

## I. Allegations of use of chemical weapons in Syria

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In 2019 the conflict in Syria entered its eighth year and, as in previous years, there were continued allegations of use and preparations for use of chemical weapons. This included an allegation that the Syrian Arab Republic used chlorine in Kabanah, north-west Syria, on 19 May.<sup>1</sup> Director-general of the Organisation for the Prohibition of Chemical Weapons (OPCW), Fernando Arias, later reported that the OPCW Fact-finding Mission (FFM) was analysing and investigating this allegation.<sup>2</sup> The FFM also continued its work investigating earlier allegations. Between 5 and 15 January the FFM deployed a team to Syria to conduct interviews and visit hospitals in Aleppo and to receive samples from the Syrian authorities in connection with an alleged use of toxic chemicals in Aleppo on 24 November 2018.<sup>3</sup> The team deployed at least three other times, at the end of September and during both October and December. In the last of these deployments, the team interviewed witnesses and collected further information regarding incidents that had taken place in Yarmouk, Damascus, on 22 October 2017; in Khirbat Masasinah on 7 July 2017 and 4 August 2017; in Qalib Al-Thawr, Al-Salamiyah, on 9 August 2017; and in Al-Balil, Souran, on 8 November 2017.<sup>4</sup> The OPCW Technical Secretariat (the Secretariat) is analysing the collected information.

The OPCW Declaration Assessment Team (DAT) also continued its efforts to clarify and resolve all of the identified gaps, inconsistencies and discrepancies in the initial declaration submitted by the Syrian Arab Republic in 2013. Between 4 and 8 February, the Secretariat and a delegation of the Syrian Arab Republic met in Beirut, Lebanon, to review the implementation of various activities, including those of the DAT. During these discussions, both parties reviewed the status of all outstanding issues pertaining to the 2013 initial declaration, regrouped them and created an action plan for each

<sup>1</sup> Ortagus, M., Spokesperson for US Department of State, 'Alleged use of chemical weapons by the Assad Regime in northwest Syria', 21 May 2019.

<sup>2</sup> OPCW Executive Council, 'Opening statement by the Director-General to the Ninety-second Session of the Executive Council (full version)', EC-92/DG.34, 8 Oct. 2019, para. 8.

<sup>3</sup> OPCW Executive Council, 'Progress in the elimination of the Syrian chemical weapons programme', Report by the Director-General, EC-92/DG.6, 23 Aug 2019, para. 18.

<sup>4</sup> OPCW Executive Council, 'Progress in the elimination of the Syrian chemical weapons programme', Note by the Director-General, EC-93/DG.5, 24 Dec. 2019, para. 15. A previous report on FFM activities relating to these incidents noted that the 'evolving' security situation was impacting upon FFM activities: OPCW Technical Secretariat, 'Summary update of the activities carried out by the OPCW Fact-finding Mission in Syria', Note by the Technical Secretariat, S/1677/2018, 10 Oct. 2018, para 11; while another report described the FFM as 'awaiting sample analysis results from the last deployments, [and] planning further deployments': OPCW Executive Council, 'Opening statement by the Director-General to the Ninety-second Session of the Executive Council', EC-92/DG.33, 8 Oct. 2019, para 8.

issue based on the activities that could be conducted to resolve it.<sup>5</sup> As part of the newly agreed structured dialogue, three further rounds of consultation took place, the first from 18 to 21 March 2019 in The Hague and the second and third in Syria from 10 to 17 April 2019 and 14 to 23 October respectively. These were, respectively, the 20th, 21st and 22nd rounds of such consultations. During the 21st round of consultations in Syria, the DAT conducted one interview, collected 33 samples from field visits to five sites, and received new information and documents.<sup>6</sup> In relation to one outstanding issue—indicators of undeclared chemical warfare agents which had been found in samples collected by the DAT in 2016—the Syrian authorities ‘acknowledged research and development activities’.<sup>7</sup>

