

# IDLIB LEFT BREATHLESS

A Report on the Chemical Attack  
in Khan Sheikhoun



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## **Idlib Left Breathless: The Chemical Attack in Khan Sheikhoun**

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## **Table of Contents**

Executive Summary .....	4
Introduction.....	4
Chemical Weapons Defined .....	4
History of Chemical Warfare.....	7
Chemical Warfare in the Syrian Civil War.....	10
Khan Sheikhoun Chemical Attack – 4 April 2017 .....	12
Timeline .....	12
Eyewitness Accounts .....	14
International Reactions and Responses.....	15
Legal Analysis .....	20
Recommendations.....	25

## EXECUTIVE SUMMARY

On 4 April 2017, airstrikes dropped what is likely Sarin gas on Khan Sheikhoun, a Syrian rebel-held town in the Idlib governorate. The attack, which killed at least 87 people and injured another 500 people, is the deadliest chemical weapons attack in the Syrian Civil War since August 2013.

This report first introduces what chemical weapons are, and describes their effects on humans. The report will then outline the historical narrative of chemical weapons throughout history and their use, particularly in the Syrian Civil War. Next, the report will lay out a timeline of what occurred on 4 April 2017, along with local and on-the-ground eyewitness accounts and the international reactions and responses. Finally, this report will discuss the relevant law associated with the ban on the use of chemical weapons in armed conflict. Using the facts of the Khan Sheikhoun chemical attack and the relevant law, this report concludes that the Syrian Government likely violated the 1925 Geneva Protocol and the Chemical Weapons Convention, and perpetrated a war crime.

## INTRODUCTION

Few weapons inspire as much fear and resentment as chemical weapons, especially toxic gases. These are, perhaps, the most universally despised of all wartime weapons. The effects that chemical weapons have on combatants and civilians rise to the level of unnecessary suffering, in contravention of the international humanitarian law principle of mitigating the harm that armed conflict causes. Despite overwhelming disapproval, use of chemical weapons prevails in armed conflict, noxious to those who cross its path.

## CHEMICAL WEAPONS DEFINED

A chemical weapon, like any other type of weapon, is utilized as a means of killing, seriously injuring, or incapacitating.<sup>1</sup> Modern chemical warfare began during World War I.<sup>2</sup> These typically included grenades, artillery shells, and other standard munitions filled with common and well known commercial chemicals.<sup>3</sup> Today, most chemical weapons remain the same, with a toxic chemical contained in munitions or delivery

*“Despite overwhelming disapproval, use of chemical weapons prevails in armed conflict, noxious to those who cross its path.”*

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<sup>1</sup> Federation of American Scientists, *Types of Chemical Weapons*, <https://fas.org/programs/bio/chemweapons/cwagents.html> (last visited Apr. 15, 2017) [hereinafter FAS].

<sup>2</sup> Organization for the Prohibition of Chemical Weapons, *About Chemical Weapons*, <https://www.opcw.org/about-chemical-weapons/what-is-a-chemical-weapon/> (last visited Apr. 12, 2017) [hereinafter OPCW].

<sup>3</sup> *Id.*

systems.<sup>4</sup> However, the delivery systems and chemical agents have evolved and become more efficient since World War I.

Modern chemical weapons utilize extremely toxic chemicals that are typically dispersed in the form of a gas, liquid, or powder.<sup>5</sup> The Chemical Weapons Convention (CWC) categorizes these toxic chemicals into three schedules.<sup>6</sup> Schedule 1 are for chemicals that have very few or no peaceful purposes, and/or have been used as weapons in the past.<sup>7</sup> Sarin is a well-known example of a Schedule 1 chemical.<sup>8</sup> Schedule 2 contains primarily the precursor chemicals to Schedule 1, and most of these chemicals have an industrial use.<sup>9</sup> Schedule 3 chemicals are typically produced in large quantities for commercial use, however some have been used as warfare agents, and can also serve as precursors to deadlier chemicals.<sup>10</sup>

Chemical weapons are often categorized as blister, blood, choking, nerve, or riot control agents.<sup>11</sup> These categories refer to the effect the agents have on the human body, and the route of penetration.<sup>12</sup> Nerve agents are classified as such due to their effect on the transmission of nerve

*“Exposure to nerve agents can cause death within a few minutes to hours after exposure depending on the concentration.”*

impulses in the nervous system.<sup>13</sup> Nerve agents can be absorbed through the skin or through respiration, and are water-soluble.<sup>14</sup> Sarin and VX are two of the most well-known nerve agents.<sup>15</sup> Sarin is typically taken in through respiration.<sup>16</sup> Exposure to nerve agents can cause death within a few minutes to hours after exposure depending on the concentration.<sup>17</sup> The critical effects of nerve agents are the paralysis of respiratory

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<sup>4</sup> *Id.*

<sup>5</sup> K. Ganesan, S. K. Raza, and R. Vijayaraghavan, *Chemical Warfare Agents*, J. Pharmacy & BioAllied Sci., Jul.-Sept. 2010.

<sup>6</sup> OPCW, *supra* note 2, at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> OPCW, *supra* note 2, at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> OPCW, *supra* note 2, at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

muscles and the respiratory center, leading to respiratory failure.<sup>18</sup> Other effects include constriction of the pupils, urination, decreased heart rate and blood pressure, muscle twitches and cramps, as well as convulsions.<sup>19</sup>

Similarly, choking agents attack the victim's respiratory tract causing pulmonary edema, where respiratory system membranes swell and the lungs fill with liquid starving the victim of oxygen.<sup>20</sup> This is commonly known as "dry-land drowning."<sup>21</sup> Symptoms include choking, coughing, headaches, chest tightness, and vomiting.<sup>22</sup> An example of a choking agent would be chlorine gas.<sup>23</sup> Chlorine is delivered in gas form, which is heavier than air, meaning it will linger close to the ground.<sup>24</sup> It is also has a very pungent odor and is irritating, which may provide warning to possible exposure.<sup>25</sup>

Blister agents, on the other hand, produce injuries to the skin of the victim that appear as burns.<sup>26</sup> These agents are oily substances and are absorbed through contact with the skin and inhalation.<sup>27</sup> Mustard gas is a well-known form of a blister agent.<sup>28</sup> Blister agents commonly cause damage to eyes and blindness.<sup>29</sup> While blister agents may not immediately cause death, like Sarin, infections in the lungs and permanent damage to the respiratory system can lead to death.<sup>30</sup>

Additionally, blood agents, such as hydrogen cyanide, are distributed through the blood stream inhibiting the transfer of oxygen by blood cells causing the body to suffocate.<sup>31</sup> Symptoms include confusion, giddiness, headaches, nausea, vomiting, convulsions, respiratory difficulty

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> FAS, *supra* note 1, at 2.

<sup>21</sup> K. Ganesan, S. K. Raza, and R. Vijayaraghavan, *Chemical Warfare Agents*, J. Pharmacy & BioAllied Sci., Jul.-Sept. 2010.

<sup>22</sup> FAS, *supra* note 1, at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> OPCW, *supra* note 2, at 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> FAS, *supra* note 1, at 2.

