

Reinforcing the Global Norm Against Chemical Weapons Use

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February 18, 2021

In recent years, the global norm against chemical weapons use has eroded, and it is critical that responsible states take action to reinforce it. Systematic violations of the Chemical Weapons Convention (CWC) and the malign use of chemical agents have continued for nearly a decade without adequate accountability. These incidents risk growing in severity and becoming more widespread for as long as the issue remains unaddressed. Reinforcing the norm against chemical weapons use necessitates a unified global effort to utilize all CWC provisions and to strengthen the consequences that violators face under the treaty and in accordance with international law.

Establishment of the Norm

The first known use of chemical weapons in modern history was in April 1915, when the Germans unleashed chlorine gas on units of French and Algerian soldiers at Ypres, Belgium. Following that attack, chlorine, phosgene, and mustard gas were used on a widespread basis throughout the first World War, accounting for approximately 90,000 of the war's casualties. In direct response to a global recognition of the severe and indiscriminate effects

HIGHLIGHTS

- The global norm against chemical weapons use has eroded and coordinated international action must be taken to reinforce it.
- Reinforcement of the norm requires strengthening existing mechanisms in the Chemical Weapons Convention (CWC) while shoring up the international community's ability to respond to the use of chemical weapons by any state or nonstate actor and to hold them accountable.
- In the absence of UN Security Council unity, it is vitally important that the Organisation for the Prohibition of Chemical Weapons (OPCW) and coalitions of like-minded states pursue actions to reinforce the norm against chemical weapons use.
- States-parties should clarify and codify the rights and privileges a state risks losing for violating the CWC, establish a precedent for challenge inspections, and expand the mandate for the attributive Investigation and Identification Team.
- Other actions that can help reinforce the norm include expanding the International Partnership Against Impunity for the Use of Chemical Weapons, establishing a clearinghouse for information about chemical weapons use perpetrators, and pursuing the prosecution of those perpetrators as war criminals.

of chemical weapons use, the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, dubbed the Geneva Protocol, was negotiated.¹ From that point onward, chemical and biological agents were banned from use in war as a matter of international law.

Yet the production, stockpiling, and intermittent use of chemical weapons continued despite the 1925 prohibition, in part due to the narrow scope of the Geneva Protocol, which applies only to the use of chemical weapons in interstate conflicts. Furthermore, a number of states included in their ratifications a reservation of the right to use chemical weapons in retaliation against a chemical weapons attack or offensively toward those not party to the protocol, including the United States, which ratified the Geneva Protocol only in 1975, after dropping napalm and Agent Orange over Vietnam throughout the Vietnam War.² Italy deposited its instrument of ratification in 1928 without reservations, but proceeded to use chemical weapons against Ethiopia in 1934, which had not yet ratified the protocol.³ The lack of a formal verification mechanism further complicated the effectiveness of and widespread compliance with the Geneva Protocol.

The de facto norm against chemical weapons use solidified following the entry into force of the CWC in 1997. Negotiations on the CWC began in 1980 at the UN Conference on Disarmament,⁴ ultimately producing a treaty prohibiting chemical weapons in 1993 that is far more expansive than the Geneva Protocol. The CWC goes beyond the Geneva Protocol by banning not only the use but also the development, production, stockpile, and transfer of chemical weapons. Today, the near-universal treaty has 193 states-parties. There are only four CWC holdout states: Egypt, Israel, North Korea, and South Sudan.

The CWC requires that all states verifiably destroy their declared chemical weapons stockpiles upon accession to the treaty. This effort by a wide group of states to negotiate such a prohibitive treaty throughout the 1980s and 1990s was an early indicator of the growing interest in establishing a stronger legal framework to support the norm against chemical weapons use.⁵

The CWC established the Organisation for the Prohibition of Chemical Weapons (OPCW), which supports implementation of the CWC and verifies states-parties' compliance with their obligations under the treaty. The CWC's near universality and the governing OPCW's oversight undoubtedly played a role in upholding the global norm against chemical weapons use for more than 20 years.

