



Omega Research Foundation

Briefing Paper: Use of Tools of Torture in OSCE participating States



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About the Omega Research Foundation

The Omega Research Foundation provides rigorous, objective, evidence-based research on the manufacture, trade, and use of, military, security and police (MSP) technologies worldwide.

Our research is used to develop and monitor effective controls and standards on the manufacture, trade, and use of MSP equipment; hold governments to account for the transfers they authorise; challenge questionable transfers of MSP equipment; educate policy makers, journalists & human rights monitors; and provide redress for torture survivors.

For more information or to contact us, please visit our website at www.omegaresearchfoundation.org.

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Disclaimer

The company information detailed in this report is for illustrative purposes only and is drawn from information already in the public domain. The authors do not intend to imply that any companies named in this report have committed any wrongdoing, nor behaved in an improper manner.

This Brief illustrates *some* the types of equipment frequently misused for torture or other cruel, inhuman or degrading treatment or punishment. It is not intended as an exhaustive resource containing *all* types of equipment being produced by *all* companies.

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Contents

INTRODUCTION.....	4
i. Types of law enforcement equipment of concern.....	5
a. Body-worn electric shock devices.....	6
b. Electric shock batons	8
c. Chemical irritants.....	11
ii. Existing control regimes	15
iii. Recommendations.....	17

INTRODUCTION

The Organisation for Security and Co-operation in Europe (OSCE) is made up of 57 participating States from Europe, North America and Central Asia. In spite of its social, economic and cultural diversity, OSCE participating States face several common challenges, one of which is to protect and preserve individuals' rights.

Law enforcement officials'¹ power to use force derives from the duty of the State to maintain public order, protect the human rights of persons within its jurisdiction, and uphold the rule of law. These powers are often exercised in difficult circumstances and it is sometimes necessary to use physical means of force. However, the authority to use force brings with it the responsibility to use it appropriately.

International Human Rights Law stipulates that any use of force must be legal, necessary, proportionate and accountable.² The right to be free from torture and other cruel, inhuman and degrading treatment or punishment (other ill-treatment) is considered an absolute and non-derogable right, meaning that the use of torture can never be justified and the absolute prohibition cannot be limited in any way,³ for any reason.

As part of their obligation to prevent against any excessive use of force, including the commission of acts of torture and other ill-treatment, states must ensure that law enforcement officials are equipped with a range of means which allow them to respond to situations appropriately.⁴ However, there are widespread reports of human rights violations perpetrated by law enforcement officials misusing equipment which could have a legitimate law enforcement use if employed correctly (e.g. 'tear gas' or hand-held batons). To provide a recent example, reports emerged in May 2017 alleging that a man was beaten and shot with an electric shock projectile weapon while handcuffed while in police custody in Wrocław, Poland in 2016, leading to his death.⁵ It is incumbent on exporting states to ensure companies under their jurisdiction do not transfer law enforcement equipment for use in states where there is a pattern of such equipment being used to systematically violate human rights.

Omega has also documented the emergence of a second category of technologies which have no practical use other than for the purposes of torture and other ill-treatment (e.g. electric shock batons,

¹ According to the United Nations (UN) Code of Conduct for Law Enforcement Officials, "The term 'law enforcement officials', includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention." For the purposes of this briefing, the term will be understood to include prison staff, who are mandated to use force in certain limited circumstances in the performance of their duties - see Rule 82 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

² See Annual Report of Christof Heyns, Special Rapporteur on extrajudicial executions, 2014, UN Doc. A/HRC/26/36; Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 2015. These draw extensively from several international human rights instruments, particularly the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.

³ Please note that in addition to their OSCE Human Dimension Commitments, all 57 OSCE participating States have ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴ United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Principle 2.

