



## 1

### ORIGINS AND SUMMARY

Established by the [Chemical Weapons Convention](#) (CWC) to monitor its implementation, the Organisation for the Prohibition of Chemical Weapons (OPCW) is mandated by the CWC to carry out non-judicial investigations of alleged use of chemical weapons.

The OPCW has a dedicated division, the Inspectorate Division, with preexisting human and financial resources to carry out such investigations of alleged use. As a result, OPCW investigations can be activated and deployed very rapidly (under twenty-four hours). OPCW investigations of alleged use may be initiated to determine whether chemical weapons have been used (Article X of the [CWC](#)), and, in certain cases, whether a specific state party to the CWC has used chemical weapons (Article IX of the [CWC](#)). They can also be initiated by the OPCW director-general in other cases of serious allegations of use of chemical weapons.<sup>1</sup> The main purpose of OPCW investigations is to verify whether violations of the CWC have occurred or to provide assistance and protection against the effects of chemical weapons as provided for in Article X of the [CWC](#).

OPCW investigations have never been specifically used to investigate attacks against healthcare, but if such attacks involved the alleged use of chemical weapons, they could well fall under the OPCW's investigative mandate.

## 2

### LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

#### Legal basis and framework

- **OPCW Inspectorate Division investigations:** The establishment of the OPCW Inspectorate Division was provided for in Art VIII (42) of the [CWC](#) as a unit of the Technical Secretariat under the supervision of the OPCW director-general. Under the CWC, the OPCW Inspectorate Division is mandated to conduct investigations of alleged use of chemical weapons in violation of the CWC.
- **Other OPCW investigations:** The OPCW director-general has the inherent power under the CWC to establish a fact-finding mission in the case of serious allegations of use of chemical weapons where he or she esteems this to be necessary to uphold the object and purpose of the convention.

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<sup>1</sup> The present factsheet concerns the OPCW's own investigative mechanisms, which are to be distinguished from the UN secretary-general's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons ([UNSG MICBW](#)) provided for by General Assembly [Resolution 42/7](#) (1987) investigating the alleged use of chemical weapons. It should be noted, though, that when the UNSG MICBW is activated, the OPCW is to cooperate closely with the secretary-general, making its resources (including those of its Inspectorate Division) available if so requested ([Verification Annex](#), Part XI, para. 27). The OPCW mechanisms are also to be distinguished from the [OPCW-UN Joint Investigative Mechanism for Syria](#) established by Security Council [Resolution 2235](#) (2015) even though the OPCW released its staff to the UN for participation in that investigation.

## Relevant rules, guidelines, and methodology

- o Part XI of the [Annex on Implementation and Verification](#) to the CWC (Verification Annex) sets out the methodology for OPCW investigations carried out under Articles IX and X of the CWC. Investigations carried out on the initiative of the OPCW director-general, such as the [OPCW Fact-Finding Mission in Syria](#), also follow this methodology to the extent that it is appropriate or feasible in light of the specific circumstances of the case.

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## SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

### Substantive scope: type of incidents within purview of Res 2286 the mechanism can investigate

<p><b>FULL</b> <i>The mechanism can look into all incidents that Res 2286 seeks to address</i></p>		N/A
<p><b>PARTIAL</b> <i>The mechanism can only look into some but not all incidents that Res 2286 seeks to address</i></p>		N/A
<p><b>CONDITIONAL</b> <i>The mechanism can only look into incidents where a certain condition related to the mechanism's mandate is met</i></p>	✓	The OPCW's investigative powers can only be triggered when an incident of violence against healthcare was allegedly carried out using chemical weapons in violation of the CWC.
<p><b>SINGLE INCIDENTS</b> <i>The mechanism can be activated/used to investigate single incidents within the purview of Res 2286</i></p>	✓	The OPCW's investigative powers can be used to investigate a single incident of violence against healthcare in as far as it allegedly involved the use of chemical weapons in violation of the CWC.