Six states declared stockpiles upon acceding to the treaty: India, Iraq, Libya, Russia, South Korea, and the

United States.⁶ Albania declared a chemical weapons stockpile several years after joining the CWC and has since destroyed it.⁷ Only the United States has yet to complete destruction of its stockpile, but it is scheduled to do so by 2023.⁸ Since the CWC's entry into force, more than 98 percent of the world's chemical weapons stockpiles have been verifiably destroyed.

Erosion of the Norm

Reports of chemical weapons attacks in Syria began in early 2013 as the Assad regime clashed with Syrian opposition forces amid the budding civil war. In August that year, news spread of a large-scale chemical weapons attack in Ghouta, with an estimated one thousand or more people experiencing convulsions, foaming from the mouth, blurry vision, and suffocation—symptoms consistent with nerve agent poisoning. The United Nations immediately launched an investigation into the alleged use of chemical weapons in Syria, and the OPCW promptly dispatched technical experts to aid in the investigation.

UN and independent governmental assessments concluded that sarin, a volatile nerve agent, was used by the Assad government in the attack.⁹ Leaders around the world began to weigh the prospects of military intervention, and the UN Security Council met in two emergency sessions over the course of a week. The UK Parliament voted against supporting military action while U.S. President Barack Obama stated he would seek authorization from Congress for a limited strike.¹⁰

Under the threat of serious U.S. military action, the United States and Russia forged an agreement whereby Syria would immediately accede to the CWC and surrender its chemical weapons arsenal, which would be verifiably destroyed through a coordinated effort led by Washington and Moscow with the support of the OPCW and the UN. Syria submitted a declaration of its stockpile to the OPCW on September 20, 2013.¹¹

Prompt destruction of Syria's chemical weapons program alleviated urgent concerns that the weapons would continue to be used on a large-scale basis throughout the country's civil war and lowered the growing risk of those weapons falling into the hands of nonstate actors in the region. Although largely unnoticed by those not privy to the situation, destruction of Syria's enormous declared chemical weapons stockpile marked an extraordinary feat.

Syria was long suspected of having a chemical weapons program but was not party to the CWC at the time of the Ghouta attack. Its use of chemical weapons against civilians during a civil war was also not expressly prohibited by the Geneva Protocol, which Damascus



During an emergency Security Council session on April 5, 2017, then-U.S. Ambassador to the United Nations Nikki Haley displayed photos of the victims of the Syrian government's April 4 chemical weapons attack in Khan Shaykuh. Sarin, a nerve agent, was used in the attack which reportedly killed as many as 100 people. (Photo: Drew Angerer/Getty Images)

The United States launched a retaliatory missile strike against a Syrian air base on April 7 in response to the April 4 sarin attack. In a statement announcing the strike, then-U.S. President Donald Trump said the Syrian Shayrat air base had been used as a staging ground by the Syrian government for the April 4 chemical attack.

ratified in 1968.¹² The international community's immediate condemnation and calls for a punishing response to the large-scale use of a suspected nerve agent under these circumstances was indicative of the strength of the de facto norm against chemical weapons use that existed even beyond the bounds of relevant governing legal institutions and treaties.

While Syria did declare and surrender the bulk of its stockpiles of chemical weapons, chemical agents, and associated equipment as required by the 2013 agreement, a host of allegations arose in 2014 regarding the use of a toxic chemical, likely chlorine gas, in the Syrian conflict. Syria was not obligated to declare nor destroy its stockpile of chlorine gas upon its accession to the CWC due to the chemical's dual-use applicability, but the CWC's general-purpose criterion explicitly prohibits the use of any chemical as a weapon.

The OPCW responded to these allegations through the conduct of its Fact-Finding Mission (FFM), which is mandated to establish the use of chemical weapons in Syria without assigning blame for the attacks. From 2014 to 2020, the OPCW deployed the FFM numerous times in Syria.¹³

In 2015 the UN Security Council unanimously adopted Resolution 2235,¹⁴ which condemned "any use of any

toxic chemical, such as chlorine, as a weapon" in Syria and established the UN-OPCW Joint Investigative Mechanism (JIM), dedicated to identifying those responsible for chemical weapons use in Syria.¹⁵

The JIM determined in August 2015 that the Syrian government was responsible for chemical weapons use during at least two incidents, in April 2014 and March 2015. The JIM also found that the Islamic State group was responsible for the use of sulfur mustard in Syria in August 2015. From 2014 to 2017, the UN and the OPCW conducted 10 JIM investigations in Syria (table 1).

