

Evidentiary Thresholds for Unilateral Aggression

Douma, Skripal and Media Analysis of Chemical Weapon Attacks as a Casus Belli

Gavan Patrick Gray

The initiation of military or economic punishment generally on states requires significant justification, lest it be judged an act of aggression. In 2018 two separate incidents invoked similar rationales for such acts of reprisal, specifically that they were responding to attacks using chemical weapons. The incidents were an alleged sarin gas attack by the Syrian government on political opponents, which led to military strikes from the United States, and an alleged poisoning via novichok nerve agents by the Russian government on a Russian ex-spy and his daughter, which led to economic sanctions from the United Kingdom. In both cases, however, evidence of culpability fell short of what legal standards typically require. Despite this, media coverage has failed to examine alternative scenarios or to offer effective critical assessment of the weak rationalizations offered by US and UK governments. The result, precipitate and incautious policy, driven by hasty conclusions rather than careful analysis, represents a failure on the part of both media and government institutions to present the public with an even-handed and neutral assessment of matters vital to their national interest.

Gavan Patrick Gray. Evidentiary Thresholds for Unilateral Aggression: Douma, Skripal and Media Analysis of Chemical Weapon Attacks as a Casus Belli. *Central European Journal of International and Security Studies* 13, no. 3: 133-165.

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Keywords: chemical weapons, Syria, Russia, media, propaganda, aggression, allegation.

CEJISS
3/2019

It is reasonable to suggest that tensions between the world's great powers are higher now than any time since the end of the Cold War. Certainly this is the view of US Director of National Intelligence, Dan Coats.¹ What previously seemed like minor differences in foreign policy, escalated during recent crisis events in Syria and Ukraine, reaching the point where direct military intervention has become entirely plausible. In April 2018, in response to a US declaration that it would launch missile strikes against the Syrian government in retaliation for alleged chemical attacks, Russia said it would not simply shoot down such missiles but potentially strike at the 'sources' launching them.² If international relations have reached a point where such a narrow margin lies between war and peace, the utmost care and attention must be given to incidents capable of causing escalation.

Two recent incidents acted as primary triggers for that dramatic increase in tension. The aggressive unilateral responses to them raise significant questions regarding the evidentiary standards required before punitive action can be taken. The first was the aforementioned retaliation for alleged gas attacks in Syria, in which the US unilaterally, and in breach of international law, attacked Syrian governmental targets. The second was the 'Skripal Affair' in the UK, in which the UK government claimed that a former Russian intelligence operative living in the UK had been poisoned by the Russian government. In both cases the level of evidentiary proof offered fell far below what would serve as reasonable standards for conviction in criminal, civil or international humanitarian law. Despite this, widespread media support for the allegations and a lack of consideration for alternative scenarios, generated an atmosphere in which it became possible to carry out reprisals against the alleged crimes without any significant opposition or response from the international community.

This paper examines the incidents used by mainstream media outlets to assess the case of allegation, it uses both independent and alternative media sources to examine whether other analysis was possible. It also compares the findings with accepted evidentiary standards for issues of international law to reach three conclusions. Firstly, media failure to highlight the weakness of evidentiary standards claimed as justification is inimical to journalism's vital role as a safeguard of the

public interest. Secondly, in promoting only a single perspective on these issues, their narrow analysis is likely to allow the perpetrators to escape justice. Finally, they exacerbated the tensions between states to the extent that major conflict becomes increasingly likely. Should such patterns of politicized media analysis persist, they are prone to represent a very real threat to international peace and security.

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Standards required

The strikes against Syria were an act of aggression that, even if driven by humanitarian aims, still require the highest level of justification to avoid crossing into illegality. The sanctions against Russia, though not as blatantly militant, still constitute an act of significant aggression and raised as much potential for an escalation of economic warfare as the missile strikes did for an escalation of the more direct kind. Though very different in nature and scale, the two incidents generated pretexts by which the US and UK could isolate their opponents from the international community and make their aim of regime change in Syria that much easier to achieve. If the claims involved in the two incidents could, therefore, be judged to have been lacking in sufficient merit it might reasonably be construed that the responses to them were driven instead by broader foreign policy aims.

To determine what legitimacy the US and UK claims held, the evidence on hand must be weighed against the standards required to justify punitive action. Should the evidence prove insufficient, there would be a further need to ask why this was not clearly highlighted by the media of those states. If such failures resulted from poor journalism or politicization of the media, there would then be a need for greater scrutiny given to the ability of these institutions to prevent governments from violating international laws and norms.

Let us consider the military first. The fact that Humanitarian Military Intervention (HMI) requires some degree of deliberate killing and destruction necessitates a heavy burden of justification.³ In considering the principles of Just War Theory the Syrian retaliatory strikes meet only one of these clearly (*Proportionality*), and one disputably (*Just Cause*), providing the crimes occurred as claimed. The others are all lacking. *Just Intent* is patently false when claimed by states openly calling for regime change in the target state while also supporting a war of aggression in nearby Yemen that has destroyed the country's infrastructure, left thousands dead, millions in the grip of fam-

ine, and unleashed a cholera outbreak infecting almost half a million people;⁴ their aims seem driven far more by Realpolitik than humanitarian principles. *Just Authority*, requiring the support of the United Nations Security Council or General Assembly, was not even sought. *Last Resort*, given Syria's willingness to accept inspections and engage in international dialogue cannot reasonably said to have been reached. Even *Probability of Success* was lacking, as the impact of both strikes and sanctions have been negligible in changing the target countries' positions on the issues in question.

The problem is that HMI is becoming increasingly legitimized through the ease at which it is invoked and the lack of repercussions for those using it as a tool of foreign policy. Some scholars suggest it is an 'emerging norm',⁵ or even a 'soft law',⁶ yet, such arguments require that exceptions to UN rules have emerged as a matter of customary international law.⁷ In the case of Unilateral Humanitarian Intervention (UHI), intervention lacking a UN mandate, unwavering opposition from the G77 and Non-Aligned Movement shows that this is certainly not the case, and the International Court of Justice, in *Nicaragua v. United States*, concluded that neither treaty nor custom legitimize UHI.⁸

Despite this, since the 1994 Rwandan massacres, some believe that UHI is justifiable where the UN fails to respond to crisis events.⁹ This still fails to recognize the deleterious, incremental effect such action has upon international law; gradually easing restrictions on the initiation of violence that exist primarily to protect weaker states from the depredation of the strong. It is for this reason that the USA was unsuccessful in removing UHI from the International Criminal Courts recognized crimes of aggression.¹⁰ Even if moral goals are accepted many other arguments remain against both UHI and HMI, one being that it frequently prolongs conflicts by preventing a weaker side from suffering a decisive loss that might allow peace to emerge¹¹. In the case of Syria it seems clear that Western support for rebels was a key factor in preventing an early victory for government forces.¹²

It is reasonable to call HMI a contested issue whose guidelines, both moral and legal, are in a state of flux. This does not mean, however, that guidelines do not exist and the clarification, acceptance, and adherence to norms governing HMI is something the international community should be moving toward.¹³ One baseline for such norms are the standards of proof used in International Humanitarian Inquiries.