### Geographic scope

<p><b>GLOBAL</b> <i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	The OPCW can investigate incidents of alleged use of chemical weapons in violation of the CWC regardless of where they occur.
<p><b>REGION-SPECIFIC</b> <i>The mechanism can only be activated to look into incidents that occurred in a specific region</i></p>		N/A
<p><b>COUNTRY-SPECIFIC</b> <i>The mechanism can only be activated to look into incidents that occurred in a specific country</i></p>		N/A

## Type of investigative activities

<b>MONITORING AND REPORTING</b> <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i>			The OPCW only investigates incidents of alleged use of chemical weapons where a formal investigation is opened.
<b>FACT-FINDING &amp; INVESTIGATING</b>	<b>Identify possible violations</b> <i>Establish facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i>	✓	OPCW investigations seek to establish facts to ascertain whether chemical weapons have been used in violation of the CWC. The OPCW is not mandated to assess whether these facts also amount to violations of general rules of international humanitarian law (IHL) or to assess whether they also amount to violations of international human rights law (IHRL).
	<b>Identify those responsible</b> <i>Identify entities/persons responsible for or with influence over facts/circumstances</i>	(✓)	Depending on the type of investigation, the OPCW will or will not identify those responsible for alleged use of chemical weapons: <ul style="list-style-type: none"> <li>• In the case of an Article IX investigation (see below), the OPCW Inspectorate Division investigates whether a state party has used a chemical weapon.</li> <li>• In the case of an Art X investigation (see below), there is no requirement for the OPCW Inspectorate Division to identify the entities or persons responsible.</li> <li>• The <a href="#">OPCW Fact-Finding Mission in Syria</a> established by the director-general is not mandated to attribute responsibility for alleged use of chemical weapons.</li> </ul>
	<b>Identify perpetrators of crimes</b> <i>Identify entities/persons allegedly responsible for war crimes or crimes against humanity</i>		OPCW investigations assess facts to ascertain whether a violation of the CWC has occurred. They do not assess these facts against international criminal law or the law of state responsibility or identify those allegedly responsible for crimes or unlawful acts under international law other than violations of the CWC.
<b>COLLECTING EVIDENCE OF ALLEGED CRIMES</b> <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i>			OPCW investigative teams collect evidence of use of chemical weapons in order to establish violations of the CWC. They do not collect additional evidence that would be necessary to establish whether a war crime or crime against humanity has been committed.
<b>ASSESSING VICTIMS' GRIEVANCES</b> <i>Identify direct/indirect consequences of attacks and assess need for reparations</i>		(✓)	OPCW investigative teams examine the consequences of a chemical weapons attack, and the OPCW works with the concerned state party to assess the need for resources to protect against the effects of chemical weapons, to coordinate other assistance activities, and to provide systems, equipment, and medical antidotes and treatments as required ( <a href="#">CWC</a> , Article X, para. 11).

<b>RECOMMENDATIONS TO</b>	<p><b>Prevent future incidents</b> <i>Identify/propose corrective measures to prevent future incidents</i></p>	(✓)	The OPCW Inspectorate Division does not make recommendations to prevent future incidents per se but will indicate any urgent need for assistance ( <a href="#">Verification Annex</a> , Part XI, para. 24), which can include items such as detection and alarm systems (see <a href="#">OPCW fact sheets</a> ).
	<p><b>Ensure accountability</b> <i>Identify appropriate avenues and concrete actions to ensure accountability</i></p>		The OPCW Inspectorate Division does not make recommendations to ensure accountability for the use of chemical weapons.
	<p><b>Address victims' needs</b></p>	✓	OPCW investigations do not make recommendations to address victim's needs or grievances per se but will indicate any urgent need for assistance ( <a href="#">Verification Annex</a> , Part XI, para. 24). The OPCW works with the concerned state party to assess the need for resources to protect against the effects of chemical weapons, to coordinate other assistance activities, and to provide systems, equipment, and medical antidotes and treatments as required ( <a href="#">CWC</a> , Article X, para. 11).

