russia was the perpetrator](#).

Then Foreign Secretary Boris Johnson made it clear that the United Kingdom wanted a decision to be adopted that would allow the OPCW to identify those responsible for future chemical weapons attacks. Johnson [called on all “right-thinking states”](#) to support the initiative. Russia and [Iran](#) were highly critical of the proposal. They



accused London of wanting to “politicise” the work of the OPCW and argued that expanding its tasks was neither useful nor necessary.

Violations of Norms against the Use of Chemical Weapons

The dispute over chemical weapons attacks has [divided the international community since 2012](#). At that time, reports of chemical weapons use in the Syrian civil war were becoming more frequent. On 21 August 2013, hundreds of people died in a sarin attack on opposition-controlled Ghouta, near Damascus. In September 2013, Syria joined the CWC under pressure from the United States and Russia, and against the background of the threat of Western military strikes. In an unprecedented multi-lateral operation, participating states removed and destroyed around 1,300 tons of chemical warfare agents from the country.

However, this did not prevent further chemical weapons attacks in Syria. It is presumed that such weapons [have been used at least several dozen times](#) since 2012. There is increasing evidence that Damascus has submitted declarations on its chemical weapons programme that were neither correct nor complete. In a climate of deteriorating relations between Russia and the West, opinions are also sharply divided on chemical weapons use.

Western states believe the Syrian armed forces are responsible for most of the chemical weapons attacks in Syria. Russia and Iran, on the other hand, question Syria’s alleged involvement, pointing among other things to the successful disarmament of Syria’s declared warfare agents. Moscow also stresses that the Islamic State has used chemical weapons in Syria and Iraq and should, therefore, be considered a suspect in other cases, too. From the outset, this dispute over responsibility has complicated the work of those international mechanisms and bodies charged with the task of investigating chemical weapons attacks.

In 2014, the Director-General of the OPCW [established a Fact Finding Mission \(FFM\)](#) to investigate alleged chemical weapons attacks in Syria. The FFM is still ongoing, but its aim is merely to clarify whether chemical weapons have been used. The inspectors will not comment on the question of culpability.

From 2015, identifying those responsible for alleged chemical weapons attacks was the job of the OPCW-UN Joint Investigative Mechanism (JIM), [established by the United Nations Security Council](#). It submitted several reports attributing in four cases responsibility to the Syrian regime and proving in two cases that the Islamic State has used mustard gas.

However, Russia, Syria and Iran have consistently criticised JIM reports as being biased. In November 2017, while the political conflict was heating up, Russia [vetoed an extension of the JIM’s mandate](#). At the same time, the West [did not support Moscow’s proposals to establish an investigative mechanism that would have had a mandate beyond Syria](#). Since then, there has no longer been an independent, international investigative mechanism to implement the JIM’s mandate to “identify, to the greatest extent feasible, individuals, entities, groups or governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons” in Syria.

Expanding the OPCW Mandate

Against this background and referring specifically to the Russian veto preventing a renewal of the JIM mandate, the United Kingdom submitted a request on 29 May 2018 to convene a Special Session of the CWC’s Conference of States Parties. Shortly thereafter, London [received the support it required](#) to carry the motion from more than 64 states.

The British government sent the initial draft of the decision to CWC States Parties on 13 June. [The text was substantially revised after the British government had](#)

[consulted a number of other states](#). The revised draft was distributed on 22 June.

Given Russia's harsh criticism of the West's approach, it was clear that a consensus decision by the [152 delegations accredited](#) at the Special Session in The Hague was unlikely. As soon as the meeting had begun, Russia, Iran and Syria tried to delay the decision-making process with procedural tricks. There followed [a controversial debate between Western supporters of an expanded mandate and its opponents, in particular, the three states mentioned above](#).

The decision was finally [adopted on 27 June by a majority of 82 to 24 votes](#) (with 26 abstentions which counted as votes not cast). Thus, the required two-thirds majority was achieved. Voting at the OPCW is unusual as CWC States Parties generally adopt decisions by consensus. Never before had such radical change to OPCW procedures been decided by a majority vote.

