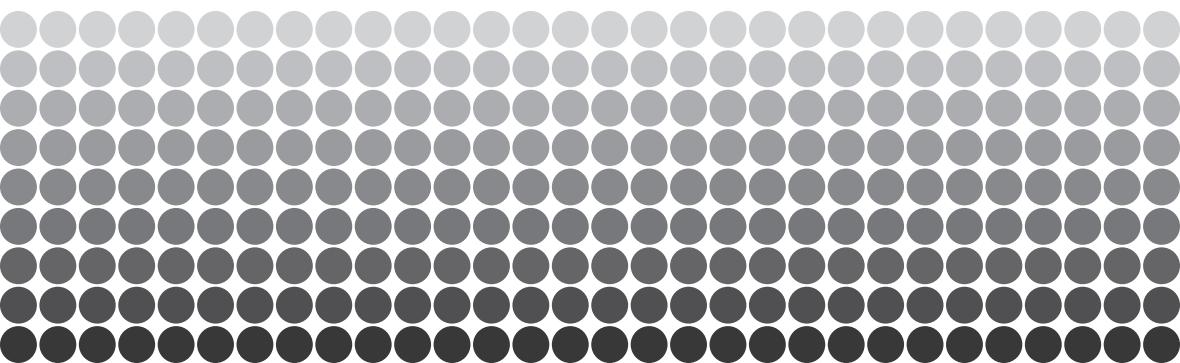


SIPRI YEARBOOK 2014

Armaments, Disarmament and International Security

Arms control implications of the use of chemical
weapons in Syria

JOHN HART



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III. Arms control implications of the use of chemical weapons in Syria

JOHN HART

Events in Syria in 2013 will have a long-term—if still somewhat uncertain and controversial—effect on future efforts to respond to allegations of use of chemical weapons. Arms control efforts undertaken in Syria reflected an evolution of international verification measures and activity that encompass both cooperative and coercive elements. Institutions and regimes not normally linked (e.g. the Organisation for the Prohibition of Chemical Weapons, OPCW, and the World Health Organization, WHO) were brought together due to high-level concerns within governments—especially Russia and the United States—and the international community. This occurred within the context of a worsening armed conflict with wider and long-lasting destabilizing effects.

After the Syrian Government's admission in 2012 that it possessed chemical weapons, in 2013 there was a growing number of allegations of their use by both sides in the conflict.¹ These prompted the United Nations Secretary-General to establish an international inspection team under his mechanism for investigation of alleged use of chemical or biological weapons, drawing personnel from the UN, the OPCW and the WHO. The team's entry into Syria was soon followed by reports of a major use of chemical weapons in the Ghouta district of Damascus on 21 August. The inspectors confirmed the use of chemical weapons at Ghouta and elsewhere without specifying which side had used them. Syria subsequently agreed (on the basis of a Russian-US framework) to become a party to the 1993 Chemical Weapons Convention (CWC), made a formal declaration of its stockpiles of chemical weapons, and reached agreement on the removal of chemical weapon agents and their precursors from its territory by sea and their destruction.² However, the Syrian Government continued to maintain that it had not used chemical weapons.

The developments in Syria, taken as a whole, underline the strength of the international norm against the possession and use of chemical weapons. They also brought to the fore policy and operational challenges associated with arms control in cases where non-state and state actors from within and outside the region are interacting in contested or ungoverned

¹ For full details of chemical weapon-related developments in Syria in 2013 see chapter 8, section I, in this volume. On developments in 2012 see Hart, J., 'Chemical and biological weapon programmes', *SIPRI Yearbook 2013*, pp. 376–80.

² For a summary and other details of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC) see annex A, section I, in this volume.

spaces and provided operational lessons on what verification can or cannot achieve under such circumstances.

