Ridding Syria of Chemical Weapons: Next Steps

Jean Pascal Zanders and Ralf Trapp

Preventing further use of chemical weapons in Syria will be achieved by their elimination rather than punitive airstrikes. Selective airstrikes, as repeatedly threatened by France, the United Kingdom, and the United States, would not have altered the military situation in the civil war, as the Syrian opposition forces and their backers had hoped.

The airstrikes would most certainly not have degraded Syria’s chemical weapons capacity to the point it would have become useless, and further chemical attacks would have remained a distinct possibility. Targeting chemical weapons storage sites risked releasing toxic clouds affecting combatants and noncombatants alike. Destroying other types of targets would have just added to the tally of conventional weapons casualties.

As the situation developed, within a mere seven weeks after the chemical weapons attacks in the Ghouta district just outside Damascus on August 21, Syria became the 190th party to the Chemical Weapons Convention (CWC). Following months of deteriorating bilateral relations, elimination of Syria’s chemical warfare capacity offered Russia and the United States common cause to rekindle security cooperation. On September 14, after three days of intense negotiations in Geneva, the two countries jointly presented to the world a very ambitious framework agreement.[1] Syria announced its accession to the CWC on the same day, the best indicator thus far that it was a behind-the-scenes partner to the deal.[2] Two weeks later, the Executive Council of the Organisation for the Prohibition of Chemical Weapons (OPCW) adopted the foundation of the framework agreement, including the ultimate destruction deadline of mid-2014.[3] Syria, which by then had already submitted two sets of documents relating to its initial declaration, declared itself bound by the CWC and the Executive Council decisions even before the CWC had entered into force for it. A few hours after the Executive Council decision, the UN Security Council endorsed it in Resolution 2118, which created the mandate for the UN secretary-general to support the disarmament project. [4] To cap two months of extraordinary twists and turns, the OPCW won the 2013 Nobel Peace Prize. [5]

Meanwhile, the Syrian civil war continues to rage. The insurgent forces have by and large rejected the September 14 framework agreement and subsequent decisions because of the international legitimacy they feel these documents bestow on Syrian President Bashar al-Assad and his government. Together with their continuing fragmentation and ideological realignments, this position may pose security and safety risks to the chemical weapons elimination project that exceed by far the technical and logistical challenges resulting from the very short time frames.

The tasks facing the OPCW and United Nations are unprecedented. Never before has the international community attempted to secure and destroy a chemical weapons stockpile in a war, let alone a civil war in which multiple factions are fighting each other for territorial and ideological control. Besides the challenges of collecting and eliminating the chemical weapons and the specialized equipment and facilities for producing them, the primary concern of both organizations will be the safety and security of their personnel.

This article reviews the events that led to the decisions to eliminate Syria’s chemical warfare capacity. It discusses the legal and practical consequences of the U.S.-Russian bilateral agreement and the OPCW and UN decisions, as well as the areas of uncertainty or ambiguity they have engendered. The final section outlines how this sequence of decisions may actually benefit longer-
term peace and security in the Middle East and offer a starting point for inclusive discussions to end the Syrian civil war.

Chemical Weapons Use

Early on August 21, several major chemical warfare incidents occurred in the Ghouta district. Hundreds of people died from the effects of poisonous gases. Many more will suffer from the long-term consequences of exposure to a neurotoxicant, now known to have been sarin.

The Ghouta attacks followed several other allegations of chemical weapons use since the end of 2012. In particular, a chemical incident near Aleppo on March 19 prompted the Syrian government to formally ask UN Secretary-General Ban Ki-moon to launch an investigation. France and the United Kingdom promptly called for an expansion of the investigative team’s mandate to include earlier incidents, which they attributed to government troops rather than the insurgents. After months of diplomatic haggling, the UN team, headed by Swedish scientist Åke Sellström and comprising experts from the OPCW and the World Health Organization (WHO), finally began its mission in Syria on August 19.

Although deaths and other casualties were reported before the Ghouta strikes, the total image of these incidents never fully added up to one of chemical warfare. The nature of the attack on the Ghouta district differed in many fundamental ways: the parallel mounting of several strikes into different areas, the number of victims, and the volume and immediacy of video footage, pictures, and corroborating witness accounts all immediately pointing to the seriousness of the event.

