

## Investigating the use of Chemical Weapons in Syria

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### Summary

Since 2013, there have been three investigative mechanisms employed to examine allegations of the use of chemical weapons in Syria. Are we any closer to finding out whodunit?

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### Investigating the use of chemical weapons

The first inquiry into the use of chemical weapons (CW) in Syria was the United Nations Secretary-General's Mechanism (SGM) for Investigation of Alleged use of Chemical and Biological Weapons. Adopted by the UN General Assembly in 1987, and endorsed by the Security Council (Resolution 620) a year later, the SGM enables the Secretary-General to carry out investigations in response to any UN Member State reporting possible violations of the 1925 Protocol or other relevant rules of customary international law.

The SGM was triggered in March 2013 after Syria (a State Party to the Geneva Protocol) reported allegations of CW use in the Khan al-Asal area of the Aleppo Governorate, for which Syria's government and opposition blamed each other. A team from the Organisation for the Prohibition of Chemical Weapons (OPCW) and the World Health Organization (WHO) was assembled and remained on standby in Cyprus until the terms of reference between the UN and Syria were agreed on. The holdup was a difference of opinion on the scope of the investigation: the UN argued that all credible claims of CW use reported by other Member States should also be investigated while Syria argued that only the March 19 Khan al-Asal attacks should be examined. In the end, the SGM team was dispatched to Syria in August 2013 to investigate Khal al-Asal and two other incidents at Sheik Maqsood and Saraqueb.<sup>1</sup> Three days after their arrival, allegations of CW use in the Ghouta area of Damascus led the team to prioritise the most recent allegations.

In its first report issued on 16 September 2013,<sup>2</sup> the team concluded that chemical

weapons, specifically nerve agent sarin, had been used on a relatively large scale—marking the end of what had become the world’s longest reprieve from CW use in conflict in a century. The international response was swift and unprecedented; leading to Syria’s accession to the Chemical Weapons Convention (CWC) and the establishment of a joint mission of the UN and the OPCW which successfully removed all of Syria’s declared chemical weapons. This was no small feat to carry out during an active conflict and it was done exceptionally well: within 13 months of the Ghouta attacks, 96% of Syria’s declared stockpile had been destroyed.

The removal of Syria’s stocks however did not end allegations of CW use. In April 2014 as the UN and OPCW cooperated to remove Syria’s stockpiles, more allegations of CW use (this time chlorine) emerged. Unlike previous allegations Syria was now a State Party to the CWC, prompting the OPCW to establish a Fact-Finding Mission (FFM) to investigate. The FFM issued three reports concluding ‘with a high degree of confidence’ that chlorine gas had been used as a weapon against the villages of Talmenes (on 21 April 2014), Al Tamanah (29-30 April and 25-26 May 2014) and Kafr Zita (11 and 18 April 2014).

Although both the SGM and FFM concluded that chemical weapons had been repeatedly used in Syria’s ongoing conflict; neither was mandated to investigate blame. The SGM’s report did state that samples collected in the Ghouta area provided “clear and convincing evidence that surface-to-surface rockets containing the nerve agent Sarin were used.”

<sup>3</sup> Moreover, inspectors were able to calculate the trajectories of the rockets “with a sufficient degree of accuracy.”<sup>4</sup> The rocket dimensions provided suggest they were adapted 330mm surface-to-surface artillery rockets which the Syrian military, not the

opposition, was believed to have possessed.<sup>5</sup> The United States and France claimed the Syrian government was responsible while Syria and Russia pointed the finger at rebels.