Enforcing the international norm against chemical weapons

The UN Secretary-General, Ban Ki-moon, was deeply disturbed by the inspection team's conclusion that chemical weapons were used on a relatively large scale. He emphasized that 'any use of chemical weapons by anyone under any circumstances is a grave violation of international law'.³

The hybrid arrangement for enforcing the norm against chemical weapons in the case of Syria has both coercive and cooperative aspects drawn from, among other things, the experience of the verified destruction of chemical weapons in Iraq and multilateral arms control in general.⁴ The latter is based on the principles of equal rights and responsibilities among all the parties whereby they seek to demonstrate to each other the fact of their compliance. The arrangement in Iraq, in contrast, was imposed on the country as part of peace settlement terms.⁵

The UN Secretary-General's mechanism for investigation of alleged use of chemical or biological weapons permits the Secretary-General to initiate an investigation on his or her own authority. This authority has been used on multiple occasions, perhaps most notably during the 1980–88 Iran–Iraq War. The allegations concerning chemical weapon use in Syria emerged shortly after the list of designated experts and technical guidelines for the Secretary-General's mechanism had been revised.⁶ While the WHO and the UN Office for Disarmament Affairs (UNODA) had concluded a memorandum of understanding (MOU) defining their rights and responsibilities as part of a separate process in 2011, MOUs between the UNODA and the OPCW and between the UNODA and the World Organisation for Animal Health (OIE) had not been finalized.⁷ One reason for the lack of final agreement on an OPCW–UN MOU on investigating alleged use of chemical

³ United Nations, General Assembly and Security Council, Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, A/67/997-S/2013/553, 16 Sep. 2013, para. 4.

⁴ The dichotomy between coercive and cooperative aspects is reviewed in Zanders, J. P., 'Hybrid disarmament framework and slow-downs', *The Trench*, 8 Feb. 2014, <<http://www.the-trench.org/hybrid-disarmament-framework/>>.

⁵ The chemical weapons in Iraq were destroyed under the terms of UN Security Council Resolution 687, 3 Apr. 1991.

⁶ UN Office for Disarmament Affairs, 'Secretary-General's mechanism for investigation of alleged use of chemical and biological weapons', <http://www.un.org/disarmament/WMD/Secretary-General_Mechanism/>.

⁷ Memorandum of Understanding between the World Health Organization and the United Nations concerning WHO's support to the Secretary-General's mechanism for investigation of the alleged use of chemical, biological or toxin weapons, 31 Jan. 2011, <http://www.un.org/disarmament/WMD/Secretary-General_Mechanism/>.

weapons is an underlying concern by some states that the UN Security Council is unduly influenced by the five permanent members (China, France, Russia, the United Kingdom and the United States). The rubric under which this concern expresses itself is the manner in which the OPCW Confidentiality Policy can or should be understood when suspected or actual cases of non-compliance with the CWC are referred to the UN. These factors may influence states' positions and interactions (at the OPCW and the UN) in specific cases of suspected non-compliance, such as in the case of Syria.

While the UN Secretary-General's authority (exercised via the UNODA) to investigate allegations of chemical weapon use extends to any state—regardless of whether it is a party to any arms control and disarmament treaty regime, such as the CWC or the 1925 Geneva Protocol—OPCW inspectors are not permitted to investigate allegations of chemical weapon use in non-state parties unless that state permits it.⁸ To do so would require unique political and technical arrangements specific to a given case. It is not normal operating practice for the OPCW to enter the territory of a non-state party, except in a technical support capacity, such as via the UNODA. More generally, the OPCW as an institution tends towards a natural conservatism in that the states parties seek to limit the cost, scope and level of intrusiveness of the regime. In the absence of specific and compelling political interest or need, this has been the default position of the regime since the CWC entered into force, in 1997.

Once Syria had agreed to join the CWC, the OPCW's role became more prominent. The OPCW–UN–WHO inspection team was transformed into the OPCW–UN Joint Mission for the Elimination of the Chemical Weapons Programme of Syria. The OPCW provides technical support and coordinates an international fund to offset verification and destruction costs. The mission's mandate is jointly based on decisions by the UN Security Council and the OPCW Executive Council and it has a dual-track reporting arrangement.⁹ One set of reports is issued by the UN Security Council, while a second set of reporting is done according to OPCW procedures and is reviewed by that body's Executive Council. OPCW decisions are generally taken by consensus, while the UN Security Council operates under the constraints associated with a possible veto by one or more of the permanent members. One would normally expect non-compliance consequences of a coercive nature to emanate from the Security Council, while the con-

⁸ For a summary and other details of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925 Geneva Protocol) see annex A, section I, in this volume. Syria has been a party to the Geneva Protocol since 1968.

⁹ UN Security Council Resolution 2118, 27 Sep. 2013; and OPCW, Executive Council, 'Destruction of Syrian chemical weapons', Decision, EC-M-33/DEC.1, 27 Sep. 2013.

sensual approach of mutual obligations and responsibilities would reside with the OPCW.

