

International Law and Disarmament: The Case of Chemical Weapons

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In preparing for the honor of delivering the second Justice Stephen Breyer Lecture at Brookings, I read closely the inspirational inaugural lecture given there in 2014 by the great man whose name and reputation mark this annual event.⁴⁶ Justice Breyer’s account of the U.S. Supreme Court and its role in the world makes for fascinating reading. It highlights the importance of drawing lessons from international events as a means of helping to preserve American values, and better understanding the broader practical and ethical purpose of those values along the way.

I am not myself a lawyer, but my experience at the Organization for the Prohibition of Chemical Weapons (OPCW) has been steeped in applications of international law for helping to achieve a world free of chemical weapons—a goal whose practical and ethical purpose should be clear to all. Our work at the OPCW—the agency created in 1997 to safeguard the implementation of the Chemical Weapons Convention—has compelled us to consider, and react to, some very complex and challenging legal issues, particularly where they intersect with sensitive political realities. Over my tenure at the helm of the OPCW, no single issue has tested our mettle as much as the mission to eliminate Syria’s chemical weapons program.

⁴⁵ This chapter was adapted from the 2015 Justice Stephen Breyer Lecture on International Law, given on April 9, 2015 at the Brookings Institution in Washington, DC.

⁴⁶ Stephen Breyer, “The Court in the World: The First Annual Justice Stephen Breyer Lecture on International Law” (presentation delivered at the Brookings Institution, Washington, DC, April 4, 2014), https://www.brookings.edu/wp-content/uploads/2014/03/20140403_breyer_international_law_transcript.pdf.

It is this experience that I wish to draw on here. In particular, I will focus on how the mission to eliminate Syria's chemical arsenal tested the resilience and flexibility of the Chemical Weapons Convention, as well as the strength of global consensus against these brutal weapons. I will also point to some emerging challenges that require us to adapt and supplement our traditional measures and approaches to preventing the proliferation of chemical weapons—most pressingly, in response to the rising threat of chemical terrorism.

Destruction of Syria's chemical weapons program

We are all only too aware of the intractable nature of the conflict in Syria. Now in its fifth year, the war has emerged as one of the greatest humanitarian crises of our time. An estimated quarter of a million people have lost their lives as a result of the fighting, and some 4.8 million Syrians have sought refuge in neighboring countries, with many more internally displaced. The war has also had a highly adverse impact on regional security, bleeding across the border into Iraq. Countries in the region remain on high alert, having to address new risks to their security, as well as to cope with unprecedented refugee flows.

Yet, although attempts to affect a political settlement have foundered, a glimmer of hope managed to spring from one of the darkest chapters of the war. That chapter began when reports of chemical weapons attacks started to emerge from Syria in late 2012 through 2013. In August 2013, these concerns reached a fever pitch on the eastern edges of Damascus. It was there, in Ghouta, a suburb of Syria's capital, that an estimated 1,500 people died following an attack with the deadly nerve agent sarin. Directly in the wake of that attack, social media conveyed haunting images of suffering and death on the part of innocent civilians, including many children. These images sent shockwaves throughout the world, compounding the cruel violence already being suffered by the people of Syria.

The introduction of a new level of indiscriminate brutality in the Syrian conflict with the use of chemical weapons precipitated what had until then been

almost entirely absent in international efforts to resolve the conflict—namely, a point of firm consensus. This point of consensus related to the need to act swiftly and decisively to remove the threat of chemical weapons from Syria.

Following confirmation of the use of chemical weapons in Ghouta by a U.N. investigation, an extraordinary sequence of events occurred.⁴⁷ On September 14, 2013, Syria submitted its instrument of accession to the Chemical Weapons Convention. That same day in Geneva, Russia and the United States agreed on a framework for the elimination of Syria's chemical weapons program.⁴⁸ Less than two weeks later, on September 27 in The Hague, the OPCW's Executive Council adopted a landmark decision that charted the course for a fast-tracked plan to eliminate Syria's chemical weapons based on the U.S.-Russian agreement. Later that day in New York, the U.N. Security Council passed resolution 2118 endorsing the Executive Council decision.

The OPCW Executive Council decision called for the removal of all chemical weapons from Syria for destruction outside the country, as well as the destruction of all production facilities in Syria. While this undertaking stretched the resources and operational limits of the OPCW, our inspectors and operational planners had been well prepared for just such a contingency. Within three days of the Executive Council decision, a team of OPCW experts was on the ground in Damascus, assisting Syrian officials to prepare an initial declaration covering some 1,300 metric tons of chemical warfare agent, as well as verifying the destruction of chemical weapons production facilities, equipment, and unfilled munitions at various sites around the country. With our U.N. partners in the OPCW-U.N. Joint Mission, established on October 16, we devised plans for accessing production and storage facilities, and overseeing the packaging and removal of Syria's chemical weapons.