Chemical weapons use continued in Syria despite the JIM findings implicating the Assad regime and the supposed total destruction of Syria's stockpile. The first major allegation surrounding the renewed use of sarin in Syria came in April 2017, in an attack that killed dozens of civilians in Khan Shaykhun, suggesting that Syria did not give up its entire chemical weapons program or that it reconstituted parts of it in violation of the CWC. Yet, after the FFM verified that sarin was used in the attack, Russia vetoed a Security Council vote to extend the mandate for the attributive JIM for another year. The JIM's final report established that the Assad regime was responsible for the use of sarin in the April 2017 attack.

In part to continue the JIM’s attribution work, OPCW member states voted to establish the Investigation and Identification Team (IIT) in 2018. In April 2020, the IIT found in its inaugural, and to date only, report that the Assad regime was responsible for a series of chlorine and sarin attacks in Syria in March 2017—a month before Khan Shaykhun.

In July 2020, spurred by the IIT’s findings, the OPCW Executive Council issued a decision calling on Syria to come clean on the totality of its chemical weapons stockpile within 90 days.¹⁶ Syria failed to meet that deadline, which expired in October 2020.

It is difficult to know with certainty why the Assad regime chose to use chemical weapons in blatant defiance of international law and the CWC after Syria’s accession to the convention. Although the incidence of Syrian chemical weapons attacks has slowed in recent years, President Bashar al-Assad appears not to have been adequately deterred by the international community’s limited actions taken in response to the continued attacks. Damascus denies that it is behind the attacks, but the regime has continued to employ chemicals as weapons of terror against its own population.

Table 1. UN-OPCW Joint Investigative Mechanism (JIM) and Investigation and Identification Team (IIT) Investigations into Instances of Syrian Chemical Weapons Use, 2014–2017.

Incident	JIM	IIT
Kafr Zita , April 11 and 18, 2014	✓	
Talmenes , April 21, 2014	✓	
Al Tamanah , April 29–30, 2014	✓	
Al Tamanah , May 25–26, 2014	✓	
Qmenas , March 16, 2015	✓	
Sarmin , March 16, 2015	✓	
Binnish , March 23, 2015	✓	
Marea , August 21, 2015	✓	
Umm Hawsh , September 16, 2016	✓	
Ltamenah , March 24, 25, and 30, 2017		✓
Khan Shaykhun , April 4, 2017	✓	

Note: The OPCW FFM investigated more than 100 reported incidents of chemical weapons use in Syria from 2013 to 2018. Of those, the UN-OPCW JIM investigated 10 incidents and attributed responsibility for four of those (Talmenes, Qmenas, Sarmin, and Khan Shaykhun) to the Syrian government. The JIM also attributed two incidents (Marea and Umm Hawsh) to the Islamic State group. After its establishment in 2018, the IIT attributed one attack (Ltamenah) to the Syrian government.

The Assad regime’s risk-benefit calculation is undoubtedly influenced by the fact that, despite substantial evidence regarding its repeated use of chemical weapons, Syria’s status under the convention has been challenged only recently.

During the first portion of the 25th annual conference of states-parties, held November 30–December 1, 2020, 46 states co-sponsored a resolution to suspend Syria’s rights and privileges in the “decision-making bodies” of the CWC and the OPCW. French Ambassador Luis Vassy introduced the resolution and called on the conference to support the decision “to demonstrate our collective commitment to fight impunity.”¹⁷ States-parties are expected to further debate Syria’s rights and privileges under the treaty during the second portion of their annual conference in the spring of 2021.

The OPCW Executive Council’s July 2020 decision, cited in France’s resolution, affirmed that the Secretariat would conduct inspections at two Syrian sites identified by the IIT as directly involved in the March 2017 chemical weapons attacks.¹⁸ That decision called on Syria to comply fully with the inspections, but Syria has yet to cooperate with or provide access for OPCW inspectors.¹⁹

The OPCW Declaration Assessment Team, which works to ensure the completeness of states-parties’ stockpile declarations, has sought to clarify outstanding inconsistencies related to Syria’s declared chemical weapons stockpile, but has received no response from Syria to date.²⁰

The Syrian government appears to view its compliance with the CWC and cooperation with the OPCW as voluntary. A lack of historical precedent for the treaty-prescribed challenge inspections may have led the Assad regime to calculate that it can stockpile and use certain chemical weapons without significant risk of penalty. Challenge inspections grant the OPCW authority to conduct unscheduled inspections into sites or facilities believed associated with a country’s chemical weapons program and, if utilized, could serve as a deterrent against states seeking to covertly maintain weapons in violation of the treaty.

