

**GERMANY****TOXIC CHEMICALS FOR LAW ENFORCEMENT****Issue**

1. In recent years there have been many discussions on toxic chemicals for law enforcement purposes in different international fora. These discussions focused on new toxic chemicals with an incapacitating effect (incapacitating chemical agents), which could possibly be developed, produced or used due to the advances in science and technology. The chemicals in question are mostly toxic chemicals which cause sedation, unconsciousness and death by severely impairing the functioning of the brain. The availability of such substances has caused concerns that, under the guise of law enforcement, a new group of chemical weapons could be developed or produced. This would blur the distinction between law enforcement and warfare and endanger the object and purpose of the Convention to completely prohibit and eliminate chemical weapons.

Legal framework of the Chemical Weapons Convention

2. The Chemical Weapons Convention contains a comprehensive definition of toxic chemicals, covering all types of both lethal and incapacitating chemicals (Article II). This is the basis for the prohibition of developing, producing, stockpiling or using toxic chemicals as chemical weapons (Article I). Exempt from these prohibitions are toxic chemicals intended for purposes not prohibited under the Convention as long as the types and quantities of such toxic chemicals are fully consistent with these purposes. One of the purposes not prohibited under the Convention is law enforcement including domestic riot control in subparagraph 9(d) of Article II. While the Convention provides a definition for riot control agents in paragraph 7 of Article II, there is no explicit definition of toxic chemicals which may be used for law enforcement. In particular the term “incapacitating chemical agents” is neither defined nor used in the Convention.

Position of Germany

3. Germany holds the view that the non-prohibited use of toxic chemicals for law enforcement cannot only be judged according to subparagraph 1(a) of Article II, but has to be interpreted also in light of the object and purpose of the Convention, i.e. the complete prohibition and elimination of all chemical weapons. In order to counter the risk of erosion of this historic political and legal decision, it is important to consider very carefully which toxic chemicals should be permitted for law enforcement.



4. Germany, in her implementing legislation has deliberately opted for a narrow interpretation of the Convention. Thus, Germany has explicitly restricted toxic chemicals for law enforcement purposes that are permitted for use, both by its military and police forces, to riot control agents as defined in paragraph 7 of Article II of the Convention (Act Implementing the Chemical Weapons Convention-CWCIA of 2 August 1994).

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