⁴⁷ The United Nations Mission to Investigate Alleged Use of Chemical Weapons in the Syrian Arab Republic was established by U.N. Secretary-General Ban Ki-moon on March 21, 2013—initially, to investigate allegations of a chemical attack at Khan al-Assal. Headed by Åke Sellström, the investigation delivered its final report on December 12, 2013, which confirmed the use of sarin in the August 21, 2013 attack in Ghouta.

⁴⁸ The Framework for the Elimination of Syrian Chemical Weapons, signed by U.S. Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov.

Syria's chemical weapons had to be transported overland to Latakia, often across contested territory, and transferred to ships for delivery to destruction facilities at sea and on land. The most lethal chemicals—about 600 metric tons of sulfur mustard agent and methyl phosphonyl difluoride (DF), a nerve agent precursor—were trans-loaded and neutralized aboard the *Cape Ray* in the eastern Mediterranean.⁴⁹ Resulting effluents from these operations, along with other toxic chemicals from Syria's weapons program, were sent for disposal to various facilities in Finland, Germany, the United Kingdom, and the United States.

A critical factor for our success was the support of no fewer than 35 of the OPCW's member states, who provided valuable in-kind and financial contributions. This included maritime assets, destruction facilities, road vehicles, and packaging materials and training, as well as a trust fund running to over 50 million euros to underwrite operational costs. The results speak for themselves. Within less than a year, the OPCW was able to report that all declared chemical weapons slated for destruction abroad had been removed from Syrian territory, and that 98 percent of these weapons had been destroyed, including all so-called Category 1 chemical weapons—chiefly, sulfur mustard and nerve agent precursors. The remaining 2 percent were destroyed by January 2016 at the Texas-based facility of Veolia, one of two commercial entities contracted by the OPCW to undertake some of the disposal effort. This completed the destruction of all chemical weapons declared by the Syrian Arab Republic.

What all this shows is that, in an all too rare moment of unity over the course of the Syrian conflict, the international community was able to forge an exceptional disarmament agreement. The United States and Russia showed crucial leadership in facilitating it in remarkably short measure. While the agreement was never going to end the conflict, it did deliver a tangible result in removing and destroying a major chemical arsenal.

⁴⁹ Sulfur mustard, a blister agent that was developed and introduced in World War I in 1917, is a unitary chemical weapon. Nerve agents, such as sarin and VX, are binary chemical weapons, comprising two or more precursors that need to be mixed prior to deployment.

Legal challenges for the removal and destruction of chemical weapons, and fact-finding missions

Even with the strong tailwinds of global political will at our back, none of these accomplishments would have been possible without the well-established legal norm of the Chemical Weapons Convention and its application in the framework of Syria's chemical disarmament. All of our work related to Syria—from putting our people on the ground for inspections to removing chemical weapons from Syrian territory, from destroying chemical weapons at sea to negotiating the destruction of some chemicals at commercial facilities—relied on our soundly navigating international legal strictures and political hurdles. At the same time, we needed, on occasion, to bridge critical gaps between existing legal frameworks.

I have already mentioned some of the overlapping legal frameworks we drew on, or had to put in place, to make all this work. There was no need, for example, for a special ad hoc international mandate for dealing with Syria's chemical weapons program. As soon as Syria joined it, the Chemical Weapons Convention provided a crucial baseline under international law for agreeing to a program for eliminating Syria's chemical weapons program, and overseeing its implementation. Details of this program, as agreed by the OPCW Executive Council, were based on elements of another agreement—the U.S.-Russia framework agreement. Implementation of this program—in the challenging and often dangerous circumstances of conflict-riven Syria—required the OPCW to establish a joint mission with the United Nations to obtain the necessary logistical and security support, including for obtaining access to sites in contested territory. To underwrite all of these actions with the requisite political and legal support, the U.N. Security Council provided strong endorsement in the form of resolutions 2118 (2013) and 2209 (2015).

