

**RUSSIAN FEDERATION****QUESTIONS AND ANSWERS  
REGARDING THE PROPOSAL TO PROHIBIT THE AEROSOLISED USE  
OF CENTRAL NERVOUS SYSTEM-ACTING CHEMICALS  
FOR LAW ENFORCEMENT PURPOSES**

This document is aimed at analysing some key aspects of the draft decision submitted on behalf of 32 States Parties to the Convention on the Prohibition of Chemical Weapons (hereinafter “the Convention”) entitled “Understanding Regarding the Aerosolised Use of Central Nervous System-Acting Chemicals for Law Enforcement Purposes” (EC-92/DEC/CRP.9/Rev.5, dated 3 March 2021, and hereinafter referred to as “Understanding” or “draft decision”). This is needed to understand the aim of the draft decision, the possible consequences of its adoption by the OPCW as submitted (including for States Parties to the Convention), and what could be done so that the idea conveyed in the draft decision could be acceptable to the Organisation for the Prohibition of Chemical Weapons (OPCW).

The topics of the questions have been chosen based on the outcome of the discussion of the draft decision with the States Parties to the Convention.

**Question 1: Which chemicals in this draft decision are considered central nervous system-acting chemicals (CNS-acting chemicals), for which the aerosolised use for law enforcement purposes is proposed to be prohibited?**

The proposed draft decision does not answer this question. The draft decision contains neither a schedule of CNS-acting chemicals, nor their characteristics or physiological properties of chemicals when they are exposed to the human body, according to which we could classify any particular chemical agents (chemicals/compounds) as a CNS-acting chemical, as the draft decision defines them. In this regard, we believe that the term “CNS-acting chemical” has been introduced into this draft decision artificially.

During several presentations arranged in 2019 on the sidelines of the OPCW events by the co-sponsors of this document, examples of so-called CNS-acting chemicals mostly included anaesthetic agents, sedative agents, and analgesics, including fentanyl and its analogues. However, there was no reference to the fact that such chemicals fall within the scope of other international treaties, such as the Single Convention on Narcotic Drugs<sup>1</sup> of 1961, the Convention on Psychotropic Substances of 1971, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The aforementioned conventions contain Schedules of narcotic drugs and psychotropic substances. These chemicals

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<sup>1</sup> As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs of 1961.



are subject to control and verification mechanisms both at the national level by States Parties, and at the international level directly by the International Narcotics Control Board (INCB) and the World Health Organization (WHO). These schedules are updated and supplemented on an ongoing basis.

It is also well known that a large number of chemicals, the so-called nerve agents, fall within the scope of the Convention. The principles for regulating such chemicals are detailed in the Convention.

The Convention does not contain the term “CNS” (CNS as an object upon which a chemical agent acts only appears in the Convention on Psychotropic Substances of 1971).

Additionally, it should be noted that the central nervous system (CNS) is connected to all organs and tissues of the human body by the peripheral nervous system. In this case, sensory nerves carry an impulse to the CNS from the peripheral receptors. Correspondingly, an impulse from the CNS is channelled through efferent nerve fibres to the cells of the executive working apparatus (i.e., the muscles, blood vessels, glands, etc.). In this context, the term “CNS-acting chemicals” is incorrect, because any chemical agent that affects human vital processes and body, including sensory organs, involves the CNS through sensory and diverting nerve endings, i.e. through the peripheral nervous system. At the same time, a CNS malfunction is always associated with the malfunction of other physiological systems of the human body.

It should be stressed from the outset that the absence of the necessary definitions and a schedule of chemicals that fall under the draft decision creates a conflict of interest of the relevant international organisations implementing the objects and purposes of the aforementioned international treaties (conventions), including provisions for international verification of compliance with those treaties and conventions.

**Question 2: Is the proposed “understanding” regarding a prohibition of the aerosolised use of central nervous system-acting chemicals for law enforcement purposes consistent with the provisions of the Convention?**

The document submitted as an “understanding” is not in line with the current provisions of the Convention and goes beyond its scope. The main objective of the Convention is a total ban on the development, production, stockpiling, and use of chemical weapons, and their destruction. The Convention also does not prohibit the use of riot control agents (RCAs); it only explicitly prohibits using riot control agents as a method of warfare.

From the perspective of international law, the term “understanding” could be classified as an agreement between the parties on some aspects of an existing international treaty. However, such an “understanding” may be reached only if at least the following two criteria are met:

- the “understanding“ proposed for adoption stems from rules already established by an international treaty; and
- the parties to the agreement have come to a consensus on the aspects in question that are the subject of the “understanding”.