These cover four broad ranges:

Reasonable suspicion: Grounds for suspicion that an incident occurred, but other conclusions are possible (forty percent probability).

Balance of probabilities: More evidence supports one interpretation than other possibilities (fifty one percent probability).

Clear & convincing evidence: Very solid support for the main probability and limited information suggests alternatives (sixty percent probability).

Overwhelming evidence: Conclusive or highly convincing evidence supports one primary interpretation of events. (eight percent probability).¹⁴

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These standards are for inquiries rather than interventions. However, it should be evident that in either case the level of 'reasonable suspicion' is quite weak and should never form the basis for decisive action. In civil law the standards are usually the higher levels of the 'balance of probabilities', while sometimes 'clear & convincing' evidence is required. In criminal law the standard reaches even higher than any of the above cases to 'beyond reasonable doubt', whereas one hundred percent probability is required for conviction and punishment. Similar standards apply in the International Criminal Court (ICC) whereby five distinct steps occur, each with more stringent requirements.

Step 1: Bringing a case to the ICC's attention: anyone can do this.

Step 2: Investigation occurs: will happen unless there are reason not to do so.

Step 3: Arrest warrants are issued: if *reasonable grounds* are established.

Step 4: Indictment and prosecution occurs: if there are *substantial grounds* for belief.

Step 5: Conviction occurs: if the defendant is found guilty *beyond reasonable doubt*.¹⁵

However, for HMI the level of 'beyond reasonable doubt' is generally accepted to be far too stringent. The circumstances surrounding crisis situations are never clear enough to guarantee this and the

time required to gather sufficient evidence would negate the impact of intervention. If we take this view, rather than strict proof, what is required is evidence that crimes against humanity are occurring, the level of evidence could switch to use either 'substantial grounds' or civil law's 'balance of probabilities' as a baseline. This would exclude only 'reasonable suspicions' as being insufficient grounds for action. In looking at the evidence for both Douma and the Skripal affair we would, therefore, be required to find a preponderance of evidence holding one party more clearly responsible than any other, before retaliatory action can be justified.

One caveat is that where any actor prevents or obscures the investigation and analysis of evidence, or promotes inaccurate or deliberately misleading interpretations of that evidence, they should expect their behavior to lead to inferences being made regarding their motivations, or their own culpability, regarding the incidents in question.¹⁶

The Douma gas attack: The accusations made

On the 7th of April, 2018 dozens of civilians were reportedly killed in a suspected chemical weapons attack in the Syrian town of Douma. US President Trump immediately laid the blame on the Syrian government, calling President Assad an 'animal' and saying Russia and Iran also bore responsibility.¹⁷ These comments established the dominant media narrative on the incident and within days many news organizations were reporting that a chemical attack had actually occurred.¹⁸ This was despite the fact that no hard evidence existed beyond video footage of alleged victims and claims from witnesses of questionable neutrality. The search for perpetrators thus jumped over the typically precedent stage of establishing that a crime had occurred.

More caution might have been expected considering prior experience of unreliable evidence in the wake of the alleged sarin gas attack in Khan Shaykhun on the 4th April 2017. At that time the attack brought a response within 24 hours in which the US Defense Secretary, James Mattis, stated, 'the Syrian regime attacked its own people...I have personally reviewed the evidence and there is no doubt'.¹⁹ Yet, within the year Mattis backtracked from his earlier claims, admitting that while, 'we have other reports from the battlefield from people who claim it's been used...we do not have evidence of it'.²⁰ While the earlier event resulted in a joint report by the United Nations and the Organization for the Prohibition of Chemical Weapons (OPCW) that found

the 'most likely' source was the Assad government, many experts on chemical weapons disagreed with such assessments.²¹

Despite this, the US responded rapidly to the Douma incident with Mattis himself stating he had 'not much doubt' and, regarding responses, the US would 'be making that decision very quickly, probably by the end of the day'.²² The evidence was, however, severely lacking, with Mattis acknowledging that, 'we're not engaged on the ground there, so I cannot tell you that we had evidence, even though we had a lot of media and social media indicators that either chlorine or sarin were used'.²³ Mattis should have recalled Colin Powell, when he stated that the National Intelligence Estimate used to justify the invasion of Iraq, and which had been signed off on by 16 intelligence agencies, had turned out to be a 'great intelligence failure'.²⁴

Support for reprisals came from the French government. The French stated that they had seen 'evidence sufficient to call into question the responsibility of the Syrian regime in the chemical attacks'.²⁵ Such declarations are without meaning, as any allegation no matter how outlandish is 'sufficient to call into question' so long as the odds are not absolute zero. The French evidence was the same videos of alleged victims, regarding which the French reported only a 'high degree of confidence' that it was not staged. The Syrian motivation, they suggested, was to dislodge rebels from urban areas and punish civilians. They also declared they had no information to support claims that rebels had access to chemical weapons.²⁶ As a result of such assessments, the US, UK and France, in contravention of international law, launched missile attacks on Syria on the 13th of April, that is nine days after the allegation.