In June 2019, the OPCW Executive Council learned that a Schedule 2.B.04 chemical had been detected in a sample taken at the Barzah facility during the third round of inspections of the Barzah and Jamrayah facilities conducted in November 2018. The report from the designated laboratory suggested the chemical, later identified as ethyl ethylphosphonate, ‘could be the primary hydrolysis product of a Schedule 1.A.01 or 1.A.03 chemical’.<sup>8</sup> The Syrian Arab Republic offered the Secretariat an explanation as to its presence in a note verbale dated 7 November 2019. The director-general noted in his December progress report that the Secretariat was analysing the explanation.<sup>9</sup>

In September, the 92nd Session of the Executive Council noted the director-general’s report of the work of the DAT, which concluded that ‘the Secretariat remains unable to resolve all of the identified gaps, inconsistencies, and discrepancies in the Syrian Arab Republic’s declaration’, and so ‘cannot fully verify that the Syrian Arab Republic has submitted a declaration that can be considered accurate and complete’.<sup>10</sup>

At the beginning of November, Director-General Árias addressed the United Nations Security Council in a private session. This was ‘a departure from the norm’ and is the first time since the adoption of Resolution 2118 in 2013 that the Security Council has held a private meeting to receive the OPCW monthly briefing. It was still a formal session of the Security Council

<sup>5</sup> OPCW Executive Council, ‘Outcome of consultations with the Syrian Arab Republic regarding its chemical weapons declaration’, Note by the Director-General, EC-91/DG.23, 5 July 2019, para. 3.

<sup>6</sup> OPCW Executive Council, EC-91/DG.23 (note 5) para. 5.

<sup>7</sup> OPCW Executive Council, EC-91/DG.23 (note 5) para. 6.

<sup>8</sup> OPCW Executive Council, ‘Progress in the elimination of the Syrian chemical weapons programme’, Note by the Director-General, EC-91/DG.14, 24 June 2019, para. 13; and OPCW Executive Council, ‘Progress in the elimination of the Syrian chemical weapons programme’, Note by the Director-General, EC-92/DG.1, 24 July 2019, para. 12.

<sup>9</sup> OPCW Executive Council, ‘Progress in the elimination of the Syrian chemical weapons programme’, Note by the Director General, EC-93/DG.3, 25 Nov. 2019, para. 11.

<sup>10</sup> OPCW Executive Council, Report of the Ninety-second Session of the Executive Council, EC-92/5, 11 Oct. 2019, para. 7.21; and OPCW Executive Council, ‘Progress in the elimination of the Syrian chemical weapons programme’, Note by the Director-General, EC-93/DG.5, 24 Dec. 2019, para. 9.

and as such open to ‘persons other than Council members and Secretariat officials’ to attend.<sup>11</sup> The meeting communiqué records that representatives of several member states made initial statements—the United States, the Russian Federation, Kuwait, Poland, Côte d’Ivoire, Peru, China, South Africa, Indonesia, France, Belgium, the Dominican Republic, Germany, Equatorial Guinea and the United Kingdom—and the Russian Federation made a further statement. The Security Council also heard from the representative of the Syrian Arab Republic.<sup>12</sup>

In a presidential statement presented by the British Ambassador to the United Nations, Karen Pierce,<sup>13</sup> at the end of November, the Security Council condemned the use of chemical weapons anywhere, at any time, by anyone; reaffirmed that chemical weapons are a threat to international peace and security; and reaffirmed its strong support for the 1993 Chemical Weapons Convention (CWC).<sup>14</sup>

### **OPCW Fact-finding Mission final report on Douma incident**

On 1 March 2019 the FFM issued its 106-page final report into the April 2018 alleged use of toxic chemicals in Douma (Douma Final Report), having finished the evaluation and analysis of all of the information gathered during its investigation, and having received all the results of the analysis by the designated laboratories of the prioritized samples.<sup>15</sup> The Douma Final Report records that there are ‘reasonable grounds that the use of a toxic chemical as a weapon took place. This toxic chemical contained reactive chlorine.’<sup>16</sup>

The FFM found, among other things, that ‘the objects from which the samples were taken at both locations had been in contact with one or more substances containing reactive chlorine’; that ‘No organophosphorous nerve agents, their degradation products or synthesis impurities were detected either in environmental samples . . . or in plasma samples from alleged casualties’; and that ‘there was no indication’ that either the warehouse or

<sup>11</sup> Security Council Report, ‘Syria chemical weapons: Private meeting with the OPCW Director-General’, *What’s in Blue: Insights on the Work of the UN Security Council*, 4 Nov. 2019.

