



## Security Council

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### **Identical letters dated 7 November 2017 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council**

On instructions from my Government, I should like to convey to you the observations of the Government of the Syrian Arab Republic regarding the seventh report of the United Nations-Organization for the Prohibition of Chemical Weapons (OPCW) Joint Investigative Mechanism that was issued on 26 October 2017 (S/2017/904).

#### **Historical background**

After the Syrian Arab Republic joined OPCW on 14 September 2013, armed terrorist groups used toxic chemical substances against the Syrian Arab Army and civilians on several occasions. The use of such substances by the terrorists led OPCW and the Security Council to respond.

In April 2014, through an exchange of letters, Syria and the Technical Secretariat of OPCW concluded an agreement concerning the establishment of a Fact-Finding Mission. The tasks, mandate and working methods of the Fact-Finding Mission were clearly defined in its terms of reference, although many seem to forget what those tasks and working methods are.

Given that the mandate of the Fact-Finding Mission did not include identifying the perpetrators of those incidents, the Security Council established the United Nations-OPCW Joint Investigative Mechanism in September 2015 and mandated it to work in an impartial and transparent manner to identify the perpetrators of the above-mentioned crimes.

Throughout the various phases of their work, the Fact-Finding Mission and the Joint Investigative Mechanism encountered serious difficulties with respect to determining the truth in accordance with the requirements established. Of course, one must take into account that those two bodies were working in extremely difficult conditions. On the one hand, the investigators were working in the midst of combat operations and, on the other, they had to contend with the politicization of the investigation by certain well-known States that are hostile to Syria and the pressure that those States were exerting.

This politicization is further proven by the fact that the United States of America, its Western allies and its proxies in the region and beyond make a loud clamour at the international level as soon as it is reported that chemical weapons have been used; the armed terrorist groups then accuse Syria of having carried out

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the attack even before any investigation has begun. However, making accusations was not enough when it came to the incident that occurred on 4 April 2017 in Khan Shaykhun. On 7 April 2017, the United States committed an act of aggression when it carried out a missile strike against the Sha'irat airbase on the pretext that it was the site from which the alleged chemical attack had been launched. The pressure exerted by the above-mentioned States can be clearly discerned from the effect that it has had on the decision-taking methods of OPCW. Whereas OPCW usually takes decisions by consensus, a vote was taken on the resolution sponsored by Russia and Iran to dispatch fact-finding teams to the site of the Khan Shaykhun incident and to the Sha'irat airbase.

Although the Fact-Finding Mission conducted its investigation into the Khan Shaykhun incident, it did not fulfil its mandate, citing groundless justifications and weak excuses. The Fact-Finding Mission failed to fulfil its mandate because:

1. It did not visit the site of the Khan Shaykhun incident and was satisfied with the information that the terrorist group provided it.
2. It failed to adhere to a fundamental investigative principle, namely, maintaining the integrity of the chain of custody.
3. It failed to demonstrate how sarin gas was used and did not answer questions concerning where and under which conditions exposure to sarin occurred.
4. It refused to visit the Sha'irat airbase, where it is alleged that the sarin gas was stored.

#### **General observation regarding the Joint Investigative Mechanism report**

- The Mechanism acknowledges that the Syrian Arab Republic engaged constructively with the Mechanism and demonstrated its commitment to cooperating with the Mechanism and facilitating its requests for access to information and witnesses. This acknowledgement is sufficient proof of the credibility and sincere intentions of Syria.
- The Mechanism did not adhere to the principle of absolute impartiality in its work, nor did it understand the supreme responsibility that is inherent to conducting such an investigation. Moreover, because of the extreme politicization of its mandate, the Mechanism did not apply the principle of “innocent until proven guilty”, nor did the question of who would benefit from the chemical attacks ever cross the minds of investigators.
- It is clear that the report is contradictory and vague and that no convincing or irrefutable physical evidence is available. Moreover, the use of such phrases as “likely”, “possibly” and “uncertain” in the report does not provide the Mechanism with a basis for stating that it is “confident that the Syrian Arab Republic is responsible for the release of sarin at Khan Shaykhun on 4 April 2017”.
- The Mechanism did not independently gather the supplementary evidence, in particular the evidence that pertains to those aspects that were overlooked by the Fact-Finding Mission. The Mechanism also failed to use all means and methods that would ensure compliance with the conditions set out in the agreement.
- The Mechanism refused to visit the site of the Khan Shaykhun incident. It was satisfied with photographs, video recordings and other material obtained from open sources that lack any credibility. The Mechanism also worked with untrustworthy organizations, such as the White Helmets, and mistakenly concluded that the security risk of such a visit outweighed the possible benefits for the investigation.