<sup>31</sup> OPCW, *supra* note 2, at 2.

and failure.<sup>32</sup> However, in sufficiently high concentrations, the victim will die before the development of symptoms.<sup>33</sup>

## HISTORY OF CHEMICAL WARFARE

The first major deployment of modern chemical weapons occurred in World War I.<sup>34</sup> Chlorine, phosgene, and mustard gases were the primary chemical weapons utilized by various state actors during World War I.<sup>35</sup> Estimates vary, but at least 90,000 people were killed and more than one million were injured by chemical weapons during the War.<sup>36</sup> The horrors that chemical weapons inflicted on the battlefield during World War I eventually led to the development of the 1925 Geneva Protocol.<sup>37</sup> The 1925 Geneva Protocol condemned the wartime use of “asphyxiating, poisonous or other gases, and of all analogous liquids, material or devices...”<sup>38</sup>

Yet, despite the promulgation of the 1925 Geneva Protocol the development and use of chemical weapons on the battlefield persisted. The Imperial Japanese Army used chemical weapons prolifically during its war of conquest in Asia.<sup>39</sup> Additionally, Nazi Germany is quite infamous for its use of the deadly chemical agent Zyklon B as a means of extermination in its prison camps in Europe.<sup>40</sup> The U.S. and the former Soviet Union both continued to develop and maintain their chemical weapon stockpiles during the Cold War.<sup>41</sup> During the Iran-Iraq War of the 1980’s, Iraq used mustard gas and nerve agents against Iranian forces, and against Kurdish populations in Northern Iraq.<sup>42</sup>

The importance of the 1925 Geneva Protocol did not wane with the disappearance of the League of Nations. State parties have continued obligations with respect to its provisions. Further, there

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> U.N. Office for Disarmament, *Weapons of Mass Destruction - Chemical Weapons*, <https://www.un.org/disarmament/wmd/chemical/> (last visited Apr. 12, 2017) [hereinafter UNODA].

<sup>35</sup> OPCW, *Brief History of Chemical Weapons Use*, <https://www.opcw.org/about-chemical-weapons/history-of-cw-use/> (last visited Apr. 13, 2017) [hereinafter OPCW, *Brief History*].

<sup>36</sup> *Id.*

<sup>37</sup> Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925, 26 U.S.T. 571.

<sup>38</sup> *Id.*

<sup>39</sup> Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934-2006 (William H. Cunliffe) (2014), <https://www.archives.gov/files/iwg/japanese-war-crimes/select-documents.pdf>.

<sup>40</sup> U.N. War Crimes Comm’n, Law Reports of Trials of War Criminals (Vol. 1, 1947), [https://www.loc.gov/rr/frd/Military\\_Law/pdf/Law-Reports\\_Vol-1.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-1.pdf).

<sup>41</sup> OPCW, *Brief History*, *supra* note 35, at 5.

<sup>42</sup> *Id.*

have been numerous U.N. General Assembly resolutions that reiterate the importance of the 1925 Geneva Protocol. In 1966 the General Assembly Resolution 2162 called for strict observance of the Protocol, and in 1969, Resolution 2603 declared a prohibition on the use of chemical weapons in international armed conflicts. Syria did not accede to the Protocol until 1968.<sup>43</sup>

On 3 September 1992, the Conference on Disarmament<sup>44</sup> presented the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (CWC) in its annual report on 3 September 1992.<sup>45</sup> By its date of entry in 1997, 165 States signed the CWC.<sup>46</sup> The CWC is administered by the Organisation for the Prohibition of Chemical Weapons (OPCW).

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<sup>43</sup> 17 December 1968 marks Syria's ascension to the Convention with the reservation that its ascension in no way indicates recognition of Israel's statehood.

<sup>44</sup> U.N. Office at Geneva, *An Introduction to the Conference*, [http://www.unog.ch/80256EE600585943/\(httpPages\)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument), (the Conference on Disarmament was established in 1979 as the sole multilateral disarmament negotiating forum of the international community) (last visited Apr. 13, 2017).

<sup>45</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and On Their Destruction, Organization for the Prohibition of Chemical Weapons (Jan. 13, 1993) [https://www.opcw.org/fileadmin/OPCW/CWC/CWC\\_en.pdf](https://www.opcw.org/fileadmin/OPCW/CWC/CWC_en.pdf).

The Harvard Sussex Program on CBW Armament and Arms Limitation, The 1993 Chemical Weapons Convention (Jan. 31, 2001), <http://www.fas.harvard.edu/~hsp/chemical.html>.

<sup>46</sup> The Harvard Sussex Program on CBW Armament and Arms Limitation, The 1993 Chemical Weapons Convention (Jan. 31, 2001), <http://www.fas.harvard.edu/~hsp/chemical.html>.



# Sarin Gas in Syria



## Exposure to Sarin

Sarin can be released into the air where the vapor can contaminate water, food, and clothing. People can be exposed to Sarin through skin or eye contact or by breathing in the nerve agent.



## Chemical Weapon Classification

Chemical Weapons are often categorized as blister, blood, choking, or nerve agents. Sarin qualifies as an “asphyxiating, poisonous or other [gas].”



## Treatment for Sarin Exposure

Treatment for exposure to Sarin consists of immediately removing the chemical from the body and seeking emergency medical attention. Those exposed to Sarin should seek high ground and fresh air. Antidotes are available but they are most useful if given immediately after exposure. Call 800-CDC-INFO for more information.



## Effects of Sarin on the Body

Sarin is one of the most well-known of the nerve agents. Exposure to nerve agents can cause death within a few minutes. It can take up to a hours after exposure depending on the concentration. The critical effects of nerve agents are the paralysis of respiratory muscles and the respiratory center, leading to respiratory failure. Other effects include constriction of the pupils, urination, decreased heart rate and blood pressure, muscle twitches and cramps, as well as convulsions.

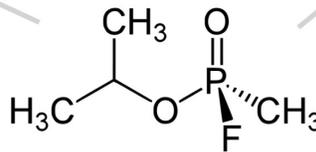
## Sarin Gas (GB)

Sarin is a toxic human-made chemical classified as a nerve agent. Sarin is a clear, colorless, odorless, and tasteless chemical that originated as a pesticide in 1938.



## Symptoms of Sarin Exposure

Exposure to Sarin may result in watery eyes, pinpoint pupils, eye pain, blurred vision, drooling and excessive sweating, coughing, chest tightness, rapid breathing, diarrhea, nausea, vomiting, and/or abdominal pain, increased urination, confusion, drowsiness, weakness, headache, slow or fast heart rate, low or high blood pressure, and blistering at the exposure site. Exposure to large doses of Sarin may result in loss of consciousness, convulsions, paralysis, and respiratory failure possibly leading to death or injury.



## Sarin in Idlib & Rif Dimashq

The April 4, 2017 chemical attacks in Khan Sheikhoun, Idlib were similar to the August 21, 2013 chemical attacks in Ghouta, Rif Dimashq. It is likely that the Syrian Government carried out both attacks.



## Relevant Law for Sarin Use

There is no lawful use of Sarin gas. The 1925 Geneva Protocol prohibits the use of chemical weapons in warfare. Use of Sarin violates Article 1 of the Chemical Weapons Convention that prohibits the use of chemical weapons. Article 8(2)(b)(xviii) of the Rome Statute expressly considers the use of sarin to be a war crime.

## CHEMICAL WARFARE IN THE SYRIAN CIVIL WAR

On 20 August 2012, U.S. President Barack Obama spoke about potential chemical weapon use in the Syrian Civil War.<sup>47</sup> President Obama stated,

“We have communicated in no uncertain terms to every player in the region that that’s a red line for us and that there would be enormous consequences if we start seeing movement on the chemical weapons front or the use of chemical weapons. That would change my calculations significantly.”<sup>48</sup>

Despite this warning by the U.S., reports of chemical weapons attacks perpetrated by the Syrian Armed Forces surfaced. The earliest alleged instance was on 17 October 2012, in the town of Salqin, Idlib Governorate, near the Turkish border. The Government of France reported the attack to the UN Secretary-General.<sup>49</sup> There were no reports of casualties. On 19 March 2013, the Syrian Armed forces attacked with Sarin gas in Khan al-Assal suburbs of Aleppo, killing more than 20 civilians.<sup>50</sup>

On 21 August 2013, the Syrian government carried out a chemical weapon attack in the Damascus suburbs of Ghouta.<sup>51</sup> The Syrian government used the nerve agent Sarin, killing 1,429 people (mostly civilians) including 426 children.<sup>52</sup> An OPCW investigation and U.S. intelligence officials would later confirm these attacks.<sup>53</sup> Heeding international outcry, on 10 September 2013, Syria’s Foreign Minister Walid Moallem admitted that the Syrian Armed Forces possessed chemical weapons in contravention of the CWC.<sup>54</sup> Moallem also stated that Syria aimed to comply with the CWC by ceasing production of chemical weapons and by opening its facilities

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<sup>47</sup> Press Release, Office of the Press Sec., Remarks by the President to the White House Press Corps (Aug. 20, 2012, 1:27 PM), <https://obamawhitehouse.archives.gov/the-press-office/2012/08/20/remarks-president-white-house-press-corps>, (“We have been very clear to the Assad regime, but also to other players on the ground, that a red line for us is we start seeing a whole bunch of chemical weapons moving around or being utilized. That would change my calculus. That would change my equation.”).

