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HOW BRITAIN SHOULD RESPOND TO CHEMICAL WEAPONS ATTACKS IN SYRIA

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SUMMARY

- Deterring the use of chemical weapons is a clear priority for the international community. However, despite various deterrence strategies over the years, international institutions are failing to manage the problem.
- In any request to the UK to offer practical support to the US and/or France in responding to another chemical attack in Syria, the UK government must address questions regarding the threshold for military action; the intelligence designating responsibility for chemical attacks, the legality and limitations of proposed action; and how an intervention would fit into the UK's wider policy for resolving the conflict in Syria.
- Learning lessons from the hastily prepared motion following the 2013 sarin gas attack in Ghouta, parliament should consider voting on a pre-emptive motion that would authorise military action should another serious chemical weapon attack be launched.
- Passing a pre-emptive motion would allow the UK to move swiftly in the event of another attack and the motion itself – especially if coordinated with positions of the US and France, or other European partners – could act as a deterrent in and of itself.

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On 4 April 2017 in Khan Sheikhou, a small town just 30 miles from the city of Homs, Bashar al-Assad's government launched a chemical attack that killed more than 80 people and injured many others.¹ It was just the latest in a series of chemical attacks that have taken place in the country since the outbreak of the war in 2011. Despite international outcry and attempts to deter Syria from launching chemical weapons, the trend in their usage shows no clear sign of abating. In the latest development the White House has accused Assad of planning another chemical weapons attack.²

Deterring the use of chemical weapons is a clear priority for the international community, but how to achieve it is a challenge. Chemical weapons are inherently indiscriminate, so states have an obligation to prevent their use to prevent the killing of innocent citizens. Not only does normalisation of chemical weapons undermine wider international security beyond Syria, it helps perpetuate the cycle of violence, making compromise between the relevant parties more difficult. In short, the continued use of chemical weapons is an impediment to resolving the Syrian conflict.

International institutions have so far failed to hold the perpetrators to account. Bearing this in mind, US President

¹ "Syria chemical 'attack': What we know", *BBC News*, 26 April 2017, available at <http://www.bbc.co.uk/news/world-middle-east-39500947>.

² Josie Ensor, "White House accuses Syria of planning another chemical attack, warns it would 'pay a heavy price'", *the Telegraph*, 27 June 2017, available at <http://www.telegraph.co.uk/news/2017/06/27/white-house-accuses-syria-planning-another-chemical-attack-warns/>.

Donald Trump's decision in April to conduct limited and proportionate airstrikes against Syrian government military facilities directly implicated in the use of chemical weapons deserves support. The US administration has clearly indicated that it would be prepared to take similar action were chemical attacks to be repeated³ and French President Emmanuel Macron has also backed this position, stating that "any use of chemical weapons would result in reprisals and an immediate riposte, at least where France is concerned."⁴

On 26 June 2017, White House Press Secretary Sean Spicer released a statement saying that the US had identified potential preparations for another chemical weapons attack and that if "Mr Assad conducts another mass murder attack using chemical weapons, he and his military will pay a heavy price."⁵ UK Defence Secretary Michael Fallon then told BBC Radio 4 that the United Kingdom would support a US strike over chemical weapons.⁶ If the UK government is ready to offer political support for such action, as it did in April,⁷ it should also consider offering military support in future.

Before the United Kingdom's snap election in June 2017, there were indications that the government was considering proposals for a parliamentary motion to support airstrikes against Syrian government forces in response to the continued use of chemical weapons.

In a mature parliamentary democracy it is crucial that the elected chamber has a strong voice in deliberations on foreign policy, particularly on the deployment of military force. Following the election result, the government will need to build a cross-party consensus if it wishes to join with allies in conducting military operations to punish and deter the use of chemical weapons. The aim of this paper is to identify the key issues that the government must address before making any proposal to approve British military action.

It would be an unprecedented step for parliament to agree to a pre-emptive vote to authorise military action against Syria in hypothetical future scenarios, but it could enable the UK to act quickly in the event of another chemical attack, and may act as a deterrent in and of itself. However, even in the absence of a pre-emptive vote, the points in this paper will still be relevant if the government seeks parliamentary support for military action in response to chemical weapons attacks in future.

A motion seeking approval for military action must contain safeguards to ensure and outline the legality, proportionality,

3 See: "US ambassador to the UN, Nikki Haley", UN Security Council, 7 April 2017, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7919.

4 "Chemical weapons a red line in Syria, says France's Macron", *Reuters*, 29 May 2017, available at <http://uk.reuters.com/article/uk-france-russia-syria-macron-idUKKBN18P10Q>.

5 Sean Spicer, "Statements from @PressSec on #syria", Twitter, 26 June 2017, available at <https://twitter.com/PressSec/status/879520906963554305>.

6 "Fallon: 'We would support US strike over chemical attacks'", *BBC News*, 27 June 2017, available at <http://www.bbc.co.uk/news/av/uk-40415745/fallon-we-would-support-us-strike-over-chemical-attacks>.