The investigative team presented its preliminary report to the UN General Assembly and Security Council on September 16. Although the authors do not identify the culprits—to preserve their impartiality, that was never part of the mandate—the document independently confirms chemical weapons use in the Syrian civil war. The report’s undeniable conclusions rest on multiple types of samples, interviews with victims and medical doctors that had treated them, investigation of munition remnants and impact zones, and laboratory analyses. The investigators established and preserved the integrity of the chain of custody from the moment they obtained the samples to the time they handed over the evidence to the laboratories in accordance with formal operating procedures and protocols. Syrian government representatives were present until the handover and reportedly monitored work in the laboratories.

Nevertheless, the UN investigative report does not fully clarify certain elements relating to those attacks. Among the issues that have not been resolved beyond a reasonable doubt are those dealing with types of delivery systems and their ownership, the quality of the sarin and whether the agent was produced using an industrial or improvised process, and the high number of exposed people who seem to have made it to medical stations combined with the virtual absence of images of instantaneous death at the sites of impact. With Syria’s detailed declarations of weapon holdings and the verification of their accuracy by OPCW inspectors, these uncertainties should be completely removed in the near future.

From Bombing to Disarmament

Now well into its third year, the Syrian civil war reportedly has cost more than 110,000 lives. Many times that number have been injured or maimed for life. Millions have fled into neighboring countries or are internally displaced. Despite pressure to act from humanitarian law or doctrines such as the responsibility to protect, no single incident in conventional warfare has been a sufficient trigger for action. After Ghouta, however, UK Prime Minister David Cameron, French President François Hollande, and U.S. President Barack Obama intensified their rhetoric to justify punitive military strikes against Syrian military assets with or without Security Council approval.

In an attempt to prepare public opinion for military strikes, the three leaders invoked many emotive images of women and children suffering from exposure to the toxicants. By overselling the limited evidence to implicate the Assad regime in the Ghouta strikes and asserting its responsibility for earlier alleged uses of chemical weapons, they accorded data fragments higher evidentiary value than these actually merited. This was the principal concern with the intelligence summaries.
published by the French, UK, and U.S. governments at the end of August. A document outlining the UK government’s legal position for punitive attacks further illustrated the complex logic to link the Ghouta chemical weapons victims to overall humanitarian concerns.

Pressing for military action while the UN investigative team was still on the ground in Syria was another psychological error. These investigators were working in accordance with procedures negotiated and approved by the international community in order to ensure impartiality in the findings.

For many observers, these factors, taken together, carried too many echoes of the highly selective and misleading evidence provided to justify the invasion of Iraq in 2003. Cameron’s failure to persuade the House of Commons to endorse military retaliation against Assad’s forces took the wind out of the French and U.S. calls for military intervention. Obama, in particular, was caught between his political rhetoric of a year earlier—chemical weapons use marked a redline—and his reluctance to get the United States embroiled in yet another Middle Eastern war.

A change of direction was needed, and to be viable, Russia needed to be on board. Russia seized on a September 9 remark by U.S. Secretary of State John Kerry to place chemical weapons disarmament in Syria at center stage. The remark was seemingly offhand but might have been previously agreed between Washington and Moscow.

Disarmament involving two or more parties by definition requires international cooperation and is possible because of the almost exclusive focus on the weapons technology. Negotiators and experts are consequently focused more on the most threatening implements of war than on the motivations and objectives of their respective leaders. This was very clear from the way Russia and the United States were able to thrash out a joint framework agreement after intense negotiation and persuade Syria to join the CWC. Meanwhile, it is equally clear that the Syrian civil war requires a political solution that addresses its underlying causes. It appears that the disarmament route may renew peace negotiations, as well as inadvertently lead to opportunities to resolve wider regional political and security issues.

**Complex Framework**

The U.S.-Russian framework agreement, Syria’s accession to the CWC on the same day, and subsequent decisions by the OPCW Executive Council and the UN Security Council have created a complex legal and operational framework. Several questions must be addressed to ensure the effective and complete elimination of Syria’s chemical weapons program.