The [decision](#) has two main parts. As far as Syria is concerned, it is the job of the OPCW Technical Secretariat to identify those responsible for chemical weapons attacks in the country "by identifying and reporting on all information potentially relevant to the origin of those chemical weapons in those instances in which the [FFM] determines or has determined that use or likely use occurred". Investigations are further limited to cases for which the JIM has not issued a report. As provided for in the CWC, the Executive Council, [in cases of particular gravity and urgency, may refer the issue directly to the United Nations General Assembly or Security Council](#).

The second part goes beyond Syria. States Parties affirm that "whenever a chemical weapons use occurs on the territory of a State Party, those who were the perpetrators, organisers, sponsors or otherwise involved should be identified". CWC members note that the Technical Secretariat has an added value because it can conduct independent investigations "with a view to facilitating universal attribution of all chemical weapons attacks".

In this context, the States Parties authorise the Director-General to provide technical assistance to a state as part of a request for assistance following a chemical weapons attack. The objective is to identify those responsible for the attack. The Technical Secretariat can also enlist the assistance of external experts with relevant experience.

The States Parties request the Director-General to prepare proposals for the next regular Conference of the Parties in November 2018 as to how such an "independent, impartial" group of experts could be established. They also ask the Director-General to develop general proposals on how to improve implementation of the OPCW verification regime and strengthen the capability of the Technical Secretariat. This is important because expanding the tasks of the OPCW is likely to require additional funding for personnel and technical equipment.

An Important Step forward – with Possible Side Effects

The decision adopted by OPCW Member States strengthens the prohibition of chemical weapons because it creates better opportunities to identify those responsible for chemical weapons attacks. The OPCW is responsible for investigations into responsibility first for Syria, and later possibly for other chemical weapons attacks. As a result, evidence will be gathered independently of the UN Security Council. This procedure circumvents a potential veto by one of the permanent members of the Security Council. Proponents of the decision are thus aiming to restrict the influence of Russia and its allies in Syria on the investigations.

The decision is logical because the OPCW is the international body best qualified to investigate chemical weapons attacks. The organisation is responsible for monitoring the implementation of the CWC. It is the only multilateral organisation competent to globally investigate chemical weapons attacks at short notice. Nearly half of its 450 employees work in departments deal-

ing with verification. The CWC contains elaborate rules and procedures for conducting chemical weapons inspections. The OPCW cooperates with a worldwide network of certified laboratories to analyse samples. In addition, the CWC has global reach with 193 member states and, therefore, covers more than 98% of the world's population. Consequently, the OPCW investigation reports are the gold standard when it comes to independent and technically robust chemical weapons analysis.

In future, the OPCW will also make its findings available to other international investigations. The decision specifically refers to the "[International, Impartial and Independent Mechanism \(IIIM\) to assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law committed in the Syrian Arab Republic since March 2011](#)". The UN General Assembly established the IIIM in December 2016. As its long name suggests, the IIIM's primary purpose is to gather information in preparation for prosecuting war crimes and human rights violations committed in Syria.

Identifying the culprits of chemical weapons attacks is a necessary, but insufficient condition for strengthening the CWC's norm against the use of such weapons. Three challenges need to be tackled for the decision to achieve its desired effect.

"After detection – what?"

Firstly, it is not merely a question of identifying those responsible for violating the CWC but also of holding them accountable. This problem of sanctioning violations of international (arms control) agreements is as old as it is difficult to solve. Back in 1961, at the beginning of the modern arms control era, political scientist and later Director of the US's Arms Control and Disarmament Agency, Fred Iklé, posed the question, "[After detection – what?](#)". Iklé, who was thinking mainly about arms control between the superpowers, described a key issue of arms control: which (potential) violator voluntarily joins an international

agreement that includes provisions which could lead to its own punishment? Iklé proposed creating a permanent agency to evaluate relevant information. It was to depoliticise, as much as possible, procedures for assessing compliance and deciding on sanctioning. Iklé's description back then to some degree captures the current role of the OPCW.

