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RUSSIAN FEDERATION

**ON AN UNDERSTANDING REGARDING THE AEROSOLIZED USE
OF CENTRAL NERVOUS SYSTEM-ACTING CHEMICALS
FOR LAW ENFORCEMENT PURPOSES**

The Russian Federation supports measures aimed at strengthening the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (hereinafter "the Convention"). At the same time such measures and corresponding actions by the Member States of the Organisation for the Prohibition of Chemical Weapons (hereinafter "the Organisation") should rely on a common interpretation and uniform understanding of the provisions of the Convention and procedures for their implementation. This has always made the basis of our Organisation, as confirmed by the fact that 97 per cent of total Member States of the United Nations are participants in the Convention.

The Russian Federation expresses appreciation to all States Parties for the decision that was adopted by consensus on introducing changes to Schedule 1 of the Annex on Chemicals to the Convention. The decision has demonstrated that the Organisation is able to take necessary measures to strengthen the Convention in order to prevent the emergence and proliferation of new types of chemical weapons.

We are mindful of the draft decision "An Understanding Regarding the Aerosolized Use of Central Nervous System-Acting Chemicals for Law Enforcement Purposes" (EC-92/DEC/CRP.9, dated 4 October 2019) proposed to the Executive Council (hereinafter "the Council") at its Ninety-Second Session.

Therefore, we would like to draw your attention to the following.

The proposed draft decision, like all previous documents prepared by a number of States on that matter (RC-4/NAT.26, dated 30 November 2018; C-22/NAT.5, dated 28 November 2017; C-21/NAT.3/Rev.3, dated 2 December 2016; and C-20/NAT.2/Rev.2, dated 3 December 2015), does not have a clear concept. Defined as "an understanding...", the title itself shifts away from the provisions of the Convention and implies a possibility for other States, who are not co-sponsors, to have another "understanding" of this problem that differs from the one contained in the draft decision.

The text of the draft decision does not mention any list of chemicals covered by "the understanding", as it does not contain any of their characteristics or physiological properties



when impacting the human body, not to mention the specific terms in relation to which we do not have a common interpretation or definition in the Convention or in other documents adopted by the Organisation.

The wording proposed in the draft decision affects the international, legal, judiciary, and political interests of a State that are determined by national legislations.

The basic terms used in the draft decision are "central nervous system-acting chemicals" (hereinafter "CNS-acting chemicals"), "the aerosolized use of CNS-acting chemicals", "law enforcement purposes", "riot control agents" (hereinafter "RCAs"), "temporary incapacitation"¹, and others.

Such obscure wording covers large groups of agents used in medicine, pharmaceuticals, pharmacology, chemical production, agriculture, etc. The draft decision addresses hundreds of thousands of compounds, the production of which is commercialised nowadays all over the world. Therefore, such a decision may have an extremely negative impact on the trade of such chemicals.

The definition of the term "law enforcement purposes", the ways and methods of their implementation as well as, if necessary, the application of any agents (not only chemical) for law enforcement purposes, are the sovereign and purely internal affair of each State.

The applied criteria of "central nervous system-acting" does not provide any basis for including a corresponding, exclusive "understanding" of a specific list of chemicals within the purview of the Convention (as is known, any chemicals that impact human life processes and bodies, including sensory organs, are CNS-acting to one extent or another). At the same time, the impairment of the function of the central nervous system is always preceded by the impairment of the function of other physiological systems.

The term "aerosolized chemical", which is being proposed to be used in the Convention, may also affect the use of corresponding RCAs that have been declared by the States Parties and that are not prohibited by the Convention. The fact is that such substances are used as aerosols. For example, according to the Scientific Advisory Board (SAB) a common RCA such as CS is used only as aerosol (SAB-25/WP.1, dated 27 March 2017).

Furthermore, it should be noted that the chemical impact through inhalation is the only way to solve the task of rapid and reversible neutralisation of individuals whose actions require immediate suppression, for example, within the context of manifestation of terrorism.