<sup>12</sup> United Nations Security Council, Official communiqué of the 8659th (closed) meeting of the Security Council, S/PV.8659, 6 Nov. 2019.

<sup>13</sup> The UK held the presidency of the Security Council for Nov. 2019. See UN Security Council, Statement by the President of the Security Council, S/PRST/2019/14, 22 Nov. 2019.

<sup>14</sup> For a summary and other details of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, see annex A, section I, in this volume.

<sup>15</sup> OPCW Technical Secretariat, ‘Report of Fact-finding Mission regarding an incident of alleged toxic chemical use as a weapon in Douma, Syrian Arab Republic, on 7 Apr 2018’, Note by the Technical Secretariat, S/1731/2019, 1 Mar. 2019.

<sup>16</sup> OPCW Technical Secretariat, S/1731/2019 (note 15), para. 2.17.

facilities suspected by the Syrian authorities of producing chemical weapons had been involved in their manufacture.<sup>17</sup>

On the matter of the two yellow industrial cylinders which the FFM observed at two separate locations (Locations 2 and 4), and which proved highly controversial (see next subsection), the Douma Final Report states:

The team analysed the available material and consulted independent experts in mechanical engineering, ballistics and metallurgy who utilised specialised computer modelling techniques to provide qualified and competent assessments of the trajectory and damage to the cylinders . . .

The analyses indicated that the structural damage to the rebar-reinforced concrete terrace at Location 2 was caused by an impacting object with a geometrically symmetric shape and sufficient kinetic energy to cause the observed damage. The analyses indicate that the damage observed on the cylinder found on the roof-top terrace, the aperture, the balcony, the surrounding rooms, the rooms underneath and the structure above, is consistent with the creation of the aperture observed in the terrace by the cylinder found in that location.

At Location 4, the results of the studies indicated that the shape of the aperture produced in the modulation matched the shape and damage observed by the team. The studies further indicated that, after passing through the ceiling and impacting the floor at lower speed, the cylinder continued an altered trajectory, until reaching the position in which it was found . . .

Based on the analysis results of the samples taken by the FFM from the cylinders, their proximity at both locations, as well as the analysis results of the samples . . . it is possible that the cylinders were the source of the substances containing reactive chlorine.<sup>18</sup>

### **Reactions to the release of the Douma Final Report**

The 90th Session of the Executive Council opened on 12 March, 11 days after the release of the Douma Final Report. Several delegations noted their concerns about the findings, with Canada stating that it ‘expect[s] that the FFM’s work on the Douma case will be referred to the Investigation and Identification Team [IIT], once it begins its activities’.<sup>19</sup> Other delegations commended the FFM: Romania on behalf of the European Union noted the professionalism of the FFM;<sup>20</sup> the United States commended the FFM ‘for its independent and impartial work undertaken in difficult and dangerous

<sup>17</sup> OPCW Technical Secretariat, S/1731/2019 (note 15), paras 2.6, 2.7 and 2.9.

<sup>18</sup> OPCW Technical Secretariat, S/1731/2019 (note 15), paras 2.13–2.16.

<sup>19</sup> OPCW Executive Council, Canada, ‘Statement by HE Ambassador Sabine Nölke, Permanent Representative of Canada to the OPCW, at the Ninetieth Session of the Executive Council’, EC-90/NAT.14, 12 Mar. 2019, p. 1.