- After a delay of several months, the Mechanism visited the Sha‘irat airbase. Although the Mechanism had defined the objectives of the visit and described it as technical, the Mechanism refused to take samples in order to determine whether there was sarin at the airbase. The pretext cited — again, mistakenly — was that doing so would not advance the investigation. The truth is that the failure of the Mechanism to do so only covers up the act of aggression that was committed by the United States of America against that airbase and prevents that country’s lies from being exposed.
- The Mechanism used the same flawed working methods as the Mission. It relied on evidence that lacks credibility and failed to maintain the integrity of the chain of custody with respect to physical evidence. Moreover, the Mechanism was satisfied with collecting biomedical specimens from persons who went to Turkey, and it did not indicate the circumstances in which and the place where the victims were exposed to sarin.
- There is no way of confirming that the witnesses who were interviewed were in Khan Shaykhun when the incident occurred. Moreover, the fact that the accounts given by some of the interviewees were identical raises the possibility that they were coached to recount the same stories. The decision of the Mechanism to rely on witness statements in its report and to consider the testimony taken from those statements as primary evidence contradicts all legal concepts. Under the law, witness testimony can be challenged. In its report, the Mechanism does not indicate how it chose the witnesses, contacted them and brought them to the location where the interviews took place. It also does not make clear whether the Mechanism participated in the selection of witnesses, nor does it give any indication as to the witnesses’ impartiality and independence. Moreover, the Mechanism does not offer any assurance that no agency, organization or State had coached the witnesses and instructed them to give identical testimony, with a view to substantiating an accusation, an allegation or a point of view, nor does the Mechanism indicate how it confirmed that those individuals, whether witnesses or victims, were present at the site at the exact moment the incident occurred.

#### **Detailed observations regarding the report of the Joint Investigative Mechanism**

- In paragraph 38 of the report, the Mechanism states that it had examined several scenarios, for each of which there is corroboration, regarding how the incident had occurred. However, it only took into account the scenario that is based on reports of an aircraft being heard or seen dropping bombs over Khan Shaykhun, but without there being any scientific basis for or physical evidence to support that assertion. The Mechanism was unable to establish that an aircraft was witnessed or a bomb was dropped, not even in the video recordings on which the Mechanism relied.
- In paragraph 41, the Mechanism states that the crater had been disturbed and nothing more. It did not bother to look into why that was the case. The Mechanism offers no explanation as to why the armed terrorist groups had filled the crater. It completely ignored this fact, although the crater was the scene of the crime. Filling in the crater buried facts and evidence and forced the investigation to take an indirect path. The Mechanism then states that it had decided to keep the issue under review and that it might visit the site in the future. Why?
- In paragraph 43, the Mechanism states that it had received conflicting information about the deployment of aircraft in Khan Shaykhun that morning. It attributes this conflicting information to the video footage it obtained showing

four plumes caused by explosives. However, this cannot be the case because the Mechanism was unable to identify the cause or the source of those explosions.