Later, claims would be made that samples smuggled out of Syria by 'activists' offered evidence that chemical weapons had been used.²⁷ Yet, these samples had no chain of custody of any kind and passed through the hands of rebels, foreign governments and intelligence agencies all opposed to the Syrian government.²⁸ In terms of on-the-ground investigation, the area was controlled by rebel forces and thus the Syrian government was unable to access it. The first investigative team were members of the Russian Military Police who arrived on 9th of April.²⁹ As rumors regarding the alleged attack began to spread, verifiable information was in short supply and some claimed that Syrian and Russian authorities were attempting to prevent inspection of the site by OPCW representatives.³⁰ The US went so far as to claim the delay was an effort by Syria and Russia to sanitize the site and clear up evidence.³¹

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Russia responded that hostile local reaction to the premature US missile strikes was the actual cause of delay and that the UN Department of Safety and Security were the ones withholding permission.³² The reality was that due to the unsecured nature of the site neither Syrian nor the Russians had the power to 'grant access' to it. Protests by crowds of civilians, shots being fired in the vicinity, and at least one nearby explosion were the key factors contributing to the delay.³³ The plain facts, if not the media's confusion, were finally cleared up by an OPCW chief who confirmed the Russian version of events, i.e. the delay being caused by security concerns from the UN.³⁴ At the end of April 2018, the situation on the ground remained the same, with very little clarification of what evidence, if any, had been discovered.

The Douma gas attack: Alternate viewpoints

In evaluating what evidence existed to justify military action against Syria, the basic elements of opportunity and motive have to be considered. In regard to carrying out these, or any other, chemical attack it should be remembered that all of Syria's declared stockpiles were verified as having been destroyed by the OPCW.³⁵ Of course, they may have kept other undeclared stocks but no evidence of this has been provided.

In terms of motives for the attacks, President Assad stated, 'If we kill people indiscriminately, it means we are losing the war because people will be against us. I cannot kill the Syrian people, either morally or for my interest, because in that case I am going to push the Syrian community and society towards the terrorists.'³⁶ While it would be foolish to take this at face value, the statement is logical, in both tactical and strategic terms. In the wake of the alleged 2017 attack in Khan Shaykhun, many, such as US Representative Tulsi Gabbard, were quick to point out that it made no sense to target civilians in a manner that would provide no practical military gains and instead offer justification for further Western intervention in Syria.³⁷ US Senator Richard Black, a former head of the Criminal Law Division at the Pentagon also expressed skepticism saying that, as a prosecutor in military cases, he could not find a motive and that Assad was 'winning on every front... why on earth would he make a small attack on a group of civilians?' adding, 'the only way ISIS can defeat President Assad is to draw the U.S. into the war. What better way than stage an attack on women and children?'³⁸

The same questions can be applied to Douma, yet at this stage the war was even closer to resolving as a victory for the Syrian government, with the US conceding in 2017 that Assad's removal was no longer necessary,³⁹ and numerous sources in early 2018 suggesting that the war was essentially over.⁴⁰ Once again, doubts were publicly raised over the logical inconsistencies with US Senator Rand Paul suggesting, 'the only thing that would galvanize the world to attack Assad directly is a chemical attack....so you wonder really what logic would there be for Assad to be using chemical weapons'. He added, 'either Assad must be the dumbest dictator on the planet — or maybe he didn't do it. I have yet to see evidence that he did do it'.⁴¹ Similarly, Major General John Shaw, former head of UK Special Forces, asked, 'Why would Assad use chemical weapons at this time? He's won the war. That's not just my opinion, it is shared by senior commanders in the US military. There is no rationale behind Assad's involvement whatsoever'. These views were echoed by Admiral Lord West, former head of the Royal Navy, who said, 'If I was advising President Assad, why would I say use chemical weapons at this point? It doesn't make any sense. But for the jihadist opposition groups I can see why they would'.⁴²

Some analysts claim that for the rebels to have targeted civilians with sarin is unlikely, either because they did not have access to it, or it is 'really difficult to assemble'.⁴³ This is moving beyond the more fundamental question of whether any attack actually took place. Certainly dead bodies were shown, but this does not mean that they were killed in a chemical attack, or that they might not have been killed elsewhere and the bodies staged for propaganda purposes. Early news reports from the scene stated that no evidence could be found of the alleged attacks and that locals were suggesting the rebels had indeed staged it.⁴⁴

Whether such claims are verifiable remains to be seen. However, there is strong evidence that the rebels did have access to, and the ability to use, chemical weapons. In 2013, based on witness testimonies, the UN had 'strong, concrete suspicions but not yet incontrovertible proof' that the Rebels had used sarin gas against civilians.⁴⁵ In the same year an interview with a rebel commander showed him make veiled threats against the West that they should supply rebels with anti-aircraft and anti-tank weapons or the rebels would 'reveal all the evidence we have [about use of chemical weapons]'.⁴⁶ As a threat this only works if such revelations would reflect badly upon the West or their allies in the Syrian opposition factions.

Later, during the war (yet prior to destruction of Syria's chemical stocks) the rebels seized control of Syrian Army bases used by Regiment III and reportedly took control of large supplies of chlorine, sarin and mustard gas.⁴⁷ In a similar vein, Turkish MPs openly claimed that members of the Turkish intelligence services had been complicit in allowing rebels to gain access to sarin.⁴⁸ On multiple occasions, Syrian government troops have been attacked with chemicals later identified as Sarin (Khan al-Asal, Jobar, Ashrafiyat Sahnaya) but in each case the relevant international organizations declined to blame rebels due to a purported lack of sufficient evidence.⁴⁹

Regarding whether rebels would use weapons against civilians, it is important to remember that these groups are extreme fundamentalists. There is no longer any significant 'moderate', non-sectarian opposition to the Syrian government,⁵⁰ and the strongest of the remaining opposition factions, whether the Islamic State or Hay'at Tahrir al-Sham (formerly Jabhat al-Nusra) take their guidelines from Al Qaeda tactical manuals such as 'The Management of Savagery'. This book advises militant believers to 'avoid targeting children and women.....as long as there is no greater Sharia benefit in targeting them'.⁵¹ In other words, where strategic benefits exist, targeting innocents is seen as justifiable. Tahrir al-Sham is one of the dominant rebel factions and it gained notoriety from a willingness to target non-combatant civilians and aid workers. In Iraq used suicide attacks against civilians while other insurgent factions focused their operations on US and Coalition forces. Their commander, Julani, encouraged such attacks against the Alawite population of Syria, leading to massacres such as the 2013 Latakia attacks which killed 190 civilians.⁵² They are also the most likely suspects in the 2017 Rashidin massacre, in which a suicide bomber targeted evacuees from a pro-Government area, killing 126, including 68 children⁵³. Such attacks frequently resulted in hundreds of people at a time being taken hostage.⁵⁴ In some cases, these hostages were placed in large cages and paraded through rebel-held areas as human shields against possible government attacks.⁵⁵