⁵ <http://www.thenews.pl/1/9/Artykul/308118,Police-chief-dismissed-over-Taser-death> accessed 13 June 2017.

thumb cuffs). There are credible reports of such inherently cruel and degrading equipment being used to carry out acts of torture and other ill-treatment in OSCE participating States, a small sample of which will be mentioned in this briefing. The UN General Assembly biennial resolution on torture and other ill-treatment demonstrates the will of the international community to end the trade in this second category of equipment, calling upon states to: *“take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”*.⁶

As an intergovernmental body largely focussed on security concerns, the OSCE is an appropriate forum at which to address the need for international measures to control the trade in equipment which is prone to being used for torture and other ill-treatment. Having already done valuable work on issues such as conventional arms control, torture prevention and the monitoring of public assemblies, a logical next step for the OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) would be to promote effective measures to prevent the manufacture, supply and use of inherently abusive equipment and to control equipment which is frequently used inappropriately in the perpetration of human rights violations. This briefing aims to demonstrate the need to give this issue increased attention.

i. Types of law enforcement equipment of concern

The UN Basic Principles on the Use of Force and Firearms (UN Basic Principles) call on states to “develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms”, including “non-lethal⁷ incapacitating weapons” and protective equipment.⁸ Since the adoption of the UN Basic Principles, the range of equipment available for law enforcement has become increasingly diverse. This growth has largely been industry-led and a lack of scrutiny and control has permitted the development of inherently cruel instruments with no legitimate law enforcement purpose, whose manufacture, supply and use should be prohibited. On the other hand, many of the tools that have been developed may have a legitimate law enforcement purpose if used appropriately; however, some of these tools are frequently misused resulting in excessive force, torture and other ill-treatment.

For the purposes of this briefing, law enforcement equipment will be split into two categories: 1) inherently abusive instruments whose manufacture, supply and use should be prohibited and 2) equipment which could have a legitimate function if used appropriately but which is often used in human rights abuses. The following examples are intended to illustrate the existence of companies producing and trading both categories of law enforcement equipment in OSCE participating States; the use of such equipment in human rights violations and the need for stronger controls. More

⁶ UN General Assembly, Resolution 70/146 on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the General Assembly on 17 December 2015, UN doc. A/RES/70/146, para. 16.

⁷ Please note that civil society and industry actors increasingly use the term “less lethal” rather than “non-lethal”. This is due to the fact that the use of almost any type of equipment can have lethal consequences, particularly if used inappropriately.

⁸ UN Basic Principles on the Use of Force and Firearms, Principle 2.

detailed information on a wider range of equipment can be found on the Omega Research Foundation website.⁹

a. Body-worn electric shock devices

These devices, often known as stun cuffs, stun sleeves and stun belts, are designed to be attached or affixed to the body of a person in custody, enabling the application of an electric shock via remote control. Existing models are designed to be fastened to the waist, wrist, ankle and leg. Voltage, duration of shock, number of possible repeated shocks, and remote control range, vary between models. They are often marketed as a discreet form of restraint for use on persons deprived of their liberty during court appearances, transfers and/or the provision of medical care.

Physical/medical effects and human rights concerns: Activation of a body-worn electric shock device causes severe pain to the wearer for the duration of the shock, leading to temporary incapacitation and compliance through pain, as well as possible longer term effects. Loss of voluntary muscle control can result in falls and secondary injuries. Even when such devices are worn but not activated, they constitute ill-treatment, maintaining the wearer in constant fear of instant pain for as long as they are worn. As such, the wearing of body-worn electric shock devices is inherently degrading to the dignity of the person. Omega considers that there are other, less harmful means of guarding persons in custody. Therefore, the use of body-worn electric shock devices in no circumstances constitutes the *least harmful* means of force necessary to achieve a legitimate law enforcement objective, meaning they do not meet a legitimate law enforcement objective that cannot be effectively accomplished with safer and less abusive alternatives.

These concerns are shared by international human rights bodies. The Council of Europe's Committee for the Prevention of Torture (CPT) opposes the use of stun belts and similar devices "*for controlling the movements of detained persons, whether inside or outside places of deprivation of liberty*", stating that they are inherently degrading and with a particularly high scope for misuse.¹⁰ The UN Committee against Torture (UN CAT) has recommended that the use of stun belts to restrain those in custody be abolished, stating that "*their use almost invariably leads to breaches of article 16 of the Convention [duty of the state to prevent acts of cruel, inhuman or degrading treatment or punishment]*".¹¹ The upcoming UNODC Resource book on the use of force and firearms in law enforcement advises that electric shock belts should not be used for law enforcement, stating "*experts have agreed that there is no tactical utility to any of these that cannot be achieved with another device, and the risk of arbitrary force amounting to torture or other forms of ill-treatment is too great.*"¹²

⁹ See Omega Research Foundation and Amnesty International, *The Human Rights Impact of Law Enforcement Equipment*, April 2015, <https://omegaresearchfoundation.org/publications/human-rights-impact-law-enforcement-equipment-april-2015> accessed 17 May 2017; Omega Research Foundation, *Visual Glossary*, <https://omegaresearchfoundation.org/resources/visual-glossary-introduction> accessed 17 May 2017.