<sup>20</sup> OPCW Executive Council, Romania, ‘Statement on behalf of the European Union delivered by HE Ambassador Brandusa Predescu, Permanent Representative of Romania to the OPCW, at the Ninetieth Session of the Executive Council’, EC-90/NAT.9, 12 Mar. 2019, p. 1.

circumstances’;<sup>21</sup> and Denmark stated that it ‘firmly rejects recent attempts to discredit and undermine the Technical Secretariat and its work’.<sup>22</sup>

However, other delegations expressed dissatisfaction with the report. For example, Iran expressed continued dissatisfaction with the FFM’s ‘work methodology’ and with the fact that the Final Report was issued ‘nearly one year after the incident on 7 April 2018’.<sup>23</sup> After the session, on 26 April the Russian Federation requested, via note verbale, that its commentary on the Douma Final Report be circulated as an official document of the 90th Session.<sup>24</sup> The Russian commentary takes particular issue with the report’s findings about the two cylinders and suggests that ‘the parameters, characteristics and exterior of the cylinders, as well as the data obtained from the locations of those incidents, are not consistent with the argument that they were dropped from an aircraft’.<sup>25</sup> The Syrian Arab Republic also sent a note verbale on the Douma Final Report to the OPCW on 11 March. The Technical Secretariat responded to both on 21 May.<sup>26</sup>

In the months that followed, controversy about the findings of the report intensified, particularly after the disclosure outside the OPCW of an internal report from a Technical Secretariat staff member who held a dissenting view. Director-General Árias told states parties during a briefing on 28 May that he received the first indication that an internal document ‘could have been disclosed outside of the Secretariat’ in March.<sup>27</sup> The staff member was described as ‘a liaison officer at [the OPCW] Command Post Office in Damascus . . . tasked with temporarily assisting the FFM with information collection at some sites in Douma’.<sup>28</sup> Reassuring states parties that ‘the Secretariat encourages serious and professional debates’ and that ‘all views, analysis, information and opinions are considered’, the director-general continued, ‘The document produced by this staff member pointed at possible attribution, which is outside of the mandate of the FFM . . . Therefore, I

<sup>21</sup> OPCW Executive Council, United States of America, ‘United States statement regarding the OPCW Fact-finding Mission report on investigation into chemical weapons use in Douma, Syria’, EC-90/NAT.16, 13 Mar. 2019, p. 1.

<sup>22</sup> OPCW Executive Council, Denmark, ‘Statement by HE Ambassador Jens-Otto Horslund, Permanent Representative of Denmark to the OPCW, at the Ninetieth Session of the Executive Council’, EC-90/NAT.21, 12 Mar. 2019, p. 2.

<sup>23</sup> OPCW Executive Council, Islamic Republic of Iran, ‘Statement by HE Ambassador Reza Najafi, Director General for International Peace and Security, Ministry of Foreign Affairs, at the Ninetieth Session of the Executive Council’, EC-90/NAT.23, 13 Mar. 2019, p. 2.

<sup>24</sup> OPCW Executive Council, Russian Federation, ‘Request for circulation of a document’, EC-90/NAT.41, 26 Apr 2019. The commentary is in the annex (pp. 3–11) to the request: Russian Federation, ‘Commentaries on the conclusion of the report of the Fact-finding Mission on the use of chemical weapons in Syria regarding the alleged use of chemical weapons in Douma on 7 April 2018’.

<sup>25</sup> Russian Federation, annex (note 24), p. 10.

<sup>26</sup> OPCW Technical Secretariat, ‘Update on the OPCW Fact-finding Mission in Syria’, Note by the Technical Secretariat, S/1755/2019, 21 May 2019.

<sup>27</sup> Árias, F., OPCW Director-General, Remarks of the Director-General at the briefing for states parties on Syrian Arab Republic: Update on IIT-FFM-SSRC-DAT, 28 May 2019, p. 3.