In addition, the Syrian government’s more recent chemical attacks have been met with far less forceful denunciations by the international community as compared to the strong and coordinated international response that immediately followed the 2013 sarin gas attack in Ghouta.

In 2018 a group of states formed the International Partnership Against Impunity for the Use of Chemical Weapons to respond to investigative gaps and to identify and hold perpetrators of chemical weapons use



Screenshot from a video posted to YouTube on April 11, 2014 shows substantial yellow coloration at the base of the cloud over Kafr Zita, Syria, drifting with main cloud. Chlorine is suspected to have been used in that attack. (Via Human Rights Watch)

responsible.²¹ Despite their important efforts to name, shame, and economically sanction responsible parties, the International Partnership's efforts to reinforce the chemical weapons norm have been less than decisive thus far.

The Syrian case highlights two important conclusions with respect to the global norm against chemical weapons use. First, it reveals that although the global norm was undoubtedly supported and strengthened by the CWC, it is distinct from the convention. The international community's coordinated and punitive response to the use of chemical weapons in 2013 by a state not originally party to the CWC, i.e., Syria, suggests that the global norm against chemical weapons use transcends the CWC and other relevant international legal institutions.

Second, the strength and effectiveness of the global norm against chemical weapons use is foremost measured by the extent to which the weapons are not used, under any circumstances, by any state or nonstate actor. Yet, the norm's strength can also be measured by the severity of the international community's response to violations of the norm. In 2013 the coordinated international response to the sarin gas attack in Ghouta demonstrated a high level of commitment to preserving and upholding the norm against chemical weapons use, highlighting the strength of the norm. The relatively muted response, however, to ongoing use of chemical weapons, primarily involving chlorine and mustard gas, in Syria from 2014 onward, combined with Russia's efforts to shield the Assad regime

from blame for the chemical attacks, has further weakened the norm.

Third, because Russia has used its veto power on the UN Security Council to undermine efforts to investigate chemical weapons use in Syria since 2013, the council has shown that it cannot always be relied on to hold violators of the chemical weapons norm to account. Only when the permanent members of the council are aligned can the body effectively help enforce compliance with the norm. In 2013, coordination among Security Council members helped drive the international community's response—specifically the U.S. and Russian responses—to the Ghouta attack. Today, absent that coordination, the unpredictability of certain veto-wielding states' responses to instances of chemical weapons use necessitates that the OPCW and coalitions of like-minded states take a more active role in reinforcing the global norm against chemical weapons use.

Outside of Syria, the targeted use of chemical weapons in assassinations have further weakened the normative and legal prohibitions on chemical weapons use. Two major instances of chemical weapons use—the 2017 assassination in Kuala Lumpur of North Korean leader Kim Jong Un's half-brother, Kim Jong Nam, using VX, and the 2018 poisoning in the United Kingdom of former Russian spy Sergei Skripal with a Novichok agent—were met by a similarly lackluster response from the international community, further exemplifying the eroded norm.



The UN Security Council votes to extend investigations into who is responsible for chemical weapons attacks against Syria at the United Nations on October 24, 2017. Russian Ambassador to the UN Vassily Nebenzia voted no to the resolution.

(Photo: Timothy A. Clary/AFP via Getty Images)

Reinforcement of the global norm against chemical weapons use requires strong legal institutions and governance alongside a coordinated, multilateral effort to address past and future instances of chemical weapons use appropriately and punitively. In keeping with the CWC's general-purpose criterion, this effort must also address the use of any chemical as a weapon, regardless of whether an agent is listed in the treaty's Annex on Chemicals. Attacks using chlorine, which states are not required to declare or destroy under the CWC due to its dual-use nature and ubiquitous commercial use, should warrant an identical response to those using sarin or another nerve agent. The norm against chemical weapons use will be restored when the international community shores up its response to instances of use and demonstrates that such use is never acceptable under any circumstances. Perpetrators of chemical weapons use must be held accountable.