It was a given that the OPCW Executive Council, for example, would consider in some fashion whether the information contained in Syria's initial (and subsequent) declarations contained all 'relevant' and 'available' information, including possible transfers of chemical weapon agents from or to other states at any time since 1 January 1946. Russia (a member of the Executive Council) has almost certainly been afforded a unique insight into the Syrian chemical defence establishment by the technical cooperative contacts between the Soviet Union and Syria in the chemical defence sector.¹⁰ The Soviet–Syrian relationship might also have contributed to Syria's agreeing to join the CWC. In the view of some, Russia might consider the implications of this prior relationship when assessing the 'completeness and correctness' of Syria's declarations, as well as the formulation and implementation of inspection mandates by international inspectors. A further sensitivity for Russia is that details of contact between the Soviet and Syrian chemical weapon defence establishments will emerge (e.g. as a consequence of archives, material or facilities being captured and made available for international inspection, or as a result of testimony by former Syrian military and scientific officials who have joined opposition groups).

Iran is in a similar, yet distinct, potentially delicate position. Although it was the victim of chemical weapons during the Iran–Iraq War, Iran's backing of Syrian President Bashar al-Assad means that its future statements on the importance of upholding the international prohibition of chemical warfare could lose some of their credibility. In the absence of overwhelming evidence that cannot be reasonably denied, Iran may wish to continue a policy of studied ambiguity—keeping the attribution of chemical weapon use to the Syrian Government unstated, while focusing instead on such issues as facilitating removal of chemicals (which Iran has assisted in a clearly consistent manner).

Modalities for arms control during an armed conflict

The investigation into chemical weapon use demonstrated the feasibility of carrying out arms control-related activities in conflict conditions in a sufficiently timely manner. In his note on the investigation team's report, Ban stated that 'The international community has a moral responsibility to hold accountable those responsible' for the attack at Ghouta.¹¹ However, accountability would require attributing the attacks to a particular party and procedures applicable to both state and non-state actors.

¹⁰ E.g. 'Soviet CW chief in talks with Syria', *Jane's Defence Weekly*, vol. 9, no. 13 (1988).

¹¹ United Nations, A/67/997-S/2013/553 (note 3), Note by the Secretary-General, para. 1.

Doubts have been raised in some quarters as to who was responsible for the chemical weapon attacks.¹² For example, the Syrian Government denies responsibility, while Russia has unambiguously stated that rebels were responsible for a chemical weapon attack that resulted in 16 deaths in March 2013.¹³ Attribution of responsibility that cannot be denied by the most sceptical of the reasonably-minded remained elusive, largely due to two main factors. One consists of the fact that some discussions are a form of ‘reductionism’ whereby analysts and commentators focus on arguing the significance or non-significance of detail. The other main factor is the role of politically motivated interpretations of national intelligence assessments and arms control verification evaluations.

The UN inspection team’s terms of reference required it to directly obtain samples and to ensure a chain of custody. It was also observed that the team must build a case that could support a criminal prosecution.¹⁴ Lack of transparency on how samples were taken and analysed undermined conclusions on the use of chemical weapon or at least permitted some to maintain contradictory conclusions on who was responsible.

The fact that the destruction of chemical weapons is occurring in the midst of an ongoing and worsening armed conflict complicates the consideration of whether the Syrian Government has made all reasonable efforts to comply with obligations in good faith. Armed conflict also tends to inject an existential element to the political calculus of the cross-linking of technical and political preferences at the UN, the OPCW Executive Council and elsewhere. In the absence of armed conflict, it is possible that the accelerated (and highly unusual) destruction time frame would have been extended to several years, as is normal OPCW practice. This is partly because all of the parties to the CWC have procedures for ensuring human health and environmental safety while developing and carrying out their destruction programmes. Such concerns lose some of their perceived relevance when the activity is occurring in a war zone.

¹² Some discussions focus on ranges of the so-called Volcano munition employed at Ghouta and their relation to the position of the various fighting forces at the time, as well as the number of confirmed, possible or likely impact locations (partly on the basis of overhead imagery). See e.g. ‘Brown Moses blog’, <<http://brown-moses.blogspot.com/>>. Other discussions focus on the political interests and relations between and among state and non-state actors rather than on technical aspects of sampling and analysis to verify the possible use of chemical weapons.