The integrity of some journalists has been attacked for suggesting that chemical attacks may have been faked or staged (either that there was no actual attack, that footage was from different times or locations than claimed, or, that actual use of chemical weapons is shown in a manner intended to divert responsibility from the true perpetrator). What is undeniable is that, from beginning of the civil war, fake videos

of massacres have been distributed on social media. Yet, in many cases, when their fraudulent nature was revealed it was then claimed that they were made by the Assad government in order to discredit the opposition for distributing them.⁵⁶ Such claims ignore a common principle of propaganda which states that an early 'big lie' will have far more impact than later revelations of truth, and that corrections can often increase the impact of the original lie.⁵⁷ Later, more carefully orchestrated fabrications appeared that were created either by individuals seeking to portray the Syrian government in a negative light, such as the entirely false 'Gay girl in Damascus' blog,⁵⁸ or for less clear-cut motives. For example, footage purportedly showing a young boy braving sniper fire in Syria, that was actually created by Norwegian film-makers in Morocco, apparently to study how the media would react to potentially fake material.⁵⁹ In both these cases, the media response was the same, both the blog and video were taken entirely at face value and widely promoted as examples of the brutality of the Syrian government.

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In the case of Douma, one month prior to the event Russia claimed that the Rebels intended to stage chemical weapon attacks in Eastern Ghouta (which includes the Douma District) as a pretext for US attacks on the capital.⁶⁰ Would the rebels be technically capable of such trickery? BBC Foreign News Producer Riam Dalati suggested they were certainly interested in manipulating media perceptions when he commented how he was, "sick and tired of activists and rebels using corpses of dead children to stage emotive scenes for Western consumption. Then they wonder why some serious journos are questioning part of the narrative."⁶¹ A much earlier video, uploaded by opposition activists to YouTube, also supports the plausibility of such a hypothesis. In it, a bizarre scene unfolds in a room within which a large Al Qaeda flag hangs on one wall. Young children are clearly encouraged to feign exposure to nerve gas (with typical spasming of the legs and shaving foam applied to their mouths), then men dressed as doctors rush in to 'treat' them with gas masks.⁶² The purpose of the video is unclear. Potentially, it is macabre performance art protesting prior chemical weapon attacks, but it is more than enough to show that rebel groups have long had the ability to convince young children to feign victimhood and mimic the effects of nerve agents.

A more recent video tape in the wake of the Douma incident shows a young boy, Hassan Diab, state that rebels brought him from the street into a hospital where he was passed off as a victim of chemical

attacks.⁶³ A doctor from the area, interviewed by veteran Middle East reporter Robert Fisk, claims that the victims of the incident are actually people who 'were overcome not by gas but by oxygen starvation in the rubbish-filled tunnels and basements in which they lived' in the aftermath of an artillery strike.⁶⁴ The Syrian Observatory for Human Rights, typically staunchly anti-Assad, also supported this interpretation of events when it blamed deaths in the area at the time on building collapse and suffocation.⁶⁵

In the wake of the attack, photos of two yellow cylinders were claimed to be 'chemical devices' yet witnesses on the scene stated that there had been no sound of explosion in the area where they were found and the devices looked too undamaged to have been dropped as bombs.⁶⁶ A reporter from Germany's ZDF network spoke to refugees from Douma who claimed the targeted building had been an Islamist command post and the opposition fighters had brought chlorine canisters to the building specifically so they could be used to portray a chemical attack if it was later bombed by the government.⁶⁷ In another video two medical personnel (Muwafak Nisreen and Khalil al-Haish), seen treating civilians in footage of the aftermath of the incident, claimed that the primary problem faced by victims was an inability to breathe due to inhalation of smoke and dust and that, while they were dealing with these patients, unidentified figures caused a panic by shouting that there had been a chemical attack.⁶⁸ It is significant that this video, together with the testimony of those in it, has been given no exposure in mainstream Western media. In the case of the Guardian, the claims are reduced to a single sentence stating, 'some doctors have appeared on Syrian television to deny that anything took place in Douma,' but offers no details of what they witnessed and instead suggests that their denials of a chemical attack are due to government threats.⁶⁹ This is potentially true, but it is only one interpretation of events and the alternate possibility, that they are describing what happened, should be weighed and assessed rather than dismissed as no news.

What seems clear is that at the time of the US missile retaliation, there was no concrete evidence that a chemical attack had taken place. There was video evidence that people had died and that others were injured and treated at medical facilities but the witness statements regarding the causes were, at best, conflicting. Physical evidence at the scene, of yellow gas canisters, was similarly underwhelming and, even in the event that these were explicitly linked to the release of nerve

agents, there is no reason to assume that the responsible party was the Syrian government, who lacked any tactical or strategic motive; rather, rebel groups, who had access to sarin, have displayed a willingness to massacre civilians, and who have a very clear and pressing reason to create such an incident. As previously stated, in cases of international humanitarian law the level of evidence required to support action, rather than simple investigation, is generally accepted to be more than that of reasonable grounds. Suffice to say, the situation in Douma was far from clear and certainly not so cut and dried that reprisals could be justified on the basis that the Syrian government was ‘clearly’ the most likely perpetrator. By circumventing such guidelines the United States’ unilateral action constitutes a further degradation of the international standards meant to preserve peace, international stability and the rule of law.

The Skripal affair: The accusations made

The Douma incident might seem like a repetition of other earlier alleged gas attacks. However, when compared to the recent alleged poisoning of former Russian spy Sergei Skripal, we can see many of the same elements at play. This suggests a dangerous pattern of behavior is developing in the relationships between Western governments and their national media. A flurry of unsubstantiated allegations from the government was being echoed in the media, confusion in the investigative process, and a blind eye turned by the media to aggressive acts of retaliation despite the dangers such acts pose to international stability.