Like nearly all other multilateral regimes, the CWC tries to solve the 'compliance' problem by strictly separating information collection and evaluation. The Technical Secretariat is responsible for collecting relevant data, while evaluation (at least so far) has fallen within the remit of political decision-making bodies. In the case of the CWC, these are the Executive Council and the Conference of the States Parties. In particularly serious cases, they may involve the UN General Assembly or UN Security Council. This is precisely what the International Atomic Energy Agency (IAEA) Board of Governors did when it [referred Iran](#) and [North Korea](#) to the UN Security Council for violating their safeguards obligations.

The decision adopted in The Hague refers explicitly to relevant CWC rules and procedures. However, in expanding the OPCW's mandate, the question as to what will happen once the OPCW has identified and named a perpetrator becomes even more poignant. Although the Conference of the States Parties may recommend "[collective measures to States Parties in conformity with international law](#)", the Security Council is still responsible for enforcement. However, known political blockades in the Council are likely to prevent effective sanctions.

This also reduces the likelihood that OPCW reports may become a basis for investigations by the International Criminal Court (ICC). According to the ICC's Rome Statute, "[\[e\]mploying asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices](#)" is a war crime. Syria has not signed the Rome Statute but the Security Council can refer war crimes committed in non-states parties to the ICC. Since Russia has so far prevented such a decision, the path to prosecution is likely

to remain blocked. As a result, individual crimes may only be prosecuted extraterritorially, [as is being attempted in Germany](#).

One hopes that the offending party would correct its behaviour to avoid being stigmatised as a treaty violator. However, experiences in Syria suggest that (the threat of) “naming and shaming” is unlikely to be a sufficient incentive to ensure compliance. Syria and Russia have repeatedly denied responsibility, sometimes with questionable arguments, even in those cases where Damascus has been identified as the perpetrator.

One last option to respond to violations of treaty obligations and to attempt to enforce compliance would be for those states which support OPCW investigation results to impose political, economic or military sanctions by themselves. The [expulsion of more than 150 Russian diplomats by Western states](#) in response to the Salisbury attack is an example of such an approach. Another example would be the US military strikes against Syria, launched two days after [the use of sarin on 4 April 2017 in Khan Shaykhun](#). The JIM later named Syrian forces as the perpetrators of the poison gas attack on this city.

One week after chemical weapons had been used in Douma near Damascus on 7 April 2018, France, the United Kingdom and the United States jointly attacked Syria. Their goals were to retaliate, to degrade the Syrian chemical weapons programme and to deter the perpetrators from launching additional chemical weapons attacks.

In both these cases, military action could not be justified by the findings of international investigations charged with identifying the perpetrators. However, once the OPCW has the responsibility and capability to identify those responsible for chemical weapons attacks, this could change.

The expansion of the OPCW mandate could also increase pressure on Germany to impose military sanctions against the convicted perpetrators of chemical weapons attacks. In particular, France wants stronger responses, including military strikes, to deter the use of chemical weapons. For ex-

ample, [French President Emmanuel Macron has repeatedly threatened rapid military strikes in cases where those responsible for chemical weapons attacks can be identified](#).

The German government described the military action in April 2018 as [‘necessary and appropriate’](#). In contrast, the Bundestag’s Research Service [suggested that the attacks did not conform to international law](#).

Politicising the Technical Secretariat

Secondly, extending the role of OPCW inspectors runs the risk of further politicising the work of the Technical Secretariat. OPCW and IAEA carefully protect the political independence of their inspectorates which they see as a precious asset. When verification takes place in highly political environments, such as in Syria or in the run-up to the 2003 Iraq war, staff of these organisations have been attacked and criticised for political reasons.

