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## **RUSSIAN FEDERATION**

### **AEROSOLISATION OF CENTRAL NERVOUS SYSTEM-ACTING CHEMICALS FOR LAW ENFORCEMENT PURPOSES**

Over the past few years, some States Parties have submitted the so-called "joint paper" (in 2017, on behalf of 39 States) entitled "Aerosolisation of Central Nervous System-Acting Chemicals for Law Enforcement Purposes" (see, for example, such papers as C-22/NAT.5, dated 28 November 2017; C-21/NAT.3, dated 21 November 2016; and C-20/NAT.2/Rev.2, dated 3 December 2015) for consideration by the Conference of the States Parties (CSP) to the Chemical Weapons Convention. The said joint papers are issues as national papers of the CSP regular sessions.

The issue of the use of toxic chemicals that target the central nervous system (CNS) through their aerosolisation for law enforcement purposes is also proposed for consideration during the Fourth Review Conference of the States Parties to the Chemical Weapons Convention (21-30 November 2018).

As for the substance of the joint paper (as in the case of C-22/NAT.5), we note the following.

The said paper contains formulations that are neither explained, nor even provided for in the Chemical Weapons Convention. Thus, for example, this paper does not provide any explanation for such notions as "law enforcement purposes", "incapacitating chemical agents", and "temporary incapacitation", and it even lacks such terms as "aerosolisation of chemicals" or "action on the central nervous system." Consequently, the States Parties to the Chemical Weapons Convention may start to interpret such notions and terms at their own discretion, which will lead to the exclusion of a universal (and single) interpretation of the Chemical Weapons Convention provisions.

Consequently, there are no plans for including the chemicals considered in these papers into a separate category controlled by the Chemical Weapons Convention for the application of verification measures. For instance, the incapacitating chemical agents generally include the irritants, psychotomimetics, and physical agents, etc.<sup>1</sup>

The lack of unambiguous wording of what should be understood under action on the CNS does not make it possible to avoid inconsistencies described in paragraphs 3 and 4 of the joint paper (C-22/NAT.5). Thus, we regard it as inappropriate to compare the toxic (including

<sup>1</sup>

Siegfried Franke, Lehrbuch der Militärchemie, Dautshher Militärverlag, Berlin, 1967 r.



potentially lethal) chemicals that target the CNS with CNS-acting chemicals that include compounds such as anaesthetics, sedatives, and analgesics that have been developed for medical purposes only and require permanent medical monitoring (supervision) during their administration.

As indicated in paragraph 5 of the joint paper (C-22/NAT.5), "CNS-acting chemicals are not riot control agents". Meanwhile, the notion of "Riot Control Agent" (RCA) is defined in Article II, paragraph 7 of the Chemical Weapons Convention and means: any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. Consequently, according to Article II, paragraph 2 of the Convention, a "Toxic Chemical" means: any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. Moreover, according to Article II, paragraph 2 of the Chemical Weapons Convention, "for the purpose of implementing this Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals".

The physiological classification of chemical agents – for example, nerve gases, blister agents, choking gases, etc. – is known to be very conditional, as it is based on the segregation of substances by their main effect on the body or by the first symptoms of intoxication. For example, mustard gas is a blister agent with nerve and paralysant toxic, lacrimator and choking properties; however, the main symptom of intoxication is the blistering effect. As an example, you can also consider the CS substance or the active component of chili pepper – Capsaicin, widely used by the States Parties as RCAs – which have clear lacrimator effect.

At the same time, it is known that the effects of mustard gas, CS gas, and capsaicin are only manifested in the body only with the participation of the CNS that gives a corresponding task to the peripheral nervous system causing the symptoms of intoxication related to the specified agent class to appear.

Therefore, almost all chemicals are CNS-acting, with the only difference being the intensity of their effects.

At the current stage of Chemical Weapons Convention implementation, several states have an individual (national) approach to listing chemicals as RCAs. Thus, according to technical advice (subitem 8(b) of SAB-21/1, dated 27 June 2014) by the Scientific Advisory Board to the Director-General of the OPCW Technical Secretariat (SAB), only 17 out of 59 chemicals declared by States Parties as RCAs in accordance with Article III, subparagraph 1(e) of the Chemical Weapons Convention met the definition of RCAs given in Article II, paragraph 7 of the Chemical Weapons Convention (Note by the Technical Secretariat, S/1177/2014, dated 1 May 2014).

