

RESPONSE TO REPORT ON OPCW INVESTIGATION OF ALLEGED BREACH OF CONFIDENTIALITY

By Inspector B

On 6 February 2020, the Director General convened a meeting to brief States Parties to the Chemical Weapons Convention on the findings of the so-called ‘independent’ investigation into alleged breaches of confidentiality within the Organisation —specifically, a breach involving the unauthorised disclosure and publication in May 2019 of a document entitled “Engineering Assessment of Two Cylinders Observed at the Douma Incident, Executive Summary”. The subjects of the investigation were two former veteran inspectors —rehired by the OPCW because of their experience and specialised knowledge— who are referred to as Inspectors A and B in the report, ostensibly to safeguard their rights of due process.

The Briefing The forum for the briefing was itself telling. In the 23-year history of the Organisation inquiries into alleged breaches of confidentiality have always been kept low key, even within the Organisation itself. This one, however, had all the fanfare and razzmatazz of a political campaign rally, with an expectant crowd of ambassadors and distinguished OPCW delegates turning out. Even the international press was on stand-by to relay the sentencing to those not lucky enough to get ring-side seats. British journalist Peter Hitchens of the Mail on Sunday called it a ‘Show Trial’ in his blog “Kafka Comes to The Hague” in which the anonymous A and B stood accused *in absentia* in a trial that lacked even a token gesture to equality of arms.

The break with tradition is all the more unusual given the OPOC (the official policy document that guides confidentiality investigations) does not allow for such dedicated public disclosures. According to the OPOC ‘the report may be made available to any State Party upon request and it shall be *summarised* in the *annual report* of the Director-General to the Conference. The next annual Conference is slated for November, but it seems the briefing couldn’t wait. Interestingly, unlike everything else about this investigation, which was elevated to the highest level of confidentiality, the public take down was declassified so the ignominy could later be broadcast to the masses from the OPCW website and it’s Twitter account (to which it later blocked any negative tweets about the report).

‘Aims’ The stated objective in the Director General’s opening comments was somewhat ominous, if not alarming — “to provide you [Ambassadors and Distinguished Delegates] with all the relevant information, ... so that you will have the necessary elements for your analysis and conclusions.” Why would the delegates be making analyses and conclusions, if they were not there as judge or jury?

These opening remarks in fact would set the tone for the remainder of the spectacle. What was supposed to be a report on a procedural breach of confidentiality quickly turned to a bait-and-switch to air the OPCW’s pitiful defence of the Douma Report itself. Paradoxically, for a technical and scientific Organisation par excellence, it was sadly a defence that was not grounded in any scientific reasoning or logic, but on ad hominem attacks and smoke and mirrors.

Due Process The investigation, according to the OPOC, should be conducted on the basis of objectivity and due process, and the Director General was adamant it was. But was it? The report claims it safeguards the names of the two individuals by calling them A and B but then

drip feeds so many obvious clues, that anyone within the Organisation (and among many delegations) would have no doubt as to their identities. Such recklessness has created a serious safety concern for the inspectors particularly given the highly divisive public debate surrounding the Douma Report. This is information that could have no bearing on the investigation of the breach itself and would appear to have been included for no other purpose than malevolence.

Compounding matters, a leak originating from within the OPCW (according to the journalist who published it) resulted in the publication of the name, nationality, deployment details and photo of one member of the Douma investigation team. The leak was further disseminated by the outlet Bellingcat who, in apparent *Schadenfreude*, hailed the disclosure as an investigative coup. Despite formal requests to do so, the OPCW took no action to prevent further propagation of the leak and have not responded positively to requests for the alleged breach to be investigated.

Neither does the hand picking of external investigators from two States Parties with vested interests instil confidence in due process. Particularly, when the Organisation's Office of Confidentiality and Security, which had always conducted such investigations, was overlooked despite having highly professional, independent nationals from non-interested countries.

Evidence The eagerness to defend the Douma Report came at the expense of due process and actual evidence. When the report finally acknowledged there was 'insufficient evidential basis to find that Inspector B disseminated Inspector A's assessment to the website' (the actual aim of the investigation) it clearly needed to find evidence of other wrongdoing, and concocted the vague and unproven accusation of 'unauthorised disclosure of confidential information to individuals who did not have a need to know such information.'