Security. Syria’s civil war poses the most extraordinary of circumstances for a chemical weapons disarmament project. All verification and disarmament activities require special arrangements to protect the members of the UN-OPCW joint mission and any other personnel involved. At the same time, the chemical weapons and specialized equipment need to be protected from unauthorized access, diversion, and attack.

Article II of the relationship agreement between the United Nations and the OPCW forms the basis for their mutual cooperation. It allows for detailed bilateral arrangements similar to the one worked out for investigating alleged chemical weapons use. In addition, Security Council Resolution 2118 contains certain provisions that will affect security management during the joint mission:

- A stipulation that Syria was already legally bound by the basic undertakings of the CWC even before becoming a party.
- A request to the UN secretary-general and the OPCW director-general to cooperate closely, including on the ground.
- A reference to the Convention on the Privileges and Immunities of the United Nations and the privileges and immunities of OPCW-designated personnel set out in Part II of the CWC Verification Annex, which create a Syrian legal obligation to ensure the safety of the UN and
Ridding Syria of Chemical Weapons: Next Steps
Published on Arms Control Association (https://www.armscontrol.org)

OPCW personnel.

- A request to all Syrian parties and interested UN member states with relevant capabilities to work closely with the OPCW and the UN to arrange for the security of the monitoring and destruction mission.
- A recognition of the primary responsibility of the Syrian government to ensure the security of the mission.
- A stipulation that the Security Council will promptly consider OPCW reports under Article VIII of the CWC concerning referrals of noncompliance.\[11\]

Syria’s submittals. Syria disclosed the size and nature of its chemical weapons program to the OPCW even before it had become a party to the CWC. It also submitted a request for technical assistance. This approach raises several interconnected issues.

The first is the legal status of Syria’s disclosure. The Executive Council decision recalled that Syria had already submitted information on September 19, gave it seven more days to submit additional information,\[12\] and reiterated the requirement under Article III of the CWC that Syria submit its initial declaration. The disclosure was a first step in a process of submitting a complete and accurate initial declaration, but not the declaration itself. It nevertheless constituted the basis for verification planning and informing CWC states-parties about the details of the Syrian chemical weapons program. Such informal processes have been utilized in the past, albeit on a voluntary basis.\[13\] In the Syrian case, such cooperation was portrayed as an obligation. Although this is consistent with the general principle of cooperation set out in the CWC, it also owes to the extraordinary circumstances of the case.

Second, the Executive Council decision includes a requirement that Syria submit information on “chemical weapons production facilities, including mixing and filling facilities, and chemical weapons research and development facilities, providing specific geographical coordinates.”\[14\]

The reference to “mixing…facilities” perhaps reflects the configuration of the Syrian chemical weapons stockpile, most of which has been reported to be in precursor form.\[15\] Mixing machines meet the criterion, under Article II.1(c) of the CWC, of equipment specifically designed for use in connection with the deployment of chemical weapons and thus fall under the CWC definition of chemical weapons. Therefore, their explicit inclusion in the Executive Council decision comes as no surprise.

The reference to “research facilities” is interesting because the CWC is silent on chemical weapons research. Also, the issue of what exactly constitutes a chemical weapons development facility remains to be determined by the OPCW.\[16\] It is not clear whether this provision in the Executive Council decision attempted to create a new legal requirement for Syria, which would raise a number of questions, or was merely a clarification to avoid situations whereby facilities involved in the early stages of chemical weapons development could be left undeclared because ostensibly they were research facilities.

A third issue, concerning the completeness of Syria’s disclosure, is addressed below.

Verification. Verification of the Syrian declarations and chemical weapons destruction operations will essentially be carried out according the procedures detailed in the CWC. Nevertheless, several issues in the area of verification deserve further analysis:

- Ensuring that the tight timelines can be met under the given circumstances will require effective and timely decision-making. It remains to be seen whether the OPCW’s consensus approach can deliver on this.
- Circumstances may demand frequent inspections or even a permanent in-country presence. Past verification practice may not be an appropriate guide in the Syrian case, given the
recent chemical weapons use and the unique security context.

- It may not be possible to ensure that all destruction operations are conducted in the presence of inspectors. If not, what are acceptable alternatives?