¹⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Electrical discharge weapons, CPT/Inf(2010)28-part, <https://rm.coe.int/16806cce1c> accessed 11 May 2017, para. 74.

¹¹ Committee against Torture, Concluding Observations on the Report submitted by the United States of America, 23rd and 24th sessions, May 2000, UN doc. A/55/44(SUPP) paras. 175-180, para. 179.

¹² UNODC Resource book on the use of force and firearms in law enforcement, advance copy, May 2017, p. 82.

Illustrative examples of use of body-worn electric shock devices: According to ongoing research conducted by Omega, at present the United States of America (US) is the only OSCE participating State where body-worn electric shock devices are widely used by law enforcement officials.

United States of America (US):

Body-worn electric shock devices are authorised for use by various public bodies in the US. These include the Federal Bureau of Prisons¹³, the US Marshal's Service¹⁴ and various sheriff's offices. Furthermore, according to research undertaken by the Omega Research Foundation, at least 19 of the 51 U.S. state level correctional departments possess body-worn electric shock devices.¹⁵ The circumstances in which these devices are authorised for use varies, but common uses include to restrain persons in custody during transfers and court appearances. Other authorised uses include the restraint of persons in custody during extradition, to deter disruptive behaviour¹⁶ and for "routine crowd control situations"¹⁷.

US-based media outlets have reported on several instances of inappropriate activation of body-worn electric shock devices during judicial proceedings. In 2015 a judge in Smith County, East Texas, ordered an electric shock belt to be activated on a defendant during a murder trial.¹⁸ The judge reportedly ordered for the shock to be administered when the defendant did not stand up at the judge's request. In another case in 2014, a defendant screamed out three times and fell to the ground when a 50,000-volt shock was administered via an electric shock device attached to his ankle.¹⁹ The judge reportedly ordered the device to be activated when the defendant, who was representing himself, verbally interrupted the judge.

There have also been reported instances of body-worn electric shock devices activating accidentally. In a March 2012 trial, the electric shock belt being worn by the defendant activated unexpectedly when the defendant was not doing anything to warrant the use of force.²⁰ The electric shock caused the defendant to scream out, collapse to the floor and lose control of his bladder. A representative of the Maricopa County Sheriff's Office said that the device in question is designed to "continuously

¹³ US Department of Justice, Federal Bureau of Prisons (2015) *Program Statement: Escorted Trips*, OPI: CPD/CSB, Number: 5538.07, December 10, 2015, https://www.bop.gov/policy/progstat/5538_07.pdf accessed 3 May 2017.

¹⁴ United States Marshal's Service (date unknown, post 2009) *Policy Directives*, http://www.usmarshals.gov/foia/Reading_Room_Information/Contracts/cso_forms_policy/less_than_lethal_devices.pdf accessed 3 May 2017

¹⁵ See <https://omegaresearchfoundation.org/case-studies/use-body-worn-electric-shock-us-state-prisons>, accessed 2 May 2017.

¹⁶ See Kingman County Sheriff's Office, Policy and Procedure Manual, Section 11.1, effective date: May 20, 2013.

¹⁷ Policy of State of Delaware Department of Corrections, Policy no. 8.30A, Chapter: 8 Administration, Subject: Electronic Immobilization Devices, Effective date: 15 January 2015.

¹⁸ <http://www.reuters.com/article/us-usa-texas-judge-idUSKCN0RQ0C720150926>, accessed 2 May 2017.

¹⁹ https://www.washingtonpost.com/local/public-safety/former-md-judge-sentenced-for-ordering-electrical-shock-for-defendant/2016/03/31/56e31728-f752-11e5-a3ce-f06b5ba21f33_story.html accessed 2 May 2017.