The 'evidence' proffered is classic McCarthyism – '*voicing* some concerns', *knowing* of the existence of Inspector A's assessment; "*displaying a desire* to have continued access to, and influence on, the Douma investigation, and most astonishingly, *writing a letter of concern* to the Director General and *referring* a staff member to an academic article on the internet critical of the OPCW's final report on Douma". In what is portrayed as some kind of sinister plot Inspector B is apparently guilty of '*approaching members* of the Technical Secretariat to join his campaign to 'challenge the final Douma report', incidentally *three months after* the alleged breach had occurred.

That Inspector B's efforts to alert the Director General of scientific irregularities inside his organisation (much of which occurred off his watch) are considered subversive and in breach of confidentiality is itself extraordinarily egregious. His qualifying the allegations against A and B as 'deliberate' and 'premediated' is a baseless personal judgement that only serves to highlight the vindictiveness of the case. As the following quotes from emails to Inspector B from a senior management official demonstrate, he was not considered the wilful inspector the investigators and the Director General try to depict, pushing his 'views' and 'taking matters into [his] own hands'

"Through your action, you [Inspector B] could actually be making the first step towards having a more professional, transparent and sound fact-finding. I hope!" (from an OPCW Director after B 'voiced some concerns' in June 2018, as referred to by the DG in his briefing)

“you [Inspector B] took all the steps to maintain your moral and professional integrity and that’s what matters most” (after Inspector B ‘voiced concerns’ to management)

“[Chief of Cabinet] is perfectly OK with receiving your [Inspector B] letter and, once he reads through, to take it from there in terms of possible meeting with the DG”..I take it as positive news as there clearly is interest to continue the communication”(After a Director of the TS facilitated communication between Inspector B and the Director General)

The leap in logic that Inspector B expressing concerns to the Director General somehow facilitated the unauthorised dissemination of a confidential document is outrageously speculative and in contravention of the Organisation’s own Directive. *‘Investigative findings should be based on substantial facts and related analysis, not suppositions or assumptions.*

Inspector B’s speaking out about the unethical and scientifically irregular behaviour in the Douma investigation has in fact been seen by some senior management as a virtuous and courageous act, contrary to what the Director General has tried to portray. One division director, just two weeks prior to Inspector B’s departure from the OPCW, praised him in writing when he said;

‘I want to commend you as well for your character and strong values, which have stood firm at times when it would have been easier to simply “let go” without fighting for what you believed was right. Thank you for everything, it will be difficult to replace you, now that your tenure is about to end’

Speaking out against wrongdoing must not be confused with disloyalty or contempt for confidentiality rules. The OPCW has a stringent confidentiality regime to protect the information of Member States. It does not have it to be misused as a smokescreen for institutional impropriety.

‘Views’ The Director General’s statement is replete with references to the *views* of the inspectors and how all *views* are taken into consideration, and *views* are exchanged. It apparently goes to the core of the TS argument why Inspectors A and B ‘took matters into their own hands.’ *‘They are individuals who could not accept that their **views** were not backed by evidence.’*

Differing views, according to the Director General, are a normal element of any investigation and the Secretariat considers all *views* exchanged.

*“In the course of any investigation, members of a team may have **views** and ideas about what happened. ... The Secretariat always takes into account all information submitted and **views** exchanged. The Douma investigation was no exception”.*

In principle this sounds reasonable. In reality, this is not how investigations work. ‘Views’ are not the currency of scientists and engineers. Facts, evidence and hypotheses are. Views are by their very nature biased. They are personal beliefs or thoughts that are not necessarily testable. A hypothesis on the other hand must be testable, and once tested, it can be supported by evidence.

As we’d expect, the term ‘views’ never appears in the Convention with respect to inspections or investigations of alleged uses of chemicals (On the two occasions it does appear it is in

reference to States Parties). Inspectors A and B have years of experience conducting and leading inspections and are trained to know that *views* have no place in verification or factual findings reports, hence the name. It is naive then, to suggest A and B would ever be insisting on their ‘views’ or were throwing tantrums because their ‘views’ were not accepted. Policy and diplomacy might work that way, but not science.