As for the submitted draft decision on regulating central nervous system-acting chemicals, there is no agreement on either the first or the second criteria.

In this regard, once again in the practice of the OPCW, we see a situation when a group of States not representing the majority of the Organisation's members (32 of 193 States Parties to the Convention) literally tries to push some “understanding” to legalise within the Convention an issue without any clear definitions. This is nothing but an attempt to substitute international law with dubious rules and decisions. This approach is absolutely unacceptable.

**Question 3: Will the adoption of the proposed draft decision of the OPCW entail new (previously non-existent) obligations for States Parties to the Convention?**

The mentioned draft decision entails new obligations for OPCW Member States due to the expansion of the legal framework of the Convention regarding both the subject matter of provisions and the scope of chemicals it covers. Its adoption will inevitably lead to new obligations for States Parties to the Convention.

First, the draft decision calls for the “prohibition of aerosolised use of CNS-acting chemicals for law enforcement purposes”. At the same time, it needs to be recognised that the wording proposed in the draft decision affects the international, legal, and political interests of a State, determined by national legislation.

To this end, States Parties will have to implement the adopted decision primarily on the national level by bringing their legislation in line with the new obligations; among other things, States will have to introduce relevant amendments to regulations governing the activities of and use of special means by law enforcement bodies. At the same time, the common approach to the implementation of this kind of decision on the international level remains highly questionable and depends to a great extent on the “understanding” the States Parties will reach, taking into account the lack of a generally recognised international treaty that defines the terms “law enforcement purposes” and “law enforcement”?

Second, it is not at all clear what specific chemicals should be prohibited or for which specific law enforcement purposes their use would be prohibited. This lack of an internationally agreed interpretation of “law enforcement purposes” enables each State to define such purposes on the basis of its national legislation.

Therefore, the “understanding” proposed by the initiators can only be a subject for comprehensive consideration of the issues as a whole. It seems that if States Parties to the Convention find compromise proposals, the subsequent development and introduction of relevant amendments to the Convention in line with paragraphs 1 – 3 of Article XV will be necessary. In this case, every State Party will have to assume obligations arising from such amendments through ratification procedures.

**Question 4: Will the adoption of this decision affect civilian industries, agriculture, pharmaceuticals, medicine, and others?**

The draft decision uses the term “CNS-acting chemical”. This wording covers a significant number of chemicals within the purview of the Convention, and it is suggested that a large number of substances and groups of substances be included that are covered by other international treaties and widely used in medicine, pharmaceuticals, pharmacology, veterinary medicine, chemical manufacturing, agriculture, and other sectors of the economy. At the same time, it needs to be understood that hundreds of thousands of such compounds used for the aforementioned aims are commercially produced all over the world.

Since 2007<sup>2</sup>, the Scientific Advisory Board (SAB), under the Director-General of the OPCW Technical Secretariat has noted in its reports that a major goal of pharmaceutical companies has been the development of devices that would deliver insulin as an inhalable aerosol, and that would thus obviate the need for millions of diabetics to inject insulin. Some drug companies are also focusing on the lungs as a point of entry for the rapid administration of drugs to the central nervous system. The physical properties that promote rapid absorption through the lungs are similar to those that promote the penetration of the blood-brain barrier. On that basis, a number of methods have been developed for administering such drugs as opioids, anti-migraine drugs, and anti-convulsants as aerosols.

In the current version, the draft decision is non-specific from the point of view of a substantial list of chemicals, since, as it has been mentioned earlier, it is not clear which chemicals and/or compounds used in various sectors of the economy of States Parties to the Convention are to be prohibited.

Thus, this decision may have severely negative consequences for the development of various sectors of the economy and trade in chemicals that are governed by the proposed draft decision in the framework of the “understanding”.

**Question 5: What are the disadvantages of issuing decisions of OPCW governing bodies, in particular regarding “CNS-acting chemicals”, in the form of “understandings”?**

The fact that there are no unambiguous or clear definitions regarding the specific chemicals that will be prohibited, or the purposes of their use that will be contrary to the Convention, creates conditions that would enable any State Party to the Convention to accuse any other State Party of not complying with this decision (if it is adopted) and, consequently, the Convention. The last several years have shown that such groundless accusations of non-compliance with the Convention have serious consequences for the “accused” State, up to unilateral sanctions.