<sup>48</sup> *Id.*

<sup>49</sup> Final Report, *United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic*, U.N. OFFICE FOR DISARMAMENT (Dec. 13 2013), <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/12/report.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> Press Release, Office of the Press Sec., Gov’t Assessment of the Syrian Gov’t’s Use of Chemical Weapons on August 21, 2013 (Aug. 30, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/08/30/government-assessment-syrian-government-s-use-chemical-weapons-august-21>.

<sup>52</sup> *Id.*

<sup>53</sup> *About OPCW-UN Joint Mission-Background*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, <http://opcw.unmissions.org/AboutOPCWUNJointMission/Background.aspx> (last visited Apr. 7, 2017).

<sup>54</sup> Anne Barnard, *In Shift, Syrian Official Admits Government Has Chemical Arms*, NY TIMES (Sept. 10, 2013), [http://www.nytimes.com/2013/09/11/world/middleeast/Syria-Chemical-Arms.html?\\_r=0](http://www.nytimes.com/2013/09/11/world/middleeast/Syria-Chemical-Arms.html?_r=0).

to international monitoring.<sup>55</sup> On 14 September 2013, Syria deposited an instrument of accession with the U.N. Secretary-General that declared Syria's commitment to the CWC.<sup>56</sup>

On 17 September 2013, the OPCW announced the *Framework for Elimination of Syrian Chemical Weapons*, (brokered by U.S. and Russia) which laid forth the general procedure for destroying Syria's chemical weapon stockpiles.<sup>57</sup> U.N. Security Council Resolution 2118 formalized the OPCW decision.<sup>58</sup> On 27 September 2013, in response to Syria's accession to the CWC, the Framework brokered by the U.S. and Russia, and Security Council Resolution 2218, the OPCW Executive Council adopted a decision ordering the destruction of Syrian chemical weapons and facilities.<sup>59</sup> Accordingly, by the end of August 2014, the OPCW oversaw the

*“[T]he intrusion of chemical weapons on the battlefield in Syria persists.*

destruction of 94% of Syria's declared stockpile of chemical weapons, including all Category 1 chemical weapons, such as Sarin.<sup>60</sup> According to OPCW monitoring, the Syrian government met its deadlines for removing its chemical weapons stockpile.<sup>61</sup> Yet, despite these diplomatic advancements, the intrusion of

chemical weapons on the battlefield in Syria persists.

In October 2016, outgoing United Nations Secretary-General Ban Ki Moon expressed concern about reports of ongoing chemical attacks despite the OPCW action.<sup>62</sup> On 13 January 2017, the OPCW implicated President Assad and his brother Maher Al Assad for ordering the use of

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<sup>55</sup> *Id.*

<sup>56</sup> *About OPCW-UN Joint Mission-Background*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, <http://opcw.unmissions.org/AboutOPCWUNJointMission/Background.aspx> (last visited Apr. 7, 2017).

<sup>57</sup> OPCW Executive Council, Joint National Paper by the Russian Federation and the United States of America – Framework for Elimination of Syrian Chemical Weapons (Sept. 17, 2013), [https://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33nat01\\_e\\_.pdf](https://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33nat01_e_.pdf).

<sup>58</sup> S.C. Res. 2118, (Sept. 27, 2013) (“Deeply outraged by the use of chemical weapons on 21 August 2013 in Rif Damascus, as concluded in the Mission’s report, condemning the killing of civilians that resulted from it, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of chemical weapons must be held accountable.”).

<sup>59</sup> OPCW Executive Council, Decision [on the] Destruction of Syrian Chemical Weapons, EC-M-33/DEC.1 27 (Sept. 2013). [https://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33dec01\\_e\\_.pdf](https://www.opcw.org/fileadmin/OPCW/EC/M-33/ecm33dec01_e_.pdf).

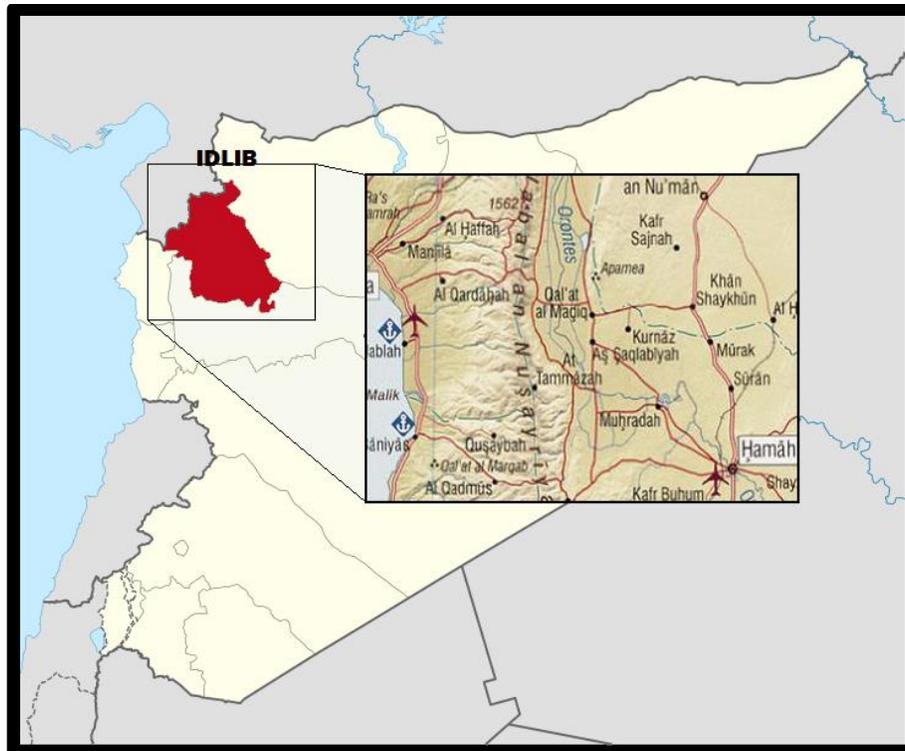
<sup>60</sup> *OPCW: All Category 1 Chemicals Declared by Syria Now Destroyed*, ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (Aug. 28, 2014), <https://www.opcw.org/news/article/opcw-all-category-1-chemicals-declared-by-syria-now-destroyed>.

<sup>61</sup> *Last of Syria's chemical weapons shipped out*, BBC NEWS (June 23, 2014), <http://www.bbc.com/news/world-middle-east-27974379>.

