

# Chemical Weapons in Syria and the UN Security Council: No Resolution Adopted

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*On April 12, Security Council met again to discuss the issue of chemical substances that caused the death of 87 persons last April 4 in Syria. A first urgent session took place on April 5 on the very same topic (see [S/PV.7915](#)).*

On April 5, three drafts of a future resolution circulated: a draft elaborated by Russia (see **Document 1** at the end of this note), a draft called “E-10” prepared by Non Permanent Members (**Document 2** reproduced at the end of this note) and a draft presented by France, United States and United Kingdom (**Document 3** reproduced at the end of this note). The main difference between these two last drafts has to do with Operative Paragraph 5 (OP 5): the version of the second text is considered by some delegates excessive, due to the request of extremely detailed military data to Syria.

A new version of this second draft circulated on April 12, with minor modifications. The text maintains OP 5 (see **Document 4** at the end of this note) with the detailed list of military information requested to Syria. As well known, France, United States and United Kingdom consider that what happened in Idlib is the result of an attack with a chemical weapon, and that Syria is directly responsible for this attack, even if there is no for the moment any investigation made by an independent body since 4 April 2017 to clarify the alleged “chemical attack”: see, for example, French Minister of Foreign Affairs [declaration](#) that does not use “alleged” when referring to what happened on April 4 and declarations of British Prime Minister (see press [note](#) of BBC of April 13). The last investigation on use of chemical weapons in Syria has been presented in January 2017 to Security Council by OPCW Fact Finding Mission, regarding an incident of 2 August 2016 (see letter and reports of OPCW Fact Finding Mission available [here](#)). It can be read in the conclusions (p. 16) that:

“6.3 Based on the evidence presented by the National Authority of the Syrian Arab Republic, the medical records that were reviewed, the results of the sample analyses, and the prevailing narrative of all of the interviews, the FFM cannot confidently determine whether or not a specific chemical was used as a weapon in the investigated incident. From the results of the analyses of the samples, the FFM is of the opinion that none of the chemicals identified are likely to be the cause of death of the casualties in the reported incident”.

48 hours later after this alleged “chemical attack” of April 4, United States bombed with 59 Tomahawk missiles the Syrian military base to which, according to United States, “chemical attack” came. This strike constitutes a clear violation of United Nations Charter, as no military action can be taken without prior approval of UN Security Council. See on this

particular point the analysis published by Professor Marko Milanovic (University of Nottingham) entitled: "[The Clearly Illegal US Missile Strike in Syria](#)" published by EJIL Talk.

In his statement at the Security Council, **Staffan de Mistura**, UN Special Envoy for Syria, commented the predictable effect of this strike ordered by President Trump in Syria without any kind of consultation:

"A few days later, the United States targeted Al-Shayrat air base with a strike of 59 Tomahawk missiles. Under-Secretary-General Feltman briefed the Council on that extremely serious development on Friday (see S/PV.7919). Since then, we have seen more fighting and violence, with new claims of the use of cluster munitions in inhabited areas, barrel bombs and incendiary weapons, including in close proximity to Khan Shaykhun itself. The Secretary-General has made clear his own position. He is appalled by the chemical weapons attack in Khan Shaykhun and calls for accountability for such crimes. In the aftermath of the United States strike, he is mindful of the risk of escalation and appeals for restraint" (see official statement available at the beginning of the meeting, available reading [S/PV.7921](#), p. 3).

It must be recalled that it is not the first time that chemical weapons in Syria are discussed in United States as a possible justification for a military intervention. In 2013, a very interesting press article entitled "**U.S. 'backed plan to launch chemical weapon attack on Syria and blame it on Assad's regime'**" published in MailonLine was removed and deleted, and "captured" by other websites (see text of the [article](#) recuperated by Reseau International).

The draft voted this Wednesday of April 12 (see official version available [here](#)) obtained **10 votes in favour, 2 against and 3 abstentions**. As predictable, Russia vetoed the text, and China abstained. Bolivia voted also against, while Ethiopia and Kazakhstan abstained. In addition to the five Permanent Members, the following States are Members of the Security Council: **Bolivia, Egypt, Ethiopia, Italy, Japan, Kazakhstan, Senegal, Sweden, Ukraine and Uruguay**.

If we read Operative Paragraph 1 of this draft, it says that the Security Council:

"1. Condamne avec la plus grande fermeté l'emploi qui aurait été fait d'armes chimiques en République arabe syrienne" / "Condemns in the strongest terms the reported use of chemical weapons in the Syrian Arab Republic" / "Condena en los términos más enérgicos el presunto empleo de armas químicas en la República Árabe Siria".

Spanish official version is extremely interesting due to the fact that "presunto" is closer to "alleged" than "reported". Maybe our readers can find interesting wording in Russian, Arabic and Chinese [official version](#) of the draft resolution.