In 2002, the first Director-General of the OPCW, José Bustani, [was forced out of office by the United States \(with the active participation of current National Security Advisor, John Bolton\)](#). Washington feared that the work of chemical weapons inspectors would undermine the rationale for the Iraq war by putting the threat posed by Iraq’s alleged chemical weapons programmes into context. As recently as July 2017, the then head of the JIM, Edmond Mulet, [complained about massive political pressure being placed on the inspectors](#).

The new decision now shifts the boundary between technical verification and political assessment of facts by giving the Technical Secretariat the mandate to identify those responsible for chemical weapons attacks. The task of ‘identification’ goes beyond the mere gathering of facts. Thus, the OPCW is now more likely to become the focus of political conflicts.

While investigating an alleged chemical weapons attack, inspectors were already able to include certain information in the investigation report, which could, for ex-

ample, be based on the analysis of samples taken and [“that might serve to identify the origin of any chemical weapons used”](#). However, based on their expanded mandate, they can now gather information specifically intended to identify perpetrators, such as satellite imagery, forensic data or operational military analyses.

The decision to extend its mandate was adopted at the end of Director-General Ahmet Üzümcü’s term of office. In a [key-note speech held on 25 May 2018 in London](#), Üzümcü argued that there is “nothing in the Convention that precludes such a role for the Organisation” to identify those responsible for chemical weapons attacks. Spanish diplomat, [Fernando Arias, who became head of the OPCW on 25 July 2018](#), will now have to implement the expanded mandate. Among other things, he will have to lead discussions on reforming the Secretariat so that it can fulfil its new task. It is still unclear what new competencies and capabilities the inspectors will require in order to name the perpetrators of chemical weapons deployments, which sources of information (including possibly intelligence information) they will be allowed to use and what budgetary implications the decision has.

Political rifts

Thirdly, the decision adopted on 27 June has widened even further the [political gap between Western states and the United States on one side and Russia and its allies on the other side](#), should this be at all possible. Against the background of political rifts between the States Parties, the coming debates on a reform of the Technical Secretariat are likely to be heated. A large majority of OPCW members supported the expansion of the organisation’s mandate. But some influential emerging economies, including India and South Africa, voted against the decision. Russia has announced its intention to block implementation of the decision and has called into question the future of the CWC and OPCW.

It is, therefore, positive that implementation of the expanded mandate will initially focus on Syria. The issue of a general expansion of the OPCW’s tasks will likely be discussed at the Fourth CWC Review Conference scheduled to take place at the end of November 2018.

And for now, the first test of the OPCW’s new powers to identify the perpetrators appears to have been postponed. At the time of the decision, an FFM report on the April 2018 chemical weapons attack in Douma was pending. There was speculation that not only chlorine but also sarin had been used in Douma. The [FFM stated in its preliminary report of 6 July there were indications of the possible use of chlorine but no evidence of a sarin attack](#). All other things being equal, it is easier to attribute a sarin attack than a chlorine attack.

On 30 June in Amesbury, two more British citizens came into contact with Novichok. One of the victims died on 8 July from exposure to the substance. London has, as it did after the Salisbury attack, [asked the OPCW for technical assistance in examining the warfare agent used](#). However, the British government will only be able to request support from the OPCW’s Technical Secretariat in identifying the perpetrators after a decision to establish a group of experts to carry out such a task has been taken at the next Conference of States Parties in November 2018.

The Fourth CWC Review Conference

Representatives of the OPCW States Parties will meet to discuss the future of the CWC and OPCW at the end of November. [The regular Conference of the States Parties \(19–20 November 2018\) and the five-yearly Review Conference \(21-30 November 2018\)](#) would have been controversial even without the Special Session. However, the decision adopted on 27 June [is likely to further reduce the likelihood of a successful review conference](#).

States Parties must tackle three challenges if they want to preserve and strengthen the prohibition of chemical weapons.