On the 4th of March 2018, Sergei Skripal, a former Russian double-agent who had been released to the UK in a spy swap, was allegedly poisoned along with his daughter Yulia, in the British town of Salisbury. The Skripals, along with a police officer who attended to them after they were found incapacitated, were admitted to hospital where it was said they were exhibiting symptoms of poisoning by a nerve agent. By the 12th March the UK government claimed it was ‘highly likely’ that Russia was responsible for the attack, either directly poisoning the Skripals with a class of nerve agent known as ‘Novichok’, or letting such material fall into the hands of the people who did poison them⁷⁰. Within days, the governments of France, Germany and the USA joined the UK in stating there was ‘no plausible alternative’ to the UK’s claims of Russian responsibility, and labeled the act a breach of international law and a threat to international security.⁷¹

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The UK Foreign Secretary, Boris Johnson, claimed that the Russians had been stockpiling Novichok agents for decades,⁷² and soon after stated that he had received assurances from Porton Down, the UK's primary chemical weapons research center, that the agent used had originated in Russia. This statement was demonstrably untrue, and it was only one of many inconsistencies, errors, or distortions surrounding the case.⁷³ Despite all that, the UK and its allies pushed ahead with enacting punishment against Russia well before any reliable identification of the responsible party had occurred and before the OPCW had finished its own official investigation of the incident. On the 14th March Britain's Prime Minister announced sanctions that would be imposed upon Russia, on the 20th March, the UK expelled 23 Russian diplomats from its territory, and on the 26th March the US expelled another 60, with 16 different EU states announcing expulsions of their own. It was only on the 3rd April, after much of the press had spent several weeks generally presenting Russia's guilt as a foregone conclusion, that senior officials from Porton Down released a statement explicitly stating that while they had identified the substance involved as being a 'Novichok' class agent, they had no way of identifying where it came from.⁷⁴ Shortly thereafter, the Russian government made a statement that elements of BZ, a NATO hallucinogenic drug, had been revealed in the samples sent to OPCW labs, though the OPCW later stated the BZ was only present in control samples for the tests.⁷⁵

By mid-April all three of the victims had either recovered, or were in a stable and recovering condition. However, the UK continued to insist that 'only Russia has the technical means, operational experience and motive for the attack on the Skripals and that it was highly likely that the Russian state was responsible. There is no plausible alternative explanation'.⁷⁶ Is it true, however, that no plausible alternative scenarios had existed which might have made it sensible to forestall initiating a major diplomatic war?

The Skripal affair: Alternate viewpoints

Before Porton Down identified the agent involved as a type of Novichok, there was a clear possibility that other causes might have existed. The Skripals had eaten at a seafood restaurant just prior to their collapse, leading some to think shellfish poisoning might have been involved. Shellfish can excrete a form of nerve toxin that would induce similar symptoms to military nerve agents. However, the initial symp-

toms reported were that the victims 'looked out of it' and were 'doing some strange hand movements looking up to the sky. It looked like they had been taking something quite strong'.⁷⁷ These comments are far more in keeping with the symptoms of high doses of opiates (such as Fentanyl) or hallucinogens (such as BZ) than they are with nerve agents of the Novichok class, whose symptoms are violent spasming of the muscles and inability to breathe, not what would typically be described as someone who is 'out of it', a phrase referring to someone being out of touch with reality, rather than experiencing a clear medical emergency. The receiving hospital also initially identified the substance involved as Fentanyl, though later reports edited this to refer only to a 'substance'.⁷⁸ There were certainly other possible scenarios that should have led the media to urge caution and wait to see the results of official investigation.

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Widespread claims of Russian responsibility and the promotion of the narrative that the substance involved was Novichok, kicked off an entire month before analysis of the material was carried out by the OPCW.⁷⁹ The French government had initially called for hard proof of Russian involvement, saying 'We don't do fantasy politics. Once the elements are proven, then the time will come for decisions to be made'.⁸⁰ Yet, within days they had, without hard evidence, joined the UK's condemnation of Russia. Germany, in contrast, gave initial support and then backed off with requests for firmer proof.⁸¹ That the agent was later identified as a Novichok was in no way proof of Russian involvement and is irrelevant to the fact that accusations and reprisals were carried out long before the evidence justified them.

Some early journalists asked the right questions, namely 'Qui bono?'⁸² Was there any reasons for Russia to target Skripal, after holding him in prison for six years and freely trading him in a spy swap? Some suggested that it was an effort to intimidate other spies,⁸³ yet this seems implausible given that all three victims survived and any future poisoning would clearly create significant diplomatic trouble for Russia. As such, in terms of plausible motives for targeting Skripal it is hard to imagine any benefit Russia could have hoped to acquire.

The timing was also highly unfavorable for Russia. Novichoks, previously unknown to the general public, had, in the very same week of the attack, been the central plot element of a television spy drama called 'Strike Back' shown in the US (earlier shown in the UK in November 2017/January 2018). With Russia also experiencing significant

international pressure regarding its support for the Syrian government and with an upcoming Presidential election, and the hosting of the 2018 Football World Cup, placing Russia in the international spotlight, it seems as though there would be several strong reasons for Russia to avoid attracting unneeded condemnation.

Leonid Rink, a Russian scientist who helped develop the Novichok strains said, 'It's hard to believe that the Russians were involved, given that all of those caught up in the incident are still alive. Such outrageous incompetence by the alleged spies would have simply been laughable and unacceptable.'⁸⁴ Alan Rodier, director of the French Center for Research on Intelligence, echoed these views, suggesting that even if Russia had wanted to attack Skripal, it would have been highly unusual for Russia to fail to kill their target or attack them in such a way that bystanders were also affected. He added that targeting a participant in a prior spy swap would also go against established inter-service norms.⁸⁵ Yet, when Jeremy Corbyn, leader of the UK's opposition Labour Party, expressed hesitance in accepting Russian guilt, he was seen by some media as having 'misjudged the mood' among British lawmakers wherein any doubts regarding responsibility for the attack were met with strong disapproval.⁸⁶

One early, and repeated, claim was that only Russia had access to Novichoks. For most of the general public, having been previously unaware of the very existence of such agents, this was perhaps easy to accept. Yet, this statement was far from being accurate. For a significant time the OPCW's official position on Novichoks was that they had 'insufficient information to comment on the existence or properties' of the agents.⁸⁷ However, communications released by Wikileaks revealed that as far back as 2006 they had supported US efforts to prevent Novichoks being added to the Chemical Weapons Convention.⁸⁸ The reason for this may have been the fact that one of the creators of the Novichok strains, Vil Miryazanov, had emigrated to the USA where he released a book that detailed the formula for the agent, something he admits would have made it quite easy for many states to produce the agent themselves.⁸⁹ The US certainly had the capability, though they took efforts to feign ignorance of the agents existence,⁹⁰ while the UK could easily have produced its own at the Porton Down chemical weapons facility, by apparent coincidence a mere eight miles from where the Skripal incident occurred. We know for certain that at least one other country, Iran, independently created Novichoks,⁹¹ and that

alone is enough to destroy any claims that, because of the type of agent employed, Russia must bear responsibility.