In this context, the lack of definitions of terms used within the draft, such as “CNS-acting chemicals”, “aerosolised use of CNS-acting chemicals”, “law enforcement purposes”, and some others, is of paramount importance. With no developed terms or definitions, there is a risk of a broad and subjective interpretation of new and non-universal terms, and of the politicisation of the problem. Moreover, without a schedule of chemicals it is virtually impossible to control the implementation of this decision in a unified manner; however, it will be easy to make an accusation of violating “understandings”. This is due to the fact that every State Party will, in line with its interpretation of the prohibition introduced by the “understanding”, implement it accordingly at the national level.

For example, no internationally recognised (adopted) instrument—including the Convention—contains definitions of the terms “law enforcement”, let alone “law enforcement purposes” where the term “law enforcement purposes” is used as an expression with no definition.

In a broad sense, existing international instruments (treaties, conventions) interpret “law enforcement” as the activities of all public authorities (legislative, executive, and judicial) that ensure that citizen rights and freedoms are respected and implemented, and enforce law and

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<sup>2</sup> SAB reports: SAB-10/1, dated 23 May 2007, and RC-2/DG.1 (para. 2.7), dated 28 February 2008.

order. In a narrow sense, it means the activities of specialised public law enforcement bodies aimed at enforcing law and order; these bodies are meant to carry out tasks such as, for example, the identification, suppression, and prevention of offences, the application of various sanctions against offenders, and the implementation of corrective (penal) actions.

Accordingly, it seems that the main purpose of such activities in most countries of the world is the protection of rights and interests of citizens, and the legitimate interests of organisations and enterprises, society, and the State, the enforcement of security, public order, and the rule of law. This protection extends to the rights of three major objects: the individual, the society, and the State itself.

This is why the definition of the term “law enforcement purposes” in particular, the ways and methods to ensure/ achieve them, and, where necessary, the use of any means (not necessarily chemical) in law enforcement, is now, in line with international law, a sovereign and strictly internal affair of each State.

A similar situation occurs with the introduction of the “aerosolised use of a chemical” criterion. This criterion will affect the use of relevant RCAs declared by States Parties that is permitted under the Convention. As a rule, such substances are used in the form of an aerosol. For example, as concluded by the Scientific Advisory Board, CS, a common RCA, is only delivered as an aerosol (SAB-25/WP.1, dated 27 March 2017).

**Question 6: Did the SAB make any comments and/or recommendations in the form of its conclusion after consideration of the initiative of 32 States Parties to formalise a decision on such a serious matter as an “understanding”?**

The SAB regularly addressed issues related to toxic chemicals used for law enforcement purposes. In this context, it should be noted that there has been quite different language in the SAB documents, such as “non-lethal agents” that can be used for law enforcement purposes, “riot control agents”, “incapacitants”, “incapacitating chemicals”, and, finally, “central nervous system-acting chemicals”. However, no specific recommendation or conclusions have been submitted by the SAB regarding the imposition of a ban on the aerosolised use of central nervous system-acting chemicals for law enforcement purposes.

The SAB periodically presented expert assessments in the context of developments in science and technology related to RCAs (formerly called “incapacitants” for some reason), “CNS-acting chemicals”, or expressed a purely scientific opinion on particular aspects related to the use of any chemicals in law enforcement, and the possible consequences of such use. For instance, in 2010, the SAB noted that it could be of assistance to the Director-General in categorising toxic chemicals that fall within the general definitions of riot control agents or incapacitants for law enforcement (SAB-15/1, dated 14 April 2010).

Furthermore, the SAB did not provide any examples of names of relevant chemicals, their structural formulas, or any other specific information in any of the cases addressing the issue of the use of any chemicals for law enforcement purposes. Moreover, the SAB stated that “technical discussions of so-called ‘incapacitating chemicals’ or ‘central nervous system-acting chemicals’ remain exhausted”, and that it sees “no value in revisiting this topic” (RC-4/DG.1, dated 30 April 2018).

In particular, the SAB report for the Third Review Conference (RC-3/DG.1, dated 29 October 2012) emphasises that it is not simply a matter of precisely which incapacitant (see paragraph 84, “incapacitating chemical”) is used for law enforcement purposes, but how it is used, and the consequences such use may have. In this regard, the example was given that pepper spray (categorised as an RCA) had been used to stop a fight in a crowded nightclub, which resulted in the death of 19 people. The deaths were caused by the fact that the visitors panicked and tried to get out of the club, ignoring all requirements to leave the building safely.