- In paragraph 44, the Mechanism states that it cannot verify the total number of persons who either died or were injured. This statement is utterly unprofessional, particularly given that seven months have passed since the incident occurred. The more significant question that must be asked is how could the Mechanism have investigated a crime where the total number of victims remains unknown.
- In paragraph 46, the Mechanism states that the Leadership Panel has determined that the information that it has obtained constitutes sufficient credible and reliable evidence. This decision is also unprofessional and has no basis in any concept of legal or criminal work. The outcomes of any investigation must be based on indisputable physical evidence.
- In paragraph 46 (d), it is stated that the crater was caused by the impact of an aerial bomb travelling at high velocity. That conclusion contradicts the flight records that the Syrian Arab Republic provided and the analysis that was conducted by several international parties of the photographs of the explosion site and the shape of the crater.
- In paragraph 54, it is stated that the Syrian Arab Republic has not provided the Mechanism with the outcomes of the internal investigation that had been launched by the Syrian national committee and of which the Mechanism had been informed. That statement is incorrect. The Mechanism was informed of the outcomes and discussions were held in that regard with the Mechanism, although the Fact-Finding Mission, citing various pretexts, was slow to respond to the request of Damascus to provide it with all the environmental and biological samples that had been gathered, in accordance with paragraph 14 of the terms of reference and paragraph 18 of part XI of the Chemical Weapons Convention concerning investigations.

#### **Annex II of the report on the investigation into the Khan Shaykhun incident**

- In paragraph 11, under the heading “Date and time”, it stated that the Mechanism obtained video footage showing plumes of smoke that had been caused by explosions in Khan Shaykhun. However, upon investigation, it became apparent that all the plumes were far away from the site of the crater, that is if we assume that the crater had been caused in the first place by aerial bombardment. There is another important aspect that must be considered. If we were to analyse the cloud of smoke caused by the explosions, we would find that the wind was blowing from west to east and, according to documents provided by several meteorological sources, at a steady speed of 1 to 1.5 m/s. This contradicts the information provided in the report, which indicates that the wind speed was 0.5 m/s and variable.
- In paragraph 14, under the heading “Early warning”, it is stated that “a witness interviewed by the Mechanism, who reported having worked that morning as a spotter in Khan Shaykhun, recalled having received an alert concerning the take-off of a Su-22 from Sha‘irat airbase on the morning of 4 April 2017. The witness stated that the alert had advised residents to be careful, as the aircraft was likely carrying toxic chemicals”. Did the Mechanism enquire as to how this brilliant, clairvoyant witness knew such details, or why the warning contained specific information regarding the type of bomb that the aircraft carried? That aside, this statement contradicts the information provided in paragraph 15, in which it is noted that several witnesses stated that there had been no warning of an attack on the morning of 4 April 2017.

- Paragraphs 22–28, under the heading “Aerial deployment”, contain a great deal of contradictory information that the Mechanism obtained from various sources, whether witness statements or the documents and the statement of the pilot that the Syrian Arab Republic provided. In paragraph 30, the Mechanism states that the weapons expert had concluded that, “depending on a number of variables such as altitude, speed and the flight path taken, it would be possible for such an aerial bomb to be dropped on the town from the aforementioned distances”. However, that completely contradicts available aerial maps, which indicate that the aircraft was 7 to 9 km away from Khan Shaykhun and heading south to north, towards Kafr Zayta. The aircraft’s path would therefore not have allowed it to do what the expert had concluded. Even more significant information is set out in paragraph 31, in which the Mechanism states that, “[t]o date, the Mechanism has found no specific information confirming whether or not a Syrian Arab Air Force Su-22 operating from Sha‘irat airbase launched an aerial attack against Khan Shaykhun on 4 April 2017”. How, then, did the Mechanism conclude that the Syrian Arab Republic was responsible?
- In paragraph 53, under the headings “Impact location” and “Crater analysis”, it is noted that the expert who studied the dimensions and shape of the crater, without visiting or seeing the site, concluded that the type of munition most likely to have caused the crater was a large bomb with a mass of 300 to 450 kg that had been dropped from an altitude of between approximately 4 and 10 km. However, owing to its shape, size and depth (50 cm), it is not feasible that the crater could have been caused by a bomb of that size dropped from that altitude, particularly given that the grazing angle of the bomb could not have been the 45 degrees, as the Mechanism claims, because the aircraft was at least 5 km away from the target and at an altitude of between 5 to 10 km. In addition, the damage at the site is not commensurate with the damage that an aerial bomb would have caused, particularly given that the casing of an electrical transformer that was only 3 metres away from the crater was undamaged. Moreover, Russian military experts, who are very familiar with the characteristics of the Su-22 because it is a Russian-made aircraft, presented an analysis in which they state that the aircraft’s path, which was tracked by a site belonging to the international coalition, indicates that it never got closer than 5 km to Khan Shaykhun. Those experts also stated that in view of the assumptions made about the aircraft’s altitude, speed and flight path, it would have been impossible for it to drop an unguided bomb that could strike Khan Shaykhun. In addition, the altitude of the aircraft after it dropped the alleged bomb would have required it to use a large quantity of fuel, and that would have caused it to emit a loud sound, thereby contradicting witness testimony. Moreover, any bomb dropped from the same altitude would cause a round crater and leave fragments at the bottom of the crater. By studying the photographs, which depict a crater 1 metre wide and only half a metre deep, one can conclude that the explosion was not caused by an aerial bomb. Furthermore, the munition was made of a metal that is used to manufacture flexible pipes, whereas missiles and bombs are made of high-quality steel.
- In paragraph 58, under the heading “Munition analysis”, the Mechanism states that “munition remnants recovered from the crater by unidentified individuals are assessed as being associated with an air-delivered chemical bomb. Specific munition remnants, particularly the tailfin, could not be recovered”. This statement confirms suspicions and fears that there has been tampering with evidence.
- Paragraphs 81–91, under the heading “Chemistry”, address the origin of the methylphosphonyl difluoride (DF) that was used to manufacture the sarin

