

Questions and Answers on the French Arrest Warrants for Chemical Weapons Attacks in Syria

1. What is the case about?

An investigation into two chemical attacks perpetrated in August 2013 in Syria was opened in April 2021 before the French Specialized Unit for Crimes against Humanity and War Crimes of the Paris Judicial Court. Two investigative judges (juges d'instruction) are looking into the Syrian government's alleged responsibility for the use of chemical weapons during the conflict as part of a pattern of deliberate, widespread and systematic attacks against civilians in areas held by opposition forces. The city of Douma and the Eastern Ghouta region - where the attacks were committed - were under the control of the opposition at the time.

On August 5, 2013, the Syrian government allegedly targeted two neighbouring towns in the eastern suburbs of the Syrian capital. Chemical weapons first hit the industrial town of Adra at approximately 1:00 AM, and then chemical weapons hit the larger city of Douma at approximately 5:00 AM. Civilians in Douma sought shelter on rooftops of buildings to avoid inhaling the toxic chemicals, which are heavier than air and tend to remain closer to the ground. Testimonies from survivors and doctors recall patients struggling to breathe and suffocating because of chemical exposure. Hospitals in Douma were rapidly overwhelmed with casualties. The chemical weapons attack on Douma injured more than 400 individuals, including many women and children. The chemical attacks on Douma and the neighbouring town of Adra on August 5, 2013, constituted the largest chemical weapons attack in Syria at the time, and foreshadowed the devastation that would follow in Eastern Ghouta two weeks later.

In the early hours of August 21, 2013, more than a dozen chemical rockets loaded with sarin, a highly lethal nerve agent, struck the neighborhoods of Ein Terma and Zamalka in Eastern Ghouta, near Damascus. When terrorized families scrambled in the middle of the night to reach their rooftops to avoid exposure to sarin, they were hit by mortar fire and other shelling by Syrian government forces. This forced them to flee the rooftops to the ground below, where exposure to sarin killed many children, women, and men. First responders and medical personnel were also harmed as they tried to rescue victims. Attacks on nearby medical facilities were carried out to coincide with the chemical attacks, which severely limited the emergency medical response. The chemical attacks resulted in more than a thousand deaths and thousands of serious injuries.

The August 21, 2013, chemical attack is the deadliest committed during the Syrian conflict and has been widely condemned by the international community.

2. What is the importance of this case?

This case gains its importance from the major impact that the chemical attacks in Eastern Ghouta left, both in terms of the number of victims and injured resulting from these attacks, and in terms of the shock that befell the international community following the attacks.

The investigating judges consider that the highest-level Syrian officials would be amongst the most responsible for these attacks.

The investigating judges' decision to issue arrest warrants emphasizes that those responsible for such grave crimes need to be held accountable and that there can be no impunity for these crimes. These arrest warrants are the first to address the use of chemical weapons in Syria and the first by a state to designate the sitting head of state of another country.

3. What is a judicial investigation (“*instruction*” or “*information judiciaire*” in French) and how long can it last?

In the French procedural system, there are two types of investigations:

- preliminary investigations (“*enquêtes préliminaires*”): they are conducted by police officers under the supervision of a Prosecutor.
- judicial investigations (“*instruction*” or “*information judiciaire*”): they are conducted by an investigative judge and can be opened by the Prosecutor at the end of a preliminary investigation, or through the filing of a civil party complaint by victims and/or NGOs.

During the judicial investigation, all parties (civil parties, defendants, Prosecutors) have the right to access the case file and may ask the judge to collect evidence, requesting for example the hearing of witnesses and experts or the implementation of technical measures.

Depending on the complexity of the case and for criminal charges, on average, the judicial investigation takes several years (often 2 to 3 years).

If there is enough evidence towards the end of the investigation, the investigative judge (*juge d'instruction*) issues a closing order to refer (ordonnance de renvoi), the case to the competent court, which for this case is the Paris criminal court (cour d'assises).

4. Why is this case being investigated in France?

Some states, including France, have extraterritorial jurisdiction laws, which allow national prosecutors and courts to investigate and prosecute international crimes when committed abroad.

In the present case, a civil party complaint was filed in France on March 1st, 2021, before the Specialized Unit for Crimes against Humanity and War Crimes of the Judicial Tribunal in Paris, seeking a criminal investigation for the August 2013 chemical weapons attacks, alleging that these attacks constitute war crimes and crimes against humanity. The criminal complaint was filed with a civil party application of the Syrian Center for Media and Freedom of Expression (SCM), and victims' testimonies of the chemical attacks, based on evidence collected by SCM, Syrian Archive, and the Open Society Justice Initiative.