7 UK Permanent Representative to the United Nations Ambassador Matthew Rycroft, "The United Kingdom supports the U.S. air strike on the Al Shayrat airfield because war crimes have consequences", gov.uk, 7 April 2017, available at <https://www.gov.uk/government/speeches/the-united-kingdom-supports-the-us-air-strike-on-the-al-shayrat-airfield-because-war-crimes-have-consequences>.

and limitations of any action, and be situated within a coherent strategy. The government should clarify its intentions and set out its position ahead of any vote addressing the issue of chemical weapons. Should events develop quickly and the government deem it necessary to engage in military operations before it is possible to consult parliament, then a motion should be tabled as soon as reasonably possible, seeking parliamentary approval for any on-going action.

The use of chemical weapons in Syria, 2013-2017

Since 2011, the Syrian civil war has caused human suffering on a colossal scale. The UK has a moral imperative to reduce the plight of the Syrian people, principally by supporting efforts towards an inclusive and sustainable political settlement. The conflict has also threatened the UK's national interests, principally by undermining the stability of the wider region, which has contributed to a prolonged refugee crisis and created a permissive environment in which violent extremist groups now operate.

On 21 August 2013 the use of sarin gas in the Ghouta suburbs of Damascus flouted the long held international norm against the use of chemical weapons. A response came in the form of The Framework for Elimination of Syrian Chemical Weapons between Russia and the US,⁸ which was later adopted in UN Security Council Resolution 2118. Having secured Syria's accession to the Chemical Weapons Convention on 14 October 2013,⁹ the agreement provided for the verification and destruction of Syria's chemical weapons. The agreement also stated that "in the event of non-compliance, including unauthorised transfer, or any use of chemical weapons by anyone in Syria, the UN Security Council should impose measures under Chapter VII of the UN Charter". This was agreed unanimously by the UN Security Council within Resolution 2118.

The process for verifying chemical weapons stockpiles, safely transporting them from active conflict zones, and destroying them, in addition to overseeing the appropriate decommissioning of relevant facilities, was incredibly complex.¹⁰ The Organisation for the Prohibition of Chemical Weapons (OPCW), which was tasked with the responsibility for destroying Syria's chemical weapons, announced that all declared chemical weapons, amounting to 1,300 tonnes, had been removed from Syria by June 2014.¹¹

However, concerns remained that the Syrian government had

8 "The Framework for Elimination of Syrian Chemical Weapons", as submitted to the Organisation for the Prohibition of Chemical Weapons, 17 September 2013, available at https://www.opcw.org/fileadmin/OPCW/EC/M-33/ecn33nato1_e.pdf.

9 The full title of the Chemical Weapons Convention is the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

10 For a timeline of the OPCW's actions, see: "Timeline of Syrian Chemical Weapons Activity, 2012-2017", Arms Control Association, available at <https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity> (hereafter, "Timeline of Syrian Chemical Weapons Activity", Arms Control Association). Also, see the OPCW's monthly progress reports, available at <https://www.opcw.org/special-sections/syria/related-official-documents/>.

11 "OPCW Maritime Operation Completes Deliveries of Syrian Chemicals to Commercial Destruction Facilities" 24 July 2014, <https://www.opcw.org/news/article/opcw-maritime-operation-completes-deliveries-of-syrian-chemicals-to-commercial-destruction-facilitie/>.

not declared all of its stockpiles and facilities. In 2015, Reuters reported that OPCW weapons inspectors had found traces of sarin and VX nerve agent at an undeclared military research site and quoted a diplomatic source saying the Syrian government “have so far been unable to give a satisfactory explanation about this finding”.¹² In 2016, *Foreign Policy* magazine reported on a confidential OPCW report that suggested that samples taken throughout Syria “indicate potentially undeclared chemical weapons-related activities” and that Syrian government explanations for the presence of undeclared agents “are not scientifically or technically plausible”.¹³

From April 2014 onwards, there were multiple allegations concerning the continued use of chemical weapons, most commonly chlorine gas.¹⁴ In late April 2014, the OPCW established a fact-finding mission to gather evidence on the use of chlorine gas.¹⁵ The fact-finding mission’s second report concluded that the evidence constituted a “compelling confirmation that a toxic chemical was used as a weapon, systematically and repeatedly”.¹⁶ However, the mission did not have the mandate to identify perpetrators.

In August 2015, the UN Security Council agreed resolution 2235, which established the Joint Investigative Mechanism (JIM) between the UN and the OPCW to identify perpetrators using chemical weapons in Syria.¹⁷ Since being established, the JIM has positively identified Syrian government forces as being responsible for three unique uses of chlorine gas – in Tell Mannas on 21 April 2014 and in Sarmin and Qminas on 16 March 2015.¹⁸

On 28 February 2017, representatives to the UN of the UK, US, and France proposed to the UN Security Council that Chapter VII measures be taken against Syria in accordance with UN Security Council Resolution 2118. These measures included travel bans and asset freezes against 11 Syrian military commanders and officials and ten government and government-related entities. The measures also included prohibition of the sale or supply of helicopters to the Syrian government. However, Russia

and China both vetoed the draft resolution.¹⁹

While the diplomatic initiatives in the wake of the 21 August 2013 attack achieved significant success – notably removing 1,300 tonnes of chemical weapons – the mechanisms to verify and remove all chemical weapons capability and deter future use of such weapons have not been carried through to conclusion.

