

Twenty-Eighth Session of the Conference of the States Parties (CSP-28) to the Chemical Weapons Convention, The Hague, The Netherlands, 28 November – 2 December 2023

NGO Statement: Addressing the development and use of riot control agents in law enforcement and armed conflict

Statement Prepared by: Dr Michael Crowley (University of Bradford); Prof Malcolm Dando (Bradford University); Prof Sven Jordt (American Thoracic Society and Duke University); Dr Paul Walker (Chemical Weapons Convention Coalition)

Chairperson, Director General, Distinguished Delegates, CWC Coalition Colleagues,

Ladies and Gentlemen,

The Chemical Weapons Convention (CWC) permits the use of riot control agents (RCAs) for “law enforcement including domestic riot control purposes,”ⁱ but only provided they are used in “types and quantities” consistent with such purposes.ⁱⁱ However, they have been frequently misused for serious human rights violations, most commonly in non-custodial settings to restrict, intimidate, or punish those participating in public protest the world over; and also in the prisons, detention centres or police stations of certain countries to ill-treat individuals.ⁱⁱⁱ A recurring medical concern has been their use in excessive quantities in confined spaces or in the open air where the targeted individuals or bystanders cannot safely and quickly disperse. In such situations, serious injury or death can result, including from the toxic properties of the chemical agents or from asphyxiation.^{iv} **Building upon the previous work of the OPCW’s Scientific Advisory Board (SAB) identifying chemicals that fulfil the definition of RCA^v, guidance should now be developed as to the quantities of identified RCAs that can legitimately and safely be employed in law enforcement. Such guidance should acknowledge relevant obligations under international human rights law, to ensure such RCA employment is proportionate, necessary, and does not endanger life or health.**

For the safety assessment of RCAs, the OPCW’s SAB relies to a large extent on reviewing scientific data produced by science agencies of the State Parties. However, State Parties have given insufficient funding to dedicated programs applying state of the art epidemiological and toxicological methods to study the effects of RCAs on diverse populations of protesters and bystanders. Even for the most widely used RCA, CS, the SAB’s assessment mainly relies on data that is several decades old. Consequently there are concerns that it has not taken sufficient account of recent studies that have raised concerns about underestimation of CS’ toxicity, its adverse effects on respiratory health and susceptibility to respiratory infections, on children and elderly, and on women’s health^{vi}. **State Parties need to support the OPCW SAB by funding new research programs to study the health effects of RCAs in diverse populations during and in the aftermath of deployment, and in toxicological model systems, with extended follow up to assess long-term effects, applying modern methodologies.**

The current situation could dramatically worsen as a result of contemporary development of systems capable of delivering significant amounts of RCAs over wide areas or extended distances, with concerns raised of their potential misuse for collective ill-treatment or punishment of crowds. Civil society researchers have documented development and promotion of ‘wide-area’ RCA delivery mechanisms, including indoor dispersion devices, external area denial devices, large capacity sprayers, water cannons, multi-barrel projectile

launchers, large calibre projectiles, and delivery mechanisms mounted on remote weapons systems, unmanned ground vehicles, and drones.^{vii} In recent years proliferation, use and misuse of ‘wide-area’ RCA delivery mechanisms has begun with reported employment of RCA drones and multi-barrel launchers against protests in the Middle East and Americas.^{viii} Earlier this year the OPCW SAB in its report to the 5th CWC Review Conference voiced concerns over “continued development, testing, production, and promotion of diverse” ‘wide-area’ RCA delivery mechanisms. It warned that “the capabilities being developed increasingly resemble military equipment. These systems could be repurposed and filled with other chemicals,” including chemical warfare agents, central nervous system-acting chemicals, and bioregulators.^{ix} **CWC States Parties should collectively establish an OPCW process to determine those RCA delivery mechanisms that are prohibited under the Chemical Weapons Convention and develop guidance on appropriate use of permitted RCA delivery mechanisms.**