Would there be any motive for anyone else to poison Skripal? Given that we have no clear motive for Russian culpability, suggesting that other parties might have also had some as yet unidentified motive is both perfectly reasonable and standard policing. In another coincidence regarding the case, Skripal was apparently a friend of a security consultant who worked for the firm that created the Steele Dossier, used to attack the reputation of US President Donald Trump.⁹² If it is reasonable to think that Russia would assassinate Skripal for decades-old espionage reasons, it would also seem prudent to determine whether he was engaged in more recent espionage for either the UK or US governments that might give them a motive for silencing an operative element. Misha Glenny, a writer specializing in Eastern European organized criminal groups, suggested it could have been an attack by such types of “economic actors” in response to illicit business dealings Skripal may have been connected to.⁹³ Aside from these possibilities, the clear and significant negative impact the incident has had on Russia’s international profile makes it plausible that the event could have been staged purely to weaken Russia’s ability to support Syria. Each of these questions, if even remotely possible, required that a careful and open investigation be conducted to accurately determine what had occurred, and assess what evidence existed to support each individual hypothesis. Unfortunately, such an investigation did not take place.

From the start of the incident, requests by Russia for access to both the victims and samples of the agent were repeatedly rejected by the UK authorities. As the Skripals are Russian citizens, their Embassy enjoys, via the Vienna Convention on Consular Relations, the right of consular access to its citizens. Additionally, under the Convention on Chemical Weapons, parties involved in a potential breach of the accords are obliged, in regard to the incident, to ‘make every effort to clarify and resolve, through exchange of information and consultations....any matter which may cause doubt’.⁹⁴ Russia requested immediate adherence to these guidelines, with Foreign Minister Sergei Lavrov stating, ‘As soon as the rumors came up that the poisoning of Skripal involved a Russia-produced agent...we sent an official request for access to this compound so that our experts could test it in accordance with the Chemical Weapons Convention.’⁹⁵ Under these principles Russia could have reasonably expected to receive access to both

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samples and the Skripals within a maximum of ten days, giving Russia in turn ten days after that point to respond to allegations, yet neither of these established procedures were followed. On the 20th March Lavrov's counterpart, UK Foreign Secretary Boris Johnson, stated, 'we will trust to the technical experts of the Organization for the Prohibition of Chemical Weapons...that's the proper procedure that the UK has to follow under the Chemical Weapons Treaty'.⁹⁶ This is plainly untrue as the treaty states that parties involved in an incident are obliged to engage in information sharing. The UK's stance toward such sharing of information with Russia might have been more honestly expressed by their Secretary of State for Defence, Gavin Williamson, when he said, 'Frankly Russia should go away and should shut up'.⁹⁷

By 6th April Sergei Skripal was improving rapidly.⁹⁸ However, by 29th of April he had still not made any form of public appearance or statement. His niece, who had previously expressed doubt over Russian involvement, was refused a visa to enter the UK to visit her relatives,⁹⁹ while his daughter Yulia, now discharged from hospital, remained isolated from both public sight and from representatives of the Russian Embassy. Her only comment on the issue was a message released by the Metropolitan Police, allegedly drafted by her, which stated, 'I do not wish to avail myself of [the Russian Embassy's] services,' and, 'I want to stress that no one speaks for me, or for my father, but ourselves'.¹⁰⁰ Aside from the significant doubts such statements raise over the level of freedom of expression she was enjoying, there is a common legal concept of 'adverse inference', wherein, if a party fails to provide access to a witness it may reasonably be inferred that the witness's evidence is probably unfavorable to the party in question.¹⁰¹ Such concerns were rendered even more troubling by reports that the British government was preparing to relocate both Skripals under assumed identities, a development that could hardly be construed as helping to provide greater clarity regarding what had befallen the pair.¹⁰²

Once again, this lack of clarity makes it very hard to ascribe more than 'reasonable grounds' to the level of evidence provided as justification for retaliatory action. In other words, even if there was evidence supporting a 'possibility' of culpability it clearly did not reach the extent whereby Russia was the most likely perpetrator. Given the lack of clarity in so many details of both the Skripal case and the Douma attack, it could reasonably be expected that a vigilant media would be eager to uncover the truth surrounding both incidents. Instead, there

was a surprising lack of incisive analysis dealing with the points raised above and in its place, with rare exceptions, the delivery of a one-sided narrative in which Russian and Syrian guilt for both incidents was presented to audiences as a *fait accompli*.

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The media response

In a 1991 report on control of public information the CIA declared their 'relationships with reporters from every major wire service, newspaper, news weekly, and television network in the nation,' that 'helped us turn some "intelligence failure" stories into "intelligence success"' and through which they 'persuaded reporters to postpone, change, hold, or even scrap stories that could have adversely affected national security interests or jeopardized sources and methods'.¹⁰³ In 2013 such practices likely became even easier to carry out with the rescinding of a law prohibiting US media from directly promoting government messages to their audiences¹⁰⁴. In the UK similar traditions exist, with both MI5 and MI6, the domestic and foreign intelligence services, having long histories of influencing, or directly working as, the journalists of major media organizations.¹⁰⁵

This is not merely an issue of journalistic ethics. The dissemination of propaganda which advocates for war, or which promotes incitement to violence or hatred against national groups is a breach of international law under Article 20 of the International Covenant on Civil and Political Rights, to which both the US and UK are parties. While the US has done its best to abrogate its responsibilities under this law,¹⁰⁶ this does nothing to obscure the fact that such acts are viewed as illegal by the international community. On an individual basis it can be hard to accuse single journalists, or even an organization, of acts justifying the condemnation of the international community. However, when an entire national press is promoting a narrative that supports punitive actions that go outside the bounds of international law, there should be a mechanism by which they can be held accountable.