On 4 April 2017 reports emerged of a chemical weapon attack in Khan Sheikhoun, with initial assessments indicating dozens of fatalities and hundreds of injuries.²⁰ *Medecins Sans Frontieres* released a statement saying that their staff were able to confirm that patients’ symptoms were consistent with exposure to a neurotoxic agent such as sarin gas.²¹ The OPCW later confirmed that bio-medical samples indicated exposure to sarin or a sarin-like substance.²²

British and American representatives to the UN stated that the attacks bore the hallmarks of the Assad regime. Nikki Haley, US ambassador to the UN, stated that “When the United Nations consistently fails in its duty to act collectively, there are times in the life of states in which we are compelled to take our own action.”²³ Reports suggested that a vote in the UN Security Council for a resolution condemning the attack and demanding that the Syrian authorities cooperate with a UN investigation were stalled due to Russian resistance.²⁴

On the night of 6-7 April 2017 US President Donald Trump authorised a military strike against Syria. US naval forces in the Mediterranean fired 59 Tomahawk missiles at Shayrat airbase in Homs, from which the chemical attack was alleged to have been launched.²⁵ The amount of damage done to the airbase and the number of Syrian airplanes destroyed is contested,²⁶ but the airbase was allegedly able to resume operations the following day.²⁷

12 Anthony Deutsch, “Exclusive: Weapons inspectors find undeclared sarin and VX traces in Syria – diplomats”, Reuters, 8 May 2015, available at <http://www.reuters.com/article/us-mideast-crisis-syria-chemicals-exclus-idUSKBN0NT1YR20150508>.

13 Colum Lynch and David Kenner, “Exclusive: US and Europe Say Assad May Have Kept Some Chemical Weapons”, *Foreign Policy*, 23 August 2016, available at <http://foreignpolicy.com/2016/08/23/u-s-and-europe-say-assad-may-have-kept-some-chemical-weapons/>.

14 For a list of allegations, see: “Timeline of Syrian Chemical Weapons Activity”, Arms Control Association. Also, see: Jean-Marc Ayrault, “Attaque chimique en Syrie – Déclaration de Jean-Marc Ayrault à l’issue du Conseil de défense”, France Diplomatie, 26 April 2017, available at <http://www.diplomatie.gouv.fr/fr/dossiers-pays/syrie/evnements/actualites-2017/article/attaque-chimique-en-syrie-declaration-de-jean-marc-ayrault-a-l-issue-du-conseil>.

15 “OPCW to undertake Fact-Finding Mission in Syria on Alleged Chlorine Gas Attacks”, OPCW.org, 29 April 2014, available at <https://www.opcw.org/news/article/opcw-to-undertake-fact-finding-mission-in-syria-on-alleged-chlorine-gas-attacks/>.

16 “Second Report of the OPCW Fact-Finding Mission in Syria: Key Findings”, OPCW, 10 September 2014, available at <https://photos.state.gov/libraries/netherlands/328666/pdfs/SECONDREPORTOFTHEOPCWFACT-FINDINGMISSIONINSYRIAKEYFINDINGS.pdf>.

17 “Security Council Unanimously Adopts Resolution 2235 (2015), Establishing Mechanism to Identify Perpetrators Using Chemical Weapons in Syria”, UN Press Centre, 7 August 2015, available at <https://www.un.org/press/en/2015/sc12001.doc.htm>.

18 “Third report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism”, Reliefweb, 24 August 2016, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1626975-1.pdf>; and “Fourth report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism”, Reliefweb, 21 October 2016, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/N1634106%20%281%29.pdf>.

19 Michelle Nichols “Russia, China block UN sanctions on Syria over gas attacks”, *Reuters*, 28 February 2017, available at <http://www.reuters.com/article/us-mideast-crisis-syria-chemicalweapons-idUSKBN167232>.

20 For an account of open source evidence of the 4 April 2017 Khan Sheikhoun incident, see: “The Khan Sheikhoun Chemical Attack, The Evidence So Far”, *Bellingcat*, 5 April 2017, available at <https://www.bellingcat.com/news/mena/2017/04/05/khan-sheikhoun-chemical-attack-evidence-so-far/>; and “The Khan Sheikhoun Chemical Attack – Who Bombed What and When?”, *Bellingcat*, 10 April 2017, available at <https://www.bellingcat.com/news/mena/2017/04/10/khan-sheikhoun-chemical-attack-bombed/>.

21 “Syria: Khan Sheikhoun victims have symptoms consistent with exposure to chemical substances”, *Medecins Sans Frontieres*, 5 April 2017, available at <http://www.msf.org/en/article/syria-khan-sheikhoun-victims-have-symptoms-consistent-exposure-chemical-substances>.