- The Executive Council decision stipulates that the OPCW Technical Secretariat must “inspect as soon as possible any other site identified by a State Party as having been involved in the Syrian chemical weapons programme, unless deemed unwarranted by the Director-General, or the matter resolved through the process of consultation and cooperation.” In general, this follows the cooperation concept of Article IX. In procedure, it is a departure from the CWC's challenge inspection mechanisms. Whether these stipulations were within the powers and functions of the Executive Council may not matter in practice, given that the subsequent Security Council resolution sanctioned this mechanism.\[17\]

Destruction. The tight timelines for the elimination of Syria’s chemical weapons program and the conditions inside the country will likely lead to certain practical and legal issues:

- The Security Council resolution foresees the possibility of removal of bulk agent and precursors from Syrian soil for destruction elsewhere. If this option were to be executed, it would need to be reconciled with the prohibition on chemical weapons transfer under Article I of the CWC. The Security Council resolution recognizes this and “authorize[s] Member States to acquire, control, transport, transfer and destroy chemical weapons identified by the Director-General of the OPCW, consistent with the objective of the Chemical Weapons Convention, to ensure the elimination of the Syrian Arab Republic’s chemical weapons program in the soonest and safest manner.”\[18\] The legal authority for this decision does not emanate from the CWC itself, but from Articles 24 and 103 of the UN Charter. Some members of the Executive Council have expressed their reservations with regard to this part of the Security Council resolution. It may be prudent for the CWC states-parties conference to recognize the legality of any removal of Syrian chemical weapons for destruction abroad in order to avoid future time-consuming legal debates that could obstruct decision-making.\[19\]

- If chemical weapons destruction were undertaken abroad or foreign mobile destruction facilities were deployed within Syria or near its borders, it needs to be established who bears responsibility for the timeliness, completeness, and safety of destruction and for the costs of destruction and verification. Under the CWC, Syria is responsible, but Syria does not own or operate this type of facility and may not have the expertise to make informed decisions. Chemical weapons destruction in Albania with technical assistance from the United States and other states-parties may be a useful precedent in this regard.\[20\] Albania received technical and financial support from several CWC parties (Germany, Greece, Italy, Switzerland, and the United States). U.S. program managers and a German contractor designed and equipped a small chemical weapons disposal facility in Germany, then transported it to Albania where it was operated by the contractor on behalf of the Albanian government.\[21\]

- Although some destruction operations in Syria could be improvised along lines similar to the ones followed before the 1997 entry into force of the CWC by the UN Special Commission that operated in Iraq after the 1991 Persian Gulf War, there are limits to such improvisation. In the Syrian case, CWC rules on destruction apply—no open-pit burning, sea dumping, or land burial.\[22\] For example, partial chemical destruction at storage locations by manually mixing the agent with decontamination solution may be acceptable as a first step of putting the agent beyond use, but explosive destruction of chemical weapons in the open clearly would not. The question is whether CWC rules could be eased, for example, with regard to the destruction of certain precursor chemicals.

The OPCW-UN Relationship. The UN and the OPCW each have mandates and responsibilities for Syria’s chemical weapons disarmament, a situation that raises the question of who ultimately is in charge of what. That issue may become more complex if other states assume responsibility for aspects of Syria’s destruction program, as allowed by the Security Council resolution.
The resolution contains key building blocks for the design of the coordination and cooperation mechanisms needed. In addition, the Executive Council decision contains a stipulation that Syria is to designate an official as the main point of contact for the OPCW and provide him or her with the authority necessary to ensure that the decision is fully implemented. It will be important to develop effective arrangements for coordination between the UN and the OPCW in the joint mission to avoid operational friction and uncertainties in decision-making.

Glimmers of Hope for the Future

The Syrian civil war continues to bring the greatest devastation onto civilians by means of conventional weapons. Many commentators from the Middle East and representatives of human rights organizations fear that the individuals responsible for the carnage, most notably Assad, will escape justice for the gross violation of the laws of war as a consequence of the chemical weapons agreements. Yet, it is far from established that the limited, punitive military strikes advocated by France, the United Kingdom, and the United States could have bought more justice for the Ghouta victims and survivors.

Disarmament involves removing a discrete weapons category from the military doctrine of a political entity. Weapons destruction is one aspect, but losing the doctrinal capacity to deploy and employ those weapons is by far the most important factor in preventing future rearmament with those weapons. Once the weapons category has been removed from military doctrine, there is no longer any testing of munitions and delivery systems or any training of troops in the use of these weapons.