**4 INVESTIGATIVE TEAM MEMBERS AND IMPACT ON INDEPENDENCE AND IMPARTIALITY**

<b>Membership</b>	<b>Election</b>	<b>Guarantee of independence &amp; impartiality</b>
<p>OPCW investigative teams are composed of inspectors and inspection assistants employed by the OPCW Inspectorate Division, other OPCW Technical Secretariat staff, and, if necessary for the proper conduct of a particular investigation, additional qualified experts.</p>	<p>Members of a specific investigative team are selected by the OPCW director-general from the inspectors and inspection assistants within the OPCW Inspectorate Division who are already designated for challenge inspections and other OPCW Technical Secretariat staff.</p> <p>Additional members may be selected from a list of qualified experts that is kept updated by the OPCW director-general. This list is communicated to all states parties to the CWC, and any state party can declare its non-acceptance of an expert in writing no later than thirty days after receiving the list (<a href="#">Verification Annex</a>, Part XI, paras. 7–8).</p>	<p>Experts serving on investigations of alleged use of chemical weapons are OPCW staff or consultants contracted by the OPCW. As such, they enjoy privileges and immunities granted to OPCW staff or experts on mission, which contributes—as does the fact they are paid by the OPCW—to their independence. The selection of experts by the OPCW director-general also takes into account their capacity to serve independently and impartially in the specific case under investigation.</p>

Activator/Creator	Authorization/Enabler	Duration to activate/create
<p>The OPCW disposes of a permanent investigative division (the Inspectorate Division), as well as other staff with specific areas of expertise required to carry out investigations into alleged use of chemical weapons.</p> <p>Article IX and X investigations can be activated as follows:</p> <ul style="list-style-type: none"> <li>Any state party to the CWC can request the OPCW to activate an investigation of alleged use in two ways: (1) by submitting a request in accordance with Article IX for a challenge inspection in a situation in which another state party is alleged to have used chemical weapons; or (2) by submitting a request for assistance in accordance with Article X to the director-general in a situation in which chemical weapons allegedly were used against the requesting state party or riot-control agents allegedly were used against it as a method of warfare.<sup>2</sup></li> <li>The UN secretary-general can also request the OPCW to activate an investigation of alleged use in situations where alleged use of chemical weapons involves a state not party to the CWC or a territory not controlled by a state party to the CWC (<a href="#">Verification Annex</a>, Part XI, para. 27).</li> </ul> <p>The OPCW director-general can also establish a fact-finding mission on his or her own initiative.</p>	<p>For an Article IX investigation, the OPCW Executive Council votes on the request. The Executive Council is composed of <a href="#">forty-one members</a> elected by the Conference of the States Parties to the OPCW for two-year terms. It is constituted with due regard to the principle of equitable geographical distribution, the importance of the chemical industry, and political and security interests. A majority of three-quarters of the council can block a decision to accept the request.</p> <p>For an Article X investigation, the director-general initiates the investigation without the need for an Executive Council vote.</p> <p>Investigations established by the director-general on his or her own initiative do not require an Executive Council vote. It should be noted that the ToR of the <a href="#">OPCW Fact-Finding Mission in Syria</a>, established by the OPCW director-general in 2014, were mutually agreed upon by the OPCW and the government of Syria through an exchange of letters.</p>	<p>Once an investigation has been triggered, the director-general is to dispatch a team “at the earliest opportunity,” ideally within twenty-four hours from the receipt of the request (<a href="#">Verification Annex</a>, Part XI, paras. 11–12). As the OPCW Inspectorate Division has a pool of experts, a secretariat, and general budget in place, once a request has been submitted and approved, it can in principle be deployed immediately. In practice, investigative teams have indeed been dispatched at the earliest opportunity, taking into account the situation on the ground and at the sites to be investigated.</p>

<sup>2</sup> In the case of an Article X request of this sort, an investigation of alleged use is conducted with two purposes: (1) to establish facts related to the alleged use and (2) to provide a basis upon which the Executive Council can take a decision with regard to whether or not to instruct the Secretariat to take further action to assist the requesting state party. No state has ever formally requested assistance.