22 “OPCW Director-General Shares Incontrovertible Laboratory Results Concluding Exposure to Sarin”, OPCW, 19 April 2017, available at <https://www.opcw.org/news/article/opcw-director-general-shares-incontrovertible-laboratory-results-concluding-exposure-to-sarin>. See also: “OPCW Fact-Finding Mission Confirms Use of Chemical Weapons in Khan Shaykhun on 4 April 2017”, OPCW, 30 June 2017, available at <https://www.opcw.org/news/article/opcw-fact-finding-mission-confirms-use-of-chemical-weapons-in-khan-shaykhun-on-4-april-2017/>.

23 “Chemical-Weapons Attack in Syria was Largest Such Event Since 2013, Disarmament Affairs Chief Tells Security Council” UN Press, 5 April 2017 <http://www.un.org/press/en/2017/sc12777.doc.htm>.

24 “Security Council Weighs Options over Syria attack”, *AlJazeera*, 7 April 2017, available at <http://www.aljazeera.com/news/2017/04/07/security-council-syria-attack-170406230140973.html>.

25 “Statement by President Trump on Syria”, the White House, 6 April 2017, available at <https://www.whitehouse.gov/the-press-office/2017/04/06/statement-president-trump-syria>.

26 “Syria moves its warplanes to Russian base in fear of US strikes”, the *Telegraph*, 20 April 2017, available at <http://www.telegraph.co.uk/news/2017/04/20/syria-moves-warplanes-russian-base-fear-us-strikes/>.

27 “Syrian Governor confirms air base operating again”, the *Telegraph*, 8 April 2017, available at <http://www.reuters.com/article/us-mideast-crisis-syria-airbase-idUSKBN17A0SO>.

On 12 April, Russia used its veto against a UN Security Council resolution condemning the original chemical attack in Khan Sheikhoun and demanding that the Syrian government cooperate with investigations.²⁸ American and French authorities subsequently declassified and published summaries of their intelligence assessments. Both held the Syrian regime responsible for the Khan Sheikhoun attack.²⁹ To date, UK authorities have not formally published a declassified version of their assessment regarding responsibility for the chemical weapon attack. However, Foreign Secretary Boris Johnson told the House of Commons on 18 April that:

“We know beyond doubt that two Sukhoi-22 aircraft took off from Shayrat airfield, where we know chemical weapons are stored. We know that they were overhead at 6:39 am when, according to all eyewitness accounts, the attack took place. We know from shell fragments in the crater that sarin had not only been used, but that it was sarin carrying the specific chemical signature of sarin used by the Assad regime. Given that samples from the victims show conclusively that they had been exposed to sarin gas, there is only one conclusion to be reached: that the Assad regime almost certainly gassed its own people, in breach of international law and the rules of war.”³⁰

What can the UK do?

When asked in the House of Commons how the UK would respond to a US request to join operations in Syria, Foreign Secretary Boris Johnson stated that “were such a request to be made in future and were it to be a reasonable request in pursuit of similar objectives, it would be very difficult for the United Kingdom to say no”.³¹ The Foreign Secretary repeated that assertion on BBC Radio 4, saying “I know it’s also the view of the Prime Minister”, and when asked whether such an alliance would require parliamentary approval, he stated that, “I think that needs to be tested”.³²

Reports subsequently emerged claiming that the prime minister would seek parliamentary approval after the 2017 general election to conduct airstrikes against Syrian government forces in the event of continued chemical attacks.³³ One source reportedly told the *Sun* newspaper that “After the election, we will have a clear majority and we will push it through”.³⁴

Deployment of the armed forces abroad is a royal prerogative and parliament has no legally established role, though norms for agreeing troop deployment have emerged in recent times.³⁵ Since 2003, when Parliament was given a vote on a substantive motion regarding the intervention in Iraq, a convention has emerged whereby parliament is often consulted, both pre-emptively and retrospectively, on the deployment of British military personnel. However, the nature and limits of this convention are still the subject of debate and remain ambiguous.

Even in the absence of a clearly defined legal convention, the UK parliamentary vote on 29 August 2013 on the principle of taking military action in Syria following the alleged use of chemical weapons by the Syrian government was seminal in establishing the informal convention of parliament’s authority on deploying British military forces. In judging how the convention should apply in the case of authorising military action in response to the continued use of chemical weapons, the fact that parliament clearly resolved on such a similar issue in 2013 reinforces the requirement for the government to return to the House of Commons to approve any new deployment.

31 “Syria and North Korea”, parliament.uk.

32 “Johnson: Difficult to say ‘no’ to Syria strike”, *BBC News*, 27 April 2017, available at <http://www.bbc.co.uk/news/uk-politics-39730685>.

33 “Conservatives may push for fresh Commons vote on Syria airstrikes after election”, the *Guardian*, 4 May 2017, available at <https://www.theguardian.com/uk-news/2017/may/04/conservatives-seek-fresh-commons-vote-after-election-to-bomb-syria>; and “Theresa May plots snap vote on bombing Syria... but is she turning into Trump’s poodle?”, the *Daily Mirror*, 3 May 2017, available at <http://www.mirror.co.uk/news/politics/theresa-plotting-commons-vote-bombing-10351005>.