The recent OPCW finding that a Novichok nerve agent was used to poison Russian dissident Alexei Navalny presents an opportunity for a unified effort to reinforce the global norm against chemical weapons use. Navalny was poisoned with a Novichok agent in August 2020 on a domestic flight in Russia. Moscow has denied responsibility for the attack.²²

Novichok agents were added to the CWC's list of banned Schedule 1 substances in June 2020, after the poisoning of Skripal triggered a campaign by CWC members to

amend the Annex on Chemicals, subjecting countries in possession of the nerve agent to the convention's most stringent declaration and verification requirements. Moscow is widely believed to be responsible for Skripal's poisoning.²³ Although the OPCW conducted sample analyses and confirmed that a Novichok agent was used, Russia has never been formally investigated or held accountable by the OPCW or under the CWC. The specific agent used against Skripal was among those included in the recent amendment to the convention's annex.

The deliberate and relatively unadmonished use of a nerve agent by a CWC state-party in 2018 represented the reality of an eroded normative prohibition on chemical weapons use. Now faced with a similar circumstance, the international community must take the necessary steps to reinforce the global norm against these indiscriminate, inhumane weapons.

Reinforcement of the Norm

Reinforcement of the global norm against chemical weapons use requires taking steps to strengthen the existing mechanisms included in the CWC while shoring up the international community's ability to respond to the use of chemical weapons by any state or nonstate actor and hold them accountable.

The OPCW has taken a series of important steps to strengthen the global norm, notably by addressing

Syria's chemical weapons program through the Executive Council's July 2020 decision and by expanding the CWC Annex on Chemicals in 2019.²⁴ Despite these efforts, further measures should be pursued.

Widespread support for a strong OPCW budget is critical for the organization to make progress toward reinforcing the norm. Russia, Iran, Syria, and other CWC states-parties have outspokenly opposed the OPCW budget for the past several years, arguing that the OPCW is overreaching its prescribed mandate to oversee the demilitarization of declared chemical weapons stockpiles. Russia, in its statement before the conference of states-parties, denounced the legitimacy of the IIT, saying "We strongly oppose the imposition to Member States against their will of financial obligations due to the illegitimate work of the attribution mechanism."²⁵ Iran's delegate noted that the OPCW's authority to attribute instances of chemical weapons use is not codified in the CWC and also rejected the annual budget.²⁶

In reality, the OPCW's mission is far greater than demilitarization oversight,²⁷ and the organization has received wide support by the majority of CWC states-parties for each of its undertakings, including the establishment of the IIT.²⁸ States-parties' undue opposition to the OPCW budget is destructive to the work of the OPCW. It is important that, despite opposition by spoilers, states-parties continue their otherwise strong support for an effective OPCW budget.

With adequate funding, there are a range of approaches the international community and specifically the OPCW can pursue to reinforce the global norm.

1. The OPCW Executive Council, together with input from all CWC states-parties, should explicitly clarify what rights and privileges will be revoked under the convention for noncompliant behavior.

Article XII of the CWC, titled "Measures to Redress a Situation and to Ensure Compliance, Including Sanctions," lists four steps to be taken in response to a country's noncompliant behavior under the convention. Step one dictates that the conference of states-parties will take into account all relevant information submitted to it by the Executive Council. Step two details that:

...in cases where a State Party has been requested by the Executive Council to take measures to redress a situation raising problems with regard to its compliance, and where the State Party fails to fulfill the request within the

specified time, the Conference may, inter alia, upon the recommendation of the Executive Council, restrict or suspend the State Party's rights and privileges under this Convention until it undertakes the necessary action to conform with its obligations under [the CWC].²⁹

Steps three and four procedurally outline the process for the conference to recommend collective measures under international law and to refer the issue to the UN General Assembly and Security Council.