As if these interlocking efforts were not enough, more work still needs to be done to backstop this unprecedented mission, such as working with Syrian authorities to clarify Syria's declaration and completing the destruction of its chemical weapons production facilities. Disturbingly, there have been new allegations that toxic chemicals are being used as weapons in Syria. In April

2014, in response to such allegations, I established an OPCW fact-finding mission. The mission was specifically tasked to gather facts on the ground regarding alleged use of chemical weapons. Among its findings, the mission concluded—with a high degree of confidence—that chlorine had been used regularly and systematically in three villages in northern Syria. Since then, the fact-finding mission has continued, with the full support of the OPCW Executive Council and the U.N. Security Council, to monitor and analyze all credible allegations of the use of chemical weapons and the use of toxic chemicals as weapons, and made every effort to establish the facts surrounding credible allegations; tragically, these activities have further substantiated instances of the use of chemical weapons or toxic chemicals as weapons in Syria.

In response to findings of the fact-finding mission, the Security Council adopted resolution 2235 (2015) in August 2015, establishing the OPCW-U.N. Joint Investigative Mechanism. The mechanism, which is mandated to identify the perpetrators of chemical weapon attacks in Syria, reconfirmed the use of chemical weapons in Syria in its third and fourth reports issued in August and October 2016.

Among these numerous actors and arrangements, one can imagine the many obstacles that our legal team had to negotiate to maintain the forward momentum of the mission. Certainly, these obstacles presented an unprecedented challenge for the OPCW. Typically, the work of chemical disarmament takes place over a period of many years—in some cases, decades—under peaceful circumstances, where agreements with local stakeholders and community groups can take years to develop, and even longer to implement. Let me highlight just a few examples of the legal challenges we faced in relation to Syria’s chemical weapons program and the circumstances in which we did so.

Among other obligations, Article I.1(a) of the Chemical Weapons Convention bars states parties from “transfer[ing], directly or indirectly, chemical weapons to anyone.” As it transpired, this ran counter to the U.S.-Russia framework agreement, which sought the removal of chemical weapons from Syrian territory for accelerated destruction outside the country. Further, the

OPCW's activities in disarmament hinge not on the actual destruction of chemical weapons, but rather, on the verification that these activities have been implemented by the possessor state.⁵⁰ But in the case of Syria, given that the possessor state was not assigned the role of destroying its chemical weapons stockpile, the OPCW and its member states needed to find novel solutions. To this end, U.N. Security Council resolution 2118 endorsed OPCW member states' agreement to allow destruction to occur outside Syria, which was in itself a good example of their willingness to stretch the letter of the law of the Chemical Weapons Convention to better capture its spirit. In short, no one was willing to allow the opportunity of ridding the world of a major chemical arsenal to slip by over too narrow or rigid an interpretation of the Convention.

Many of the legal challenges we faced arose precisely because of the need to find inventive solutions for destruction, including at sea and at commercial facilities. This required addressing relevant international and domestic legal requirements—and the interplay between them—across many different jurisdictions, involving both the private and public sectors. Some of the safety, security, and liability issues associated with the packaging, transportation, storage, destruction, and disposal of chemical weapons in these circumstances entailed an approach that was anything but business as usual.

The fact-finding mission affords an especially interesting case, since provision for such a mechanism was not foreseen by the Chemical Weapons Convention. The legal basis for the fact-finding mission is to be found in the general authority, given to me as Director-General, to ensure the OPCW upholds, at all times, the object and purpose of the convention. This authority was reinforced, in this instance, by the relevant decisions of the OPCW Executive Council and UNSCR U.N. Security Council resolutions 2118 and 2209, as well as endorsement of the fact-finding mission by the Executive Council and its acceptance by Syria, as the state party concerned, through a bilateral exchange of letters.

⁵⁰ Article I.2 reads, "Each State party undertakes to destroy all chemical weapons it owns or possesses [...]"

Chemical disarmament and the terrorist threat

I have often described the Chemical Weapons Convention as the most effective treaty in the history of multilateral disarmament—with good reason. Holding all of its member states to the same commitments, and backed by a strong network of support and mutual assistance, the Convention stands—more than two decades since it was negotiated—as the only legally binding instrument to comprehensively ban an entire class of weapons of mass destruction under international verification.

Among our 190 member states, eight have declared possession of chemical weapons. Three of them have completely destroyed their stockpiles, namely, India, Albania, and a state party that prefers not to be identified. Iraq has finalized a destruction program for remnants of chemical weapons, and Libya has eliminated its chemical weapons, with only a modest amount of indirect precursor chemicals left to be destroyed. In a remarkably short period of time, 98 percent of Syria's chemical weapons have been destroyed. Countries with the lion's share of the world's chemical weapons stockpile—Russia and the United States—have committed to ensuring complete destruction of their stocks by December 2020 and September 2023, respectively. All told, the OPCW has verified the destruction of 87 percent of the world's declared chemical weapons to date. Within the next eight years, we anticipate that all member states' declared chemical weapons stocks will be destroyed.