Despite strong political positions heard in France, in United States and United Kingdom on the direct responsibility of Syria in the "chemical weapon attack", the representatives of these three Permanent Members at UN Security Council presented on April 12 a draft resolution trying to force UNSC to condemn the use "reported" or "qui aurait été fait" of chemical weapons. In case of the adoption of such a resolution, it would have been a very first "premiere" in UN Security Council's practice. On this very particular point we would be

extremely grateful to know of any precedent of a UN Security Council resolution condemning “reported” violence by a State against its own citizens.

It is probable that in a coming meeting, Security Council will consider the missile strike ordered by President Donald Trump of 6 April against Syria. A first urgent meeting took place last 7 April (see [S/PV.7919](#)), and legally speaking, no arguments can be found, despite the official statement made by United States during this meeting. Military reprisals are legally forbidden by United Nations Charter signed in 1945. Airstrikes launched without the consent of a State on its territory are in a very similar situation. On this last point, it can also be recalled that last December 2016, Denmark decided to withdraw from airstrikes in Syria (and Iraq), after Canada (February 2016): on Denmark’s decision, we refer to our modest [note](#) entitled “***The decision of Denmark to withdraw from airstrikes on Syria and Iraq***” (Debate Global, December 9, 2016).

On the different reasons and motivations to explain United States intervention in Syria, we refer to our recent note edited in Spanish, entitled “[Armas químicas en Siria: Consejo de Seguridad y Estados Unidos](#)”. It must be noted that during his intervention at Security Council last April 12, the representative of Syria said that:

“This comes at a time when the Syrian army and its allies are achieving crushing victories against terrorism; national reconciliation is being concluded across Syrian towns and regions; and significant steps have been taken in the Astana talks, emphasizing, as Mr. De Mistura said, the sovereignty and territorial integrity of Syria” (see the text of his intervention at pp. 28-21 of [S/PV.7921](#))

### **Document 1: Draft elaborated by Russia**

“Recalling the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) ratified by the Syrian Arab Republic on 14 September 2013, and the Council’s resolutions 1540 (2004), 2118 (2013), 2209 (2015), 2235 (2015), 2314 (2016), and 2319 (2016),

Expressing its deep concern regarding the alleged incident with the chemical weapons in the Khan Shaykhun area of southern Idlib in the Syrian Arab Republic on 4 April 2017 reportedly causing large-scale loss of life and injuries, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of chemical weapons must be held accountable,

Recalling that in resolution 2118 (2013) the Council decided that the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons, to other States or non-State actors and underscored that no party in Syria should use, develop, produce, acquire, stockpile, retain or transfer chemical weapons,

**1.** Requests the joint FFM and the JIM investigative team to visit as soon as possible the site of the alleged incident in Khan Shaykhun and adjacent territories to conduct full-scale investigation using the whole spectrum of

relevant methods, including the alternative information collection efforts and investigative skills, as was strongly recommended for such cases in the 4th and 5th JIM's reports (para. 49 and para . 11 respectively).

**2.** Demands all parties in the Syrian Arab Republic to secure in accordance with the resolution 2118 (2013) without any delay free and safe access for the joint FFM and JIM team to the site of the incident and adjacent areas;

**3.** Requests the Director-General of the OPCW Technical Secretariat and the head of the OPCW-UN Joint Investigative Mechanism (JIM) to forward through the United Nations Secretary-General to the Council for its consideration their proposals on the personal composition of the joint team to be dispatched to the Idlib Governorate of the Syrian Arab Republic based on the principle of a broad-based and balanced geographical representation;

**4.** Decides that the report of the joint FFM and JIM team should include all the evidences collected at the site of the incident and be provided to the Council for consideration;

**5.** Decides to remain actively seized of the matter.

## **Document 2: Draft resolution E-10**

*“Recalling the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) ratified by the Syrian Arab Republic on 14 September 2013, and the Council’s resolutions 1540 (2004), 2118 (2013), 2209 (2015), 2235 (2015), 2314 (2016), and 2319 (2016),*

*Expressing its horror at the reported use of chemical weapons in the Khan Shaykhun area of southern Idlib in the Syrian Arab Republic on 4 April 2017 causing large-scale loss of life and injuries, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of chemical weapons must be held accountable,*

*Noting the Organization for the Prohibition of Chemical Weapons (OPCW) has announced, in addition to its ongoing investigation, that its Fact Finding Mission (FFM) is in the process of gathering and analyzing information on this incident from all available sources and will report to the OPCW Executive Council,*

*Recalling that in resolution 2118 (2013) the Council decided that the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons, to other States or non-State actors and underscored that no party in Syria should use, develop produce acquire, stockpile, retain or transfer chemical weapons,*

