

Syria: Vote to Establish a Joint Investigative Mechanism into the Use of Chlorine Bombs

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What's In Blue

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Tomorrow morning (7 August), the Council will vote on a US draft resolution that would establish a UN-OPCW Joint Investigative Mechanism to determine responsibility for the use of chemical weapons in Syria. The draft resolution was circulated to all Council members yesterday afternoon and passed the silence procedure this morning.

The majority of Council members think that the added value of the Joint Investigative Mechanism (JIM) is its potential to allow the Council to receive explicit information identifying the actors responsible for the use of chemical weapons in Syria. Nevertheless, the draft resolution to be voted on tomorrow is heavily focused on process. Council members are aware that several more steps are needed to operationalise the mechanism and that information identifying those responsible for the use of chemical weapons would not be available soon.

Within 20 days of adoption, the UN Secretary-General and OPCW Director-General will submit to the Security Council recommendations for the establishment and operation of a UN-OPCW Joint Investigative Mechanism, including elements for the terms of reference. The Council is then expected to respond to those recommendations within 5 days of receipt. Only when the Council agrees on this set of recommendations will the JIM become operational. If that hurdle is met, the Secretary-General will then report to the Council when the JIM commences full operations and will continue to report every 30 days. Most Council members expect that this reporting will be done within the framework of the existing monthly reporting on Syria's chemical weapons set out in resolution 2118. Separately, the JIM will report back to the Council within 90 days of commencing operations, and as appropriate thereafter.

The JIM will be established for a period of one year, renewable by a Council decision, to determine who is responsible for the use of chemical weapons in Syria. Its mandate to attribute responsibility is closely tied to the determination of use of chemical weapons by the OPCW fact-finding mission. (In December 2014, this fact-finding mission concluded that chlorine had been used as a weapon and had repeatedly been delivered in barrel bombs dropped from helicopters. While the OPCW fact-finding mission could not attribute blame, it did note that only the government has aerial capacity and only rebel-held areas were targeted.) In addition, the JIM will be authorised to examine information and evidence that was not obtained or prepared by the OPCW fact-finding mission.

The draft resolution is a result of almost four months of P5 negotiations, largely between Russia and the US. There were also negotiations with the entire Council membership in July. Over the past 16 months, allegations of chlorine bomb attacks have been regularly raised during Council members' monthly consultations on the Syrian chemical weapons track. The chlorine bomb attacks on 16 March in Sarmin, just ten days after the Council adopted resolution 2209, which condemned the use of toxic chemicals such as chlorine and threatened sanctions, provided greater impetus to try and set up an attribution mechanism. France had prepared a Council response to the Sarmin attacks but the US was more cautious at that time due to the ongoing Iran nuclear talks. A month later, the US arranged a closed Arria-formula meeting on 16 April for Council members to hear first-hand accounts of chemical weapons attacks in Syria. In remarks to the press, the US said the Council needed an attribution mechanism to determine who carried out the attacks.

Council dynamics on the chemical weapons track—once hailed as a key area where there was consensus among Council members—have been divisive for some time. The US viewed resolution 2209 as a final warning to Damascus before there were consequences for its use of chlorine bombs. Russia has insisted that the Council cannot attribute blame to Damascus since only the OPCW has the capacity to fully assess the situation. It has further argued that follow-up measures are unacceptable without an attempt to prove that the allegations are true. Other Council members have argued that “proof” would be a difficult litmus test to meet since the OPCW fact-finding mission is specifically prohibited from attributing blame.

It seems that differences between Russia and the US may have been bridged through language which reflects the Council's intention to seek the OPCW's expertise to determine the use of chemical weapons, while maintaining the primacy of the Council to follow-up on accountability for such use. However, none believe that information emanating from a JIM would be sufficient in and of itself for Russia to relent and allow the imposition of “further measures”, which have been persistently threatened for non-compliance with Security Council resolutions. Indeed, in the event that perpetrators are successfully identified, there is no mechanism to trigger sanctions in the draft resolution that will be voted on tomorrow. The draft resolution merely reaffirms the Council's decision in resolution 2118 to impose measures under Chapter VII in response to violations, a veiled reference to sanctions.

Even though the draft resolution is a US initiative, tabling it for a vote was delayed not only due to arduous negotiations with Russia, but also because the US has been hesitant to move on any Syria initiative in the Council in deference to the talks on the Iran nuclear issue. The successful conclusion of these talks and subsequent endorsement of the Iran nuclear deal by the Council on 20 July in resolution 2231, created the necessary context for the US to move this draft resolution forward. The circulation of the draft resolution to all Council members yesterday followed talks between Russian Foreign Minister Sergei Lavrov and US Secretary of State John Kerry on 3 August in Doha and 5 August in Kuala Lumpur. Following the bilateral in Kuala Lumpur, Kerry publicly announced that agreement had been reached with Russia on the draft resolution that would identify the

perpetrators of chemical weapons attacks in Syria. There has been no similar public announcement by Lavrov. The US view has been that the establishment of a JIM would require Russia's cooperation and Kerry's announcement indicates that the US has secured a commitment from Russia not to block the resolution's adoption.

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