34 “Theresa May ‘planning snap Commons vote’ to bomb Assad forces in Syria, Politics Home, 4 May 2017, available at <https://www.politicshome.com/news/uk/defence/military-campaigns/news/85625/theresa-may-planning-snap-commons-vote-bomb-assad>.

35 For a discussion of parliament’s role in approving military action see: “Parliamentary approval for military intervention”, parliament.uk, 13 May 2015, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7166>.

28 “Russia blocks Security Council action on reported use of chemical weapons in Syria’s Khan Shaykun” UN News Centre, 12 April 2017, available at <http://www.un.org/apps/news/story.asp?NewsID=56554#.WRX4cVMrJE4>.

29 “Declassified US Report on Chemical Weapons Attack”, the *New York Times*, 11 April 2017, available at <https://www.nytimes.com/interactive/2017/04/11/world/middleeast/document-syria-chemical-weapons-report-white-house.html>; and “Attaque chimique en Syrie – Déclaration de Jean-Marc Ayrault à l’issue du conseil de défense”, France Diplomatie, 26 April 2017, available at <http://www.diplomatie.gouv.fr/fr/dossiers-pays/syrie/evenements/actualites-2017/article/attaque-chimique-en-syrie-declaration-de-jean-marc-ayrault-a-l-issue-du-conseil>.

30 “House of Commons Hansard: Syria and North Korea”, parliament.uk, 18 April 2017, available at <https://hansard.parliament.uk/Commons/2017-04-18/debates/44BA2CB7-F44F-4AA5-9E80-861781949F82/SyriaAndNorthKorea>. (hereafter, “Syria and North Korea”, parliament.uk)

It is currently unclear in what circumstances the government might propose a substantive motion but there are three potential scenarios:

1. A pre-emptive motion on the principle of offensive military action *before* the further use of chemical weapons;
2. A motion *after* the further use of chemical weapons and *before* any offensive military action; or
3. A motion *after* the further use of chemical weapons and *after* any offensive military action

A pre-emptive vote authorising the government to take action in future would be unprecedented. The principal advantage of a pre-emptive motion is that it would afford the government sufficient time to make a clear and thorough case for its proposed action and overarching strategy, and would allow parliament to adequately deliberate and debate the issues at stake. Securing a prescriptive parliamentary vote in the midst of developing events would add an extra challenge to an already complex situation.

The government's handling of the vote in 2013 deserves criticism for being too rushed. As a result, the government failed to provide any clarity about its position, failed to convince MPs about the suitability of military means for achieving the desired policy objective, and failed to give MPs enough time to review the intelligence or the legal considerations, both of which were both published on the day of the vote.

However, an obvious problem associated with a pre-emptive vote is the possibility of events developing beyond those originally envisaged and parliament being seen to act as an excessive restraint on the government's freedom in exercising a royal prerogative. Avoiding constraining the operational flexibility of the armed forces and not prejudicing the capability, effectiveness, or security of those forces is a clear imperative.

Acknowledging that a pre-emptive vote involves a degree of speculation about future circumstances, which is inherently complicated, the specific scenarios under consideration in this paper are not too abstract or complex to be understood or managed. Furthermore, a vote authorising parliament to use military force in the case of continued uses of chemical weapons could, in itself, act as a deterrent to further uses of chemical weapons before they occur.

The House of Commons should be offered the opportunity to express its opinion on the subject of military action in Syria, to ask questions of the government in adequate time ahead of any motion, and establish conditions it may wish to place on offensive military operations. Meanwhile, there should be an understanding that parliament cannot exhaustively address all contingencies. To protect against unforeseen developments, any pre-emptive motion could establish the

circumstances in which the government would seek further approval for military action.

Issues the government must address

In making the case for military action, the government should publish a paper that clearly details why it believes the action is necessary, how non-military options have been exhausted, what the proposed policy aims are, and how they can be achieved through military action. In 2013 the government did not do this in detail and what was produced arrived too late. This contrasts with the approach to the vote in 2015 on extending airstrikes against the Islamic State group to Syria from Iraq. In advance of this vote, the prime minister responded with a 38 page paper to the Foreign Affairs Select Committee on extending military operations against the group in Syria, which was used in the parliamentary debate and approval of the government's action on 2 December 2015.

The government must address questions about:

1. The threshold for military action
2. The intelligence implicating those responsible for the use of chemical weapons
3. The legality of the proposed action
4. The limitations of military action, to prevent escalation and mission creep
5. The wider strategy for UK policy in Syria

On many of these points the government may not be able to provide final answers due to unforeseeable changes in the future. However, that should not preclude the government from explaining the principles behind its thinking on these issues in order to build confidence across the House.

The sections below outline the key components that need to be included in any future white paper on military action in Syria.