The use of RCAs “as a method of warfare” is prohibited under the Convention.^x However, during late 2022 and in 2023 there has been reported employment of RCAs by military forces of one Eastern European State in its ongoing armed conflict with another Eastern European State. This has included the reported use of drones to drop K-51 grenades containing RCA onto opposing forces.^{xi} The issue was raised at the 5th CWC Review Conference by the State reportedly targeted^{xii} and by at least one other CWC State Party^{xiii}. Subsequently additional CWC States Parties have requested further information from the State alleged to have conducted these attacks, in order to establish whether RCAs were employed in contravention of the CWC.^{xiv} The State alleged of conducting these RCA attacks has denied such action, instead accusing its opponent of such activities.^{xv} To date, this matter has not been resolved. **All CWC States should reaffirm that RCAs must never be used “as a method of warfare”. They should seek to establish the facts of the matter in this case, and if necessary employ the full range of the OPCW’s collective consultation, clarification and fact-finding mechanisms.**

We thank you for your kind attention and request this statement be made part of the official published proceedings of this Conference.

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ⁱ OPCW, Chemical Weapons Convention, 1993, Article II.9

ⁱⁱ OPCW, Chemical Weapons Convention, 1993, Article II.1.a.

ⁱⁱⁱ For illustrative cases see for example, Lethal in Disguise 2: How Crowd-Control Weapons Impact Health and Human Rights, Physicians for Human Rights/International Network of Civil Liberties Organizations (INCLC) in collaboration with the Omega Research Foundation, 22 March 2023; Amnesty International, Global: Misuse of tear gas killing and injuring protesters worldwide – updated interactive website, 30 May 2023; Crowley, M. Chemical Control, Palgrave Macmillan, London, UK, 2016, pp.50-80.

^{iv} See for example, Summerhill EM, Hoyle GW, Jordt SE, Jugg BJ, Martin JG, Matalon S, Patterson SE, Prezant DJ, Sciuto AM, Svendsen ER, White CW, Veress LA; ATS Terrorism and Inhalational Disasters Section of the Environmental, Occupational, and Population Health Assembly. An Official American Thoracic Society Workshop Report: Chemical Inhalational Disasters. Biology of Lung Injury, Development of Novel Therapeutics, and Medical Preparedness. Ann Am Thorac Soc. 2017 Jun;14(6):1060-1072. doi: 10.1513/AnnalsATS.201704-297WS, Physicians for Human Rights/INCLC op.cit (2023) Amnesty International (2023) op.cit.; Crowley, M. (2016) op.cit, pp. 48-49 and pp. 72-75.

^v OPCW Technical Secretariat, Office of Strategy and Policy, Note by the Technical Secretariat, Declaration of riot control agents: advice from the Scientific Advisory Board, S/1177/2014. OPCW, The Hague, 1 May 2014. See also Scientific Advisory Board, 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. SAB-25/WP.1. OPCW, The Hague, 27 March 2017.

^{vi} Rothenberg C, Achanta S, Svendsen ER, Jordt SE. Tear gas: an epidemiological and mechanistic reassessment. *Ann N Y Acad Sci*. 2016 Aug;1378(1):96-107. doi: 10.1111/nyas.13141.

Torgrimson-Ojerio BN, Mularski KS, Peyton MR, Keast EM, Hassan A, Ivlev I. Health issues and healthcare utilization among adults who reported exposure to tear gas during 2020 Portland (OR) protests: a cross-sectional survey. *BMC Public Health*. 2021 Apr 26;21(1):803. doi: 10.1186/s12889-021-10859-w.

Brown JL, Lyons CE, Toddes C, Monko T, Tyshynsky R. Reevaluating tear gas toxicity and safety. *Inhal Toxicol*. 2021 May-Jul;33(6-8):205-220. doi: 10.1080/08958378.2021.1963887.

Tear Gas Use During COVID-19 Pandemic Irresponsible; Moratorium Needed, Says American Thoracic Society (Press Release June 11, 2020)

<https://www.thoracic.org/about/newsroom/press-releases/journal/2020/tear-gas-use-during-covid-19-pandemic-irresponsible-moratorium-needed,-says-american-thoracic-society.php>

