

The President  
of the  
UN HRC  
Ambassador Nazat Shameem Khan  
Geneva

8 June 2021

**The OPCW's Investigation of the Alleged Chemical Weapon Attack in Douma, 7 April 2018**

Dear Ambassador Shameem Khan,

It is with great concern that we write yet again, this time with regard to a statement and comments by the Director General of the OPCW at the UN Security Council on 3 June 2021.

In his address to the 8785<sup>th</sup> meeting of the United Nations Security Council, the Director General of the OPCW, Ambassador Fernando Arias, has chosen to reject the request of 28 internationally respected persons made in the 8 February 2021 [Statement of Concern](#) that a neutral forum be provided in which all of the inspectors involved with the Douma investigation are allowed to discuss and evaluate the evidence. In doing so the Director General has also, yet again, chosen to denigrate two of his most experienced and highly respected former OPCW scientists through a series of misleading and deceitful claims. Before we return to the substantive issues concerning the OPCW Douma investigation and the need for further objective and rigorous scientific engagement, we are duty bound to correct the OPCW Director General.

**Misleading and False Claims**

**First**, the Director General presented 'Inspectors A' and 'B' as rogue inspectors who played a 'limited' role in the Douma investigation. These claims are misleading in the extreme. It is public record that Inspector B, Dr. Brendan Whelan, had an extensive role in the Douma FFM which included oversight of scientific planning, analysis of data gathered during the investigation and involvement with the toxicological assessment. He was responsible for the keeping of records of discussions and writing progress reports and updates for the Office of the Director General. Dr. Whelan was **chief drafter of the original report**. To imply that he was in any way peripheral is simply incorrect. Dr. Whelan was in a position to observe and report on the irregularities and fraud that he witnessed. Regarding Inspector A, Ian Henderson, it is factually incorrect of the Director General to claim he was not a member of the Fact-Finding Mission when there exist publicly available documents confirming that he was. He was involved in a deployment to a facility suspected of producing chemical weapons and deployed two further times to take additional measurements at Location 4 (the site of the second alleged cylinder impact) and visit the hospital at Location 1. **It is disingenuous of the Director General to suggest that either of these Inspectors were not in a position to observe and report on the irregularities that have now become public knowledge.**

**Second**, the DG claims that the Inspectors sought to publicly discredit the work of the OPCW only after their 'own opinions did not gain traction'. This profoundly misrepresents the course of events. As has already been made clear ([see Berlin Group 21: background information](#)), throughout 2018 and 2019 senior OPCW management ignored and/or suppressed concerns raised by Inspectors A and B who had, in the absence of any available whistleblower policy at the OPCW, made multiple attempts to raise their serious concerns, shared also by other OPCW inspectors, internally. These attempts included requests to initiate an internal inquiry by the OPCW's Office of Internal Oversight and repeated requests to meet with the Director General. **All of these were ignored by OPCW management.**

**Third**, once again the DG has attempted to dismiss concerns raised by the dissenting inspectors on the grounds that the bulk of investigative and analytical work on the Douma investigation occurred during the last six months of the investigation. During the UNSC meeting he claimed that more than 100 samples were collected and most were 'analysed after Summer 2018' and that '70 results were brought in those last six months of the investigation'. These claims are incorrect and we have set out the facts previously ([see Berlin Group 21: background information](#)). Noteworthy, as can be seen from the final report (para 8.5) only 44 samples were in fact analysed for the entire investigation. Comparing the final report with the leaked original interim report, it is clear that the bulk of the 106-page final report was already written by June 2018 when 70% of all samples had been analysed, **an official toxicology assessment had been conducted with the help of NATO experts**, and 87% of witness interviews had been analysed. Although studies on the cylinders were carried out during the Autumn of 2018, the conclusions were contradicted by a similar study from within the FFM. No additional Bibliography has been added to the final report suggesting there was no further scientific research conducted (compare Annex 13 of the final report with the Bibliography [last page] of the leaked original interim report). **It is, therefore, seriously misleading for the Director General to discount the issues raised on the basis of work carried out during the last six months of the Douma investigation. Moreover, regardless of what work was carried out in the last 6 months, it in no way excuses the irregular and fraudulent behaviour throughout the investigation whilst the substantive scientific issues raised in the original interim report remain unresolved in the final FFM report (See '[Scientific Flaws](#)').**