¹³ Russian Ministry of Foreign Affairs, [Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs on the use by illegal armed groups of chemical weapons in Syria], Press Release 534-19-03-2013, 19 Mar. 2013, <http://www.mid.ru/brp_4.nsf/newsline/956AFD3F61A3A6EA44257B33004BDE03>.

¹⁴ Lynch, C. and Warrick, J., ‘In Syrian chemical weapons claim, criticism about lack of transparency’, *Washington Post*, 21 June 2013.

Implications for arms control and regional security

The norm against the development and use of chemical weapons remains unquestioned. However, the approbation that might normally attach to a state that uses such weapons has been mitigated to an extent in the case of Syria. The factors leading to this mitigation include ongoing arguments over attribution of responsibility for use and concerns regarding the broader humanitarian implications of the armed conflict. The international inspection and verification activity has resulted in the acquisition of practical experience and better understanding by those responsible for political and technical assessments within governments and international institutions. The case of Syria will also tend to strengthen the OPCW's institutional capacity over the short-to-medium term. The implementation of arms control measures in contested or ungoverned spaces will remain a difficult challenge that must ultimately be dealt with on an individual basis.

The Syria case provides a model for how other states can assist or influence the declaration and verification process. Another benefit is that the sea-based disposal operations being used for Syria might make the recovery and remediation of sea-dumped chemical munitions more politically acceptable within the CWC framework.¹⁵ The experience will also have the effect of extending the chemical weapon verification expertise beyond the cold war generation of specialists. The fact that several dozen states have provided technical and other assistance provides further experience in institutional cooperation, despite the economic inefficiencies entailed. The Syria experience also demonstrates the political importance attached to taking actions that are technically superfluous, such as the disposal of common and innocuous chemicals such as isopropanol. Taking such action serves to emphasize the political importance that states place on the verified destruction or disposal of all elements of a given chemical weapon programme and thereby serves to strengthen the underlying prohibition against chemical warfare.

The investigation of the allegation of chemical weapon use in Syria highlighted the overlap between intelligence tasks within states regarding any given weapon system and arms control verification carried out within a multilateral treaty regime. Intelligence methods and sources are a necessary adjunct to multilateral arms control. However, the validity, purpose and appropriateness of these methods can be highly problematic for multilateral arms control, and so such activity is usually treated as an internal state responsibility. International efforts to verify the completeness and correctness of Syria's declaration to the OPCW help to clarify the nature of this overlap. This reflects the fact that the multilateral institutions have

¹⁵ On sea-dumped chemicals see chapter 8, section II, in this volume.

their own mechanisms for acquiring and assessing relevant information in conjunction with states (individually or collectively) offering the results of their assessments using national technical means (NTM). Such interactions also highlight a need to authoritatively demonstrate the use of chemical weapons through a public and scientifically peer-reviewed chain-of-custody (rather than relying on public summaries of national intelligence assessments). The Syria case also shows how verification assessment uncertainty is handled (or mishandled) when higher-level politically preferred interpretations come into play at the UN Security Council, the OPCW Executive Council and elsewhere. Thus, operational detail can be selectively summarized in a manner that supports preferred political interpretations.

More generally, the internationally verified destruction of chemical weapons is occurring within a broader international humanitarian crisis with longer-term implications for international peace and security in the Middle East. Against this regional backdrop, there has been a de facto political delinking of weapon systems—chemical, nuclear and conventional—in recent years. Unlike the nuclear weapon-free zones (NWFZs) in other regions of the world, there had been hope for the establishment of a weapon of mass destruction-free zone (WMDFZ) in the Middle East that would link the banning of chemical, biological and nuclear weapons.¹⁶ Rogelio Pfirter, OPCW Director-General between 2002 and 2010, publicly posed the question of whether any state should implicitly or openly maintain an option to use chemical weapons irrespective of the possible possession or use by other states of nuclear weapons. During his tenure, most non-member states in the Middle East agreed to enter informal dialogue regarding their possible accession to the CWC. Following the accession of Syria, the only CWC non-member states in the Middle East are Egypt and Israel. The latter is now the only state in the region believed to possess weapons of mass destruction, and it now arguably has more incentive to engage more deeply in WMDFZ processes.¹⁷

¹⁶ On the NWFZs in Latin America and the Caribbean, the South Pacific, Africa and Central Asia see Annex A, section II, in this volume.

¹⁷ On Israel's nuclear forces see chapter 6, section VIII, in this volume.