The threshold for military action

If the government proposes a pre-emptive motion, then it should clarify as far as possible what sorts of thresholds it would establish for military action. This will be a difficult undertaking that needs to take account of competing demands. If the bar is set too low, then it increases the risk of British measures being perceived as general acts of aggression not clearly linked to deterring the use of chemical weapons and possibly prompting counter-escalation. Similarly, if it is set too high and its remit is too narrow then it again will not achieve the objective of deterring the use of chemical weapons and will appear to give the different parties involved in the conflict more space to carry out other violations of international humanitarian law. Furthermore, establishing a 'red line', as Obama did in 2012, can be

problematic if the government is perceived not to have taken action when this line is crossed.³⁶

The exercise is made more straightforward by focusing on the specific category of chemical weapons, but there are still differences in the deadliness and history of use of different types of chemical weapons. The presence and use of less deadly choking agents such as chlorine has been documented at various points throughout the conflict, while more lethal nerve agents such as sarin have been documented in fewer instances, even though they have caused significantly more casualties. In any pre-emptive motion the government should clarify whether it would consider any use of chemical weapons as warranting a response, or if it would distinguish between them with respect to the threshold that would be crossed.

While the exercise of declaring a threshold could be perceived to limit the government's freedom of action, it is nonetheless an important exercise in effectively communicating to the warring parties what action the UK government considers unacceptable and warranting of a response.

By focusing exclusively on the issue of chemical weapons the government would need to exercise caution to ensure that it was not perceived to be giving the Syrian and Russian militaries a free pass to use conventional weapons in violation of international humanitarian law. Military options to reduce the overall levels of violence in Syria are lacking because no-fly zones or safe zones are problematic and unrealistic at this stage. However, the government should continue to vocally denounce continued violations of international humanitarian law and work with its allies to develop mechanisms for accountability, deterrence, and the enforcement of de-escalation agreements to reduce overall levels of violence.

Intelligence

It is vital that the UK government establishes the requisite degree of proof that the Syrian government is using chemical weapons before any action is taken. In light of the Chilcot Report's findings, it is crucial to restore trust among both MPs and the public concerning the veracity of the intelligence on which proposed military action is based. A high burden of proof is also important for deterring 'false flag' attacks potentially designed to draw outside powers into the conflict.

Following the use of chemical weapons in Syria on 21 August 2013, the Joint Intelligence Committee (JIC) published a summary of its assessment of the Syrian government's responsibility on the day of the parliamentary vote to authorise military action.³⁷ The short amount of time between publication of the declassified summary and the

vote did not afford members of parliament sufficient time to properly consider the summary, or for a proper dialogue to emerge between government and parliament where the concerns of parliamentarians could be addressed. This experience demonstrated the difficulties in conducting a vote in rushed circumstances after the use of chemical weapons and before the use of military force.

As detailed above, the American and French Governments have already declassified their intelligence assessments of the use of chemical weapons in Khan Sheikhoun on 4 April 2017. The length and level of detail provided by the American and French governments in their assessments of the Khan Sheikhoun attack far exceeded that provided by the UK government into the 2013 attack in eastern Damascus. In the case of a pre-emptive vote before the further use of chemical weapons, the government should remedy this by publishing a declassified report of its assessment of the Syrian government's historic use of chemical weapons. A declassified report should include a comprehensive assessment of the Khan Sheikhoun incident on 4 April 2017, but also address the wider pattern of the use of chemical weapons in Syria.

The government needs to strike a balance between its duty to keep its intelligence and information gathering capabilities secret and the need to present evidence to support its positions. While providing classified briefings to all parliamentarians would be impractical, the government should invite the Intelligence and Security Committee to examine its classified evidence and report its view on the intelligence to parliament before any debate.

Legality

Just as establishing the intelligence basis for British military action is important, establishing its legality is also crucial for upholding Britain's respect for the law and for restoring public trust in the government's use of the armed forces. The use of chemical weapons by the Syrian government since October 2013 has violated Syria's legal responsibilities under the Chemical Weapons Convention, UN Security Council Resolution 2118, and international humanitarian law. However, there are no universally accepted international rights to enforce treaties or UN Security Council resolutions by military means in the absence of a further UN Security Council resolution to that effect. Even if launching military action against forces using chemical weapons against civilians is legitimate in moral and policy terms, it does not necessarily mean that such action is legal under international law.

To date, the US administration has not elaborated on its precise legal position for justifying its actions against the Shayrat airbase in April 2017. As noted by Professor Ben Saul of Chatham House, "the US strikes were remarkable for the conspicuous absence of any serious effort by the US or supporting states to reconcile them with international law."³⁸

³⁶ "Remarks by the President to the White House Press Corps", the White House Archives, 20 August 2017, available at <https://obamawhitehouse.archives.gov/the-press-office/2012/08/20/remarks-president-white-house-press-corps>.

³⁷ "Syria: reported chemical weapons use – Joint Intelligence Committee letter", gov.uk, 29 August 2013, available at <https://www.gov.uk/government/publications/syria-reported-chemical-weapons-use-joint-intelligence-committee-letter>.

³⁸ Ben Saul, "US Missile Strikes Expose the Untenable Status Quo in International Law", Chatham House, 26 April 2017, available at <https://www.chathamhouse.org/expert/comment/us-missile-strikes-expose-untenable-status-quo-international-law>.