<sup>62</sup> S.C. Letter from the Secretary-General addressed to the President of the Security Council, S/2016/888 (Oct. 21, 2016), [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2016\\_888.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_888.pdf), (The letter specifies attacks on 11 April 2014, 18 April 2014, 21 April 2014, 29–30 April 2014, 25–26 May 2014, 16 March 2015, 24 March 2015, and 21 August 2015.).

chemical weapons.<sup>63</sup> On 13 February 2017, the Human Rights Watch (HRW) reported there were at least 8 chlorine gas attacks during the siege of Aleppo.<sup>64</sup> These chemical weapon attacks launched by the Syrian government killed 9 civilians (including 4 children), and injured at least 200 others.<sup>65</sup> On 28 February 2017, Russia and China vetoed a Security Council resolution (drafted by the US, UK and France) that, *inter alia*, sought to sanction 11 commanders from the Syrian Armed Forces for allegations of chemical attacks.<sup>66</sup>

## **KHAN SHEIKHOUN CHEMICAL ATTACK – 4 APRIL 2017**



### ***Timeline***

On 4 April 2017, around 6:30 in the morning local time, witnesses recounted warplanes carrying out an aerial strike in Khan Sheikhoun, a rebel-held town in the southern part of the Idlib

<sup>63</sup> Anthony Deutsch, *Exclusive: Assad linked to Syrian chemical attacks for first time*, REUTERS (Jan. 13, 2017, 2:08 PM), <http://www.reuters.com/article/us-mideast-crisis-syria-chemical-weapons-idUSKBN14X1XY>.

<sup>64</sup> *Syria: Coordinated Chemical Attacks on Aleppo*, HUMAN RIGHTS WATCH (Feb. 13, 2017, 10:57 AM), <https://www.hrw.org/news/2017/02/13/syria-coordinated-chemical-attacks-aleppo>.

<sup>65</sup> *Id.*

<sup>66</sup> *Syria war: Russia and China veto sanctions*, BBC NEWS (Feb. 28, 2017), <http://www.bbc.com/news/world-middle-east-39116854>.

governorate.<sup>67</sup> Following the bombing, numerous civilians began having respiratory problems including gasping for air and staggered breathing.<sup>68</sup> Rescue workers arrived on the scene shortly after the attack, not knowing that a chemical agent had been used.<sup>69</sup>

U.S. military radar suggests that the Syrian Air Force carried out the attack.<sup>70</sup> U.S. military forces monitored a Syrian Air Force fixed-wing aircraft take off from Shayrat airbase in Homs on the morning of 4 April.<sup>71</sup> The aircraft flew over Khan Sheikhoun on two occasions, once at 6:37 a.m., and again at 6:46 a.m.<sup>72</sup> Most other States and rebel forces on the ground assert that the Syrian Government is responsible for the attack, due to the Syrian Air Force having the only aircraft in the area at the time.<sup>73</sup>

*The attack [on Khan Sheikhoun] left at least 87 people dead, including 28 children and more than 500 people injured.*

The Russian and Syrian militaries state that on 4 April, the Syrian Air Force delivered an airstrike on the eastern outskirts of Khan Sheikhoun in order to destroy militant facilities used to produce chemical bombs.<sup>74</sup> They stated that these bombs were previously sent to Iraq and even used in Aleppo.<sup>75</sup> Their claim is that after the bombing by the Syrian Air Force, the chemical weapons in the facilities were released to the atmosphere, causing many casualties.<sup>76</sup> Many have rejected the Russian and Syrian explanation including some calling their story “fanciful.”<sup>77</sup>

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<sup>67</sup> Ellen Francis, *Scores reported killed in gas attack on Syrian rebel area*, REUTERS (Apr. 5, 2017), <http://www.reuters.com/article/us-mideast-crisis-syria-idlib-idUSKBN1760IB>.

<sup>68</sup> Anne Barnard and Michael R. Gordon, *Worst Chemical Attack in Years in Syria; U.S. Blames Assad*, THE NEW YORK TIMES (APR. 4, 2017), [https://www.nytimes.com/2017/04/04/world/middleeast/syria-gas-attack.html?\\_r=0](https://www.nytimes.com/2017/04/04/world/middleeast/syria-gas-attack.html?_r=0).

<sup>69</sup> *Id.* (This left at least five members of the White Helmets Civil Defense organization injured from exposure to the chemical agent.)

<sup>70</sup> *Syria ‘chemical attack’: What we know*, BBC NEWS (Apr. 7, 2017), <http://www.bbc.com/news/world-middle-east-39500947> [hereinafter BBC].

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *WHO says people affected by nerve agents in Idlib chemical attack*, TASS RUSSIAN NEWS AGENCY (Apr. 5, 2017), <http://tass.com/world/939493>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> BBC, *supra* note 70, at 11.

The attack left at least 87 people dead, including 28 children and more than 500 people injured.<sup>78</sup> Described as “constitute[ing] the single largest chemical weapons attack in Syria since the attack on eastern Ghouta in August 2013,” the story is corroborated by numerous eyewitness accounts.<sup>79</sup>

### *Eyewitness Accounts*

Many of the people living in Khan Sheikhoun were sleeping when Syrian warplanes dropped Sarin nerve agent into the Idlib suburb.<sup>80</sup> Mariam Abu Khalil was one of the few who were awake when the bombs hit.<sup>81</sup> Khalil is a fourteen-year-old resident of the Idlib suburb.<sup>82</sup> She described a bomb hitting a nearby building, “It was like a winter fog.”<sup>83</sup> Although Khalil took shelter in her own home, she described how first responders reacted to the gas.<sup>84</sup> She said, “they inhaled the gas and died.”<sup>85</sup>

People such as Hussein Kayal, a member of the Edlib Media Center, rushed to the scene of the bombing.<sup>86</sup> Kayal described people laying on the ground, unable to move, with constricted pupils.<sup>87</sup> Mohammed Rasoul described a similar scene.<sup>88</sup> Rasoul heads a charity ambulance service that responded to the attacks.<sup>89</sup> Rasoul’s employees reported that they found people choking in the streets—many of them children.<sup>90</sup> Similarly, the Syrian Observatory for Human

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<sup>78</sup> Jack Moore, *Khan Sheikhoun, Town Where Chemical Attack Killed 86, Hit in Another Airstrike*, NEWSWEEK (Apr. 7, 2017), <http://www.newsweek.com/khan-sheikhoun-town-where-chemical-attack-killed-86-hit-further-airstrikes-580483>.

<sup>79</sup> *Syrian chemical attack largest attack since 2013*, THE CITIZEN (Apr. 6, 2017), <http://citizen.co.za/news/news-africa/1479842/syrian-chemical-attack-largest-attack-since-2013/> (Quoting Kim Won-soo, the UN High Representative for Disarmament Affairs.)

<sup>80</sup> BBC, *supra* note 70, at 11.

<sup>81</sup> BBC, *supra* note 70, at 11.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> BBC, *supra* note 70, at 11.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> BBC, *supra* note 70, at 11.

Rights reported that medics treating survivors showed symptoms of foaming at the mouth, fainting, and vomiting.<sup>91</sup>

To some people who rushed to the location of the bombing, the use of chemical weapons was apparent.<sup>92</sup> “We knew that some kind of poison gas was used,” Hamid Kutini said.<sup>93</sup> “The team found people fainting, and people with froth coming from the mouth, and shivers in their bodies...many died while they were asleep.”<sup>94</sup> Kutini is a member of the White Helmets, and rushed in to help those affected by the bombings.<sup>95</sup> He said he got into the area immediately after the bombs were dropped, and told reporters that he was still suffering from weakness in vision, a headache, and colorblindness several hours after the attack.<sup>96</sup>

In addition to eyewitnesses and first responders, doctors treating victims of the attack found their patients to be exhibiting signs of chemical weapon inhalation.<sup>97</sup> Doctor AbdulHai Tennari, told the Associated Press that the April 4 bombing appeared to be much more serious than a chlorine attack.<sup>98</sup> Tennari is a pulmonologist who treated many victims of the attack.<sup>99</sup> He said that many people died before being able to reach a hospital.<sup>100</sup> “If they got to the hospital we can treat them. Two children who took a while before they were lifted out of the rubble died.”<sup>101</sup>

### ***International Reactions and Responses***

At the same time world leaders were meeting at the Brussels Conference on the Future of Syria, news broke that the Syrian government was suspected of carrying out a chemical attack in Khan

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<sup>91</sup> *Syria conflict: ‘Chemical attack’ in Idlib kills 58*, BBC NEWS (Apr. 4, 2017), <http://www.bbc.com/news/world-middle-east-39488539>.

