

Submission to the OEWG for the Fifth CWC Review Conference (RC-5)

Addressing Non-Compliance and Ensuring Accountability for CW Use

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Never since the 1997 Chemical Weapons Convention (CWC) has entered into force have there been so many allegations of non-compliance with one of the core prohibitions codified in the Convention, i.e. the prohibition of using chemical weapons.

The Fifth CWC Review Conference should therefore address as a matter of priority cases of non-compliance with a view to ensuring accountability for CW use.

More than 300 instances of chemical weapons use in Syria have been reported. The OPCW's Investigation and Identification Team (IIT) has concluded that there are reasonable grounds to believe that the Syrian Air Force was responsible for the use of chemical weapons on their own population in at least four cases. The IIT stated that "military operations of such a strategic nature as these four attacks only occur pursuant to orders from the highest levels of the Syrian Arab Armed Forces."

The OPCW has also helped to confirm that Russian citizens Sergey Skripal and Alexei Navalny were poisoned with nerve agents of the Novichok family. This type of agents has been developed in the former Soviet Union. Russia refuses to answer questions of other states parties related to these attacks.

In the course of its war of aggression against Ukraine, Moscow has repeatedly accused Kyiv of planning to stage "false flag" operations involving chemical weapons. Kyiv, for its part, has accused Moscow of preparing the ground for its own use of chemical weapons by disseminating these false allegations. The OPCW has rejected Russian accusations that it was helping to prepare Ukrainian "false flag" operations by having OPCW experts on standby to verify the use of chemical weapons. The Technical Secretariat has called on Moscow's representative to the OPCW to refrain from such "baseless allegations".

It is essential to the integrity of the CWC to investigate alleged chemical weapons use, to identify those responsible and, wherever possible, hold them to account.

Towards this end, states parties at RC-5 should:

- individually and collectively continue to call out violations of the Convention,
- call on those states that allege non-compliance to make evidence available for independent checks of the veracity of such allegations,
- encourage the use of CWC mechanisms, such as clarification procedures and investigations, to determine whether chemical weapons-related allegations are true,
- take a decision to strengthen the OPCW's investigative capabilities by mainstreaming the tasks given to the IIT into the regular verification work of the organisation, and
- re-confirm that the IIT's mandate provides the basis for investigations of all cases of alleged use of chemical weapons and for its efforts to identify the perpetrators of any such chemical weapons use.

Given the expectation of compliance with their norms and rules, multilateral disarmament institutions, like the OPCW, are not designed to bring those responsible for CW use to justice. Enforcement at the international level rests with the UN Security Council and nationally with member states. Hence, national penal legislation and international criminal law provide also important tools to hold to account those responsible for chemical weapons use. The UN's *International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011* (IIIM) plays an important role in this respect.

States parties at the Fifth CWC Review Conference should therefore:

- reiterate their support for collaboration and information sharing between the OPCW Technical Secretariat and the IIIM,
- emphasise the importance of implementing national penal legislation addressing chemical weapons use, including allowing for universal jurisdiction,
- encourage the initiation of court proceedings against those responsible for the use of chemical weapons in more CWC states parties, and
- express their support of future investigations into chemical weapons use, including through court cases, both at the national and international levels.

Civil society is playing an increasing role in documenting cases of chemical weapons use. Evidence collected by non-governmental experts is used frequently by governments, prosecutors and the media. In order to be able to provide such inputs for the implementation of the Convention, it is important that civil society organisations have unhindered access to deliberations of state parties.

States parties at the Fifth CWC Review Conference should therefore:

- decide to remove obstacles to civil society participation at all sessions of the Conference through a transparent system, which prevents individual states parties (or a small number thereof) from blocking NGO participation.

Priority areas for the OPCW and its States Parties in the next five years

In order to ensure follow-up on the above recommendations and decisions CWC states parties at RC-5 may wish to decide to:

- Task State Parties through their collaboration in the policy making organs to
 - Provide the financial resources to execute above recommendations and decisions,
 - Oversee implementation of the RC-5 decision to mainstream the responsibilities of the IIT into the regular verification work of the organization, and
 - Revise the mechanism for civil society attendance at future sessions of the Conference can no longer be prevented by individual (or small groups of) states parties.
- Task the Director-General and the Technical Secretariat of the OPCW to
 - Maintain readiness to investigate any non-compliance allegation so that evidence presented can be fact-checked independently,
 - Preserve the knowledge and expertise in the TS so that CWC clarification procedures and investigations can be conducted to determine whether chemical weapons-related allegations are based on factual evidence,
 - Request the DG to prepare and implement measures to mainstream the IIT responsibilities into the verification work of the Technical Secretariat, and
 - Include in its capacity building programme activities to facilitate the investigation and prosecution of those responsible for the use of chemical weapons in more CWC states parties.