In 2013 the UK government published its position regarding the legality of military action in Syria following the chemical weapons attack in eastern Damascus. This document represents the most similar legal precedent for guiding any future action. In the summary published on the day of the parliamentary vote, the government asserted that military action would be legal as a humanitarian intervention if its objective were to deter or disrupt the further use of chemical weapons.³⁹

The government argued that, in the case of the UN Security Council being blocked by other permanent members, humanitarian intervention could be permitted according to three conditions:

1. There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief.
2. It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved.
3. The proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose).

The government should publish a detailed summary of its legal position and argument as far in advance of a vote as possible to allow for proper consideration and debate. When the government sought parliament's approval in 2013, it failed to convince MPs on points (ii) and (iii) that there was no practical alternative to the use of force and that the proposed use of force would be necessary and proportionate to the aims and be strictly limited in time and scope. Any future proposals should be mindful of the need to satisfy these points if the government wishes to argue for a legal mandate on the basis of a humanitarian intervention. Furthermore, the very legality of humanitarian intervention under customary international law is highly contentious.⁴⁰ The government should therefore be prepared to make a justification for the foundations of the international laws that they are invoking to justify any proposals.

Limitations and preventing escalation

As noted above, in order to meet the requirements for a justifiable humanitarian intervention, the proposed use of force must be necessary and proportionate to the aim of relieving humanitarian need, and must be strictly limited in time and scope to this aim. This principle is also important from a policy perspective in order to prevent mission creep and escalation by other parties, which could harm other UK

³⁹ "Chemical weapon use by Syrian regime: UK government legal position", gov.uk, 29 August 2013, available at <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position>.

⁴⁰ See: Vaughan Lowe and Antonios Tzanakopoulos, "Humanitarian Intervention", Oxford Public International Law, May 2011, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e306>.

interests. Preventing escalation by other parties while being firm about the consequences for the continued use of chemical weapons should be a key objective of any future operation.

It is instructive to look at the limited and successful airstrikes conducted by the United States on 6-7 April as a test case. Here, it is clear that while military action did present risks, they were adequately mitigated by the limited nature of the strikes. The US administration also took the important step of notifying the Russian authorities, which had personnel at the Shayrat airbase, ahead of the strike,⁴¹ and ensured that the targets were directly linked to the use of chemical weapons, sending clear signals to the Syrian and Russian governments that the strike itself was not about regime change or the establishment of no-fly zones or safe zones. The airstrikes did not, therefore, lead to further escalation.

In the wake of the attack the Russian government initially indicated it would cut the de-confliction line between the Russian and US militaries, both of which operate in Syria.⁴² However, US officials have subsequently stated that the line has continued to work "nonstop" since the American airstrikes.⁴³ Reports did suggest that the Russian and Syrian militaries took several other steps including sending a Russian frigate to Syria's Mediterranean coast,⁴⁴ improving Syrian air defence systems,⁴⁵ and moving Syrian warplanes to the Russian base in Khmeimim.⁴⁶

Considering the prominence of the Russian air force in the military campaign in Syria and the close cooperation between the Syrian and Russian militaries, it is not impossible that a future chemical weapons attack could be conducted by planes departing from the Russian Khmeimim base, or that Russian military personnel or assets are more directly implicated. In seeking support for military action in a pre-emptive vote, the government should clarify how it would respond to a permanent member of the UN Security Council being so directly implicated in the use of chemical weapons and what other measures it might take in that case.

The most effective way to limit the risks of escalation by other parties is for the government to limit the targets of its military action in accordance with its relatively limited mission scope. Understandably, the government cannot divulge proposed targets for future operations in great detail, but it should

⁴¹ "Syria air strikes: US 'warned Russia ahead of airbase missile bombardment'", the *Independent*, 7 April 2017, available at <http://www.independent.co.uk/news/world/middle-east/syria-air-strikes-us-russia-warn-ahead-airbase-donald-trump-putin-missile-attack-tomohawk-cruise-a7671736.html>.

⁴² "Russia cuts 'deconfliction' hotline with U.S. following Syria strikes", *CBS*, 7 April 2017, available at <http://www.cbsnews.com/news/russia-agrees-maintain-deconfliction-channel-us-syria-strikes/>.

⁴³ "Department of Defence Press Briefing by Col. Dorrian via Teleconference from Baghdad, Iraq", US Department of Defense, 26 April 2017, available at <https://www.defense.gov/News/Transcripts/Transcript-View/Article/1163952/departement-of-defense-press-briefing-by-col-dorrian-via-teleconference-from-bag/>.

⁴⁴ "Tensions rise as Russia reinforces Syrian air defences and warns of 'considerable damage' to ties with US after missile strike", the *Telegraph*, 7 April 2017, available at <http://www.telegraph.co.uk/news/2017/04/07/russia-halts-air-safety-deal-us-syria-warns-considerable-damage/>.

⁴⁵ "US Missile strikes: Russia announces plan to bolster Syrian air defences and derides Trump over 'extremely low' effectiveness of bombing", the *Independent*, 7 April 2017, available at <http://www.independent.co.uk/news/world/middle-east/us-missile-strike-russia-syria-air-defences-bolster-donald-trump-putin-low-extremely-low-effective-a7671921.html>.