The Russian national document RC-4/NAT.9, dated 21 November 2018, emphasised the need to develop and harmonise together with all the States Parties a corresponding conceptual construct to be used in all official documents of the Organisation. This would facilitate the universal (uniform) perception of the provisions of the Convention and rule out any liberal interpretation of terms and definitions proposed in the draft decision.

¹ Although used in the text of the Convention, this term does not have a clear definition from the viewpoint of its interpretation and universal understanding by all States Parties.

The Russian Federation highly appreciates the work conducted by the SAB regarding the technical expertise related to the lists of RCAs that have been declared by States Parties or that are considered as RCAs (SAB-21/1, dated 27 June 2014; SAB-25/WP.1, dated 27 March 2017; and RC-4/DG.1, dated 30 April 2018).

The SAB found that only 17 out of 59 chemicals contained in the list met the definition of an RCA. At the same time, as it was stated, 42 chemicals presented as RCAs show very strong toxic effects and may lead to severe injuries, including fatalities. In this context such chemicals have nothing to do with the task of riot control.

In particular, the toxicity of agents depends not only on the way they penetrate the human body, but also on their aggregate state. That said, the toxicity of an agent used as aerosol will depend on its composition, the size of its particles, and means of distribution (e.g., fog, smoke, or dust).

In this regard, we believe it is necessary to adopt measures to streamline the understanding of RCAs and bring the list of RCAs in compliance with SAB recommendations. It would make a significant contribution in common ideology of fulfilment of obligations by all States Parties in this regard (including by removing chemicals from the RCA list that do not correspond to those purposes).

This kind of approach should be applied not only with regard to the term “CNS-acting chemicals”, but also when conducting at least the provisional categorisation of these types of chemicals by class, for example by the degree (nature) of their physiological impact on humans.

The report of the Twenty-Third Session of the SAB (SAB-23/1, dated 22 April 2016) contains the explanation that CNS-acting chemicals “can have a very low safety margin when delivered as an aerosol”. At the same time, it is not specified exactly what safety margin should be assessed when submitting a decision on the inclusion of potentially hazardous toxic chemicals on the Schedules of the Convention, as different countries have different approaches to assessing levels of toxicity, the danger posed by substances, and the identification of the degree of a toxicant’s hazardous impact. In this regard, different interpretations in determining the safety of potentially hazardous chemicals may arise.

The draft decision makes reference to the “explanations” of the SAB on how CNS-acting chemicals differ from RCAs, as they primarily affect the central nervous system. However, in Article II of the Convention, the definitions of “chemical weapons” and “riot control agents”, in describing the effects of these chemicals on the human body, use expressions such as “chemical action on life processes” and “temporary incapacitation”, or a “chemical [...] which can produce rapidly in humans sensory irritation or disabling effects”. There is no definition of a “CNS-acting chemical”.

In light of the above, at this stage we find it inadvisable to take any decisions on such serious and important matters at the Organisation in the absence of a common “understanding” and a uniform interpretation by all States Parties, without exception, of the terminology that is proposed to be used.

The adoption of the draft decision in its current state at this stage would be counterproductive and premature. This decision will generate additional obligations for States Parties that they had not anticipated when signing and ratifying the Convention.

The Russian Federation proposes that informal consultations begin at the Ninety-Third Session of the Executive Council (or that a temporary working group be established) in order to work through the different interpretations that currently exist. The practice of this approach has been, and still is broadly applied within the Organisation.

During the presentations given by the initiators of the draft decision in October – November 2019, the primary examples of “CNS-acting chemicals” were given as anaesthetics, sedatives, and analgesics, including fentanyl and its analogues. However, at the same time, it was not specified that these chemicals fall within the purview of other international treaties, such as the Single Convention on Narcotic Drugs of 1961², the Convention on Psychotropic Substances of 1971, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

These conventions contain schedules of narcotic and psychotropic substances, for which mechanisms of control and verification are stipulated (including inspection activities) both on the part of States Parties, as well as directly on the part of the International Narcotics Control Board (INCB) and the World Health Organization (WHO). For example, the schedules of the Convention on Psychotropic Substances include chemicals that have “the capacity to produce [...] central nervous system stimulation or depression” (paragraph (a)(i)(2) of Article 2).