In the first week following the Skripal incident UK audiences were met with a deluge of media messages assuring them of Russian guilt and calling for retaliatory measures. *The Metro* declared, 'From Russia with hate: Link to Kremlin confirmed',¹⁰⁷ while the *Daily Telegraph* labeled it a 'warlike act to which NATO must respond'.¹⁰⁸ *The Telegraph* also asked, 'What can Britain do in response to Russian nerve attack?',¹⁰⁹ and other newspapers offered helpful suggestions, such as

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the Guardian's, "10 possible British responses...how could the UK punish Russia effectively?"¹¹⁰ This theme of 'punishment' was very common, with *the Guardian* also offering up 'Retaliation in Syria: What are May's options?'¹¹¹ and the *Belfast Telegraph* describing the eventual response as 'Airstrikes launched as allies punish Syria for "despicable" Douma attack'.¹¹²

Not only was there a clear narrative being promoted by much of the media, in many cases, independent voices were attacked for offering alternative points of view. In the USA in 2014, Barack Obama set the tone that would be used in such cases when he declared that it was 'an insult to human reason and to the legitimacy of [the United Nations] to suggest that anyone other than the [Syrian] regime carried out this attack [at Ghouta]'.¹¹³ Far from being an insult to reason it is, in fact, a fundamental principle of both good reporting and good policing to investigate all possible scenarios and to always maintain an element of doubt in your own findings. Black and white pronouncements of 'obvious' guilt are the tools of political rhetoric rather than either law enforcement or journalism, yet the former has begun to seep more and more into the latter fields.

When #SyriaHoax began to trend on Twitter, J.M. Berger, a counter-terrorism researcher suggested it was 'a clear example of a Russian influence campaign'.¹¹⁴ Whether or not this might be true overlooks the important fact that dislike for the source of information does not by automatically render the information untrue. Repeatedly, the fact that perspectives on the incidents in Syria or the UK were either promoted by Russian media sources, or shared the same views as Russian sources, was used as an excuse to 'poison the well', whereby anything agreeing with Russian positions is inherently suspicious. As in the aforementioned case of the leader of the UK's Labour Party finding himself under attack, from his own party members, when he challenged the Prime Minister's assertion that Russia was to blame for the Skripal incident.¹¹⁵ More significantly, his Press Secretary was accused of peddling Russian propaganda for daring to have opinions that were similar to those of the Russia government, for example by suggesting that, 'Ukraine had become governed in part by the fascistic right, and that the Ukraine conflict could start World War III'.¹¹⁶ Given that there were far-right elements in the post-coup Ukrainian government and that any conflict involving Great Powers has the potential to spiral out of control, both of these were purely factual statements; yet, now they

seem to have become enough of an incentive to warrant a McCarthy style hunt for 'Reds under beds'.

Certainly, the Russian government and its media does engage in propaganda and everything its says should be met with a measure of skepticism. Its claims that the samples in the Skripal incident contained the BZ agent only used by NATO, and the announcement that they had discovered chemical weapons laboratories in rebel-held areas of Syria were both dramatic, but ultimately hollow and unsubstantiated, examples of why all such claims should be critically assessed and verified. The same, of course, applies to Western media. In the wake of both Douma and the Skripal Affair, comments on social media that disagreed with the dominant narrative, were written off as the work of 'Russian bots'.¹¹⁷ However, two of the accounts highlighted as examples of this turned out to be very real individuals who simply happened to have alternative opinions. In acknowledging the error some media outlets decided it would be more accurate to refer to them as 'trolls' (someone who writes purely with the intent to offend) or 'conspiracy theorists'.¹¹⁸

The term 'conspiracy theorist' has long been a common, and perhaps an effective, way of excluding people with alternative viewpoints from political discussion.¹¹⁹ Following gas attacks in Syria in 2017, anyone suggesting the Syrian government may not have been responsible was, ipso facto, a conspiracy theorist. Theodore Postol, a weapons expert and Professor Emeritus at MIT was labeled as such for opposing the US government's position on the Syrian issue.¹²⁰ Though Postol's analysis was not entirely solid and contained several errors, it was not any inaccuracy that earned him the pejorative appellation. The media itself frequently makes similar errors and Postol's past, award-winning work critiquing missile systems should have seen his assessment, whether accepted or rejected, viewed purely in terms of objective analysis. What is more relevant, however, in being labeled a 'conspiracy theory' is whether the conclusions reached are outside the bounds of what the government and the mainstream media have designated as being socially acceptable points of view. Thus you have the *New York Times*, 'Syria conspiracy theories flourish at both ends of the spectrum',¹²¹ the *Guardian's*, 'A lesson from Syria: Its crucial not to fuel far-right conspiracy theories',¹²² and *The New Statesman* suggesting that conspiracy theories regarding the Skripal affair 'tap into antisemitic tropes'.¹²³ For many mainstream media sources the consensus appeared to be that

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supporting the narrative of the UK or US governments was legitimate journalism but if you happened to share the views of Russia or Syria you became an 'apologist'. *Al Jazeera* offered a clear example of this practice when it declared,

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Eva Bartlett, Vanessa Beeley...call themselves independent journalists, yet post gushing photos of themselves posing with Bashar al-Assad on social media, appear on Russian state television to peddle the Assad regime's lines and travel across the United States to accuse anyone opposing Assad of being an al-Qaeda sympathizer...Robert Fisk, Tim Anderson and pro-Palestinian 'activists' such as Rania Khalek have all joined in on the whitewashing. The problem with these regime apologists is that they claim to be journalists or academics...a genocide-denying regime and its allies cannot be given the benefit of the doubt, and those publicly defending such a regime are not journalists.¹²⁴

This type of reasoning is clearly begging the question. That is, we cannot question the truth of whether Assad is an evil dictator because Assad is an evil dictator. This form of biased, fallacious analysis should have no place in either professional journalism or academia.

This pattern of aggressively militant journalism reached its current nadir, however, with the *Times of London* declaring, with a front-page headline, that several British academics were, by virtue of expressing doubt over mainstream views on Douma, 'apologists for Assad' and that their work was 'wrong, unscholarly and odious' and represented a 'stain on the reputation of the institutions which host [them]'. By comparing them to 'holocaust deniers' and suggesting that no university would host the latter, the *Times* was explicitly advocating for the termination of the academics' employment.¹²⁵ Thankfully, none of the institutions involved seem to have been swayed to such measures by the heavy-handed appeal for academic censorship and punishment. Nonetheless, such excessive, and unwarranted, accusations by a paper that, despite its obvious journalistic failings, holds significant status, could still have a very negative impact on an academic's career prospects.