**Fourth**, the Director General has misleadingly sought to defend the OPCW FFM Douma report on the grounds that its conclusion of there being 'reasonable grounds' to believe a chemical weapons attack took place is in line with the Human Rights Council's Independent International Commission of Inquiry on the Syrian Arab Republic. This assertion by the Director General is deceptive. Neither of the Commission's 2018 reports present any firm or final conclusions regarding chlorine being used as a weapon in Douma and do, in fact, raise concerns shared by us and the inspectors regarding the likelihood of chlorine gas being the cause of death of the 43 civilians at Douma. One of the 2018 Commission Reports to which Arias refers states that:-

*The available evidence is largely consistent with the use of chlorine, but this in and of itself does not explain other reported symptoms, which are more consistent with the use of another chemical agent, most likely a nerve gas. The Commission's investigations are on-going. (A/HRC/38/CRP.3: p. 14)*

The other report from 2018 states:

*'... the Commission cannot make yet any conclusions concerning the exact cause of death, in particular on whether another agent was used in addition to chlorine that may have caused or contributed to deaths and injuries' (A/HRC/39/65: p. 17).*

Moreover, and as recently confirmed to us in a communication from the Independent Commission, their latest report (A/HRC/46/54) does **not include** the 7 April 2018 alleged attack in Douma in its list of 38 established cases which met the 'required standard of proof, enabling it to report on these incidents publicly'. **As such, it is simply not truthful for the OPCW DG to be defending his organisation's Douma Report on the basis that it is in line with reports from the independent commission.**

### **Failure to Respond to Calls for Transparency and Accountability**

We are dismayed also at the Director General's refusal to either meet with the inspectors or arrange any kind of forum in which the outstanding scientific issues can be addressed by all of the inspectors involved with the Douma investigation. **Remarkably, the Director General claimed in the Security Council meeting that he has no authority over the Douma Report and therefore cannot arrange any kind of forum in which all of the inspectors involved in the Douma investigation can discuss the scientific evidence.** In doing so the Director General has now explicitly rejected our call made to the recent Conference of States Parties for the OPCW's own scientific advisory board (SAB) to be engaged with this issue. We note here that **the Director General's rationale is distorted and not in line with the Chemical Weapons Convention (CWC) which states that 'The Director General may also, as appropriate, in consultation with members of the Board, establish temporary working groups of scientific experts to provide recommendations on specific issues'**. More generally, it is absurd that the head of OPCW, an organisation responsible for researching and publishing documentation can then claim to have no authority over or responsibility for that report. It is even more disturbing that the head of an organisation chooses to denigrate two of the organisation's most experienced and long serving inspectors rather than actually meeting and listening to them.

Such a **meeting with all the inspectors is essential** if the truth about Douma is to be finally established. We again remind all involved that we have identified no less than eleven substantive procedural and scientific irregularities and flaws relating to the Douma investigation, none of which have yet been properly responded to let alone resolved by the OPCW. Full details of these can be found on both the [Berlin 21 Group website](#) and also that of the [Courage Foundation](#) but we take the opportunity to reiterate some of the most salient facts now established and in the public domain:

**First**, it has been public knowledge since late 2019 that the original interim report was secretly modified to be issued for publication in June 2018 and only stopped when this act of deception was discovered by a member of the Douma team. The modifications effectively drew unsupported conclusions that there was sufficient evidence at that time of a chlorine gas release and censored issues about chemistry, toxicology, ballistics and witness testimony that had been raised in the original interim report. **This attempt within the OPCW to secretly**

alter the original interim report and underhandedly publish a doctored version unknown to the inspectors is fraudulent and incompatible with the expected behaviour of a trusted international organization. *The OPCW has never provided any explanation for this event.*