The mechanisms put into place in the above-specified international treaties also stipulate measures of control over the trade (including illicit trafficking) of narcotic and psychotropic substances, the licensing of import-export transactions with said substances, control over the supply of these substances for medical purposes (the issuance of prescriptions and reporting of such), measures to counter illicit international trafficking, and measures for the oversight and inspection of activities (domestic control to be exercised by a State over companies engaged in the production, consumption, and warehousing of said substances). The objective of these stringent control measures is to prevent the abuse and illicit trade and overproduction for unlawful purposes, without causing any detriment to global use (for medicinal purposes, for example) and to facilitate international cooperation in this area.

It bears noting that the Convention of 1961 was ratified by 187 States, and that the Convention of 1971 was ratified by 184 States. In line with international treaties, parties to conventions are obliged to limit the production, manufacture, import, consumption, distribution and reserves, as well as the use and storage of controlled substances in order to ensure that they are used exclusively for medical and scientific purposes. The production and distribution of controlled substances requires a license. Each year, all countries submit their estimated and statistical data on the quantities of required, produced, and consumed narcotic and psychotropic substances, as well as the volumes of said substances seized by law enforcement agencies from illicit trafficking operations.

²

Part 1 of Annex to SAB-25/WP.1, dated 27 March 2017, entitled “Response to the Director-General’s Request to the Scientific Advisory Board to Consider Which Riot Control Agents are Subject to Declaration Under the Chemical Weapons Convention (hereinafter “the Convention”)

As at August 2019, the schedules in the Convention of 1961 and the Convention of 1971 include 134 narcotic drugs and 144 psychotropic substances.

The Russian Federation also understands the emphasis on these chemicals, as the abuse of the drugs based on these substances is a cause of the growing trend of fatalities in various regions around the world due to overdoses (reports by the United Nations Commission on Narcotic Drugs and the United Nations Office on Drugs and Crime).

In the Russian Federation, the list of narcotic drugs, psychotropic substances, and their precursors is considerably more extensive than the list under the control of the aforementioned conventions. It includes 573 substances, all with their own independent listings, and tens of thousands of narcotic drugs and psychotropic substances included in the list under the definition of key “derivative” chemicals (including fentanyl and its analogues).

It is now being proposed that chemical compounds that fall under the control of the Conventions of 1961, 1971, and 1988 be put under the control of the Convention without having worked at all with the United Nations Commission on Narcotic Drugs, the INCB, or WHO.

Taking into account the status of the question on banning the use of CNS-acting chemicals, we find it necessary to conduct an extensive study on the matter using the following comprehensive approach:

1. Take measures to clarify the use of riot control agents within the framework of the Organisation in line with the recommendations of the SAB, and excluding from the list the 59 and 42 chemicals that do not meet the purposes of riot control.
2. Prepare recommendations on an extensive set of terms and use thereof within the framework of the Convention, in particular:
 - “central nervous system-acting chemicals (including in aerosolized form);
 - “law enforcement purposes”;
 - “temporary disabling effect”.

According to the procedure set out in Article XV, prepare the corresponding amendments to the Convention, including to Article II.

3. Have the Organisation initiate work with the INCB, the United Nations Office on Drugs and Crime, the United Nations Commission on Narcotic Drugs, and WHO to agree upon zones of responsibility among said organisations and in particular with regard to chemicals that may fall within the purview of the proposed draft decision.

The Russian Federation is prepared to continue working on this matter in collaboration with other States Parties, and is also counting on the understanding of and support for the approaches addressed above during the forthcoming discussion of the draft decision at the Ninety-Third Session of the Executive Council and in future.