*Recalling its determination that the use of chemical weapons in the Syria Arab Republic represents a threat to international peace and security,*

**1.** *Condemns in the strongest terms the reported use of chemical weapons in the Syrian*

*Arab Republic, in particular the attack on Khan Shaykhun reported on 4 April 2017, expresses its outrage that individuals continue to be killed and injured by chemical weapons in the Syrian Arab Republic, and expresses its determination that those responsible must be held accountable;*

*2. Expresses its full support to the OPCW Fact Finding Mission, demands that all parties provide delay-free and safe access to any sites deemed relevant by the OPCW FFM, and, as applicable, by the JIM, to the reported incident in Khan Shaykhun in accordance with resolution 2118, and requests that the FFM report the results of its investigation as soon as possible;*

*3. Requests that the Secretary General make the necessary arrangements for the UN-OPCW Joint Investigative Mechanism to liaise closely with the Fact Finding Mission to expeditiously investigate any incident the FFM determines involved or likely involved the use of chemicals as weapons in order to identify those involved in accordance with the provisions of paragraph 5 of its Resolution 2235;*

*4. Recalls that in its resolutions 2118 and 2235 it decided that the Syrian Arab Republic and all parties in Syria shall cooperate fully with the OPCW and the United Nations including the Joint Investigation Mechanism;*

*5. Emphasizes that this includes the obligation upon the Syrian Arab Republic of complying with their relevant recommendations, by accepting personnel designated by the OPCW or the United Nations, by providing for and ensuring the security of activities undertaken by these personnel, by providing these personnel with immediate and unfettered access to and the right to inspect, in discharging their functions, any and all sites, and by allowing immediate and unfettered access to individuals that the OPCW has grounds to believe to be of importance for the purpose of its mandate, and decides that all parties in Syria shall cooperate fully in this regard; [op. 7 of op. 2118]*

*6. Requests the Secretary-General to report on whether the information and access described in paragraph 5 has been provided in his reports to the Security Council every 30 days pursuant to paragraph 12 of resolution 2118.*

*7. Recalls its decision in response to violations of resolution 2118 to impose measures under Chapter VII of the United Nations charter.*

### **Document 3: Draft resolution presented by France, United States and United Kingdom**

*Recalling the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) ratified by the Syrian Arab Republic on 14 September 2013, and the Council's resolutions 1540 (2004), 2118 (2013), 2209 (2015), 2235 (2015), 2314 (2016), and 2319 (2016),*

*Expressing its horror at the reported use of chemical weapons in the Khan Shaykhun area of southern Idlib in the Syrian Arab Republic on 4 April 2017 causing large-scale loss of life and injuries, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of*

*chemical weapons must be held accountable,*

*Noting the Organization for the Prohibition of Chemical Weapons (OPCW) has announced, in addition to its ongoing investigation, that its Fact Finding Mission (FFM) is in the process of gathering and analysing information on this incident from all available sources and will report to the OPCW Executive Council,*

*Recalling that in resolution 2118 (2013) the Council decided that the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons, to other States or non-State actors and underscored that no party in Syria should use, develop produce acquire, stockpile, retain or transfer chemical weapons,*

*Determining that the use of chemical weapons in the Syria Arab Republic represents a threat to international peace and security,*

**1.** *Condemns in the strongest terms and use of chemical weapons in the Syrian Arab Republic, in particular the attack on Khan Shaykhun reported on 4 April 2017, expresses its outrage that individuals continue to be killed and injured by chemical weapons in the Syrian Arab Republic, and expresses its determination that those responsible must be held accountable;*

**2.** *Expresses its full support to the OPCW Fact Finding Mission investigation and requests that it report the results of its investigation as soon as possible;*

**3.** *Recalls paragraph 9 of resolution 2235 (2015), which requested the FFM to collaborate with the JIM to provide full access to all the information and evidence obtained or prepared by the FFM, and stresses that the JIM should begin to fulfill its mandate alongside the FFM as it seeks to determine whether the incident on April 4 2017 involved the use of chemicals as weapons;*

**4.** *Recalls that in its resolutions 2118 and 2235 it decided that the Syrian Arab Republic and all parties in Syria shall cooperate fully with the OPCW and the United Nations including the Joint Investigation Mechanism;*

**5.** *Emphasizes that this includes the obligation upon the Syrian Arab Republic to provide the JIM and FFM with the following:*

*(a) flight plans, flight logs, and any other information on air operations, including all flight plans or flight logs filed on April 4 2017;*

*(b) names of all individuals in command of any helicopter squadrons;*

*(c) arrange meetings requested including with generals or other officers, within no more than five days of the date on which such meeting is requested;*

*(d) immediately provide access to relevant air bases from which the JIM or the FFM believe attacks involving chemicals as weapons may have been launched*