What Inspectors A and B *have* rightfully decried is the wilful omission of facts and *expert* opinions —such as chemical analysis results, expert opinions from toxicologists, engineering studies, discrepancies in witness accounts etc.— from consideration in the investigation. What the Secretariat must consider is not *views*, but rather *facts, evidence* and *reasonable hypotheses*.

It is not that A and B ‘*are individuals who could not accept that their **views** were not backed by evidence*’, it is that A and B are individuals who could never accept that a scientific investigation is not backed by science.

Remedial Measures If more confidentiality training for staff is the proposed panacea against future confidentiality breaches, then perhaps someone has seriously missed the point. OPCW staff are fully *au fait* with their confidentiality obligations. The investigation report even says so of A and B. It is probably not the staff who require schooling in yet more procedures, but management who need to awaken to why someone would feel the need to take such a career-ending risk as defying confidentiality regulations in the first place.

It was no secret within the Organisation that there were serious concerns of unethical behaviour surrounding the Douma investigation. Management, sadly, didn’t want to hear of it. All legitimate avenues to raising those concerns, yet alone having them acted upon, were obstructed. Had there been dialogue with the inspectors at the outset, this current situation would likely never have arisen. But amazingly, having seen the dire consequences of disengagement, rather than reaching out to listen, the TS has chosen to turn up the music even louder in the hope of drowning out any remnants of dissenting voices.

Common Goal Sr Arias, neither Inspector A nor I have ever met you, and in fact we have been prevented from seeing you. But we have heard you are a reasonable person. Indeed, when you took over at the OPCW from your predecessor, it gave us hope. You were inheriting a situation that was not of your making and we believed things could change. We also realise the most extraordinary difficult situation you must find yourself in, with undoubted pressure coming from many quarters and possibly not getting a balanced account from those closest to you.

You have our utmost reassurance sir, that neither of us has ever tried to cause harm to your, or should I say, our Organisation. We were there when it was created. We grew as it grew. We saw three Director Generals come and go, and we, as now, fervently believed in its mission — a shared goal that you are charged with carrying forward and to which we have contributed so much. You need only look at our impeccable records and support to the TS over a combined tenure of almost 30 years. That we would suddenly ‘go rogue’ at the autumn of our careers, with nothing to gain and everything to lose, defies all logic. Why would we risk so much? To push a personal ‘view’? Hardly.

Something had gone wrong inside the OPCW sir. And we wanted you to know. It’s that simple.

Inspector A and I have tried to resolve our concerns with you in private. Far from the peering public. However, this saga has, unfortunately, escalated to a point where we are now publicly

portrayed not as colleagues but, sadly, as adversaries. Inspectors who once could count on you and your predecessor's unconditional defence from attacks on our integrity and professionalism, are now being smeared as the antithesis of these values— for nothing more than daring to speak out.

But we have no regrets about speaking out. It has always been in defence of the Chemical Weapons Convention. This remarkable document has been our point of reference, the final arbiter in all our discussions for as long as we've been with the OPCW. The CWC is unique among multinational disarmament treaties. It gives inspectors unqualified authority over their work. Not only does it prohibit Member States from trying to influence us, but with remarkable foresight the drafters of the Convention tried to ensure the independence and objectivity of inspections by allowing individual inspectors to append 'differing observations' from the rest of the team.

In accordance, therefore, with this spirit of the Chemical Weapons Convention we and others from the Douma fact-finding mission, respectfully request to invoke provisions *62 and 66 of Part II of the Verification Annex so we *can* register those 'differing observations.' This is not unusual. The opportunity has been there for all other on-site inspection reports since the Organisation began. Why deny it now when the stakes are so incredibly high and when assurances of independence and impartiality are more critical than ever? What better way "to uphold the universal ban on chemical weapons and contribute to global peace and security", so rightly committed to by you in your closing remarks, than by taking guidance from the Chemical Weapons Convention itself.

Inspector B

05 March 2020

*"The right of inspectors to include differing observations is a constitutive element supporting the independence and objectivity of inspections. It allows an inspector to record observations which in his or her belief render the results of the inspection questionable,"

Krutzsch, W. and Trapp, R. 1999. Verification Practice under the Chemical Weapons Convention. A Commentary. Kluwer Law International