



Disarming Syria

by Jean Pascal Zanders

Since the chemical weapons (CW) attacks on the Ghouta district just outside Damascus on 21 August, political developments have taken several unexpected twists leading Syria to become the 190th party to the Chemical Weapons Convention (CWC). Russia and the United States reached agreement on a framework for the dismantlement of Syria's chemical warfare capacity, in which the Organisation for the Prohibition of Chemical Weapons (OPCW) as well as the United Nations will play central roles. Western threats of military force – although they undeniably contributed to Syria's acceptance of the deal – have receded for the time being. And while the deferral of international justice regarding the Ghouta strikes will frustrate many parties, the emphasis on disarmament may actually open up the prospect of a negotiated end to the conflict.

The investigation

The United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic presented its Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013 to the UN General Assembly (UNGA) and Security Council (UNSC) on 16 September. The document confirms CW use in the Syrian civil war. Its conclusions rest on multiple types of samples, victim interviews,

investigation of munition remnants and lab analyses. The investigators established and preserved the integrity of the chain of custody from the moment of sampling until they handed over the evidence to the laboratories in accordance with formal operating procedures and protocols. Syrian government representatives were present until the handover.

Although the authors of the Report do not identify the culprits – to preserve impartiality, that was never part of their mandate – the number of parallel attacks, the volume and quality of sarin delivered over the target areas, the detailed description of the delivery systems and the investigators' ability to determine the trajectory and angle of impact of several rockets quite conclusively exclude insurgent forces as the perpetrators. Even the exploitation of the early morning temperature inversion suggests familiarity with the meteorological circumstances whereby the sarin cloud would not rise too high. Being heavier than air, concentrated toxic fumes penetrated into the cellars where the victims were sheltering from artillery shells.

Setting chemical disarmament as the goal

Two days earlier, Russian Foreign Minister Sergey Lavrov and US Secretary of State John Kerry achieved a framework agreement on the elimination



of Syria's chemical warfare capacity. Furthermore, Syria announced its accession to the CWC: it will become its 190th state party on 14 October. Both developments changed the dynamics of the game, from edging ever closer to punitive military strikes against government forces to international cooperation with central roles for two multilateral institutions, the OPCW and the UN.

Syria is the first CW possessor to join the CWC after the treaty-specified deadlines for destroying CW and related infrastructure expired. The treaty originally envisages a maximum of 15 years from the entry into force of the convention (29 April 1997). This timeframe expired last year. The Executive Council must now set the ultimate destruction date and interim milestones. The Executive Council is one of the two decision-making bodies of the OPCW and consists of 41 states, elected within and proposed by their respective regional groups for a two-year term. Chemical powerhouses such as the US and Russia are permanently represented on the Executive Council but they only have one vote each. The framework agreement proposes tight target dates for Syria, such as submission of its CW inventory within one week and completion of all destruction operations by mid-2014. Annex A of the framework agreement outlines the principles for the Executive Council decision document.

This demonstrates that Russia and the US are proposing to the OPCW a destruction process for Syria that differs in several important aspects from the one outlined in the CWC. John Kerry reinforced this point in the press briefing after the Geneva discussions: 'We have committed to use extraordinary procedures under the Chemical Weapons Convention for the expeditious destruction and stringent verification of Syrian chemical weapons.' Yet, before the US-Russian proposals become binding on Damascus, the Executive Council needs to endorse them. The potential therefore exists that, based on technical evaluations of feasibility as well as political considerations, the Council puts forward different timelines. Although the body prefers consensual decision-making, majority voting is indeed possible. Having said that, it is becoming increasingly clear that Damascus has politically committed itself to the framework agreement. On 20-21 September it submitted documents to the OPCW relating to its initial declaration ahead of CWC requirements

but within the one week deadline laid down in the US-Russian deal.

Easier set than done ...

The framework agreement suggests the possibility of CW disposal outside of the country, but acknowledges that it might not be possible. From a technical angle, the safe passage of the munitions and bulk containers with agents and their precursors through conflict-torn territories might pose the biggest challenge. Legal obstacles, however, might prove even more formidable.