In the Syrian case, the Executive Council's July 2020 decision stated that if Syria failed to meet the October deadline to declare the remainder of its chemical weapons stockpile to the OPCW, the council would recommend the conference of states-parties adopt a decision to take action under step two.³⁰ These "rights and privileges," however, are not defined in any explicit way by the CWC. According to a briefing by the UK House of Commons, because these measures are not specified under the CWC, step two may include the revocation of any rights and privileges "so long as they conform with international law." Examples of a state's rights under the CWC include the right to vote on matters pertaining to the CWC, the right to serve on the Executive Council and the CWC staff, the right to participate in the exchange of scientific and technical information, the right to participate in OPCW development programs, and the right to trade certain industrial chemicals.³¹

Clarifying explicitly what rights and privileges a state could lose under the CWC for noncompliant behavior and revoking them when agreed may deter future violations of the treaty and are important steps toward reinforcing the global norm against chemical weapons use. Yet, it is important to ensure that the revocation of these rights and privileges is not enough to drive that state's withdrawal from the treaty altogether. The OPCW Executive Council and CWC states-parties should consider carefully what consequences are appropriate under step two when deciding on the Syrian case and should take action to codify these measures under the CWC going forward.

2. CWC states-parties should establish a precedent for challenge inspections.

The CWC assumes compliance and does not regularly inspect all facilities as the International Atomic Energy Agency does to ensure nuclear programs are peaceful,³² but in the event that a state may appear to be in noncompliance with its obligations under the treaty, the



The Organisation for the Prohibition of Chemical Weapons headquarters in the Hague, Netherlands. (Photo: Ant Palmer/Getty Images)

convention includes an explicit provision allowing states-parties to request a challenge inspection of the potential noncompliant state.³³ The process includes a series of expedited steps to notify the possibly noncompliant state of other states' concerns and, eventually, to conduct an inspection at any location or facility in question. Challenge inspections are not guaranteed, however, and the inspected state is permitted to deem the requested parameter of inspection to be unacceptable.³⁴ For this reason, even in the event that a challenge inspection is conducted, it may not ultimately reveal a state's covert chemical weapons production or storage. No challenge inspection has ever been conducted, but the OPCW has run several simulated challenge inspections to practice the process and test the organization's readiness, most recently in 2011 in Thailand.³⁵

Challenge inspections represent an important verification tool under the CWC and, if enacted, could contribute to deterring future covert chemical weapons production, stockpiling, and use by noncompliant states. To maintain the OPCW's preparedness, the organization should consider hosting simulated challenge inspections on an annual basis. In 2011 the inspection was based on a hypothetical scenario but conducted at an actual chemical plant in Bangkok, giving

inspectors the opportunity to practice the technical processes necessary to conduct a challenge inspection. Regular mock challenge inspections will signal to potentially noncompliant states that the OPCW will not balk to initiate such an inspection and will be prepared to conduct it.

As with clarifying the rights and privileges a state will lose for noncompliant behavior, establishing a precedent for practicing and enacting challenge inspections is an important step toward strengthening the CWC and reinforcing the norm against chemical weapons use.

3. The OPCW should work to immediately expand the mandate of the Investigation and Identification Team (IIT) to investigate any alleged use of chemical weapons by any CWC state-party.

The IIT was established in 2018 with a mandate to investigate instances where the OPCW FFM determined that chemical weapons were used in Syria and to attribute responsibility for those attacks.³⁶ The inaugural IIT report, issued in April 2020, concluded that the Syrian government was responsible for the use of sarin and chlorine in March 2017, and those findings directly informed the OPCW Executive Council's July 2020 decision on Syria.

No OPCW attribution body exists apart from the IIT. According to the organization, although the IIT was established specifically to identify perpetrators of chemical weapons use in Syria, the OPCW director-general may provide technical assistance to aid in a state-party's investigation of chemical weapons use on its territory. In this circumstance, "experience and know-how of the IIT will be transferred to relevant parts of the Secretariat to enable it to provide adequate assistance to States Parties, upon request."³⁷

But an OPCW effort to support a state's individual attribution effort is vastly different from an impartial and formal investigation led by the global chemical weapons watchdog. The political considerations that plague the former help to explain why occurrences of chemical weapons use by CWC states-parties, such as Russia, have continued.