<sup>92</sup> Lizzie Dearden, *Syria chemical attack: Sarin gas likely weapon used in Idlib as experts say Russian claims ‘don’t add up’*, INDEPENDENT (Apr. 5, 2017), <http://www.independent.co.uk/news/world/middle-east/syria-chemical-attack-idlib-Sarin-gas-toxic-khan-sheikhoun-russia-assad-claims-experts-evidence-a7668996.html>.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Sarah el Deeb and Zeina Karam, *Chemical attack kills dozens in Syria, US blames Assad*, ASSOCIATED PRESS (Apr. 5, 2017), <https://www.apnews.com/0bbfce47f71c4955bc532f39c69ff3a8>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

Sheikhoun.<sup>102</sup> Around the world, governments released statements of outrage and called for investigations into the attack.

U.K. Prime Minister Theresa May reaffirmed support for the removal of Assad, “I’m very clear that there can be no future for Assad in a stable Syria which is representative of all the Syrian people and I call on all the third parties involved to ensure that we have a transition away from Assad. We cannot allow this suffering to continue.”<sup>103</sup> She urged the OPCW to investigate.<sup>104</sup>

U.K. Foreign Minister Boris Johnson also said that “[i]f this is shown to be the work of the regime, it is further evidence of the atrocities perpetrated against the Syrian people over six years of appalling conflict.”<sup>105</sup>

Similarly, the U.S. immediately condemned the attack. The White House released a statement saying, “Today’s chemical attack in Syria against innocent people, including women and children, is reprehensible and cannot be ignored by the civilized world. ... The United States stands with our allies across the globe to condemn this intolerable act.”<sup>106</sup> Likewise, France’s Minister of Foreign Affairs and International Development, Jean Marc Ayrault, requested an emergency Security Council meeting to discuss the attacks.<sup>107</sup> He also emphasized that, “France has, since the start of the conflict, done its utmost to ensure that the international community sheds full light on the use of chemical weapons in Syria, identifies the perpetrators and draws the necessary conclusions to put an end to it.”<sup>108</sup>

The High Representative for Disarmament Affairs to the Security Council, Kim Won-Soo, noted that the attack was carried out through an airstrike in a residential area, and that “[i]f confirmed, this would constitute the single largest chemical weapons attack in [Syria] since the attack on

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<sup>102</sup> Robin Emmott and Gabriela Baczynska, *Conference on Syria overshadowed by chemical attack*, REUTERS (Apr. 5, 2017), <http://www.reuters.com/article/us-mideast-crisis-syria-conference-idUSKBN176001>.

<sup>103</sup> Martin Chulov and Kareem Shaheen, *Syria chemical weapons attack toll rises to 70 as Russian narrative is dismissed*, THE GUARDIAN (Apr. 5, 2017), <https://www.theguardian.com/world/2017/apr/04/syria-chemical-attack-idlib-province>.

<sup>104</sup> *Id.*

<sup>105</sup> Press Release from Boris Johnson, Foreign Sec., U.K. Foreign & Commonwealth Office, Chemical Weapons Attack in Syria (Apr. 4, 2017), <https://www.gov.uk/government/news/foreign-secretary-comments-on-reports-of-chemical-weapons-attack-in-syria>.

<sup>106</sup> Press Gaggle by Press Sec. Sean Spicer, Office of Press Sec. (Apr. 4, 2017, 11:45 AM), <https://www.whitehouse.gov/the-press-office/2017/04/04/press-gaggle-press-secretary-sean-spicer-442017>.

<sup>107</sup> Statement from Jean-Marc Ayrault, Minister of Foreign Affairs and Int’l Development (Apr. 4, 2017), <http://www.diplomatie.gouv.fr/en/country-files/syria/events/article/chemical-attack-in-syria-statement-by-jean-marc-ayrault-minister-of-foreign>.

<sup>108</sup> Statement from Jean-Marc Ayrault, Minister of Foreign Affairs and Int’l Development (Apr. 4, 2017), <http://www.diplomatie.gouv.fr/en/country-files/syria/events/article/chemical-attack-in-syria-statement-by-jean-marc-ayrault-minister-of-foreign>.

Eastern Ghouta in August 2013.”<sup>109</sup> The OPCW also released a statement “[condemning] the use of chemical weapons by anyone, anywhere and under any circumstances.”<sup>110</sup>

Following the attack, the international community took steps to identify the chemical agent used in the attack. Jerry Smith, who supervised removal of Syrian Sarin stockpiles, said after analyzing footage of the aftermath,

“[i]f you look at the footage itself, the victim’s don’t have any physical trauma injuries. There is a foaming and pinpointed pupils, in particular. This appears to be some kind of organo-phosphate poison. In theory, a nerve agent. The toxicity of chlorine does not lend itself to the sort of injuries and numbers that we have seen.”<sup>111</sup>

Turkey’s Justice Minister Bekir Bozdag reported that autopsies conducted on victims “[confirmed] that chemical weapons were used.”<sup>112</sup> He also reported that “scientific investigations” confirmed the use of chemical agents, but did not elaborate further.<sup>113</sup>

There were also calls for the Security Council to take action. France, the U.K. and the U.S. proposed a resolution to the Security Council requesting an international investigation.<sup>114</sup> The proposed resolution would require the Syrian government to provide flight plans and logs for the day of the attack, in addition to the names of all helicopter squadron commanders.<sup>115</sup> Syria would also have to provide access to air bases where the attacks may have been launched.<sup>116</sup> The

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<sup>109</sup> S.C. Meetings Coverage SC/12777 (Apr. 5, 2017), <https://www.un.org/press/en/2017/sc12777.doc.htm>.

<sup>110</sup> Press Release, Organisation for the Prohibition of Chemical Weapons, OPCW Press Release on Allegations of Chemical Weapons Use in Southern Idlib, Syria (Apr. 4, 2017), <https://www.opcw.org/news/article/opcw-press-release-on-allegations-of-chemical-weapons-use-in-southern-idlib-syria/>.

<sup>111</sup> Martin Chulov and Kareem Shaheen, *Syria chemical weapons attack toll rises to 70 as Russian narrative is dismissed*, THE GUARDIAN (Apr. 5, 2017, 9:56 EDT), <https://www.theguardian.com/world/2017/apr/04/syria-chemical-attack-idlib-province>.

<sup>112</sup> *Turkey says autopsies show chemical weapons used in Idlib attack*, SPECIAL BROADCASTING SERVICE (Apr. 7, 2017, 6:33 AM), <http://www.sbs.com.au/news/article/2017/04/06/turkey-says-autopsies-show-chemical-weapons-used-idlib-attack>.

<sup>113</sup> *Turkey says autopsies show chemical weapons used in Idlib attack*, SPECIAL BROADCASTING SERVICE (Apr. 7, 2017, 6:33 AM), <http://www.sbs.com.au/news/article/2017/04/06/turkey-says-autopsies-show-chemical-weapons-used-idlib-attack>.

<sup>114</sup> *U.S., France, Britain propose U.N. resolution on Syria gas attack*, REUTERS (Apr. 5, 2017, 9:25 AM BST), <http://uk.reuters.com/article/uk-mideast-crisis-syria-resolution-idUKKBN17702O?il=0>.

