

**SOUTH AFRICA’S EXPLANATION OF VOTE ON THE DRAFT
DECISION ON AN “UNDERSTANDING REGARDING THE
AEROSOLIZED USE OF CENTRAL NERVOUS SYSTEM-ACTING
CHEMICALS FOR LAW ENFORCEMENT PURPOSES”**

Chairperson,

It is with infinite concern that I take the floor to deliver my delegation’s explanation of its abstention vote on the Draft Decision, which has just been adopted, titled “Understanding Regarding the Aerosolized Use of Central Nervous System-Acting Chemicals for Law Enforcement Purposes”.

First of all, based on the available and the evolving scientific evidence in the field of chemistry, my delegation wishes to place it on record that it has become acutely aware of the inevitable hazards associated with the aerosolised use of CNSAC for law enforcement purposes. The Chemical Weapons Working Committee of South Africa categorically accepts the available evidence as compelling and broadly concurs with the issues outlined in the Working-Paper circulated by the distinguished delegation of the United States of America, and the concerns raised set out in the Draft Decision, both of which are supported by the co-

sponsors. That represents considerable common ground between my delegation and the co-sponsors of the Draft Decision.

However, South Africa is of the firm view that, universally, the notion of a “shared” or “common” understanding purportedly sought to be achieved by means of the Draft Decision speaks for and of itself as an agreement by, between and among concerned parties, predicated on unanimity of views on a specific subject matter. Consequently, the realisation of such a “shared” or “common” understanding in this organisation, pertaining to the meaning of the letter and spirit of any provisions of the CWC, short of following the mechanisms prescribed under Articles XIV or XV of the CWC, can only legitimately be realised by means of a decision based on consensus rather than a division by vote.

Without any fear of equivocation, my delegation is of the firm view that the Chemical Weapons Convention (CWC) is silent on whether or not the aerosolised use of Central Nervous System Acting Chemicals (CNSAC) for law enforcement purposes falls within the ambit of what is contemplated under Item 9 (d) of Article II of the CWC as a “purpose not prohibited”. It is my delegation’s contention that if it were otherwise, the State Parties to the CWC would not have invested as much time as they have, spanning over fifteen years, in fervent diplomatic efforts aimed at

persuading all States Parties to reach an agreement on a “shared” or “common understanding” that the aerosolised use of CNSAC for law enforcement purposes is not consistent with a “purpose not prohibited”, contemplated under Item 9 (d) of Article II of the CWC.

Undoubtedly, the importance of a “shared” or “common understanding” being sought, if achieved, short of initiating an amendment to any specific provisions of the CWC in accordance with the procedures set out under Article XV thereof, is that it would crystalize the position and bring certainty to the letter and spirit of the CWC pertaining to this relevant subject matter.

In this regard, my delegation wishes categorically to state that, in the absence of an agreement by consensus on a “shared” or “common” understanding on the Draft Decision, it remains keen to work with and support any States Parties that seek to achieve the objective of prohibiting the aerosolised use CNSAC, by invoking mechanism prescribed under Article XV to amend the provisions of any aspect of the CWC to enable it to keep pace with developments on matters that fall under the purview of the work of the OPCW. In the alternative, if there is a genuine view that the CWC already has language that prohibits the aerosolised use of CNSAC for law enforcement purposes, my delegation

would be willing to work with any States Parties seeking to resolve any divergence of views or dispute on the meaning of the letter or, if need be, the spirit of the CWC by invoking the mechanism prescribed under Article XIV thereof.

South Africa believes that purporting to adopt a “shared” or “common” understanding by means of a divided vote is a contradiction in terms, which would result in a moral dilemma and legal absurdity in the event of even a single dissenting vote being cast on this matter. Regrettably, by going down the path of seeking a “shared” or “common understanding, which is a diplomatic path, by now calling for a division by rollcall vote, the co-sponsors of the draft decision now leave the OPCW in a legal quandary. This is so because any single vote against the Draft Decision bears incontrovertible testimony to the absence of consensus and, by extension, to the absence of a “shared” or “common” understanding on this important subject matter.

While it is accepted that a two-thirds majority is recognised in the rules of procedure of the Executive Council as a decision making mechanism on administrative matters that come before the Executive Council for a decision, it is my delegation’s considered view that a voting mechanism ordinarily employed to deal with decision making on administrative

matters cannot legitimately be utilised as a mechanism to lead to an end state on a matter still remains couched in language that defines it as a purely diplomatic effort, without first opting out of it to then invoke a mechanisms prescribed under the CWC with a view to bringing certainty to the interpretation of any of the provisions of the CWC.

My delegation is profoundly concerned that adopting what is supposed to be a “shared” or “common” understanding in the manner purportedly done today, cannot only to further polarise the Organisation and feed a discernible growing culture within the organisation in terms of which some States Parties increasingly feel themselves justified in taking the view that they are neither morally or legally bound by certain decisions, on account of either real or perceived procedural defects in how decisions on fundamental matters within the organisation are made. Such a culture, if allowed to fester, would not only serve to further polarise the organisation, but could, in the fullness of time, lead to an implosion of an organisation as important as the OPCW. It is imperative for all states Parties to do all in their power to preserve the unity of this organisation for the sake of ensuring global security against the threat of chemical weapons.

In conclusion, my delegation is of the firm view that, as an organ of a disarmament organisation, the Executive Council is enjoined to reaffirm the leadership of the OPCW by always making the Right Decisions, for the Right Reasons, in the Right Way. Posterity calls out to us from the bosom of the future to act with propriety in order to bequeath to them a safer world; one free of chemical weapons in all forms. Failure to that procedurally would detract from the leadership role the OPCW is enjoined to play on matters that are integral to its mandate.

For these reasons, my delegation has abstained, based on principle, not in opposition to the efforts aimed at prohibiting the aerosolised use of CNSAC for law enforcement purposes, but one that is based on our commitment to organisational integrity, substantive and procedural fairness, which is what the OPCW needs to uphold if it is to provide unquestionable leadership to all around the world on matters that fall within the purview of its mandate.

Finally, Chairperson, my delegation requests that a full version of this statement be circulated and regarded as an official statement of this meeting and be posted on the OPCW website and external server.

I thank you for your attention