One of the *Times'* own reporters, former Middle East correspondent Hala Jabar, gave a succinct assessment of the problem when she tweeted,

In my entire career, spanning more than three decades of professional journalism, I have never seen MSM resolve to such ugly smear campaigns & hit pieces against those questioning mainstream narratives, with a different view point, as I have seen on Syria, recently...This is a dangerous maneuver, a witch hunt in fact, aimed not only at character assassination, but at attempting to silence those who think differently...The journalists, activists, professors & citizens under attack are presenting an alternative view point. Surely, people are entitled to hear those and are intelligent enough to make their own judgments.¹²⁶

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That a multiple winner of Foreign Correspondent of the Year and a key voice from the Syrian conflict could make such comments and not have them picked up by any major Western media is perhaps, in itself, evidence of what she has described. Another award-winning Middle East journalist, Jonathan Cook, wrote that the '[Anti-Assad] voices are important. They are another piece of the jigsaw, as we try to work out what is really going on in places like Douma. But publications like the *Guardian* are consistently presenting them as the *only* pieces their readers need to know about. That isn't journalism'.¹²⁷

This is precisely the danger. Any party interested in identifying and bringing to justice the perpetrators of the Douma and Skripal attacks should be eager for open and honest debate of all perspectives on the matter. With Douma, there is certainly a possibility that the Syrian Army, even if Assad himself did not approve a chemical attack, might have acted independently of rigid command structures and launched an operation resulting in such deaths. Similarly, with the Skripal affair, while it does not seem as though Russia had sufficient motive, this does not mean that one did not exist. Yet, in both of these cases, failures to critically assess more than one side of the story seriously calls into question mainstream Western media claims that they wish justice to be served.

The impact

In the wake of the Douma incident, the USA first violated international law by threatening to use unilateral military action against Syria. Then it more clearly violated international law, and arguably domestic US law, when Donald Trump ordered retaliatory missiles strikes on Syrian

facilities. Even the tenuous legal arguments used to attempt to justify US Presidents skirting Congressional authorization for such acts ring hollow, given that they still require the ‘anticipated nature, scope and duration, fall short of a war in the constitutional sense.’¹²⁸ While the actual outcome of the Syrian missile attacks was relatively minor, nine injured and no deaths, the strikes could not have been anticipated with certainty to have avoided escalation. Russia had stated that it would respond proportionally, leading to potential tit-for-tat engagements, and if Russian citizens had been harmed they would have targeted the US planes or vessels involved. Numerous articles had already been written on the possibility that Syrian tensions might be the spark for a wider conflict between the US and Russia, and such speculation only increased in the months leading up to the strikes.¹²⁹ The international response to this perilous jingoism was not any type of formal chastisement or condemnation, but instead weak disapproval from the United Nations, more vocal opposition from Russia and China,¹³⁰ and statements of support from the EU, Canada and NATO.¹³¹

In a similar fashion, UK efforts to impose harsh economic sanctions on Russia in response to the Skripal affair received little backlash despite their lack of justification. Rather, members of the European Parliament called for a boycott of the Russian-hosted 2018 World Cup,¹³² while UK broadcasting regulator OFCOM announced it was considering banning the Russian television station RT.¹³³ In the end, tougher economic sanctions were blocked by a small number of opposing EU states.¹³⁴ Nonetheless, the sanctions imposed on Russia by both the UK and US in response to the Syrian and Skripal incidents still had serious economic impact and further exacerbated tensions between the countries.¹³⁵ While the Chinese government suggested that ‘all parties should discard their Cold War mentality, refrain from confrontation and make concerted efforts to uphold world peace, stability and tranquility’,¹³⁶ a motion at the UN Security Council calling for states to ‘cease aggression against the Syrian Arab Republic and refrain from further aggressive acts in violation of the international law and the UN Charter’ failed to find support outside Russia, China and Bolivia.¹³⁷ This failure to defend the fundamental purpose of the United Nations made it considerably easier, the following month, for Israel to launch strikes on Syria without fear of rebuke.¹³⁸ These strikes, targeting alleged Iranian assets within Syria, threatened to draw the former state further into the prolonged conflict and represented the clear manner

in which these incidents of preemptive punishment can lead to incremental escalation of tensions and a continuing degradation of international law and security.

Conclusion

It is common sense to assume that state actors will be swayed by various biases and a desire to promote their individual aims. However, when the same biases begin to permeate the state's media institutions, society loses its ability to hold government accountable. Beyond this, the dissemination of propaganda, when done effectively and extensively, will cast a baleful influence not only upon the state's own population but on any international agencies that might also be exposed to these narratives. Thus it becomes open to question whether officers of agencies such as the OPCW, if exposed to a steady stream of heavily biased Western media narratives, can be expected to act in a perfectly neutral manner. This is not solely in regard to UK or US media bias but also Russian, or any other, media messages that fail to present a balanced analysis of events. When discussion of the issue devolves into competing opposing narratives that refuse to engage with the alternate positions, it only increases the likelihood that external spectators will feel as though they are expected to 'choose a side'. Media coverage of this type, straying from basic principles of neutrality, invariably creates a toxic atmosphere at the highest levels of international interaction in which unbiased analysis of critical events becomes almost impossible to achieve.

The increase in tensions, coupled with the weakening of international law's ability to prevent aggressive acts, makes it more and more likely that minor incidents will escalate into acts of aggression or tit-for-tat reprisals that might lead to broader, more intense, or more direct military conflict. Not only are any media that fail to engage in neutral, balanced analysis, complicit in such developments, they also neglect their responsibility to try to clearly identify the guilty parties involved in the instigating incidents. There is still no clear answer regarding who was responsible for either the deaths in Douma or the poisonings in Salisbury and, in both cases, there remains a pressing need, in terms of justice being served and future incidents being prevented, in identifying, prosecuting and punishing the guilty parties in a matter according to established law.

While the reaction of governments to the incidents described in this paper may be in keeping with self-serving principles of RealPolitik,

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and a nefarious yet still understandable, willingness to bend the rule of law, there can be no similar rationalization of the media's negligence. Whether deliberate malfeasance, stemming from unconscious bias, or a simple inability to maintain professional standards, the gradual politicization of many major media outlets appears to have played a significant role in preventing incidents such as Douma and the Skripal affair from receiving the careful scrutiny such events demand. This paper, however, does not make a blanket condemnation; that problems which are evident can in no way undercut the contributions made by individual voices within major organizations that still challenge accepted doctrine or offer counterpoints to the prevailing popular opinion. It will be necessary, however, for them to remain vigilant, and for others to emulate their professional standards, if other factors are to be prevented from exerting a degrading effect upon their profession. Given that the governments involved are unlikely to be swayed by ethical concerns, it is likely that only a greater adherence to the core values of journalism by such individual actors will be able to prevent similarly precipitous reprisals from occurring in the future.



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