<sup>115</sup> *U.S., France, Britain propose U.N. resolution on Syria gas attack*, REUTERS (Apr. 5, 2017, 9:25 AM BST), <http://uk.reuters.com/article/uk-mideast-crisis-syria-resolution-idUKKBN17702O?il=0>.

<sup>116</sup> *U.S., France, Britain propose U.N. resolution on Syria gas attack*, REUTERS (Apr. 5, 2017, 9:25 AM BST), <http://uk.reuters.com/article/uk-mideast-crisis-syria-resolution-idUKKBN17702O?il=0>.

proposal included monthly reports by U.N. Secretary-General Antonio Guterres on Syrian cooperation in the investigation.<sup>117</sup>

Russia and Iran also faced criticism following the attack. The U.S. State Department said that there should be “no illusions about Assad or his intentions. Anyone who uses chemical weapons to attack his own people shows a fundamental disregard for human decency and must be held accountable.”<sup>118</sup> The State Department also called for Iran and Russia to “exercise their influence over the Syrian regime and to guarantee that this sort of horrific attack never happens again.”<sup>119</sup> While speaking to the Security Council, Matthew Rycroft, U.K. ambassador to the U.N., said that Assad had “humiliated” Russia.<sup>120</sup>

In the aftermath of the attack, Russia provided a very different version of the events. Defense Ministry representative Igor Konoshenkov, speaking on a Youtube channel, reported that Syria had carried out an airstrike on a “large terrorist ammunition depot and a concentration of military hardware in the eastern outskirts of [Khan Sheikhoun] town.”<sup>121</sup> He claimed that the site of the strikes included a workshop that produced chemical weapons.<sup>122</sup> Syria provided the same story. The Syrian General Commander of the Army and Armed Forces “categorically denied on Tuesday allegations and claims circulated by media outlets, which are partner in shedding the Syrian blood, about the use of chemical substances in the town of [Khan Sheikhoun] in [Idlib] countryside.”<sup>123</sup> In response to the proposed Security Council resolution, Vladimir Safronkov (Russia’s deputy ambassador to the U.N.) accused the U.K. of being “obsessed” with overthrowing Assad.<sup>124</sup> According to Safronkov, there is no need for a new resolution, and any

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<sup>117</sup> *U.S., France, Britain propose U.N. resolution on Syria gas attack*, REUTERS (Apr. 5, 2017, 9:25 AM BST), <http://uk.reuters.com/article/uk-mideast-crisis-syria-resolution-idUKKBN17702O?il=0>.

<sup>118</sup> Press Release from Rex Tillerson, Sec. of State, U.S. State Dep’t, Chemical Weapons Attack in Syria (Apr. 4, 2017), <https://www.state.gov/secretary/remarks/2017/04/269460.htm>.

<sup>119</sup> Press Release from Rex Tillerson, Sec. of State, U.S. State Dep’t, Chemical Weapons Attack in Syria (Apr. 4, 2017), <https://www.state.gov/secretary/remarks/2017/04/269460.htm>.

<sup>120</sup> *Syria chemical 'attack': Russia faces fury at UN Security Council*, BBC NEWS (Apr. 5, 2017), <http://www.bbc.com/news/world-middle-east-39500319>.

<sup>121</sup> *US, France and Britain propose UN resolution on Syria 'chemical weapons attack'*, THE TELEGRAPH (Apr. 5, 2017, 4:39 AM), <http://www.telegraph.co.uk/news/2017/04/05/us-france-britain-propose-un-resolution-syria-chemical-attack/>.

<sup>122</sup> *US, France and Britain propose UN resolution on Syria 'chemical weapons attack'*, THE TELEGRAPH (Apr. 5, 2017, 4:39 AM), <http://www.telegraph.co.uk/news/2017/04/05/us-france-britain-propose-un-resolution-syria-chemical-attack/>.

<sup>123</sup> *Army general Command categorically denies using chemical materials in Khan Shaikhoun*, SYRIAN ARAB NEWS AGENCY (Apr. 4, 2017), <http://sana.sy/en/?p=103554>.

<sup>124</sup> *Syria chemical 'attack': Russia faces fury at UN Security Council*, BBC NEWS (Apr. 5, 2017), <http://www.bbc.com/news/world-middle-east-39500319>.

international investigation must be “full, [and] objective.”<sup>125</sup> Additionally, he called the video evidence of the attack staged.<sup>126</sup>

The Syrian Arab News Agency (or SANA, the state-run media outlet) reported that Syria “didn’t and will never use those materials in any place or time, nor in the future.”<sup>127</sup> SANA also reported that Russian President Vladimir Putin made claims that, “Russia has data that new provocations are planned in Syria with the goal of putting the blame on Damascus for allegedly using chemical weapons.”<sup>128</sup>

However, much of the international community viewed Russia’s version of events with skepticism. Colonel Hamish de Bretton-Gordon, a chemical weapons expert that spoke to the BBC, said that the Russian version was “fanciful.”<sup>129</sup> He went on to say, “It’s very clear it’s a Sarin attack. The view that it’s an al-Qaida or rebel stockpile of Sarin that’s been blown up in an explosion, I think is completely unsustainable and completely untrue.”<sup>130</sup>

In response to the attacks, in the early hours of 7 April, the U.S. launched 59 Tomahawk cruise missiles from the USS Ross and USS Porter, targeting al-Shayrat airbase near Homs.<sup>131</sup> The U.S. warned Russian troops in the area approximately 90 minutes prior to the attack.<sup>132</sup> U.S. President Trump ordered the strikes, citing the “vital national security interest of the United States to

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<sup>125</sup> *Syria chemical 'attack': Russia faces fury at UN Security Council*, BBC NEWS (Apr. 5, 2017), <http://www.bbc.com/news/world-middle-east-39500319>.

<sup>126</sup> *Syria chemical 'attack': Russia faces fury at UN Security Council*, BBC NEWS (Apr. 5, 2017), <http://www.bbc.com/news/world-middle-east-39500319>.

<sup>127</sup> *Army general Command categorically denies using chemical materials in Khan Shaikhoun*, SYRIAN ARAB NEWS AGENCY (Apr. 4, 2017), <http://sana.sy/en/?p=103554>.

<sup>128</sup> *Putin: Russia has data that new chemical weapons provocations are planned in Syria to blame Damascus*, SYRIAN ARAB NEWS AGENCY (Apr. 11, 2017), <http://sana.sy/en/?p=104085>.

<sup>129</sup> Martin Chulov and Kareem Shaheen, *Syria chemical weapons attack toll rises to 70 as Russian narrative is dismissed*, THE GUARDIAN (Apr. 5, 2017, 9:56 EDT), <https://www.theguardian.com/world/2017/apr/04/syria-chemical-attack-idlib-province>.

<sup>130</sup> Martin Chulov and Kareem Shaheen, *Syria chemical weapons attack toll rises to 70 as Russian narrative is dismissed*, THE GUARDIAN (Apr. 5, 2017, 9:56 EDT), <https://www.theguardian.com/world/2017/apr/04/syria-chemical-attack-idlib-province>.

<sup>131</sup> Nadia Khomami and Jamie Grierson, *US military strikes on Syria: what we know so far*, THE GUARDIAN (Apr. 7, 2017, 1:42 EDT), <https://www.theguardian.com/world/2017/apr/07/us-airstrikes-on-syria-donald-trump-what-we-know-so-far>.