	Pre-existing	To be established when activated/created
<b>Human resources</b>	<p>The OPCW disposes of a permanent division composed of qualified inspectors and inspection assistants (the OPCW Inspectorate Division) for investigations into alleged use of chemical weapons. Other members of the OPCW Technical Secretariat with relevant expertise can also be deployed as part of OPCW investigative teams.</p> <p>The OPCW Inspectorate Division's secretariat is required under the CWC to maintain a high standard of readiness to conduct a challenge inspection or investigation of alleged use of chemical weapons.</p>	<p>For a specific investigation, and in light of specific needs for additional expertise or manpower, the director-general can select additional experts from an expert list maintained for that purpose (<a href="#">Verification Annex</a>, Part XI, para. 7).</p>
<b>Financial resources</b>	<p>The OPCW's regular budget is financed by states parties to the CWC in accordance with the UN scale of assessment adjusted to take into account differences in membership between the UN and the OPCW (<a href="#">CWC</a>, Part VIII(A)(7)).</p> <p>The OPCW regular budget covers administrative costs and verification costs of investigations carried out by the OPCW.</p> <p>The OPCW maintains a fully equipped capability to investigate allegations of use of chemical weapons. Equipment is stockpiled and ready for rapid deployment.</p>	<p>The OPCW may and has requested and received voluntary contributions from states parties to the CWC to cover specific costs associated with OPCW investigations.</p>

<p><b>Confidential reporting to and dialogue with parties to the conflict</b></p>	<p>✓</p>	<p>N/A</p>
<p><b>Public reporting to UN and/or other international organizations</b></p>	<p>(✓)</p>	<p>OPCW investigative teams must submit a situation report to the director-general within twenty-four hours, a preliminary report within seventy-two hours, and a final report within thirty days. The director-general transmits these reports to the OPCW Executive Council and all other states parties to the CWC on a confidential basis. (<a href="#">Verification Annex</a>, Part XI, paras. 22–23).</p> <p>If the Executive Council takes a decision to provide supplementary assistance to a state party requesting such assistance in connection with the use or threat of use of chemical weapons (pursuant to Article X of the <a href="#">CWC</a>), the director-general shall transmit to the secretary-general the decision together with the investigative report in connection with the request for assistance (see Article IV(2) of the 2000 <a href="#">Relationship Agreement</a> between the UN and the OPCW).</p> <p>Information obtained by OPCW investigative teams is not published or otherwise released unless the state party to which the information refers gives its express consent or through procedures (agreed on by the states parties), which ensures that information is only released in strict conformity with the needs of the CWC (<a href="#">Confidentiality Annex</a>, Part A(c)(ii) and (iii)).</p> <p>In cases of particular gravity, states parties can bring the issue, including relevant information and conclusions, to the attention of the General Assembly or Security Council (<a href="#">CWC</a>, Article XII(4)).</p>
<p><b>Transmissibility to judicial mechanisms</b></p>		<p>It is unclear whether, and if so on the basis of which criteria and in accordance with which procedures, the OPCW would transmit information collected by its investigative teams to judicial authorities requesting such information. It should be noted however, that the OPCW cannot be compelled to disclose confidential information it has obtained in the performance of its mandates as it enjoys privileges and immunities that protect it from such compulsory disclosure (<a href="#">CWC</a>, Article VIII(E); <a href="#">Verification Annex</a>, Part II(B)).</p>