⁴⁶ "Syria moves its warplanes to Russian base in fear of US strikes", the *Telegraph*, 20 April 2017, available at <http://www.telegraph.co.uk/news/2017/04/20/syria-moves-warplanes-russian-base-fear-us-strikes/>.

nonetheless commit to limiting itself to targets that are clearly and directly linked to the use of chemical weapons, as opposed to wider command and control centres or other infrastructure. The conduct of previous military engagements has damaged confidence in the government's commitment to avoid mission creep. The government needs to be mindful of this. In 2011, when then Prime Minister David Cameron sought approval for military action in Libya, he gave repeated assurances that the proposed action was not about regime change and only about enforcing UN Security Council Resolution 1973, authorising all necessary measures to protect civilians. Then Foreign Secretary William Hague also gave a commitment that "if the government ever fundamentally changes the nature of the mission that we have described to the House, we will return to the House for a further debate to consult it again."⁴⁷

However, as noted in the Foreign Affairs Select Committee's report on the Libyan intervention, the policy of civilian protection morphed into one of regime change without parliament being consulted again.⁴⁸ Any proposed motion for action in Syria should explicitly incorporate the commitment to return to the House should the mission fundamentally change.

Wider strategy

The issue of chemical weapons cannot be isolated from the wider Syrian conflict. As such, the government needs to consider and set out how an airstrike policy might affect other issues within Syria, and what can be done to mitigate any potential risks arising from such action. This could include questions about how military action would affect on-going UN-led peace negotiations, UK-Russia relations, and the fight against the Islamic State group, among others.

The UK should aim to support the UN-led peace negotiations, continue to engage with the Russian leadership, and ensure that the capabilities of the Syrian state are not degraded to the point that Syria is destabilised further.

Furthermore, securing the objective of deterring the Syrian government from continuing to use chemical weapons is not a substitute for a wider strategy aimed at facilitating an inclusive political settlement that secures a sustainable reduction in violence. In order to work towards achieving this goal significant investment is needed in the UK's diplomatic capacity.

The government will also need to ensure that it adequately manages the expectations of Syrian opposition forces that might misread a greater willingness to use military means to deter the use of chemical weapons as a willingness to force regime change through military action.

47 "House of Commons Hansard: United Nations Security Council Resolution 1973", parliament.uk, 21 March 2011, available at <https://hansard.parliament.uk/Commons/2011-03-21/debates/1103219000001/UnitedNationsSecurityCouncilResolution1973>.

48 "Libya: examination of intervention and collapse and the UK's future policy options", parliament.uk, 9 September 2016, available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2015/libya-policy/>.

The government should also take the opportunity of a debate about the use of military force in Syria to address other questions concerning the UK's military involvement in Syria. For example, the 2015 parliamentary motion authorising military action against the so-called Islamic State group in Syria excluded authorisation to take action against other terrorist groups, as designated by the UN Security Council, and therefore did not align the UK armed forces' rules of engagement with those of other coalition allies.⁴⁹

In June 2016, UK special forces were photographed operating alongside opposition groups at al-Tanf border crossing between Syria and Iraq.⁵⁰ When forces aligned with the Syrian government recently advanced towards these groups, threatening UK forces, it was US aircraft that struck the advancing forces. It is unclear whether the Royal Air Force are prepared to take action against hostile forces in defence of UK special forces.⁵¹

Conclusion

Despite the initial successes of previous initiatives, such as the Framework for the Elimination of Syrian Chemical Weapons in 2013, it is deeply regrettable that diplomatic mechanisms for managing the proliferation and use of chemical weapons have effectively broken down. There are no simple or risk free options for deterring Syria from using chemical weapons again. However, preventing Syria from spiralling further into cycles of violence is both a humanitarian and political imperative for resolving the conflict.

This paper has sought to set out issues that the government should address in a parliamentary motion to authorise military action against the Syrian regime in response to the continued use of chemical weapons. These include the threshold for a military response, the intelligence implicating those using chemical weapons, the legal basis for action, limitations on any action, and the wider strategy for UK policy in Syria. In any proposal, it is imperative that the link between an operation's objectives and its proposed action is clear.

Hopefully the government won't need to take action to deter further uses of chemical weapons. A coherent and resolute position, shared by the UK, US, and France, should hopefully act as a deterrent in itself. Indeed, an approach agreed among key European partners would send an even stronger message to Syria and act as an even more forceful deterrent. But in order to ensure that our words are not perceived as hollow, the government must be prepared to answer the difficult questions that accompany proposals for even a limited intervention.

49 "MPs approve motion on ISIL in Syria", parliament.uk, 2 December 2015, available at <https://www.parliament.uk/business/news/2015/december/mps-debate-motion-on-isil-in-syria/>.

50 "UK special forces pictured on the ground in Syria", *BBC News*, 8 August 2016, available at <http://www.bbc.co.uk/news/uk-37015915>.

51 "US Strikes Syria to protect British and American special forces", *Sky News*, 19 May 2017, available at <http://news.sky.com/story/us-strikes-syria-to-protect-british-and-american-special-forces-10883334>.

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