It is very significant that the SAB once again in its report (SAB-23/1, dated 22 April 2016) drew attention to the call contained in the joint paper that had been submitted by 23 States Parties at the Twentieth Session of the Conference of the States Parties (C-20/NAT.2/Rev.2, dated 3 December 2015). This joint paper recommended that all States Parties provide their national position on the use of CNS-acting chemicals for law enforcement purposes, and express their interest in further discussion by States Parties within the OPCW framework on this issue, with the objective of developing concrete recommendations as to how the OPCW should address CNS-acting chemicals<sup>3</sup> in a way that would help prevent the re-emergence of chemical weapons. However, it is understood that in light of the above, and in the absence of the necessary conceptual framework and a schedule of specific chemicals falling under the issue of “CNS-acting chemicals”—or even criteria for classifying chemicals as such—States Parties to the Convention cannot formulate their national position.

The SAB did not comment on the “prohibitive” draft decision, dated 3 March 2021 (document EC-92/DEC/CRP.9/Rev.5).

**Question 7: Do the law enforcement agencies of the States Parties to the Convention proposing the initiative to ban the aerosolised use of “CNS-acting chemicals” for law enforcement purposes have riot control agents that have the effects of CNS-acting chemicals or temporary incapacitation (incapacitating effects)?**

Within the context of the submitted draft decision, this issue is particularly relevant, because ever since the Convention came into force, no emphasis has been placed on how to specify chemicals that may be used as RCAs, including for law enforcement purposes.

Moreover, there was no definition of the term “incapacitating effect” for the purposes of implementing the Convention.

In this regard, following the entry-into-force of the Convention, several western countries actively developed so-called “non-lethal weapons” based on of incapacitating chemicals (agents) for law enforcement purposes and as RCAs.

In this context, for example, a wide range of chemicals has been evaluated in the United States. For example, Pennsylvania State University has published the results of biomedical research on various pharmaceutical agents, including sedatives, anaesthetics, opioid analgesics, antipsychotics, antidepressants, and other classes of agents that had been considered “calmatives” (calming substances) in special non-lethal techniques. Thirty-two of the

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<sup>3</sup> This call was included in all subsequent similar joint papers up to the Fourth Review (RC-4/NAT.26, dated 30 November 2018).

chemicals under consideration were roughly divided into ten classes according to their mechanism of action on the human body with potential for use as “non-lethal” weapons.<sup>4</sup>

It is understood that most of these chemicals (along with other substances) fall within the scope of the proposed draft decision (EC-92/DEC/CRP.9/Rev. 5, dated 3 March 2021).

Due to the incompleteness of the conceptual framework in the period from 2007 to 2018, substances used for law enforcement purposes or as RCAs are consolidated as incapacitants in scientific publications and SAB materials. As a result, several countries conducted research and developed so-called “non-lethal weapons” based on incapacitants!<sup>5</sup>

However, it should be emphasised that this approach contradicts the Convention since, under paragraph 2 of Article II, incapacitating chemicals are considered to be toxic chemicals falling under the definition of chemical weapons. Such chemicals are listed in Schedules contained in the Annex on Chemicals of the Convention and are subject to verification measures.

Accordingly, riot control agents (the RCAs) are not listed in Schedules contained in the Annex on Chemicals of the Convention.

The definition of the term “RCA” is given in paragraph 7 of Article II; however, there is no wording “incapacitating effect” in it. It is up to the State to specify the RCAs and submit a declaration in accordance with paragraph 1(e) of Article III of the Convention, which “shall be updated not later than 30 days after any change becomes effective.”

It wasn’t until 2011 that the SAB noted that there was no definition of “incapacitants” in the Convention (SAB-16/1, dated 6 April 2011).

The first correct interpretation of chemicals for the purpose of the implementation of the Convention was officially published in the draft decision under consideration, which was submitted by 32 States Parties to the Convention. However, it does not contain a schedule of corresponding chemicals.

It is difficult to say as yet whether the research regarding the assessment of “incapacitants” for law enforcement purposes and as RCAs has been completed. Nevertheless, since 2013, the United States has officially stated at various levels and forums—including at the OPCW—that it does not develop, produce, stockpile, or use “incapacitating” chemicals. However, it can be noted that the development of such chemicals has not stopped. For example, patent number US 10,060,715 B1, dated 28 August 2018, on non-lethal incapacitating bullets loaded with “incapacitating substances,” including those related to RCAs, insecticide, and other chemicals, was issued in the United States.

As a positive example, one could cite the relevant statements made by, for example, Germany and Switzerland, which in 2013 officially declared that under their national laws, toxic chemicals intended for law enforcement purposes were restricted exclusively to RCAs as defined in paragraph 7, Article II of the Convention.

