

Syria: From Stalemate to Compromise

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What's In Blue

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The Security Council is poised to unanimously adopt a resolution this evening (27 September) that requires the verification and destruction of Syria's chemical weapons stockpiles, calls for the convening of the Geneva II peace talks and endorses the establishment of a transitional governing body in Syria with full executive powers. The Council is expected to adopt this resolution following the adoption of a related decision at the Organisation for the Prohibition of Chemical Weapons (OPCW) at The Hague this afternoon. (Procedurally, the sequencing of these adoptions is important as the Council will endorse the OPCW decision.)

Yesterday (26 September) Russia and the US called for consultations to introduce their agreed text to the rest of the Security Council. Reaching agreement on the Syria file has taken two weeks of high-level negotiations in Geneva and New York—primarily between Russia and the US. The draft resolution had been shared with the P5, but it is clear that the substance of the agreement had been worked out between Russia and the US. It seems Council members accepted that the high-level discussions in New York this week on the sidelines of the General Assembly between Russian Foreign Minister Sergei Lavrov and US Secretary of State John Kerry would determine the contours of any Council outcome as well as the OPCW decision. (The OPCW draft decision, presented by Russia and the US on 19 September, was delayed several times due to a lack of agreement.)

What has been clear since the 9 September proposal by Russia to put Syrian chemical weapons under international control is that both Russia and the US were interested in reaching an agreement but the gaps in their fundamental positions needed to be bridged. The US wanted expedited and verified procedures for an inspections mechanism that would be reflected in a binding and enforceable resolution. The US was also strongly interested in demonstrating that an agreement on the chemical weapons issue did not change its commitments towards a political solution to the Syrian crisis. Russia, on the other hand, was of the view that a Council endorsement of the OPCW process would be sufficient. It was also opposed to calling for a political transition in a Chapter VII resolution.

The Draft Resolution

The compromises reached are reflected in the “fait accompli” text presented to the wider Council membership in consultations last night. Although the draft resolution slated for adoption tonight only references Chapter VII of the UN Charter in its second to last operative paragraph, it includes an Article 39 determination that the use of chemical weapons in the Syrian Arab Republic constitutes a threat to international peace and security. (Chapter VII is usually invoked following an Article 39 determination by the Security Council that there has been a “threat to the peace, breach of the peace, or act of

aggression.” An explicit reference to Article 39 or to the nature of the determination is not essential, however, for the Council to use its Chapter VII powers.) This, together with the explicit reference to Article 25 where one would usually find a reference to “acting under Chapter VII” following the Article 39 determination, makes for an interesting compromise.

Moreover, although Article 25 commits member states to “agree to accept and carry out the decisions of the Security Council”, the draft resolution uses the more robust “obligated to accept and carry out the decisions.” In addition, the draft includes several paragraphs of binding provisions (seven of the 21 operative paragraphs begin with “decides” rather than the weaker “urges” or “notes”.)

The draft text also has the Council deciding to impose measures under Chapter VII in “the event of non-compliance with this resolution, including unauthorized transfer of chemical weapons, or any use of chemical weapons by anyone in the Syrian Arab Republic”. Once again, this is an interesting compromise, as it does not use the more airtight procedural language found in some previous Council resolutions on non-proliferation (1718 and 1874 on DPRK and 1737, 1747, 1803 and 1929 on Iran) stating that “further decisions will be required should such additional measures be necessary.” However, it does not contain a clear trigger mechanism or a specific date for compliance, although it is likely that the OPCW decision will include deadlines that need to be followed.

In addition the draft includes a significant joint reporting mechanism to the Council by the OPCW via the Secretary-General. The first set of recommendations on the role of the UN in eliminating the chemical weapons stockpile in Syria is due within 10 days of adoption to be followed by monthly reports on the implementation of the resolution. Both the draft Security Council resolution and draft decision of the OPCW seem to indicate that the referral to the Security Council for instance(s) on non-compliance rests with the OPCW. In effect, this creates additional thresholds which must be crossed in order for the Council to consider options under Chapter VII.

Moreover, the draft does not specify what measures could be imposed under Chapter VII, which spans provisional measures under Article 40, sanctions under Article 41 and the use of force under Article 42. In addition, in making reference to “any use of chemical weapons by anyone” in Syria, the draft may potentially accommodate for the allegations made by Russia that armed opposition groups have used chemical weapons in the past. As Russia has cast doubt on the allegations that the 21 August chemical weapons attack was perpetrated by the government, as suggested by the UN inspection report (S/2013/553), and insisted that a violation be “indisputable and proved”, the issue of incontrovertible evidence may make any subsequent decision-making to impose measures under Chapter VII difficult.

In fact, although the draft condemns the use of chemical weapons in Syria and notes the Secretary-General’s report on the 21 August attack, the draft resolution does not attribute responsibility for the attacks specifically to the Syrian government. While the Secretary-General in his briefing to Council members on 16 September on the results of the UN investigation into the alleged use of chemical weapons in Syria likewise did not attribute

blame for the attacks, many Council members, particularly the P3, in remarks to the press following the consultations were of the view that the report provided detailed information on delivery systems which pointed to government culpability.