Although the organization's attribution work in Syria is valuable, the OPCW can further strengthen the IIT by expanding its mandate to include the use of chemical weapons by any CWC state-party. Doing so would also necessitate expanding the mandate of the FFM, whose actions precede the IIT's investigation and which conducts an inquiry immediately after an attack to determine whether a chemical weapon was used.

The OPCW aided in a German-led investigation of Navalny's poisoning by confirming that a Novichok agent was used, similar to the work of an FFM.³⁸ The organization also responded to a letter from Moscow requesting the possible dispatch of technical experts to support Russia's investigation into the poisoning, which occurred on Russian territory.³⁹ A Russian investigation into the use of a nerve agent by Russian officials is unlikely to produce any findings that implicate the Kremlin, despite strong evidence to the contrary, but a formal OPCW investigation attributing the attack to Russia could mark an important step toward holding Moscow accountable for its continued violations of the CWC.

The recent poisoning of Navalny presents an opportunity to extend the mandate of the FFM and IIT. To do so, a state or group of states would need to introduce a joint proposal to the conference of states-parties, which can vote by majority to extend both mandates just as the conference did to establish the investigative body in 2018.⁴⁰ The 25th conference is expected to convene for its second session before the end of April 2021.⁴¹

Going forward, removing the burden of attribution from individual states-parties and reassigning it to the OPCW in all cases can help to assuage any concerns that states may have for launching an investigation into certain powerful states, such as Russia, and holding their leaders accountable

for the use of chemical weapons. Formally identifying perpetrators is an important step in the process of reinforcing the global norm against chemical weapons use.

4. Partner states should consider expansion of the International Partnership Against Impunity for the Use of Chemical Weapons.⁴²

Outside of the OPCW, additional mechanisms exist that can contribute to reinforcing the norm against chemical weapons use. France established the International Partnership Against Impunity for the Use of Chemical Weapons in 2018, with a stated purpose to "supplement the international mechanisms to combat the proliferation of chemical weapons." The initiative brings together 40 countries and the European Union, who commit to support international investigations into chemical weapons use and to hold perpetrators accountable by encouraging multilateral action to sanction implicated states and individuals.⁴³ Additional activities include publishing the names of all sanctioned entities, groups, or governments to ensure accountability. Most recently, in September 2020, France and Germany announced they would work to investigate the poisoning of Navalny under the International Partnership.⁴⁴

The recently established partnership's value as a third-party investigator is yet to be fully realized. Although expansion of the IIT and the OPCW's formal adoption of all attribution work is important to promote thorough investigations into all instances of chemical weapons use, the partnership's work can support OPCW findings by independently corroborating the organization's conclusions, which have been accused of being politically motivated by states seeking to avert blame. Notably, in the Syrian case, Russian and Syrian opposition to OPCW findings regarding the Assad regime's use of chemical weapons have precluded a coordinated response by the organization at times, including when Russia vetoed an extension of the JIM's mandate. Third-party verification of OPCW findings can help dispel any allegations of politicization and can strengthen the IIT's attribution work. An expanded International Partnership can support future prosecution efforts by sharing information with relevant legal institutions alongside the OPCW and can help to ensure that punitive sanctions in response to chemical weapons use are applied on a coordinated, multilateral basis as member states agree to collectively sanction identified states and individuals.

Expanding the International Partnership to include a majority of OPCW member states, either as a centralized

body or on a regional basis, could widen the mechanism's bandwidth and signal the broad, multilateral support for upholding the global norm against chemical weapons use.

5. The OPCW should establish a near-automatic process by which all findings attributing chemical weapons use to an individual, state, or nonstate actor are compiled for referral to and prosecution in national or international courts or tribunals.

In July 2020, the OPCW Executive Council's decision welcomed a memorandum of understanding between the OPCW and the UN International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic Since March 2011 (IIIM).⁴⁵ That expression in the July decision reflected a provision of the IIT's mandate, which requires that it "preserve and provide information to the [IIIM], as well as to any relevant investigatory entities established" under UN auspices.⁴⁶ The IIIM does not have the authority to prosecute perpetrators of chemical weapons use, but it is responsible for collecting and conveying information that may be relevant for national or international courts and tribunals. The OPCW reported in October 2018 that the Secretariat was in the process of implementing the arrangement with the IIIM,⁴⁷ but it is not clear whether this pathway has been formally established.

