

NGO Joint Statement

Development and use of riot control agents in armed conflict and law enforcement and armed conflict

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

Gentlemen,

The CWC prohibits use of riot control agents (RCAs) “as a method of warfare”.¹ However, from February 2022 until at least November 2024, the media, certain States Parties and civil society organisations have collectively reported the repeated use of RCAs by Russian military forces against Ukrainian military forces in several hundred cases as part of the ongoing armed conflict in that country. These reported attacks sometimes included use of drones dropping K-51 and RG-VO tear gas grenades onto embedded Ukrainian forces in order to flush them out for subsequent Russian assault.²

Russian military RCA use against Ukrainian forces has been repeatedly raised by Ukraine and other CWC States Parties including at the 5th Review Conference, CSP-28 and Executive Council meetings.³ To date Russia has denied all alleged use of RCAs, and has instead accused Ukraine of such activities.⁴ On 24th June 2024 the OPCW Stated that “In relation to allegations of use of toxic chemicals as weapons...the information provided to the Organisation so far by both sides, together with the information available to the Secretariat, is insufficiently substantiated.”⁵

All CWC States should reaffirm at this CSP that RCAs must never be used “as a method of warfare”. Given the scale, seriousness and long-standing nature of reported RCA use in Ukraine, and the inability of the OPCW to establish the facts remotely, States Parties should dispatch a suitable body, such as an OPCW Fact Finding Mission, to Ukraine to establish the facts and present its findings to the OPCW for action.

The CWC permits RCA use for “law enforcement including domestic riot control purposes,”⁶ but only provided they are used in “types and quantities” consistent with such purposes.⁷ 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.⁸ 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.⁹ **Building upon its work identifying chemicals that fulfil the definition of RCA¹⁰, the Scientific Advisory Board should develop guidance 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 State Party scientific agencies. 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 health¹¹. **State Parties need to support the SAB by funding new research programs to study 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 in law enforcement for collective ill treatment of crowds, or by military forces in armed conflict. 'Wide-area' RCA delivery mechanisms, include large capacity sprayers, water cannons, multi-barrel projectile launchers, and delivery mechanisms mounted on unmanned ground vehicles, and drones. ¹²In its February 2023 report to the 5th Review Conference, the SAB 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.¹³ **States Parties should establish an OPCW process to determine those RCA delivery mechanisms that are prohibited under the CWC and develop guidance on appropriate use of permitted RCA delivery mechanisms.**

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

¹ OPCW, Chemical Weapons Convention, 1993, Article I.5

² OPCW, Permanent Representation of Ukraine to the OPCW Point 6 (e) Addressing the threat from chemical weapons use. Statement by the Delegation of Ukraine at the 106th session of the Executive Council; US Department of State, Russia Spreads Disinformation to Cover Up Its Use of Chemical Weapons in Ukraine, <https://www.state.gov/russia-spreads-disinformation-to-cover-up-its-use-of-chemical-weapons-in-ukraine/>, 7 June 2024; 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> ³ **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; 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. The other co-sponsoring States were Canada, France, Italy, Japan, the UK, and the United States; OPCW, Note Verbale from the Permanent Representation of the Federal Republic of Germany to the Technical Secretariat of the OPCW Dated 29 February 2024, Executive Council, 105th Session 5 – 8 March 2024 EC-105/NAT.6 29 February 2024. The additional five co-sponsoring States were Albania, Czech Republic, the Netherlands, North Macedonia and Poland.

⁴ Note Verbale from the Permanent Representation of the Russian Federation to the Technical Secretariat of the OPCW Dated 12 October 2023

⁵ OPCW, Statement on Ukraine from the OPCW Spokesperson, 7 May 2024, <https://www.opcw.org/media-centre/news/2024/05/statement-ukraine-opcw-spokesperson#:~:text=Both%20the%20Russian%20Federation%20and,website%20and%20is%20regularly%20updated>

⁶ OPCW, Chemical Weapons Convention, 1993, Article II.9

⁷ OPCW, Chemical Weapons Convention, 1993, Article II.1.a.

⁸ 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 (INCLIO) 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.

⁹See 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/INCLIO *op. cit.*, (2023) Amnesty International (2023) *op. cit.*; Crowley, M. (2016) *op. cit.*, pp. 48-49 and pp. 72-75.

¹⁰OPCW 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.

¹¹Rothenberg 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>. ¹²Crowley, 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.

¹³OPCW 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.