<sup>132</sup> Nadia Khomami and Jamie Grierson, *US military strikes on Syria: what we know so far*, THE GUARDIAN (Apr. 7, 2017, 13:42 EDT), <https://www.theguardian.com/world/2017/apr/07/us-airstrikes-on-syria-donald-trump-what-we-know-so-far>.

prevent and deter the spread and use of deadly chemical weapons.”<sup>133</sup> Various international actors expressed support for the strikes.<sup>134</sup>

Assad and his allies, however, had a very different response to these strikes. The People’s Assembly of Syria issued a statement following the strikes, “This blatant aggression came in defense of the collapsed terrorist organizations and in an attempt to revive them since that Israel failed to carry out this mission before.”<sup>135</sup> The Assembly also went on to call the U.S. a “sponsor of terrorism in the world.”<sup>136</sup>

Russia, in response, suspended a 2015 deal to exchange flight information to avoid air incidents over Syria.<sup>137</sup> Valentina Matviyenko, Chairman of the Federation Council of the Federal Assembly of Russia, said that the U.S.’s actions constituted aggression and a violation of international law.<sup>138</sup> Iranian President Hassan Rouhani, in a phone call to President Assad, called the strikes a “blatant violation of the Syrian sovereignty and all the international laws and conventions.”<sup>139</sup>

## LEGAL ANALYSIS

The Syrian Government likely committed a war crime by dropping Sarin gas on Khan Sheikhoun. The 1925 Geneva Protocol<sup>140</sup> and the CWC, in addition to other international instruments, such as the Rome Statute, prohibit the use of chemical weapons in armed conflicts.<sup>141</sup>

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<sup>133</sup> EXEC. OFFICE OF THE PRESIDENT, LETTER TO CONGRESS ON SYRIAN AIRSTRIKES (Apr. 7, 2017).

<sup>134</sup> *UK government ‘fully supports’ US air strike in Syria*, BBC NEWS (Apr. 7, 2017), <http://www.bbc.com/news/uk-39524685>; *U.S. allies show support for strikes on Syria*, REUTERS (Apr. 7, 2017, 8:26 PM), <http://www.reuters.com/article/us-mideast-crisis-syria-reaction-idUSKBN1790M4>.

<sup>135</sup> *People’s Assembly strongly condemns US aggression on one of Syrian air bases in central region*, SYRIAN ARAB NEWS AGENCY (Apr. 7, 2017), <http://sana.sy/en/?p=103770>.

<sup>136</sup> *People’s Assembly strongly condemns US aggression on one of Syrian air bases in central region*, SYRIAN ARAB NEWS AGENCY (Apr. 7, 2017), <http://sana.sy/en/?p=103770>.

<sup>137</sup> May Bulman, *US air strikes in Syria: Russia suspends agreement preventing direct conflict with American forces*, INDEPENDENT (Apr. 7, 2017, 8:04 BST), <http://www.independent.co.uk/news/world/middle-east/us-russia-air-strikes-syria-suspend-agreement-memorandum-direct-conflict-military-donald-trump-putin-a7671631.html>.

<sup>138</sup> *Putin: Russia has data that new chemical weapons provocations are planned in Syria to blame Damascus*, SYRIAN ARAB NEWS AGENCY (Apr. 11, 2017), <http://sana.sy/en/?p=104085>.

<sup>139</sup> *President al-Assad receives phone call from President Rouhani who expressed strong condemnation of US blatant aggression on Syria*, SYRIAN ARAB NEWS AGENCY (Apr. 9, 2017), <http://sana.sy/en/?p=103897>.

<sup>140</sup> See G.A. Res. 58/52, Art. 1(a)–(b), Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

<sup>141</sup> See Rome Statute of the International Criminal Court, 37 ILM 1002, Article 8(2)(b)(xviii) (1998).

The 1925 Geneva Protocol prohibits the use of chemical weapons in warfare.<sup>142</sup> The Protocol states,

“Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world; and...the High Contracting Parties...accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.”<sup>143</sup>

The 1925 Geneva Protocol did not, however, limit stockpiling, development, or production of chemicals, because some of the chemicals used for weapons are also utilized for industrial and commercial uses.<sup>144</sup> Syria acceded to the Protocol on 17 December 1968.<sup>145</sup> The CWC, adopted by the Conference on Disarmament in Geneva in 1992, sought to rectify the shortcomings of the 1925 Convention.<sup>146</sup>

Pursuant to the CWC, states must not “develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer....”<sup>147</sup> Additionally, the CWC prohibits, under *any* circumstances, the use of chemical weapons.<sup>148</sup> Prohibited chemical weapons include toxic chemicals,<sup>149</sup> defined as chemicals that “can cause death, temporary incapacitation or permanent harm to humans.”<sup>150</sup> These effects are consistent with the use of Sarin gas, which constitutes a prohibited chemical

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<sup>142</sup> Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925, 26 U.S.T. 571.

<sup>143</sup> Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925, 26 U.S.T. 571.

<sup>144</sup> *Chemical Weapons*, United Nations Office for Disarmament Affairs, <https://www.un.org/disarmament/wmd/chemical/> (last visited Apr. 16, 2017).

<sup>145</sup> Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925, 26 U.S.T. 571.

<sup>146</sup> *Chemical Weapons*, United Nations Office for Disarmament Affairs, <https://www.un.org/disarmament/wmd/chemical/> (last visited Apr. 16, 2017).

<sup>147</sup> CWC, *supra* note 45, at Art. I(1)(a).

<sup>148</sup> CWC, *supra* note 45, at Art. I(1)(b); G.A. Res. 58/52, Art. 1(a)–(b), Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

<sup>149</sup> G.A. Res. 58/52, Art. 2(1)(a), Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

<sup>150</sup> G.A. Res. 58/52, Art. 2(2), Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

weapon. Schedule 1 of the CWC confirms this assertion, by expressly identifying Sarin as a toxic chemical.<sup>151</sup>

The chemical weapon attack in Khan Sheikhoun, which is likely attributable to the Syrian Government, is a war crime in violation of the 1925 Geneva Protocol and the CWC. According to many eyewitness accounts, doctors treating patients, and the symptoms victims showed before death, the chemical agent used is consistent with that of the nerve-agent Sarin.<sup>152</sup> Sarin can cause vomiting, fainting, pinpoint or small pupils, blurred vision, headaches, convulsions, and respiratory failure among many other things.<sup>153</sup> Sarin can also be treated with atropine if administered soon after exposure.<sup>154</sup> All of these symptoms were present according to eyewitnesses and doctors.<sup>155</sup> Moreover, it was reported that atropine successfully treated the symptoms that several victims were exhibiting.<sup>156</sup> Although weaponized chlorine is a banned substance in armed conflict, and has been used in Syria before, the symptoms shown by victims of this airstrike were more comparable to that of Sarin.<sup>157</sup>

*The Syrian Government likely committed a war crime by dropping Sarin gas on Khan Sheikhoun.*

Sarin qualifies as an “asphyxiating, poisonous or other [gas],” therefore the 1925 Geneva Protocol prohibits Syria’s usage of it.<sup>158</sup> The attack also violates the obligations enshrined in

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<sup>151</sup> G.A. Res. 58/52, Schedule 1, Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

<sup>152</sup> Lizzie Dearden, *Syria chemical attack: Sarin gas likely weapon used in Idlib as experts say Russian claims ‘don’t add up’*, INDEPENDENT (Apr. 5, 2017), <http://www.independent.co.uk/news/world/middle-east/syria-chemical-attack-idlib-Sarin-gas-toxic-khan-sheikhoun-russia-assad-claims-experts-evidence-a7668996.html>.

<sup>153</sup> *Facts About Sarin*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://emergency.cdc.gov/agent/Sarin/basics/facts.asp> (last updated Nov. 18, 2015).

<sup>154</sup> *Facts About Sarin*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://emergency.cdc.gov/agent/Sarin/basics/facts.asp> (last updated Nov. 18, 2015).

