

Riot Control Agents and the Chemical Weapons Convention

Barbara Hatch Rosenberg
FAS Working Group on Biological and Chemical Weapons

For the Open Forum on Challenges to the Chemical Weapons Ban
The Peace Palace, The Hague
1 May 2003

Riot Control Agents as a Special Category

The use of riot control agents (RCA) in past wars, particularly in Vietnam, was a driving force in the negotiation of the Chemical Weapons Convention (CWC). However, RCA remained contentious throughout the negotiations because of their ongoing use around the world in law enforcement and riot control. The tension between this necessary use, which was reiterated as permissible from the beginning, and the possibility of RCA use in warfare was not resolved until the end, when the Chairman issued a revised text including, for the first time, an explicit ban on the use of RCA as a method of warfare. In explaining the revision the Chairman noted that

“a common view has emerged among delegations that the preparation and application of any method of warfare dependent upon toxic properties of chemicals should be banned under the Convention.”

Thus, according to the Chairman, RCA are cited explicitly *because* they are toxic chemicals. They are also given special treatment under the CWC in a number of ways: they are uniquely and explicitly

1. defined (Art. II.7),
2. prohibited for use as a method of warfare (Art. I.5),
3. required to be declared (Art. III.1(e)),
4. cited in Art. X.8(b) on investigation and assistance if used against a State Party, and
5. permitted for a purpose not prohibited by the Convention, namely, “law enforcement including domestic riot control purposes” (Art. II.9(d)).

Riot Control Agents as Toxic Chemicals

At the same time, RCA are covered in the CWC’s definition of toxic chemicals, which includes any chemical that can cause “temporary incapacitation” and includes “all such chemicals.” The use of RCA in warfare is thus doubly prohibited, and RCA fall into both a special class and the general class of toxic chemicals. The US Navy Judge Advocate General’s preliminary legal review on nonlethal weapons (1997) acknowledges the possibility that a given substance can be subject to both the restrictions placed by the CWC on RCAs and those placed on toxic chemicals. As a toxic chemical, RCA can only be used for the purposes not prohibited for toxic chemicals, listed in Art. II.9, which include domestic riot control—further evidence that RCA are considered to be “toxic chemicals.” And, as toxic chemicals, RCA are subject to the requirement that their types

and quantities must be consistent with their purpose. This implies that the munitions or devices used to deliver RCA must also be consistent with that purpose.

A problem has already arisen in this regard: The Bazalt Works in Russia is preparing to produce and sell various types of ammunition containing RCA. According to ITAR-TASS (5 Dec. 2002) the munitions include hand grenades, projectiles for portable grenade launchers, mortar shells and cluster bomb units. Although these munitions are said to be for RCA, not all of them are appropriate for riot control purposes. If they are produced and sold, their potential use with other toxic chemicals will seriously undermine the object and purpose of the Convention.

Dissemination of Riot Control Agents

The text of the Convention and its negotiating history, taken together, imply that the only toxic chemicals that can be introduced into munitions or devices for dissemination are RCA. If held in this form, RCA would be already prepared and on hand if they should be wanted for illegal use as a method of warfare. Although the basic intent of the CWC is to exclude completely the possibility of the use of chemicals as weapons, it was necessary to permit RCA to be held and used in munitions or devices for purposes of law enforcement including riot control. This permission makes RCA uniquely threatening, and the resulting discord with the goal of the Convention makes special safeguards necessary. The explicit declaration requirement for RCA provides transparency regarding possession of this special threat. The explicit prohibition against the use of RCA as a method of warfare emphasizes that this unique class of disseminatable toxic chemicals is subject to the same prohibitions as other toxic chemicals, for which there are no “purposes not prohibited” that involve dissemination by munitions or devices. The only use of toxic chemicals for law enforcement purposes that was discussed during the negotiations, other than riot control, was capital punishment, which does not require the use of munitions or devices for dissemination.

Immobilizing/Incapacitating Chemicals

Riot control agents are defined in the CWC as

Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.

Traditionally, these are chemicals that repel rather than immobilize. In contrast, immobilizing or incapacitating agents, rather than causing crowds to disperse, would immobilize them and thereby permit their capture and possible mistreatment.

Nonetheless, the CWC does not exclude the possession of immobilizing chemicals that fit the definition of RCA. Research currently being conducted to find a truly reversible immobilizing or incapacitating agent is not a violation of the Convention--although it is unwise and likely to be ultimately counterproductive, as the next speakers will demonstrate. The inclusion in Schedule 2 of a chemical incapacitant, BZ, that does not fit the RCA definition underlines the fact that such agents are clearly illegal. RCA cannot include any chemical listed in a schedule.

Permissible Uses of RCA

Questions have been raised about the permissible purposes for the use of RCA, but there seems to be general agreement that they all fall under one “purpose not prohibited:” law enforcement including domestic riot control. According to Professor Fidler, “law enforcement” purposes means:

1. enforcement of domestic law within a state’s own territory or areas subject to its jurisdiction;
2. extraterritorial law enforcement activities undertaken by military forces and permitted by international law, such as
 - maintaining public order and safety during occupations,
 - control over prisoners of war,
 - consensual peacekeeping, or
 - peacekeeping operations authorized by the Security Council under Chapter VII of the UN Charter.

These purposes cover most of the situations permitted by US law for the military use of RCA, but do not cover situations involving armed conflict among combatant forces. US military and defense commentators acknowledge the difficulty of determining the boundary between permissible and prohibited activities in some situations cited in US law, and the consequent danger of violating the Convention (Navy JAG 1997, Maj. E. Harper in *Naval Law Review* 2001, Secretary of Defense Donald Rumsfeld in Congressional testimony 5 Feb. 2003).

The UK Ministry of Defence recently encapsulated a clear understanding of the CWC regarding the use of RCA, as follows:

RCA “are permitted for dealing with riot control,” but the CWC precludes the use of chemicals, including RCA, in [other] “military operations or on any battlefield” (G. Hoon, Press Conference 27 March 2003).