**Second,** In July 2018, a US delegation, without any prior notice, was allowed to brief the investigation team just days before the interim report was published (two weeks after the duplicitous attempt to publish the doctored interim report had been thwarted) to promote their assessment that chlorine gas had been used as a chemical weapon in Douma by the Syrian government. This is quite distinct from a member state offering data or intelligence to the OPCW to help the investigation, which States Parties are legitimately encouraged to do. **A State Party seeking to influence the inspectors in this manner, however, is a violation of Article VIII, para 47 of the Chemical Weapons Convention “CWC” (which states ‘Each State Party shall respect the exclusively international character of the responsibilities of the Director General, the inspectors and the other members of the staff and not seek to influence them in the discharge of their duties’).** It also contravenes a regularly cited dictum of the Director General that the identities of inspectors must be protected to both maintain the integrity of the investigation and for their personal security. *The OPCW has never provided any response to this serious matter.*

**Third,** After the FFM team had returned to The Hague **most of the team** who were on the ground in Syria **were excluded** from continuing the investigation. This exclusion became more pronounced after the release of the published interim report in July 2018 and through to the release of the final FFM report in March 2019. As detailed in a recently leaked letter from Inspector Brendan Whelan to the Director-General there were never any discussions, meetings, or sharing of views or information between the on-site inspectors in Damascus and the team leader who had left Damascus before the investigation began but who nonetheless played a leading role in writing the final report. The letter also stated that within the team ‘there was an intolerance for views on alternative hypotheses.’ Preventing full and open discussion amongst inspectors who had actually been on the ground in Syria, and who had extensive experience, is not compatible with a scientific, objective and transparent investigation.

**Fourth,** and regarding ballistics evidence pertaining to the two chlorine cylinders allegedly dropped from a helicopter, the final OPCW FFM report asserts that three independent external experts concluded that the damage to the cylinders and roofs were compatible with a fall from height. **Moreover, they claim, without providing any technical explanation or evidence, that the cylinder at one location, after penetrating through the roof, took a sideways bounce onto a nearby bed, apparently in defiance of physical laws.** These unscientific conclusions were inconsistent with earlier findings and observations of the FFM team, many of which were noted in the suppressed original interim report, as well as with those of an engineering assessment of the two cylinders. Moreover, the final report contains unresolved inconsistencies and insufficient explanatory material. As such, the final report does not provide adequate evidence or analysis to support a claim that the cylinders were dropped from a significant height.

**Fifth,** the **toxicology assessment** produced in consultation with NATO chemical weapon toxicology experts in June 2018 clearly concluded that the signs and symptoms reported and

observed, as well as the arrangement of the deceased at Location 2 (gathered in piles and indicating no attempt to escape), **were inconsistent with chlorine gas at Location 2 being the cause of death.** This conclusion, however, was obfuscated without any explanation or justification in the final OPCW FFM report. The final report mentions that toxicology experts were consulted in September and October 2018 but notably never details their assessment. Instead, the report states that *'it is not currently possible to precisely link the cause of the signs and symptoms to a specific chemical'*. As such, the report substitutes clear unequivocal opinions from toxicologists expert in chemical weapons poisoning for an unspecific statement which is not attributed to toxicologists that are reported to have been consulted in September and October. As such, the final OPCW FFM report has omitted key evidence that ruled out chlorine as the cause of death, apparently justifying the omission because other experts were subsequently consulted (but whose professional opinions are not reported). Such cherry-picking of evidence is highly irregular possibly amounting to scientific fraud.