**6.** *Requests the Secretary-General to report on whether the information and access described in paragraph 5 has been provided in his reports to the Security Council every 30 days pursuant to paragraph 12 of resolution 2118.*

**7.** *Recalls its decision in response to violations of resolution 2118 to impose measures under Chapter VII of the United Nations charter.*

**Document 4: Draft resolution submitted to Security Council on 12 April 2017 with the following result: 10 votes in favour, 2 against and 3 abstentions**

*France, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution*

*The Security Council,*

*Recalling the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) acceded to by the Syrian Arab Republic on 14 September 2013, and its resolutions 1540 (2004), 2118 (2013), 2209 (2015), 2235 (2015), 2314 (2016), and 2319 (2016),*

*Expressing its horror at the reported use of chemical weapons in the Khan Shaykhun area of southern Idlib in the Syrian Arab Republic on 4 April 2017 causing large-scale loss of life and injuries, affirming that the use of chemical weapons constitutes a serious violation of international law, and stressing that those responsible for any use of chemical weapons must be held accountable,*

*Noting the Organisation for the Prohibition of Chemical Weapons (OPCW) has announced, in addition to its ongoing investigation, that its Fact Finding Mission (FFM) is in the process of gathering and analysing information on this incident from all available sources and will report to the OPCW Executive Council,*

*Recalling that in resolution 2118 (2013) the Council decided that the Syrian Arab Republic shall not use, develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons, to other States or non-State actors and underscored that no party in Syria should use, develop produce acquire, stockpile, retain or transfer chemical weapons,*

*Recalling the report by the Director-General of the OPCW (EC-82/DG18 dated 6 July 2016) that the OPCW Technical Secretariat is not able to resolve all identified gaps, inconsistencies and discrepancies in Syria's declaration, and therefore cannot fully verify that Syria has submitted a declaration that can be considered accurate and complete in accordance with the CWC or OPCW Executive decision EC-M-33/DEC.1 dated 27 December 2013 or resolution 2118 (2013),*

*Recalling its determination that the use of chemical weapons in the Syrian Arab Republic represents a threat to international peace and security,*

**1.** *Condemns in the strongest terms the reported use of chemical weapons in the Syrian Arab Republic, in particular the attack on Khan Shaykhun reported on 4 April 2017, expresses its outrage that individuals continue to be killed and injured by chemical weapons in the Syrian Arab Republic, and expresses its determination that those responsible must be held accountable;*

**2.** *Expresses its full support to the OPCW FFM, demands that all parties provide delay-*

free and safe access to any sites deemed relevant by the OPCW FFM, and, as applicable, by the OPCW-United Nations Joint Investigative Mechanism (JIM), to the reported incident in Khan Shaykhun, including the site of the reported incident on 4 April, in accordance with resolution 2118 (2013), and requests that the FFM report the results of its investigation as soon as possible;

**3.** Requests that the Secretary-General make the necessary arrangements for the JIM to liaise closely with the FFM to expeditiously investigate any incident the FFM determines involved or likely involved the use of chemicals as weapons in order to identify those involved in accordance with the provisions of paragraph 5 of its resolution 2235 (2015);

**4.** Recalls that in its resolutions 2118 (2013) and 2235 (2015) it decided that the Syrian Arab Republic and all parties in Syria shall cooperate fully with the OPCW including the FFM and the United Nations including the JIM;

**5.** Emphasises that this includes the obligation upon the Syrian Arab Republic of complying with the relevant recommendations of the OPCW and the United Nations, including the FFM and the JIM, by accepting personnel designated by the OPCW or the United Nations, by providing for and ensuring the security of activities undertaken by these personnel, by providing these personnel with immediate and unfettered access to and the right to inspect, in discharging their functions, any and all sites, and by allowing immediate and unfettered access to individuals whom the OPCW or the United Nations, including the JIM, has grounds to believe to be of importance for the purpose of its mandate, and specifically that this includes the obligations upon the Syrian Arab Republic to provide the JIM and FFM with the following and take the following steps:

(a) flight plans, flight logs, and any other information on air operations, including all flight plans or flight logs filed on 4 April 2017;

(b) names of all individuals in command of any aircraft;

(c) arrange meetings requested including with generals or other officers, within no more than five days of the date on which such meeting is requested;

(d) immediately provide access to relevant air bases from which the JIM or the FFM believe attacks involving chemicals as weapons may have been launched;

**6.** Requests the Secretary-General to report on whether the information and access described in paragraph 5 has been provided in his reports to the Security Council every 30 days pursuant to paragraph 12 of resolution 2118 (2013);

**7.** Recalls its decision in response to violations of resolution 2118 to impose measures under Chapter VII of the Charter of the United Nations;

**8.** Decides to remain actively seized of this matter.

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