Firstly, they will need to avert further fragmentation of the chemical weapons regime. The CWC, opened for signature in 1993, is the political, legal and normative cornerstone of chemical weapons disarmament. It prohibits the development, production and use of all toxic substances for non-peaceful purposes.

However, as a consequence of the political dispute over responsibility for chemical weapons attacks in Syria and elsewhere, new instruments have been created or proposed which could lead to a disintegration of the chemical weapons regime. Alongside the IIM, the [UN Human Rights Council has also been investigating serious human rights violations and crimes against humanity since 2011](#). It has also repeatedly published reports on chemical weapons attacks.

In 2016, Russia proposed a [convention for the suppression of acts of chemical terrorism](#), apparently in order to distract from the Assad regime's use of chemical weapons in Syria. On 23 January 2018, France and 23 other, mostly Western states launched [the International Partnership Against Impunity for the Use of Chemical Weapons](#) to identify and name those responsible for chemical weapons attacks. In response, Russia proposed a United Nations Independent Mechanism of Investigation (UNIMI) to assume the tasks of the FFM and JIM [but failed to garner the necessary support](#).

The CWC States Parties should, therefore, declare at the Review Conference that new instruments to control chemical weapons can only complement the CWC. Compatibility with the CWC should be the most important yardstick for judging any new initiatives to strengthen the ban on chemical weapons.

Secondly, the Review Conference will provide an opportunity to counteract the politicisation and polarisation of the chemical weapons debate. The permanent members of the Security Council play a special role in enforcing international norms. They

bear primary responsibility for re-establishing a global consensus on the chemical weapons ban.

In the long run, it is impossible to sustain and strengthen multilateral institutions without the support of the major powers. It is impossible to predict when and how the deep political divisions between Russia and the West can be overcome. Despite their bilateral disagreements, however, it would be sensible for Moscow and Washington to agree on continuing at least certain forms of cooperation to control weapons of mass destruction. It was ultimately the shared understanding that close cooperation provided the only way to prevent Syrian chemical weapons falling into the hands of terrorist groups which was the basis for the successful Russian-US cooperation on disarmament in 2013 and 2014.

To some degree at least, it has been possible to articulate joint positions on the disarmament and non-proliferation of weapons of mass destruction. For example, the United Kingdom, Russia and the United States as depositary states and therefore guardians of both the 1968 Nuclear Non-Proliferation Treaty (NPT) and the 1970 Biological Weapons Convention (BWC) did issue joint statements [ahead of the BWC Review Conference in 2017](#) and [on the occasion of the NPT's 50th anniversary](#).

A similar statement by permanent members of the Security Council and some key middle powers, such as Germany, stressing the importance of the chemical weapons ban and identifying common ground on how to strengthen the CWC could possibly help make the Review Conference a success.

Thirdly, more work needs to be done in the run-up to the Review Conference to advance the OPCW's central reform projects. One key question is what should be the core of the organisation's future work. Until recently, verification of chemical weapons disarmament was the main task of the Technical Secretariat.

Meanwhile, more than 96% of the world's declared 72,000 tons of chemical weapons have been destroyed. Of the eight states that declared chemical weapon stock-

piles when joining the CWC, only the United States (and presumably Syria) has yet to complete destruction. Washington plans to achieve this goal by 2023.

But what efforts should the OPCW undertake to counter the threat of chemical weapons proliferation? The answer to this question is still the subject of much controversy.

Better Responses to New Threats

Chemical weapons risks have changed significantly in the 25 years since the CWC was negotiated. The focus is no longer on chemical weapons use by regular armed forces in inter-state conflicts, such as during the First World War or by Iraq in the war against Iran in the 1980s. Today, chemical weapons attacks by non-state actors or terrorist use by states, such as happened in Syria, appear to be the greater danger.

The discussion on Syria influences the debate on the necessary reform steps described here and elsewhere. It would be helpful to make this discussion more objective and return to the more technical aspects of chemical weapons control. This might increase the odds that participants at the Review Conference will be able to lay the foundations for more common ground.

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