disseminated in Khan Shaykhun. In that connection, we should like to draw attention to the following:

- It was Syria that proposed to the Mechanism that it should analyse the DF samples taken from the Syrian stockpile that was removed from the territory of the Syrian Arab Republic and destroyed in the Mediterranean Sea aboard the American vessel *Cape Ray*, in order to ensure that those samples did not contain secondary compounds that could have generated the additional compounds that were found in the samples of the sarin disseminated in Khan Shaykhun.
- The report did not address the question of the concentration of sarin in the samples (which was less than usual). It also did not address whether a marker chemical was present. It is difficult to prove that the marker is of Syrian origin because there are no samples available from the now destroyed stockpiles of States parties that could be used to establish the chemical fingerprint of the marker.
- In its report, the Mechanism cited the analysis of and the studies carried out on the DF samples taken from the stockpile that had been removed from the territory of the Syrian Arab Republic. The results showed that the samples contained phosphorus hexafluoride (PF<sub>6</sub>), which was also found in the sarin samples that were taken from Khan Shaykhun. The presence of the former indicates that DF was manufactured using hydrogen fluoride (HF). However, this not a conclusion that was drawn by the Mechanism. When Syria acceded to the Chemical Weapons Convention, it informed OPCW of the technique by which DF was manufactured. This technique is not used by Syrian Arab Republic exclusively and this was never a secret. It could therefore have been manufactured by any other State or entity.
- The analysis revealed that some samples contained phosphorous oxychloride (POCl<sub>3</sub>). The presence of that compound caused other compounds to be detected in the samples taken from Khan Shaykhun. The technique used to manufacture DF, and of which OPCW was informed, does not involve the use of POCl<sub>3</sub>. If that compound were to be found in the raw materials used in the manufacturing process, then the various technical processes used to produce DF (thermal conversion of dimethyl phosphite (DMP), distillation of methylphosphonyl dichloride (DC) and distillation of DF) would have removed any trace of that compound.
- The Declaration Assessment Team took samples from equipment used in the manufacture of DF (containers, Teflon-lined reactors) and from equipment used at mixing and filling sites (tanks and pipelines). None of the results of the analyses carried out on those samples indicated the presence of either the compounds on which the Mechanism based its opinion or any other secondary compound that was found in the samples taken from Khan Shaykhun.

I should be grateful if the present letter could be circulated as a document of the Security Council.

(Signed) **Bashar Ja'afari**  
Ambassador  
Permanent Representative