^{vii} Crowley, M. Drawing the Line: Regulation of ‘Wide Area’ Riot Control Agent Delivery Mechanisms under the Chemical Weapons Convention, University of Bradford/Omega Research Foundation, April 2013; Crowley, M. Tear Gassing by Remote Control: The Development and Promotion of Remotely Operated Means of Delivering or Dispersing Riot Control Agents, University of Bradford/Omega Research Foundation/Remote Control Project, December 2015; Crowley, M. Development and Hostile Use of Toxic Chemical Means of Delivery and Dispersal in: Crowley, M., Dando, M and Shang, L. (eds.) Preventing Chemical Weapons: Arms Control and Disarmament as the Sciences Converge, Royal Society of Chemistry, August 2018, pp.332-380; Crowley, M. Contemporary Development, Promotion and Use of Remote Control Riot Control Agent Delivery Mechanisms: Challenges for Effective State Regulation, the 10th European Symposium on Non-Lethal Weapons, 20-23 May 2019, Royal Military Academy, Brussels, Belgium; Crowley, M. and Dando M. Toxin and Bioregulator Weapons, Palgrave Macmillan, November 2022.

^{viii} UN Human Rights Council, Report of the Detailed Findings of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory, A/HRC/40/CRP.2, 18 March 2019; Faine Greenwood, F. and Zaqqout, O. Drones Don’t Wear Uniforms. They Should, *Foreign Policy*, 22 May 2018; Al Jazeera, Israeli Drone Targets Journalists, 12 November 2018; Breiner, J. Israel Using Drones to Tear Gas Palestinian Demonstrators in West Bank, *Haaretz*, 28 April 2021, <https://www.haaretz.com/israel-news/2021-04-28/ty-article/.premium/israeli-police-using-drones-to-drop-tear-gas-on-palestinian-demonstrators/0000017f-f49d-d887-a7ff-fcfd91cd0000>; Amnesty International, Suppressing Protests: French Less-Lethal Weapons Used In Lebanon, January 2021, <https://www.amnesty.org/en/latest/research/2021/01/lebanon-french-less-lethal-weapons/>; Amnesty International, Lebanon: New evidence reveals French law enforcement equipment unlawfully used to crush protests, 28 January 2021; Human Rights Watch, Colombia: Egregious Police Abuses Against Protesters, 9 June 2021; Amnesty International, Cali: In the epicentre of repression: human rights violations during the 2021 national strike in Cali, Colombia, AMR 23/4405/2021, 30 July 2021.

^{ix} OPCW Review Conference, “Report by the Director-General: Report of the Scientific Advisory Board on Developments in Science and Technology to the Fifth Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention,” RC-5/DG.1, 22 February 2023, paragraph 80.

^x OPCW, Chemical Weapons Convention, 1993, Article I.5

^{xi} Phillips, L. and Crouch, D. Have Chemical Weapons been Used in Ukraine? Royal United Services Institute, 20 June 2023, <https://www.rusi.org/explore-our-research/publications/commentary/have-chemical-weapons-been-used-ukraine>; Hambling, D. Russia’s Tear Gas Bombings In Ukraine May Be First Step In Dangerous Chemical Escalation, *Forbes*, 1 November 2022, <https://www.forbes.com/sites/davidhambling/2022/11/01/yes-these-are-chemical-weapons-why-russias-tear-gas-bombings-in-ukraine-matter/?sh=5f093b2038b0>

^{xii} OPCW, Statement by Dr Kateryna Bila, Head of the Secretariat of the Chemical Weapons Convention of the Ministry of Foreign Affairs of Ukraine at the 5th Special Session of the Conference of the States Parties to review the operation of the Chemical Weapons Convention, RC-5/NAT.13, 15 May 2023.

^{xiii} OPCW, UK National Statement to the Fifth Review Conference of the Chemical Weapons Convention by Her Excellency Joanna Roper, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland

^{xiv} OPCW, Note Verbale from the Permanent Representation of the Federal Republic of Germany to the Technical Secretariat of the OPCW, Executive Council, EC-104/NAT.6, 6 October 2023

^{xv} Note Verbale from the Permanent Representation of the Russian Federation to the Technical Secretariat of the OPCW Dated 12 October 2023

Statement Endorsements (Affiliations are listed for identification purposes only):

Malcolm Dando, *University of Bradford*

Sven Eric Jordt, *American Thoracic Society (ATS)*

Mina Rozei, *CWC Coalition*

Deborah Klein Walker, EdD, *American Public Health Association*

Paul F. Walker, *CWC Coalition*