France's Specialized Unit for Crimes against Humanity and War Crimes was created in 2013 and is composed of prosecutors and investigative judges who have a special expertise in the investigation and prosecution of crimes of international law. They work closely with a specialized police unit (OCLCH). Around 160 cases are pending, at different stages of the proceedings, before this Specialized Unit and relate to alleged crimes in more than fifteen (15) countries.

5. What are other complaints related to chemical attacks in Syria?

Complaints relating to the chemical attacks in Al-Ghouta in 2013 and Khan Shaykhun in 2017 were submitted to the authorities in Germany on 6 October 2020, and in Sweden on 19 April 2021. These complaints included a wide range of evidence and information. The NGOs have continued to submit extensive new evidence to the investigative authorities in France, Germany, and Sweden, including a large collection of witness testimonies, visual evidence, and information about the chains of command of the entities suspected of carrying out the attacks.

6. What is the status of the case?

In April 2021, following the filing of the complaint and civil party applications, an investigation was officially opened, and two investigative judges were appointed. The original complaint and supporting evidence were developed by the Syrian Center for Media and freedom of Expression (SCM), Syrian Archive (a program of the NGO Mnemonic), and Open Society Justice Initiative, which along with individual victims, joined the investigation as civil parties, Civil Rights Defenders (CRD), an NGO partner in the project, also joined as a civil party.

Dozens of testimonies - from victims and witnesses of the attacks and experts - have been collected. Hundreds of pieces of documentary evidence have been filed: declassified intelligence reports, contributions from international organizations, analysis of open-source information as well as photos and videos that support the responsibility of the Syrian government in carrying out these attacks.

The volume and detail of the evidence convinced the judges that there is serious or corroborating evidence making it likely that **Bashar al-Assad**, President of the Syrian Arab Republic and head of the armed forces, **Maher al-Assad**, *de facto* leader of the 4th Armored Division, General **Ghassan Abbas**, director of Branch 450 of the Syrian [Scientific Studies and Research Center](#) (SSRC), and General **Bassam al-Hassan**, Presidential Advisor for Strategic Affairs and liaison officer between the Presidential Palace and the SSRC - took part in the planning and execution of these attacks and bear individual criminal responsibility for the crimes.

The investigative judges therefore determined that the proper response to the victims and the evidence presented was the issuance of international arrest warrants against the identified individuals.

7. What is an arrest warrant under French law?

In the French judicial system, an arrest warrant means that the investigative judge gives an order to law enforcement to find and bring the cited person before him or her.

French law stipulates that an arrest warrant may be issued if there is serious or consistent evidence making it likely that this person could have participated in the commission of an offense. Furthermore, the person must be a fugitive or reside outside of France and be accused of an offence punished by imprisonment.

In the event that the requested person « *cannot be seized* » before the closure of the judicial investigation, a report of an unsuccessful search is to be drawn up and the individual is considered to be « *indicted* » for the purpose of a potential referral of the case to court for a trial.

If the requested person resides abroad, it is not necessary to draw up such a report and the issuance of the arrest warrant is sufficient for the case to be referred to court.

When an international arrest warrant is issued, Interpol member states contact the organization to request the deliverance of a Red Notice. The National Central Bureaus (NCBs) in each country are responsible for forwarding their Red Notice requests to the Interpol General Secretariat. In France, the NCB, located in Paris, is part of the Central Directorate of Judicial Police (DCJP), and more specifically its Division of International Relations (DIR).

Member states apply their own laws when deciding whether to arrest a person.

8. Can an arrest warrant be challenged?

An arrest warrant may be challenged by the parties to the proceedings, at the initiative of the requested person's defense, or by the Prosecutor.

The requested person may raise the nullity of the arrest warrant:

- During the judicial investigation, but only if s/he has been summoned and has appeared before the investigating judge to be formally indicted.
- After the closing of the investigation, only if s/he has not been indicted or if the closing order (in French "Ordonnance or Arrêt de mise en accusation") has not been duly notified.

As for the Prosecutor, s/he can raise the nullity of the arrest warrant before the investigating Chamber as well as request the withdrawal of the warrant to the investigating judge and challenge a potential refusal before the investigating Chamber.