<sup>28</sup> Árias (note 27), p. 3.

instructed that, beyond the copy that would exclusively be kept by the FFM, the staff member be advised to submit his assessment to the IIT, which he did, so that this document could later be used by the IIT.<sup>29</sup>

He also informed states parties that he had authorized an investigation into the sharing of the document and that they would be informed of the outcome.<sup>30</sup> The Secretariat published the findings of the investigation on 6 February 2020.<sup>31</sup>

At the 91st Session of the Executive Council in July 2019, the director-general informed states parties that the investigation ‘does not have any bearing on the findings of the Douma report’.<sup>32</sup> He continued:

Since an internal working document was disclosed outside the Technical Secretariat, the Office of Confidentiality and Security has been collecting, preserving, and analysing information in order to understand how this document was disclosed. I have informed the Permanent Representative of the Syrian Arab Republic and the Chairperson of the Executive Council that I have authorised a full confidentiality investigation. In order to protect the integrity of the investigation and the due process rights of anyone involved, and in accordance with normal practice in respect of ongoing investigations, no further information about the investigation is available at this time.<sup>33</sup>

At the 24th Conference of States Parties (CSP) in November, the director-general repeated his view that the overall conclusions of the FFM inquiry were ‘based on the preponderance of objective facts’, noting that ‘it is in the nature of any thorough inquiry for individuals in a team to express subjective views’.<sup>34</sup> He continued: ‘While some of these diverse views continue to circulate in certain public discussion fora, I would like to reiterate that I stand by the impartial and professional conclusions reached by the FFM.’<sup>35</sup>

This restatement was timely as the month before, on 15 October, another Technical Secretariat staff member reportedly presented dissenting views about the Douma Final Report to a panel of individuals in Brussels. Convened by the Courage Foundation (which describes itself as ‘an international organisation that supports those who risk life or liberty to make significant contributions to the historical record’<sup>36</sup>), the panel included the first director-general of the OPCW Technical Secretariat, Ambassador José

<sup>29</sup> Árias (note 27), p. 3.

<sup>30</sup> Árias (note 27), p. 3.

<sup>31</sup> OPCW Technical Secretariat, ‘Report of the investigation into possible breaches of confidentiality’, Note by the Technical Secretariat, S/1839/2020, 6 Feb 2020.

<sup>32</sup> OPCW Executive Council, ‘Opening statement by the Director-General to the Ninety-first Session of the Executive Council (full version)’, EC-91/DG.25, 9 July 2019, para. 24.

<sup>33</sup> OPCW Executive Council, EC-91/DG.25 (note 32), para. 25.

<sup>34</sup> OPCW, Conference of the States Parties, ‘Opening Statement by the Director-General to the Conference of the States Parties at its Twenty-fourth Session (full version)’, C-24/DG.21, 25 Nov. 2019, para. 16.

<sup>35</sup> OPCW Conference of the States Parties, C-24/DG.21 (note 34), para. 17.

<sup>36</sup> Courage Foundation, ‘About Courage’, [n.d.].

Bustani of Brazil.<sup>37</sup> After the meeting, the panel issued a statement which, among other things, called on the OPCW to ‘permit all inspectors who took part in the Douma investigation to come forward and report their differing observations in an appropriate forum’ of states parties. The panel presented these criticisms ‘with the expectation’ that the OPCW would ‘revisit’ its investigation.<sup>38</sup>

One week before the opening of the CSP, states parties received an open letter signed by the panel members and 16 other prominent individuals.<sup>39</sup> The letter drew attention to the deliberations of the panel and asked states parties for their ‘support in taking action . . . aimed at restoring the integrity of the OPCW and regaining public trust’.<sup>40</sup> This letter was mentioned during some interventions at the CSP, especially in the closing stages of the meeting.<sup>41</sup>

<sup>37</sup> Courage Foundation, ‘Panel criticizes “unacceptable practices” in the OPCW’s investigation of the alleged chemical attack in Douma, Syria on April 7th 2018’, Press release, 23 Oct. 2019.

<sup>38</sup> Courage Foundation, Press release (note 37).

<sup>39</sup> Courage Foundation, Open letter to Permanent Representatives to the OPCW, 18 Nov. 2019.

<sup>40</sup> Courage Foundation, Open letter (note 39), p. 1.

<sup>41</sup> Speaking on this issue under agenda item 24 (any other business) were Syria, Russia, Iran, China, USA, Venezuela, Belgium, Nicaragua and the United Kingdom. See OPCW, Webcast CSP-24, ‘Day 5—Morning’, 0:59.46–1:07.55, 1:15.36–1:39.16 and 1:41.11–2:00.37.