<sup>155</sup> *See Syria conflict: ‘Chemical attack’ in Idlib kills 58*, BBC NEWS (Apr. 4, 2017), <http://www.bbc.com/news/world-middle-east-39488539>; Lizzie Dearden, *Syria chemical attack: Sarin gas likely weapon used in Idlib as experts say Russian claims ‘don’t add up’*, INDEPENDENT (Apr. 5, 2017), <http://www.independent.co.uk/news/world/middle-east/syria-chemical-attack-idlib-Sarin-gas-toxic-khan-sheikhoun-russia-assad-claims-experts-evidence-a7668996.html>.

<sup>156</sup> *Turkey says autopsies show chemical weapons used in Idlib attack*, SPECIAL BROADCASTING SERVICE (Apr. 7, 2017, 6:33 AM), <http://www.sbs.com.au/news/article/2017/04/06/turkey-says-autopsies-show-chemical-weapons-used-idlib-attack>.

<sup>157</sup> *See Syria conflict: ‘Chemical attack’ in Idlib kills 58*, BBC NEWS (Apr. 4, 2017), <http://www.bbc.com/news/world-middle-east-39488539>; Lizzie Dearden, *Syria chemical attack: Sarin gas likely weapon used in Idlib as experts say Russian claims ‘don’t add up’*, INDEPENDENT (Apr. 5, 2017), <http://www.independent.co.uk/news/world/middle-east/syria-chemical-attack-idlib-Sarin-gas-toxic-khan-sheikhoun-russia-assad-claims-experts-evidence-a7668996.html>.

<sup>158</sup> Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Jun. 17, 1925, 26 U.S.T. 571.

Article 1 of the CWC, and Sarin is a banned Schedule 1 gas in the CWC.<sup>159</sup> The CWC expressly bans the use of chemical weapons under all circumstances.<sup>160</sup> Because eyewitness accounts, medical professionals, and symptoms all indicate the use of Sarin during the 4 April Syrian airstrike, these actions are in contravention of the CWC.

Additionally, Article 8(2)(b)(xviii) of the Rome Statute expressly considers the use of “asphyxiating, poisonous or other gases” including Sarin and chlorine to be a war crime.<sup>161</sup> Although Syria is not a party to the Rome Statute, many international legal scholars consider the prohibition of chemical weapons to be customary international law, and thus unlawful in both

*“Both the 1925 Geneva Protocol and CWC do not allow any use of chemical weapons, such as Sarin gas.”*

international and non-international armed conflicts, regardless of whether the State is a party to one of the aforementioned conventions.<sup>162</sup>

Finally, the use of chemical weapons is per se banned in armed conflict. Both the 1925 Geneva Protocol and CWC do not allow *any* use of chemical weapons, such as Sarin gas. Sarin cannot be lawfully used on either

combatants or non-combatants. Thus, by using a banned chemical agent in the Khan Sheikhoun, Syria’s actions were a per se violation.

Based on the facts of the Khan Sheikhoun chemical attack, it is likely that the chemical agent used was Sarin. Sarin gas is a banned substance under the 1925 Geneva Protocol, and the CWC. There is no lawful use of Sarin in armed conflict. Thus, the most likely perpetrators of this attack, the Syrian Government, committed a war crime by using Sarin gas in an airstrike on the town Khan Sheikhoun.

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<sup>159</sup> G.A. Res. 58/52, Art. I, Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Dec. 17, 2003).

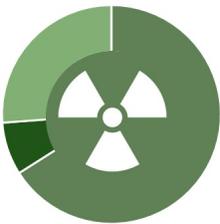
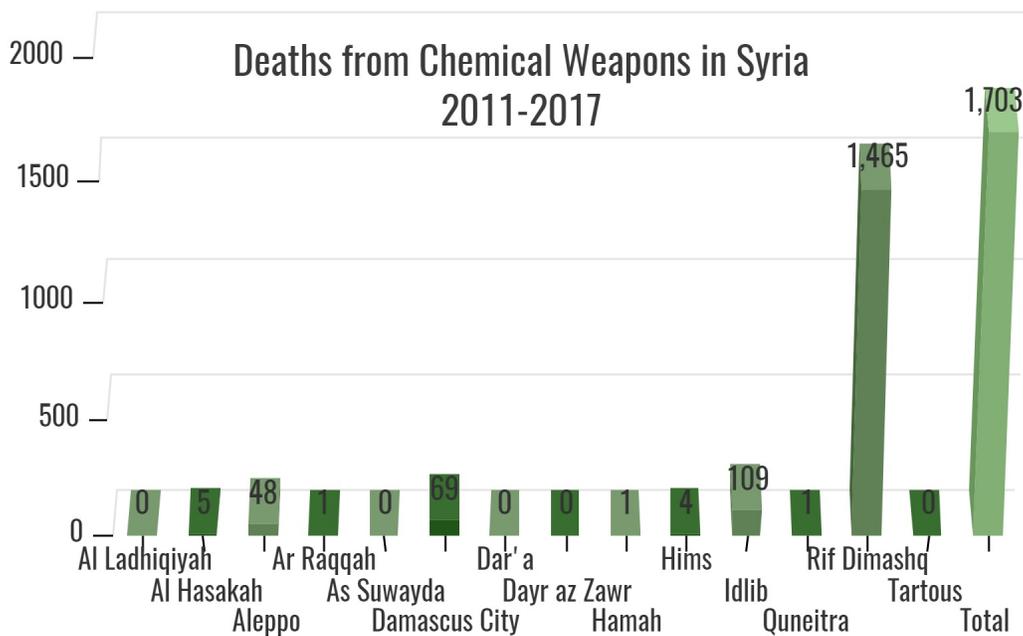
<sup>160</sup> CWC, *supra* note 45, at Art. I(1)(a).

<sup>161</sup> Rome Statute of the International Criminal Court, 37 ILM 1002, Article 8(2)(b)(xviii) (1998).

<sup>162</sup> JEAN-MARIE AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULES, RULE 74 (2005), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule74](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule74).

# Gas Attacks in Syria

## Chemical Weapons in the Syrian Conflict



3,600 INJURIES  
426 CHILD VICTIMS  
1,429 DEATHS

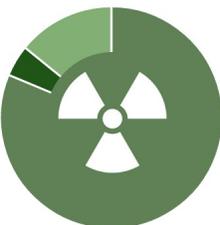
Chemical Weapons are banned per se in armed conflict against combatants and non-combatants. Article 8(2)(b) (xviii) of the Rome Statute expressly considers the use of “asphyxiating, poisonous or other gases” including Sarin and Chlorine to be a war crime.



97% of the Deaths from Chemical Weapons in Rif Dimashq

### Ghouta, Damascus Countryside August 21, 2013

The Syrian Government deployed Sarin Gas via a Surface-to-Surface Missile.



+500 INJURIES  
+28 CHILD VICTIMS  
+87 DEATHS

It is unlawful to develop, stockpile, or use chemical weapons. Sarin is prohibited by the 1925 Geneva Protocol, 204. Use of Sarin violates Article 1 of the Chemical Weapons Convention as a banned Schedule 1 gas in the CWC.205.



80% of the Deaths from Chemical Weapons in Idlib

### Khan Sheikhoun, Idlib April 4, 2017

The Syrian Government deployed Sarin Gas with an Aerial Strike.

## **RECOMMENDATIONS**

SAP recommends that all warring parties adhere to the negotiated ceasefire of 28 December 2016, so that the peace process can continue. The Syrian Government and local rebel groups should allow independent monitors and investigators into Khan Sheikhoun to allow for a full and thorough investigation. The findings from these attacks should be documented and turned over to the International, Impartial and Independent Mechanism on International Crimes Committed in the Syrian Arab Republic.

Furthermore, the Syrian Government should declare any remaining stockpiles of chemical weapons, in violation of their international obligations under the CWC. The Syrian Government should also allow the OPCW access to these stockpiles to ensure the destruction of any remaining chemical weapons.