Article I of the CWC says: 'Each State Party to this Convention undertakes never under any circumstances: (a) to develop, produce, *otherwise acquire*, stockpile or retain chemical weapons, or *transfer, directly or indirectly, chemical weapons to anyone*.' The first clause affects the potential recipient of Syria's weapons; the second one affects Syria, soon to become a party to the CWC.

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Some commentators have pointed out that, in March 2007, the Executive Council granted an exception to allow the transport of CW from Austria to a destruction facility in northern Germany. However, this transfer concerned a mere three shells, which had been determined to be 'old chemical weapons' (i.e. produced between 1925 and 1946 and deteriorated beyond use) and to pose an immediate environmental hazard. In its decision, the Council also underscored the exceptional nature of the authorisation and its application to old chemical weapons (OCW): 'nothing can alter the general obligation of each State Party as stipulated in Article I of the Convention never under any circumstances to transfer chemical weapons, directly or indirectly, to anyone, or the obligation of each State Party that declares OCWs to destroy them under the terms of the Convention'.

Current estimates suggest that Syria owns around 1,000 metric tonnes of agent. Some US officials seem to hint at their transfer to Russia – an idea Lavrov resisted in the margins of his meeting with French Foreign Minister Laurent Fabius in Moscow on 17 September. Even if acceptable to Moscow, however, the CW would still have to

transit over the territory or through the coastal waters or air space of neighbouring states, all of whom (with the exception of Israel) are party to the CWC. In addition, Russia – just like the United States – has domestic laws banning transportation of CW across borders of regional or sub-regional administrative entities.

The Executive Council decision of March 2007 regarding Austria also emphasised another core principle in the CWC: the possessor state is at all times responsible for its CW and their destruction. In other words, from a legal viewpoint, it appears that the weapons will have to be destroyed on Syrian territory. The very short deadline in the bilateral framework agreement may thus be nearly impossible to meet in this respect. Construction of one or more destruction facilities inside the country would likely breach the target of mid-2014. Several countries have developed mobile installations to eliminate CW or industrial toxic waste. Pending availability, these can conceivably be swiftly moved to Syria and commence destruction operations within a few months. Recent press reports suggest that the CW might be scattered over 40–50 different locations across the country, raising the question of how many times those mobile installations would have to be assembled and disassembled. Additional delays could result, for instance, from the need each time to test the units before the start of operations, and to clean them thoroughly after completing munition destruction. To optimise this process, CW would have to be relocated to the fewest possible depots.

Moving CW across the country will always entail serious public health and environmental hazards, which is why destruction installations had to be built near each storage site in Russia and the US. In Syria, ongoing combat operations magnify those risks many times. Convoys may be deliberately targeted or the escorts attacked with a view to capturing the munitions. The displeasure of some insurgent groupings with the framework agreement – due to the semblance of legitimacy it bestows on the Assad regime – may make them reluctant to accept ceasefires enabling the transit of the weapons or their local destruction. Security and safety of the international staff will be paramount for the OPCW and the UN, and their deployment may well depend on the agreements concerning security guarantees to be concluded

with the warring factions. And the same will apply to contractors operating the mobile destruction facilities.

A conceivable solution, combining operational creativity and legal flexibility, might be to neutralise the chemical warfare agents and their precursors in existing facilities to such an extent that it then becomes possible to move the resulting compounds outside Syrian territory for final destruction.

What role for the UN?

The bilateral framework agreement identifies several roles for the UN Security Council. First, Russia and the US will seek a resolution to reinforce the decision to be taken by the OPCW Executive Council, not just to ensure its verification and effective implementation, but also to request from the UN Secretary General recommendations on how the UN could support the weapon elimination process. John Kerry clarified afterwards that such support for OPCW inspections and destruction could be both logistical and administrative.