Information verifiably implicating the Assad regime in the systematic use of chemical weapons will support any future international efforts to prosecute the Syrian president for crimes committed against humanity.

There is no precedent for such a body apart from the IIIM, which applies only to Syria and is mandated to investigate all crimes against humanity committed in Syria. Yet, an IIIM-inspired team that focuses solely on chemical weapons use could follow a similar model and be housed within the OPCW. The liaison team need not limit its work to CWC states-parties or to states alone. There is value in developing a system that may be used to hold nonstate actors accountable for the use of chemical weapons.

The International Partnership Against Impunity for Use of Chemical Weapons calls on its member states to gather and retain available information on perpetrators of chemical weapons use and to share that information with relevant national and international legal institutions.⁴⁸ Although an expanded International Partnership would be beneficial for the international community's efforts to combat chemical weapons use, the OPCW should

establish a similar in-house process to ensure that its work duly supports the future criminal prosecution of those responsible for the use of chemical weapons.

The OPCW Executive Council should discuss the merits of a new team dedicated to consolidating all information related to a state's or individual's use of chemical weapons to support future prosecution efforts on an ad hoc basis. That team would serve as the liaison between the OPCW and relevant courts or tribunals, who may otherwise lack the technical expertise that the organization has with respect to chemical weapons. The Executive Council should propose that the conference of states-parties vote to establish the new initiative.

In practice, the liaison team could serve as a clearinghouse for the information acquired by the OPCW through its challenge inspections, the FFM, and IIT investigations. It could also serve as a space for the OPCW to process information related to the use of chemical weapons by nonstate actors and groups, which the chemical watchdog investigates periodically as those instances arise. Impartial OPCW experts staffed to the new team could compile all relevant information into a comprehensive report that could support any future prosecution efforts.

A team similar to the IIIM that collects information that may be relevant for the eventual prosecution of those responsible for the use of chemical weapons can play an important role in the international community's effort to appropriately penalize violations of the legal prohibition.

6. The international community should pursue the prosecution of perpetrators of chemical weapons use.

Individuals involved in ordering or carrying out chemical weapons attacks by any state or nonstate actor should be prosecuted as war criminals. Chemical weapons are illegal under international law, as outlined by the Geneva Protocol, the Rome Statute of the International Criminal Court, and the CWC. The international community should establish a precedent of prosecuting any instances of chemical weapons use as war crimes, and the perpetrators of those attacks as war criminals. A new OPCW-based, IIIM-modeled team could support these legal efforts.

The threat of criminal prosecution, if credible, can serve as a deterrent against would-be perpetrators of chemical weapons use. When legal prosecution is not politically or immediately feasible, the international community should articulate that evidence is being collected for future legal action and utilize other tools to hold individuals or governments accountable for use of chemical weapons.

These tools could include targeted economic sanctions, asset freezes, or a collective loss of privileges under relevant multilateral institutions. For example, returning to the Syrian case, a temporary revocation of Damascus' rights and privileges under the CWC and sanctions against the Syrian government could be enacted in the short term as a case is built to prosecute Assad for war crimes.

Enforcing accountability for the use of chemical weapons will require a coordinated effort by individual states. While CWC states-parties could vote together to suspend certain Syrian rights and privileges under the treaty, imposing effective sanctions or other economic measures necessitates a commitment by a large number of states to individually hold the Assad regime accountable. There is no single forum where all states can meet to coordinate the various facets of a joint response to chemical weapons use. Ultimately, holding perpetrators accountable for use of chemical weapons demands a commitment by the international community writ large to act in every way possible to penalize states and individuals without impunity.

Conclusion

In his speech before the 25th conference, OPCW Director-General Fernando Arias said, “[T]he world now is not the same as the one of 1993, when the Convention was signed. It is a more polarised place, where progress on demilitarisation and non-proliferation is constantly threatened, and the efforts of the international community to live in a safer place are compromised.”⁴⁹

Against the backdrop of Syria's chemical weapons program and the repeated use of nerve agents by certain governments to poison political dissidents and innocent bystanders, Arias' words ring true. There is an urgent need to pursue additional, more creative approaches to reinforce and strengthen the global norm against chemical weapons use.

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