Similarly, the FFM reports made mention of witness accounts of helicopters dropping barrel bombs containing chlorine. The United States and others noted that only the Bashar al-Assad regime had helicopters while Russia maintained that the regime’s helicopters were coincidentally flying in the area at the time.<sup>6</sup> In an interview with the BBC in February 2015, Assad denied that government forces had used chlorine as a weapon and went further to say “We have bombs, missiles and bullets... There is [are] no barrel bombs, we don’t have barrels.”<sup>7</sup>

## **Investigating Whodunit**

In August 2015, after almost two years of numerous allegations, investigations and UNSC resolutions stressing those responsible should be held accountable,<sup>8</sup> the UNSC finally and unanimously called for an official inquiry to identify culpability. Resolution 2235 gave a one-year mandate to an OPCW-UN Joint Investigative Mechanism (JIM) to identify those involved in cases “where the OPCW FFM determines or has determined that a specific incident in [Syria] involved or likely involved the use of chemicals as weapons...”<sup>9</sup>. In other words, only incidents considered by the FFM are to be included in investigating blame. The large-scale use of sarin in the 2013 Ghouta attacks that had been confirmed by the SGM was excluded.

According to the OPCW’s first report on the JIM, the FFM reports mention 116 alleged incidents of CW use in Syria over the course of 2014 and 2015 of which 23 it confidently determined involved exposure to a chemical substance.<sup>10</sup> From these, the OPCW narrowed the list down to six potential cases

for further investigation with a seventh added during the UNSC's meeting on the JIM report in February 2016.<sup>11</sup> The seven cases include the aforementioned incidences of chlorine use in the villages of Talmenes, Al Tamanah and Kafr Zita plus four others: Qmenas (16 March 2015), Sarmin (16 March 2015) and Binnish (23 March 2015) in the Idlib Governorate and Marea (21 August 2015) in the Aleppo Governorate.

The JIM is now in its second phase, conducting in-depth analysis of the cases listed above and will include field visits and witness interviews as well as case-relevant information provided by Member States and other sources. This phase will continue until the OPCW gathers sufficient information to enable it to report findings to the Security Council. The UNSC can decide to extend the JIM mandate when it expires based on the status of its findings at the time.

## The fog of chemical warfare

The Syrian case has been the first to test the CWC's provisions, setting a precedent for how the UNSC responds to confirmed violations of the treaty's main prohibitions. It is a positive step that a 'whodunit' inquiry is finally in motion - a step that strengthens the provisions of the CWC, the world's only verifiable disarmament treaty. For the process to be wholly credible the SGM-confirmed Ghouta attacks need to be included. Whether or not the JIM is able to confidently determine culpability for the chlorine attacks, the failure to ascertain the whodunit of the sarin attacks will leave them shrouded in political tones. If judgement on those responsible for breaking the longest 'chemical peace' is left to individual capitals, the objective of a world free of chemical weapons may never be achieved since cases like Syria will recur.

## Endnotes:

- <sup>1</sup> Sheik Maqsoud on 13 April 2013 and Saraqeb on 29 April 2013. See: BBC News, "Syria Chemical Weapons Allegations," May 17, 2013, <http://www.bbc.co.uk/news/world-middle-east-22557347>.
- <sup>2</sup> A/67/997-S/2013/553, 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, 16 September 2013.
- <sup>3</sup> A/67/997-S/2013/553, 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, 16 September 2013.
- <sup>4</sup> A/67/997-S/2013/553, 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, 16 September 2013.
- <sup>5</sup> Syria chemical attack: What we know,' *BBC News*, 24 September 2013.
- <sup>6</sup> 'UN threatens force if chlorine used in Syria attacks,' *Aljazeera*, 7 March 2015.
- <sup>7</sup> 'Assad says Syria is informed on anti-IS air campaign,' *BBC News*, 10 February 2015.
- <sup>8</sup> S/RES/2118, 27 September 2013 and S/RES/2209 6 March 2015.
- <sup>9</sup> Paragraph 5, S/RES/2235, 7 August 2015.
- <sup>10</sup> S/2016/142, 'First report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism,' 12 February 2016.
- <sup>11</sup> United Nations Press Release, Joint Investigative Mechanism Presents Its First Report to Security Council, 22 February 2016: <http://www.un.org/press/en/2016/dc3608.doc.htm>.