Disarmament is also about preventing the outbreak of war. Because particular weapons technologies are considered to be destabilizing to international relations, people view their elimination as a contribution to peace and security. Even if war breaks out, disarmament prevents their use in combat or escalation of hostilities.

Translated to the U.S.-Russian framework agreement and the OPCW and UN Security Council decisions, forcing Syria to give up its chemical weapons arsenal will prevent a future Ghouta from occurring during the civil war. By bringing about Syria’s accession to the CWC and by identifying a central role for the OPCW, Russia and the United States have made chemical disarmament in Syria a longer-term responsibility of the global community rather than a temporary, ad hoc reaction to a pressing problem by a few.

If successful, those disarmament decisions may inject a fresh dynamic into the so-called Helsinki process on eliminating nonconventional weapons from the Middle East. The final document of the 2010 Nuclear Nonproliferation Treaty Review Conference still requires the convening of a meeting on that subject. Nevertheless, some of the core assumptions about regional security, in particular, with regard to the strategic relationships among Egypt, Israel, and Syria, will have to be revisited in terms of the doctrinal relationships between their respective weapons holdings. Thus, for example, Syria’s chemical weapons served a doctrinal function similar to Israel’s nuclear weapons as an instrument of last resort in case of an existential threat to the state. As the former will soon be eliminated, this could have an impact on current regional security postures or on the prospects of other countries joining the CWC or the Biological Weapons Convention. If Israel were to join the CWC after the completion of Syria’s disarmament, Egypt would become wholly isolated, globally and within the Arab League, as a CWC nonparty. [23] If Egypt were to join the CWC under international pressure, how would this affect its bargaining position within the NPT context?

The standoff over Iran’s nuclear program may acquire a different dynamic. U.S. and Iranian statements on the margins of and to the UN General Assembly in late September suggest a newfound willingness to address concerns and desires in constructive ways. The first meeting in Geneva between the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States) and Iran ended with a positive joint declaration and commitment for speedy follow-on discussions. The Iranian presidential election in June may prove to have been a watershed event in reconnecting Tehran with the world in mutually beneficial ways. These outcomes will benefit the disarmament of Syria and possibly the Geneva negotiations attempting to end the civil war. Iran is set to play important roles in both processes.
Making progress on these multiple fronts will require a move toward an inclusive process of political transition in Syria. That transition could benefit from progress being made with Syria’s chemical weapons disarmament if it built on some of the practical arrangements and dialogue that the disarmament process is establishing and the political transition process will require. At the same time, key steps in the disarmament process will depend on cooperation by the different parties of the Syrian conflict or at least their commitment not to derail it. If one accepts that there is no military solution to the Syrian conflict, then it would be shortsighted to portray chemical weapons disarmament as a tactical victory for the Assad regime. It should be seen as a step toward de-escalation enabling political dialogue aimed at a political transition.

Jean Pascal Zanders is an independent disarmament and security researcher at The Trench, a research initiative focusing on disarmament and arms control. He was a senior research fellow at the European Union Institute for Security Studies. Ralf Trapp is an independent disarmament consultant and was a senior planning officer with the Organisation for the Prohibition of Chemical Weapons (OPCW) and secretary of the OPCW Scientific Advisory Board.

ENDNOTES


10. For the full text, see http://www.opcw.org/about-opcw/un-opcw-relationship/.


16. CWC, art. III, para. 1(d).

17. Ibid, para. 10.

18. Although day-to-day decisions on the operations of the CWC are the prerogative of the OPCW Executive Council, responsibility for matters that affect the interpretation of the provisions of the treaty, such as the manner in which the prohibition on chemical weapons transfers under Article I applies to the special circumstances of Syrian chemical weapons disarmament in the context of UN Security Council Resolution 2118, belongs to the OPCW Conference of the States Parties. See CWC, art. VIII.


22. CWC, verification annex, part IV(A), para. 13.

23. Israel has signed but not ratified the CWC. Egypt has not signed it.

Source URL: https://www.armscontrol.org/act/2013-11/ridding-syria-chemical-weapons-next-steps