Sixth, Individuals connected with the OPCW have been used in attempts to smear and discredit those questioning the Douma investigation. Specifically, in November 2020 a draft letter, falsely alleged to have been sent by the Director General in response to a private letter from inspector Dr. Whelan to Mr. Arias in which he outlined his concerns about the Douma investigation, was leaked to an 'open source' investigation website which then published the draft letter together with the identity of the inspector in question. The intention of the leak, and the associated article published by *Bellingcat*, was clearly to discredit the OPCW inspector and create the misleading impression that all concerns raised by him had been addressed. In fact, the draft letter was never sent by the Director General and no detailed response was ever given to the issues raised by Whelan. Shortly after this occurrence, in December 2020, a BBC4 radio series aired in which an anonymous source, reportedly connected with the OPCW Douma investigation, contributed to an attempt to discredit the two dissenting inspectors and former OPCW DG Ambassador Bustani. **These developments suggest that one or more individuals within the OPCW are involved with leaking disinformation and attempting to discredit the OPCW scientists who have raised concerns about the Douma investigation. At the June 3 Security Council meeting, the Director General appeared to rule out a formal 'rules of confidentiality' investigation of these breaches unless the 'person is identified', in spite of the requirement in the CWC Confidentiality Annex to do so.**

All of these issues are self-evidently serious and the continuing unresolved scientific issues are further compounded by new information coming to light. For example, we have recently noted in correspondence with you and the Commission (our letter 20 May 2021 to you) that there are significant question marks over the number of deceased at Douma. Here witness information relating to the burial of up to 300 civilians in a mass grave was absent from the final report (see original interim report: Table; p. 24 and para 7.66; p, 23). This number is 6 times higher than the official figure of 43 dead. Close examination of the original interim report and the final report reveal further **alarming alterations**. For example, unexplained witness reports regarding the finding of deceased in basements (original interim report: Table; p. 24 and para 7.69; p. 23-24) have been obfuscated or deleted in the final report. These reports are unexplained because no plausible route could be identified by which chlorine gas could pass directly into the basement (see original interim report paras 7.25; p. 15 and 7.83; p. 27). The fact that only 'Country X' witnesses reported unexplained nerve agent symptoms (original interim report: para 7.77; p. 26) has been obfuscated in the final report

(final report, para 8.79; p. 26). These reports are unexplained because no traces of nerve agent were ever found. Finally, information regarding the 're-positioning' of the bodies of victims through the course of the night 7/8 April 2018 is obfuscated in the final report (compare original interim report: para 7.69; p. 23 with the final report: annex 11; p. 103). In addition, questions regarding the authenticity of foam-like material seen on some of the deceased are alluded to but not resolved (see for example final report: para 8.98; p. 29).

To conclude, it should be a source of shame and embarrassment for the United Nations that, to date, no serious attempt has been made to respond to the repeated calls from eminent individuals and organisations for transparency and accountability at the OPCW regarding its controversial Douma investigation. Indeed, when former UN Assistant Secretary General Hans von Sponeck posted the 2021 Statement of Concern, signed by 28 leading international experts and opinion leaders, to Director General Arias, the envelope was simply returned **unopened!** This failure is made all the more serious because **what is at issue here concerns the deaths of fifty or more civilians and now well documented flaws and irregularities regarding an investigation into the circumstances of their deaths.** It is simply not tenable for the United Nations and associated organisations to be seen tolerating the smearing of respected and experienced scientists whilst failing to answer eminently reasonable questions and calls for transparency and scientific rigour.

We have so far not had replies from you to several communications on this serious Douma issue. We, of course, understand that you cannot be expected to deal with the many specific issues brought to your attention. We would argue that the seriousness of the controversy over Douma and the efforts of the Independent Commission on Syria to deal with the protection of human rights demand special consideration.

We hope that you share our view that at stake is nothing less than the integrity of the United Nations. We look forward to hearing from you.

Yours Sincerely,

Ambassador José Bustani	Professor Richard Falk	Dr. h.c. Hans von Sponeck
First OPCW Director General	Emeritus Professor of Int.Law Princeton University	UN Assistant Secretary-General (ret)

cc: **Paulo Sérgio Pinheiro,**  
**Chairman of the Independent Commission on Syria**  
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