<p><b>Possible follow-up mechanisms</b></p>	<p>✓</p>	<p>The OPCW Executive Council is mandated to consider the reports of OPCW investigative teams and take “appropriate” decisions, such as:</p> <ul style="list-style-type: none"> <li>• Bringing the matter to the Conference of the States Parties<sup>3</sup> and making recommendations for action it should take, such as suspending or restricting a state party’s rights and privileges under the CWC, so that the conference can then take enforcement measures (<a href="#">CWC</a>, Article XII) (see below); or</li> <li>• Requesting the concerned state party to take steps to redress the situation within a specific timeframe (<a href="#">CWC</a>, Article VIII(36)).</li> </ul>
<p><b>Available enforcement measures</b></p>	<p>✓</p>	<ul style="list-style-type: none"> <li>• The Conference of the States Parties to the CWC may, upon the recommendation of the Executive Council, restrict or suspend a state party’s rights and privileges under the CWC (<a href="#">CWC</a>, Article XII(2)).</li> <li>• In cases of serious damage to the object and purpose of the CWC, the conference may recommend collective measures to states parties in conformity with international law (<a href="#">CWC</a>, Article XII(3)).</li> <li>• The conference shall, in cases of particular gravity, bring the issue, including relevant information and conclusions, to the attention of the General Assembly and Security Council (<a href="#">CWC</a>, Article XII(4)).</li> <li>• An additional mechanism can be established to identify perpetrators (e.g., the 2015 <a href="#">UN-OPCW Joint Investigative Mechanism for Syria</a>). This could then potentially be followed by a Security Council resolution to take action against the perpetrators.</li> <li>• A team can be set up to remove all declared chemical weapons from a state. The decision to do so can and has been taken by the OPCW Executive Council and endorsed by a Security Council resolution, as was the case in Syria (joint <a href="#">UN-OPCW Joint Mission in 2013</a>) and Libya (<a href="#">Security Council Resolution 2298 in 2016</a>).</li> </ul>

<sup>3</sup> The Conference of the States Parties is the plenary organ consisting of all members of the OPCW. It is the “principal organ of the Organisation” and has the general power to oversee the implementation of the CWC and to act in order to promote its object and purpose.



Thus far, no investigations into alleged use of chemical weapons have been requested and carried out under Article IX or X of the [CWC](#). However, the OPCW's investigative capacity has been used, both in Syria and in other contexts. The OPCW's director-general established the [OPCW Fact-Finding Mission in Syria](#) in 2014, which is mandated to establish the facts surrounding allegations of use of toxic chemicals for hostile purposes in Syria, the reports of which mention attacks on hospitals. In 2015 the UN-OPCW Joint Investigative Mechanism for Syria was established by an OPCW Executive Council decision and endorsed by [Security Council Resolution 2235](#) to identify those behind chemical weapons attacks in Syria. Finally, the UN secretary-general has established [UN missions to investigate the alleged use of chemical weapons in Syria](#), which the OPCW was asked to support and assist.

Year/country	Investigated alleged Violations of the CWC	Investigated alleged attacks on healthcare
<a href="#">Syria</a> (2015)	✓ OPCW-UN Joint Investigative Mechanism established by Security Council <a href="#">Resolution 2235</a> (and mandate extended by <a href="#">Resolution 2319</a> in 2016) with the aim of identifying those behind chemical weapons attacks in Syria (see third report <a href="#">here</a> ).	N/A
<a href="#">Syria</a> (2014)	✓ OPCW Fact-Finding Mission in Syria established by the OPCW director-general to establish the facts surrounding allegations of use of toxic chemicals for hostile purposes in Syria (reports available <a href="#">here</a> ). <sup>4</sup>	✓ Several reports mentioned attacks on hospitals ( <a href="#">November 2015 report</a> , p. 118; <a href="#">February 2015 report</a> pp. 20, 34, 48) and medical personal suffering from exposure to chemical weapons ( <a href="#">February 2015 report</a> , pp. 21, 48).
<a href="#">Syria</a> (2013)	✓ UN mission to investigate the allegations of the use of chemical weapons in Syria established to investigate three reported incidents of alleged use of chemical weapons in Syria.	N/A

<sup>4</sup> The OPCW Fact-Finding Mission in Syria was set up on the basis of the director-general's authority under the CWC to seek to uphold at all times the object and purpose of the convention, as reinforced by the relevant decisions of the OPCW Executive Council and Security Council Resolution 2118 (2013). The OPCW's Executive Council decisions EC-M-48/DEC.1 (recalled by Resolution 2209/2015) and EC-M-50/DEC1 require the mission to study all available information relating to allegations of use of chemical weapons in Syria, including that provided by the government of Syria as well as by others.