Immediately after the release of the text of the agreement, it seemed that a solution for overcoming the various challenges mentioned above might have been a setup analogous to the UN

Special Commission for Iraq (UNSCOM). During the early 1990s, UNSCOM inspectors basically had unfettered access to all locations in Iraq. All activities were planned, coordinated and monitored from offices in New York. Destruction of chemical and biological weapons and missiles, while maintaining certain safety standards, at times relied on the most basic disposal methods, local technical skills and improvisation with available technologies

(e.g. the creation of the equivalent of a fuel-air explosion to incinerate sarin-filled artillery rockets). With Syria's cooperation as a party to the CWC and the backup of the OPCW inspectors, the process could reasonably be assumed to proceed more smoothly than had been the case with Iraq's determined non-cooperation. In addition, the UNSC could conceivably create the framework for a multinational security force to safeguard Syria's CW and offer protection to the verification and destruction activities.

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Following the conclusion of the framework agreement, however, OPCW Director-General Ahmet Üzümcü seems to reserve a leading role for the CWC implementation organisation, making an UNSCOM-type scenario less likely. Nevertheless, he will require the full backing and clout of the UNSC to enforce Syrian compliance if needed. Russia has already indicated its willingness to provide military support to safeguard the CW storage sites and protect international staff and other people involved in destruction activities. And the mentioning, in the bilateral agreement, of UN Charter Chapter VII measures – along with explicit references to the provisions in the CWC that cases of non-compliance can be referred to the UNGA and UNSC – indicates a willingness to keep a big stick ready and on hand.

Disarmament versus justice?

China and Russia will be comfortable with the framework agreement and are emphasising the disarmament components over the passages referring to possible punitive actions. For Western states – France, the UK and the US in particular – the document represents, at the same time, a partial setback and a potential success.

After the Ghouta chemical attacks, in fact, they built up a narrative to justify punitive military strikes against Syrian military assets – with or without a UNSC resolution – by invoking the images of women and children suffering from exposure to the toxicants when urging a speedy response to deter the Assad regime from future chemical warfare. Their argument set the chemical weapon at the centre of the concern because the international community had outlawed its use and possession for decades. By depicting the viciousness of the civil war and highlighting the crimes committed by the regime, it drew on humanitarian and human rights concerns. Yet it became soon difficult to explain why the fate of the many hundreds of victims of chemical warfare should count for so much, whereas the more than 100,000 deaths from conventional warfare never elicited a similar reaction. Furthermore, pressing for military action while the UN investigative team was still on the ground in Syria raised additional concerns. These investigators were working in accordance with procedures negotiated and approved by the international community in order to ensure maximum impartiality in the findings. Last but not least, public opinion was wary of a rushed intervention reminiscent, rightly or wrongly, of the precedent of Iraq ten years ago.

In this context, Russia seized on an apparently offhand remark made by Kerry to place Syria's CW disarmament centre stage. By nature and definition, disarmament requires cooperation between states and is possible because of the almost exclusive focus on the weapon technology, rather than on the personalities or policies of the leaders involved. This was very clear from the way Russia and the US were able to thrash out a joint framework agreement after intense negotiation, and get Syria to sign up to the CWC.

True, the disarmament process recognises the current Syrian President as a partner and, therefore, seems to bestow legitimacy on the regime. This explains the extreme frustration of the opposition forces with the bilateral agreement and the absence of the air strikes that might have significantly degraded Syria's war fighting capacity. Disarmament, however, can remove a particular mode of warfare from the battlefield and thus prevent future humanitarian catastrophes and human rights violations. Here lies the indirect impact of the West's posture. When UN Secretary General Ban Ki-moon released the investigative report on Ghouta a week ago, its potential to trigger immediate punitive air strikes had all but dissipated. Minds had already turned to implementing the framework agreement and overcoming the many political, security and safety, and technological challenges it raises.

The Ghouta report retains its relevance for future war crime indictments against the perpetrators. However much one might regret the *realpolitik* that underlies disarmament cooperation, the framework accord has lit glimmers of hope for negotiating an end to the civil war and for wider disarmament opportunities in the Middle East.

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