While six countries remain outside the Chemical Weapons Convention, Myanmar has now ratified the treaty and will soon join as our 191st member state. We anticipate that Angola and South Sudan will follow suit, and we continue to engage Egypt and Israel in the wake of Syria's chemical demilitarization. Given that the convention is an accepted international legal norm, there can be no justification for these countries remaining outside the convention; simply put, chemical weapons are not a strategic option for any country. North Korea remains a particular concern in this regard, given suspicions that it possesses a large stockpile and production capability, as well

as its lack of engagement with the OPCW regarding the issue of chemical weapons.⁵¹

Despite our many accomplishments in global chemical disarmament, I must strike a note of caution. Today, terrorism poses one of the most clear and present threats to a chemically secure future. We are all well attuned to the stated intentions of non-state actors to acquire, and to use, weapons of mass destruction. With the likelihood of chemical weapons use by states increasingly remote, we must not drop our guard in relation to terrorist groups. In March 2016, the government of Iraq shared information with the OPCW Technical Secretariat regarding alleged chemical weapons attacks at three locations in Iraq. The Secretariat deployed a technical assistance visit team to assist Iraqi authorities in the conduct of their investigations. The reports resulting from these investigations confirmed the use of chemical weapons by non-state actors. The OPCW is carefully monitoring allegations of the use of chemical weapons, or toxic chemicals as a weapon, by non-state actors and remains ready to look into any credible information in such cases.

Worth noting is that the threat of chemical weapons use is not confined to a handful of countries in one particular region. Twenty years ago, the Aum Shinrikyo doomsday cult launched two attacks using sarin and hydrogen cyanide in Matsumoto and in the Tokyo subway. These attacks claimed the lives of 20 people and injured thousands. Had the dispersal of these deadly chemical agents been engineered differently, the results could have been far more catastrophic, potentially killing thousands. These attacks were not

⁵¹ Joseph Bermudez, Jr., “North Korea’s Chemical Warfare Capabilities,” *38 North*, October 10, 2013, <http://38north.org/2013/10/jbermudez101013/>; “North Korea,” The Nuclear Threat Initiative, <http://www.nti.org/learn/countries/north-korea/>; “Chemical Weapons Program,” Federation of American Scientists, fas.org/nuke/guide/dprk/cw/ (last updated November 28, 1998); International Crisis Group, “North Korea’s Chemical and Biological Weapons Programs (Asia Report N°16718),” (Brussels: International Crisis Group, 2009); United States Department of Defense, “Military and Security Developments Involving the Democratic People’s Republic of Korea 2012,” (Arlington, VA: United States Department of Defense, 2012), http://www.defense.gov/Portals/1/Documents/pubs/Report_to_Congress_on_Military_and_Security_Developments_Involving_the_DPRK.pdf; Neil Gibson and Emily Chorley (Eds.), *Jane’s Nuclear, Biological and Chemical Defence 2011-2012*, (London: Jane’s Information Group, 2011).

launched by a state at war, nor did they occur in an active conflict zone. They were brought about by a group motivated to maliciously develop and use chemicals to bring about death and provoke terror.

Given terrorists' propensity to exploit vulnerabilities in the global security system, the threat of chemical weapons should be a concern for all states. How we deal with these threats represents our next great challenge, well within our mandate to "exclude completely the possibility of the use of chemical weapons"⁵²—by anyone in any circumstances. To effectively prevent the re-emergence of chemical weapons, we must push beyond current global non-proliferation norms and seek more effective solutions. In the first instance, this means working with our member states to ensure the convention's prohibitions are fully reflected in their domestic laws and that they have the means to enforce them. This means:

- Strengthening the capacity of national jurisdictions that may be too weak to detect and prosecute criminal chemical activity;
- Supporting enactment of legislation to monitor the toxic chemical industry and trade; and
- Strengthening collaboration with relevant international frameworks and organizations to build global capacity to prevent chemical terrorism.

These are not impossible tasks, but they will require collective action and constant vigilance to bring about meaningful contributions to global chemical security.

To better facilitate work in this area, the OPCW hosts regular, focused discussion in its Open-Ended Working Group on Terrorism. We seek to build response and protection capacity in our member states through a broad range of training and assistance activities, in close collaboration with inter-

⁵² The preamble to the Chemical Weapons Convention declares that the states parties to the convention are "Determined for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons, through the implementation of the provisions of this Convention [...]".

national and regional organizations such as the African Union, while also enhancing inter-agency coordination through forums such as the United Nations Counter-Terrorism Implementation Task Force comprising 38 entities and Interpol.⁵³

Conclusion: Lessons learned from Syria

Given the ongoing search for international consensus in settling the Syrian conflict and the new and emerging challenges for preventing the future development and use of chemical weapons, it is vital that we draw lessons from the experience of Syria's chemical demilitarization. Let me conclude by singling out three such lessons.