Other aspects of the draft text include operative paragraphs endorsing the 30 June 2012 Geneva Communiqué to establish a transitional governing body with full executive powers and calling for the Geneva II peace talks to convene as soon as possible. While there is a general reference to accountability, there is no referral of the situation in Syria to the ICC. (On 14 January, Switzerland submitted a letter to the Council, co-signed by 56 other member states, requesting that it refer the situation as of March 2011 to the ICC [S/2013/19].)

The Vote and Council Dynamics

At press time it was unclear if all Council members would co-sponsor the draft resolution but it appeared to be heading in that direction. Most members appear to support the draft resolution and see the Russia-US agreement on two substantive components of the Syrian crisis as a step in the right direction. However, there also remains a certain amount of scepticism as to whether the gap between Russia and the US and others has closed sufficiently for the adoption of this resolution to allow for a comprehensive settlement of the Syrian crisis.

It seems unlikely that after successfully blocking any Chapter VII resolution in the Council for over two and a half years, Russia would be willing to adopt such measures, whether in the Council in the first instance, or by referral from the OPCW. Elected Council members expect that they will continue to be caught up in on-going P5 divisions over accountability and compliance by the Syrian regime over any possible consequences as well as over the role of Syrian President Bashar al-Assad in any transitional process. They are aware that the plan they are being asked to endorse might do little more than set the stage for further delaying tactics and small concessional gestures from Syria leaving the Council with few real options for relevance other than a continuing reporting cycle. While it seems that at least one member protested the lack of E10 involvement in the negotiations over the draft resolution, there is general acceptance that this is an issue that had to be resolved between Russia and the US.

Another area of concern for many Council members is that while the draft resolution addresses the chemical weapons issue and the political track, it ignores the devastating humanitarian situation and the tens of thousands of civilians which have been killed by conventional weapons. With a growing refugee population in excess of 2.1 million and over 4 million internally displaced persons, coupled with alarming predictions of starvation in towns under siege and a collapsing health infrastructure as a result of deliberate and systematic attacks on medical facilities, some Council members, in particular Australia, Luxembourg and the UK, are of the view that the Council should turn its attention back to the humanitarian situation as soon as possible.

In spite of these concerns members are aware that in the last five weeks, since the 21 August chemical weapons attack, the Council has moved from being almost totally sidelined in the face of a possible military strikes on Syria by the US and others to now

having an oversight role. While the Russia-US dynamic will continue to determine the course of future Council action, once this draft resolution is adopted the Council will have a legal and political basis to play a more substantive role.

Background

The Negotiations: Geneva

Shortly after the 9 September proposal by Russia to put Syrian chemical weapons under international control, with the aim of eventually dismantling them, Lavrov and Kerry met in Geneva. Over the course of 12 -13 September they agreed to a framework for the elimination of Syrian chemical weapons (S/2013/565). In the agreement, Russia and the US committed to:

- submit a draft decision to the OPCW for the procedures and verification of the destruction of Syrian chemical weapons in the first half of 2014; and
- work together towards a prompt adoption of a Security Council resolution reinforcing the OPCW decision and, in the case of non-compliance, the Council should impose measures under Chapter VII.

The framework agreement also called on Syria to accede to the Chemical Weapons Convention and supply a comprehensive list of its chemical weapons stockpile and the locations of its storage, production and research and development facilities, which Syria did on 14 September and 20 September, respectively.

At that point in time many Council members interpreted the framework agreement as a signal that Russia and the US had agreed that the OPCW should take a decision, followed by the adoption of a Chapter VI resolution by the Security Council and that a Chapter VII resolution would only be invoked at a later stage in the case of non-compliance.

The Negotiations: New York

The substance of any potential Security Council outcome was closely guarded over the last two weeks of negotiations. What is known is that among the contentious issues were whether and how to refer to Chapter VII in the text, attribution of responsibility to the Syrian government for the 21 August chemical weapons attack, the details regarding what the actual inspection mechanism might entail, how to reference the need for accountability, whether to establish a sanctions committee, agreed timeframes in which the government should comply and whether to include a trigger mechanism in the case of non-compliance.

Following the Kerry-Lavrov negotiations on Tuesday (24 September) it was unclear if sufficient progress had been made towards an agreement on these issues and Council members were pessimistic that any deal could be reached if ministerial-level negotiations failed. The following day (25 September) a draft text was shared with the other P5 members (China, France and the UK) at a luncheon with the Secretary-General. By Thursday the mood had shifted as it seemed Russia and the US were close to agreement

on an approach to the Syria chemical weapons file. This was confirmed when consultations were called for 8 pm last night to circulate the draft resolution to the wider Council.

Related Events

Separately, Kerry and Lavrov will meet with the Secretary-General again as well as with UN-Arab League Joint Special Representative Lakhdar Brahimi on the Geneva II political track later today (27 September).

Also, in late October, the Council may receive a further report from the UN inspection team that has recently redeployed to Syria, led by arms expert Åke Sellström, to investigate previous allegations of chemical weapons use in Syria that had been presented to the Secretary-General. The team has determined that there are seven allegations, including the completed probe into the 21 August attack, that warrant further investigation.

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