The Russian Federation understands the concern raised by several states that some unlisted chemicals may be hazardous for the purposes of the Chemical Weapons Convention, including when they act through inhalation.

At the same time, based on Article VI, paragraphs 1 and 2 of the Chemical Weapons Convention, each State Party has the right, subject to the provisions of the Convention, to develop, produce, otherwise acquire, retain, transfer, and use toxic chemicals and their precursors for purposes not prohibited under the Convention. It is, however, stipulated

that each State Party shall adopt the necessary measures to ensure that toxic chemicals and their precursors listed in Schedules 1, 2, and 3 of the Annex on Chemicals of the Chemical Weapons Convention are used within its territory or in any other place under its jurisdiction or control, including facilities related to such chemicals, subject to verification measures as provided in the Verification Annex.

To achieve a common understanding of the provisions of the Chemical Weapons Convention by all its States Parties it is necessary to define such concepts and terms as "law enforcement purposes", "aerosolisation of chemicals", "incapacitating chemical agents", and "temporary incapacitation", as well as "central nervous system-acting" toxic chemicals.

As the Chemical Weapons Convention does not provide the definition of "aerosolisation of chemicals", it is not appropriate to use the term "aerosolisation" in a joint paper (C-22/NAT.5), as it also covers the aerosolisation of authorised chemicals as RCAs. For example, Appendix 4 to a SAB paper (SAB-25/WP.1, dated 27 March 2017) states that CS gas is dispersed as a solid aerosol.

According to paragraph 27 of draft SAB report on developments in science and technology for the Fourth Special Session of the Conference of the States Parties to the Chemical Weapons Convention (RC-4/DG.1, dated 30 April 2018), technical discussions of so-called "incapacitating chemicals" or central nervous system-acting (CNS) chemicals remain exhausted: "... The SAB sees no value in revisiting this topic as scientific facts remain unchanged since the SAB first considered the issue. In view of the increasing availability of such chemicals, the Secretariat should be prepared to develop capabilities that could be required to conduct missions involving an alleged use of CNS-acting chemicals for hostile purposes, including sample collection and the addition of analytical data to the OPCW Central Analytical Database (OCAD)." Paragraph 39 of the same paper proposes to add to the OCAD: "appropriate analytical data for chemicals that may pose a risk to the Convention or that are needed to help differentiate permitted activities from prohibited activities .... This could include isotopically-labelled relatives and stereoisomers of scheduled compounds, salts of scheduled chemicals, toxic industrial chemicals, CNS-acting chemicals, riot control chemicals, bioregulators, toxins, and unscheduled chemicals that have been identified as posing a risk to the Convention."

Such SAB proposal in the current wording entails almost all known chemical compounds. It is not stated which chemicals may be identified as a risk for the Convention.

Given that the pending issue is not regulated under the Convention, decisions that may be adopted by the OPCW on this question could eventually lead to introduction of additional commitments for the States Parties, which were not envisaged during the ratification of the Convention. The suggested proposal is itself an extension of provisions and, consequently, the scope of the Convention, involving amending and supplementing the general provisions of the Convention.

We believe that during the upcoming discussions within the framework of the Fourth Review Conference on the question of so-called incapacitating chemical agents, adoption of decisions to issue mandates for the OPCW at the level of governing bodies, as well as adoption of any binding decisions must be prevented.

## **Conclusion**

In order to solve the problem identified by a range of states in joint papers (C-22/NAT.5, dated 28 November 2017; C-21/NAT.3, dated 21 November 2016; C-20/NAT.2/Rev.2, dated 3 December 2015), it is proposed to develop and harmonise the terminology that is suggested for the OPCW official documents with all the States Parties. Particularly, it is necessary to define precisely what is meant by: "law enforcement purposes", "aerolisation of chemicals", "incapacitating chemical agents", "incapacitation", and "CNS-acting" toxic chemicals.

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