

**Statement by the Delegation of the Islamic Republic of Iran at the 96th Session
of the Executive Council on the Draft Decision entitled:**

**“Understanding Regarding the Aerosolized Use of Central Nervous System-
Acting Chemicals (CNS) for Law Enforcement Purposes”**

Mr. Chairperson,

The draft decision EC-92/DEC/CRP.9/Rev.6 entitled “Understanding Regarding the Aerosolized Use of Central Nervous System-Acting Chemicals for Law Enforcement Purposes” suffers from major technical ambiguities and legal uncertainties some of which were highlighted in the joint Working Paper sponsored by delegation of the Republic of China, the Islamic Republic of Iran and the Syrian Arab Republic (EC-95/WP.1 dated 2 October 2020).

It is a matter of regret that despite repeated calls by overwhelming majority of CWC States Parties including many regional groups, the proponents of the proposed draft decision are resistant to any proposals to explore ways and means to reach an understanding through overarching structural dialogue on the definition of the CNS-acting chemicals.

The scope of application of the Convention in terms of prohibition as well as its exemptions in terms of non-prohibition are clearly defined therein. Furthermore, the legality of the course of action and procedure of adoption of the decision on the CNS-acting is under question. There is no doubt that any proposed change or amendment to the scope of the Convention shall proceed in accordance with the provisions of article XV.

It should be emphasized that the proposed draft decision would seriously undermine the rights of States Parties under the provisions of the Convention including in particular on activities not prohibited under the Convention. Such an arbitrary and unjustified action to rewrite the

Convention by drastically changing the scope of this fundamental instrument would not only jeopardize the integrity as well as the effectiveness of the CWC, but it would have a domino effect on the activities of the PMOs of OPCW and negatively affect debates around the future of the OPCW.

The proponents of the draft decision unlike the provisions embodied in Article 31 and 32 of 1969 Vienna Convention on the Law of International Treaties regarding the general rules of the interpretation of the international treaties have put their own interpretation of the provisions of the Convention and chose a wrong and shortcut path compromising the integrity of this fundamental instrument to serve their own short-sighted political interest.

Let me clarify once more that this draft decision suffers from many shortcomings including inter alia as following:

- The nature and lethality of all CNS acting chemicals as well as their definition have not yet been discussed and no conclusion is reached on this issue. They are inserted neither in the text nor in the schedules of the Convention,
- The scope of the Convention is defined in Article I and II. None of the provisions of this fundamental instrument justifies an arbitrary reading of the provisions to extend the scope of the Convention and recognize CNS-acting chemicals as a CW.
- While the Convention recognises the right of the States Parties to use RCA, the authors of the draft decision have argued and concluded that CNS, if used in aerosolised form, would have almost had similar effects as chemical weapons. This conclusion is based on the false assumption that all CNS-acting chemicals, if aerosolised, would have a low safety margin.
- The drafters of the decision have completely ignored the very real fact that chemicals, amongst others, CNS-acting chemicals, indeed, encompass an entire group of chemicals used in medicines, pharmaceuticals, and agriculture.
- RCAs, even in aerosolised form, are chemicals permitted under the Convention. So, the mere aerosolisation, without considering other factors, cannot justify the ban on the use of CNS-acting chemicals, due to the fact that certain chemicals, like Fentanyl, have a low safety margin and lethal dose if used in aerosolised form with high doses, etc.

- Though different concepts such as CNS-acting chemicals, incapacitating agents, non-lethal weapons have been used interchangeably by the supporting States Parties of the draft decision without delineating each concept, as it would have different legal implications.
- The proposed draft decision extends the scope to a very wide range of chemicals that the existence of the mentioned conditions (lethal dose and safety margin) for many of them has not been proven so far.
- Article II (paragraphs 1(a) and 9(d)) of the Convention permits use of toxic chemicals for “law enforcement including domestic riot control purposes”. The draft decision aimed to outlaw the use of any CNS-acting chemicals in aerosolised form. This is in clear contravention of the provision of the Convention, where toxic chemicals might be used for law enforcement purposes, as long as the types and quantities are consistent with such purposes as stipulated in the above-mentioned paragraphs.
- The conceptual ambiguities of the proposed draft decision go further, as it is not clear which CNS-acting chemicals are the main purpose of the draft decision. If only the effect of the chemicals on the central nervous system is the criterion, some other chemicals that are used in riot control will also fall within the scope of the proposed draft decision.
- The “law enforcement” and RCAs have both been distinguished under the provisions of the Convention, so law enforcement would not be constrained to only certain toxic chemicals, namely RCAs, but toxic chemicals other than RCAs to be used in types and quantities consistent with the purpose of the Convention and not prohibited under the Convention. This decision clearly sets new parameter for the law enforcement which has not recognized in the Convention.
- CNS-acting chemicals are not scientifically confined to certain chemicals as claimed in aerosolised form might have a low safety margin. Indeed, there is a set of chemical compounds generally named as chemicals affecting the central nervous system. In many cases, there are chemical compounds that are known as drugs approved by the competent health authorities to treat various diseases.
- The proposed draft decision argues that the CNS-acting chemicals have a very low safety margin when delivered as an aerosol. While it intends to prohibit all categories of the CNS-acting chemicals, it should be noted that some of the CNS-acting chemicals like Fentanyl might have this characteristic. For instance, unlike Fentanyl, Benzodiazepines have low

toxicity and high safety margins, as the Flunitrazepam toxicity is lower than a conventional RCA like CS.

- Given the wide variety of the set of chemical compounds of the CNS-acting chemicals and the different characteristics of them, it is misleading to apply a single decision for all CNS-acting chemicals without determining a specific category of them which might not be compatible with the activities not prohibited under the Convention. Indeed, it is neither technically correct nor justified under the provisions of the Convention to prohibit the aerosolised use of CNS-acting chemicals and generalise it to all of the CNS-acting chemicals based on the characteristics that still need a common understanding to be reached.
- The Convention delicately embodies a balance of the rights and obligations of States Parties under provisions of the Convention as enshrined in Article II paragraph 1(a) of the Convention known as General-Purpose Criterion (GPC) that “[t]oxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes”. Under the GPC provisions of the Convention, the use of toxic chemicals is excluded for peaceful purposes not prohibited under the Convention.

Mr. Chairman,

Whereas it is essential to preserve the integrity of the OPCW as a unique multilateral disarmament forum in order to achieve the world free of chemical weapons, it must be noted that the decision has significantly eroded the CWC compromissory nature on the boundaries of the applications of the CWC as well as the rights and obligations of the Parties. The proposed draft decision does not reflect a common understanding among States Parties on the issues of CNS-acting chemicals.

This is not the first time that classical proponents of non- consensual decisions in the OPCW have decided once more to question the multilateral diplomacy aimed at promoting common objectives under the provisions of the Convention. In this regard, since the requirements of Article XV are not met, any action by the Council considered Ultra Vires, as tantamount to new obligation and amendment of the Convention which exceeds the powers and functions of the Council. This dangerous trend would clearly jeopardize the credibility as well as the integrity of the OPCW.

Last but not least for above reasons, we are not in a position to support the draft decision and would cast negative vote and urge other delegations to vote against it. We would disassociate ourselves with the document if adopted.

I would like to ask this statement be made as an official-series document of the 96th session of the Executive Council and published on the external server and public website of the OPCW.

Thank you.