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<sup>4</sup> Lakoski J., Bosseau Murray, W. & Kenny, J., 2000, *The advantages and limitations of calmatives for use as a non-lethal technique*, College of Medicine Applied Research Laboratory, Pennsylvania State University, p. 2.

<sup>5</sup> Crowley M., and Dando M., 2014, *Biochemical security 2030, A study of contemporary dual-use chemical and life science research potentially applicable to incapacitating chemical agent weapons*, University of Bradford, United Kingdom of Great Britain and Northern Ireland.

However, it should be emphasised that such statements have not received any traction in the OPCW in terms of regulating chemicals intended for RCA-related purposes. Russia's national document EC-93/NAT.6, dated 6 March 2020, cited the SAB's conclusion contained in paragraph 8.8 of SAB-21/1, dated 27 June 2014, according to which out of 59 chemicals declared as an RCA, "only 17 chemicals met the definition of an RCA as defined by paragraph 7 of Article II." It is understood that, among the 42 chemicals not approved for RCA-related purposes, there are chemicals categorised as CNS-acting chemicals.

It can be assumed that the main problem for States concerning the participation in the discussion of this issue is the difficulty in understanding the way on how to address it due to the lack of necessary definitions referred to in this paper and the schedule of chemicals covered by the draft decision.

**Question 8: Will prohibition of the use of CNS-acting chemicals for law enforcement purposes have any effect on the fight against terrorism and extremism?**

Maintaining law and order, the fight against crime, terrorism, and extremism, and tackling domestic unrest are part of law-enforcement activities that are carried out, as mentioned above, by any State on the basis of its national legislation. National anti-terrorist and other special services are supposed to have a set of various methods, means, and equipment specifically designed for these purposes to perform all kinds of tasks under any conditions. Exclusion of any specific means from this set of measures would naturally require a revision of law-enforcement methods and entail certain consequences.

At the same time, it has been noted that there is no alternative to exposure by inhalation for rapid and reversible neutralisation of persons whose actions are to be immediately suppressed—in cases of manifestations of terrorism, for example.

In this context, we can suppose that in the event that this "understanding" is adopted, the States Parties to the Convention will most likely have to review their approaches to mechanisms for fighting terrorism and extremism.

**Question 9: What can be done to achieve support within the OPCW of the concept embodied in the draft decision?**

A brief analysis of the document has already highlighted negative aspects for all States Parties to the Convention not listed among its 32 co-sponsors. Russia has always stood for strengthening the regime and the mechanisms enshrined in the Convention and, in this case, is ready to actively engage in the discussion of CNS-acting chemicals and all the aspects related thereto.

Taking into account the situation with the prohibition of the use of CNS-acting chemicals, in EC-93/NAT.6, dated 6 March 2020, the Russian Federation suggested studying it in detail using the following comprehensive approach:

1. Take measures to clarify the riot control agents used in the context of the Convention in line with the recommendations of the SAB by excluding from the list (containing 59 chemicals) of the 42 chemicals that do not serve the purpose of controlling riots.<sup>6</sup>

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<sup>6</sup> This aspect is set forth in detail in EC-93/NAT.6.



2. Prepare recommendations on the key terms and definitions to be used in the context of the Convention, in particular:
  - “central nervous system-acting chemicals” (including aerosolised);
  - “law enforcement purposes”;
  - “temporary incapacitating effect”; and
  - others at the discretion of the States Parties.
3. Compile a list of chemicals to be covered by the draft decision.
4. Work should be initiated among the OPCW, the INCB, the United Nations Office of Drugs and Crime, the United Nations Commission on Narcotic Drugs and the WHO, harmonising the areas of responsibility of these organisations in terms of the chemicals that can fall under the proposed draft decision.
5. Prepare, in accordance with the procedure provided for in Article XV, the relevant amendments to the Convention, including to Article II thereof, as well as amendments to the Annex on Chemicals.

The Russian Federation believes that such an approach would clarify the issues raised in the draft decision and address the concerns of those States Parties who have sought action on CNS-acting chemicals over the years.

We also realise that amendments and changes to the Convention may impose on certain States Parties additional obligations under the Convention, but this work will be carried out in a transparent manner with the participation of all OPCW Member States without exclusions.

The Russian Federation stands ready to continue searching for a mutually acceptable approach to this issue in cooperation with other States Parties to the Convention.

We request that the above be circulated as an official document of the Ninety-Sixth Session of the Council and published on the Organisation’s external server and website.