9. If the international arrest warrants do not lead to an arrest could there be a trial *in absentia*?

Under French case law, if an individual who is subject to an arrest warrant resides abroad and could not be arrested, the issuance of an arrest warrant gives way to an indictment in front of a court. Therefore, they could be tried *in absentia* if the court determines that it is in the interests of the administration of justice, the accused has been notified of the proceedings and has declined to exercise their right to be present. If convicted, the accused person has the possibility to challenge the conviction and request a new trial.

10. Are there any immunities in such a case?

The investigating judges, in issuing the arrest warrants, considered that none of the alleged perpetrators could claim any form of immunity from prosecution, including the Syrian president, Bashar al-Assad.

The judges have conducted a three-year probing investigation, heard the exceptional testimony of victims, reviewed extensive documentary evidence, interviewed numerous experts, and from this robust body of evidence found that it inescapably provided serious or corroborating evidence that Bashar al-Assad and three others are the individuals participated in the commission of these horrific crimes. Having reached that conclusion, they felt it was their obligation and that the law allowed them to issue an arrest warrant against those individuals.

States widely recognize that state agents have no immunity from prosecution by foreign national courts for the commission of international atrocity crimes.

The use of chemical weapons is one such crime, regarded in international law as an absolute prohibition—a crime for which there can be no immunity for any person, regardless of their political status (this concept is known in legal terms as a “peremptory” prohibition, or by the Latin term *jus cogens*).

Notably, the current Syrian arrest warrants mark the first time that this “no immunities for international crimes” principle has been applied in a national judicial system not just against high-level officials, but against the sitting head of state of another nation. Until now, only international courts have recognized their jurisdiction to prosecute the sitting head of state for international crimes.

The international community uniformly condemned the chemical attacks against Ghouta in August 2013. The United Nations Security Council in Resolution 2118, passed on 27 September 2013, determined that the use of chemical weapons in Syria constituted a “*threat to international peace and security*” and stressed that “*those individuals responsible for the use of chemical weapons in the Syrian Arab Republic should be held accountable*”.

Violations of a peremptory norm of international law, like the prohibition of the use of chemical weapons, creates obligations on the international community as a whole. The International Court of Justice recalled that all States must seek to bring an end to crimes - such as torture - that are considered by the international community of states as a norm from which no derogation is permitted.

These arrest warrants against high-level Syrian officials, including the Syrian head of state, provide the possibility that perpetrators of chemical weapons attacks will face justice, regardless of their title or function.

11. What are chemical weapons and how is the Syrian government involved?

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention, or CWC), which entered into force in April 1997, defines chemical weapons as “*toxic chemicals and their precursor*” as well as “*munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals*”.

Sarin is specifically classified as a Schedule 1 chemical under the Chemical Weapons Convention, which includes chemicals that have few, if any, uses outside of chemical warfare. Sarin is a nerve agent used to kill civilian populations.

The Syrian government admitted to possessing chemical weapons as early as July 2012. And under diplomatic pressure in response to the attacks at Eastern Ghouta, the Syrian government acceded to the Chemical Weapons Convention in October 2013.

At the heart of Syria’s chemical weapons program lies the Scientific Studies and Research Center (SSRC), a Syrian government program responsible for the development and production of conventional and non-conventional weapons and delivery systems, including chemical weapons and the munitions that carried them.



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The United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, established by the Secretary-General on 21 March 2013 (UN Mission), was present in Syria at the time of the attack, visited and took samples from some of the attack sites, and found “*clear and convincing*” evidence that sarin was used in the Eastern Ghouta attack in August 2013.

Following the chemical attacks on Eastern Ghouta on August 21, 2013, and Syria’s accession to the Chemical Weapons Convention, the Organization for the Prohibition of Chemical Weapons (OPCW) adopted procedures for the destruction of Syria’s chemical weapons program. The decision was endorsed by the United Nations Security Council in Resolution 2118 taken the same year but was not followed by the Syrian government.

In addition to the UN Mission, the Joint Investigative Mechanism (JIM) of the United Nations and the Organisation for the Prohibition of Chemical Weapons (OPCW), established in 2015, identified the Syrian government as responsible for multiple chemical attacks. In several reports, the JIM concluded that the Syrian government was responsible for the use of chlorine and sarin in different attacks during the conflict.

Subsequent investigations by the OPCW’s Independent Investigation Team (IIT) determined that specific Syrian officials were involved in sarin attacks in 2017, and that the sarin used in the Eastern Ghouta attack and subsequent sarin attacks had the same chemical signatures indicating they all came from Syrian government production facilities.

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