1) *Move quickly on the windows of opportunity.* In terms of any work towards peace and stability, we must capitalize quickly on any, and every, opening that presents itself. Windows of opportunity on complex and contentious arms control actions do not stay open for very long. The politics of security and national interest evolve rapidly, governments change, and conditions on the ground are in constant flux, nowhere more so than in conflict situations.

Without a doubt, the opportunity to remove and destroy Syria's chemical weapons required swift, decisive action. Any delay in that process, or any wavering by any of the principal actors involved, may have undermined that mission's success—and possibly heralded its failure. Within the OPCW, we have factored this experience into our contingency planning—both to ensure we can respond quickly to similar opportunities in the future, and to draw on this experience as a template for how we would conduct any future removal and destruction missions.

⁵³ A full list of these entities can be accessed on the website of the United Nations Counter-Terrorism Implementation Task Force at <https://www.un.org/counterterrorism/ctitf/en/ctitf-office>.

2) *Strengthen international rules of the road.* A second lesson gleaned from the Syria experience speaks to the inviolability of international law and multilateral approaches to disarmament. Without the Chemical Weapons Convention and the implementation muscle provided by the OPCW, there would have been no rules of the road—and no vehicle to arrive at the destruction of Syria’s chemical weapons. We need to keep these rules before us and ensure they can be adapted to different circumstances to obtain the best possible results. This must include making our disarmament gains permanent by denying anyone recourse to chemical weapons, irrespective of whether they try to do so in the name of a state or non-state entity. Though we are trending positively towards complete destruction of chemical arms, the threat posed by terrorists will continue to challenge us in this respect.

3) *Build on success.* This brings me to my third and final point, perhaps best expressed by German pacifist Ludwig Quidde, who won the Nobel Peace Prize in 1927. True to the award criteria set by Alfred Nobel, Quidde wrote, “Every success in limiting armaments is a sign that the will to achieve mutual understanding exists, and every such success thus supports the fight for international law and order.”⁵⁴

The success of the action to eliminate Syria’s chemical weapons program drew on international consensus against these barbarous weapons. It also provided a diplomatic rallying point that has been sadly lacking in efforts to resolve the Syrian crisis. While that rallying point has not, in the end, expanded further, it has nonetheless provided a model and point of departure for new efforts. In particular, it has shown what can be achieved when political will rallies behind a well-established international legal norm. Even if we judge the Syria mission only by the criteria of disarmament history, it must be counted as a remarkable achievement. This achievement is not yet at an end point, but it has already played an important role in activating and consolidating the practical legal force of the Chemical Weapons Convention and set a high benchmark for future disarmament efforts.

⁵⁴ Ludwig Quidde, “Essay based on Nobel Lecture of December 12, 1927,” (Stockholm: Nobel Foundation, 1927), http://www.nobelprize.org/nobel_prizes/peace/laureates/1927/quidde-lecture.html.



Ahmet Üzümcü was appointed director-general of the OPCW in December 2009 and reappointed for a second term in December 2013. Immediately prior to his appointment as OPCW director-general, he served as the permanent representative of the Republic of Turkey to the United Nations Office at Geneva.

Ambassador Üzümcü is a career diplomat with vast experience in multilateral diplomacy. During the past decade he has represented Turkey at the NATO Council, the Conference on Disarmament, the United Nations, and other international organizations in Geneva. Ambassador Üzümcü chaired the Conference on Disarmament for four weeks in March 2008 and attended various disarmament-related meetings and conferences in Geneva, Brussels, and elsewhere.

Previously, Ambassador Üzümcü served as deputy undersecretary of state for bilateral political affairs at the Ministry of Foreign Affairs of Turkey. From June 2002 to August 2004, he was the permanent representative of Turkey to the NATO Council in Brussels. He held the post of ambassador of Turkey to Israel from 1999 to 2002. From 1996 to 1999, he headed the Personnel Department at the Ministry of Foreign Affairs in Ankara. Prior to that, he served in various posts at the Ministry of Foreign Affairs as well as at the Turkish delegation to NATO (1986-1989), the Turkish embassy in Vienna (1979-1982) and as a consul in Aleppo (1982-1984).