²⁰ See *State v. Collins*, 1CA-CR12-0296, para. 7, available at <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2014/1%20CA-CR%2012-0296.pdf>, accessed 2 May 2017.

transmit for 15 seconds” and causes *“involuntary muscle lock up”*, while blaming the incident on an equipment malfunction.²¹

Manufacture and trade: Companies in several OSCE participating states have previously manufactured or traded body-worn electric shock devices.²² There are several US manufacturers of body-worn electric shock devices and these include Myers Enterprises Inc., Nova Security Group and Advanced Ops International. It has been reported that the Myers Enterprises Inc. “Stun-Cuff” has been tested outside of the US, including in fellow OSCE participating state Canada, as well as Jordan, Israel and Singapore.²³ The Myers Enterprises Inc. website has instructions for clients making international orders.²⁴ The Advanced Ops International website claims that the company partners “with more than 4,000 law enforcement agencies globally to help capture and secure criminals and protect communities.”²⁵



Image © NOVA Security Group

Image shows the Nova Security Group Electronic RACC (Remote Activated Custody & Control) Belt.

b. Electric shock batons

These devices, also known as stun batons, are portable, hand-held weapons that are often visually similar to ordinary police batons. They usually have two to four electrodes near the tip which are designed to inflict a painful electric shock upon contact when activated. Some have metallic strips or spirals along the length of the baton to conduct electricity. Most models can also be used like an ordinary baton as a striking weapon, but some only function as an electric shock weapon.

Physical/medical effects and human rights concerns: The use of electric shock batons results in intense, localised and general pain but not incapacitation. Potential injuries include burns, puncture wounds and welts, as well as the risk of secondary injuries should the subject fall. This weapon is designed to cause compliance through pain not incapacitation and it is open to misuse as it enables the user to inflict extreme pain, often without leaving long-lasting identifiable physical traces, at the touch of a button. Examples of misuse include sustained or prolonged use, multiple shocks and shocks to intimate areas of the body such as the genitals. There is a lack of research into the effects of direct

²¹ Azcentral.com, “Murder defendant shocked in court when stun belt accidentally goes off”, available at <http://archive.azcentral.com/video/1508632501001>, accessed 2 May 2017, see 1:10 – 1:30 and 2:08 – 2:11.

²² See Omega Research Foundation and Amnesty International, *From Words to Deeds: Putting an end to the EU trade in ‘Tools of Torture’*, 2012, Index: ACT 30/062/2012, pp. 10-17.

²³ Melissa Mann, “A true takedown device: How the Stun-Cuff wireless prisoner control device makes transport safer”, PoliceOne.com, 13 August 2015, <https://www.policeone.com/police-products/duty-gear/restraints/articles/8702869-A-true-takedown-device-How-the-Stun-Cuff-wireless-prisoner-control-device-makes-transport-safer/>, accessed 3 May 2017.

²⁴ <http://www.stun-cuff.com/page/793166> accessed 3 May 2017.

²⁵ <http://advancedopsinternational.com/law-enforcement/> accessed 3 May 2017.

contact electric shock weapons, including on those with underlying health issues or who are under the influence of drugs or alcohol at the time of use. This is particularly important given the fact that there have been a number of deaths after the use of such weapons.

The CPT has expressed “strong reservations” concerning the use of direct contact electric shock weapons for law enforcement purposes, pointing out that “*properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control.*”²⁶ The upcoming UNODC Resource book on the use of force and firearms in law enforcement advises against the use of electric shock batons for law enforcement.²⁷ Omega believes that electric shock batons do not meet a legitimate law enforcement objective that cannot be effectively accomplished with safer alternatives, and considers that their use for law enforcement purposes should be prohibited along with their corresponding production and trade.

Illustrative examples of inappropriate use of electric shock batons: In many instances, reports of torture or other ill-treatment perpetrated using electric shock equipment do not specify the exact type of equipment used. Several factors can contribute to this, including a lack of technical information among torture prevention monitors and survivors of torture struggling to provide an exact description of the equipment or not wishing to go into great detail for understandable reasons. Nonetheless, the use of electric shock batons has been documented in multiple OSCE participating States, including the following examples:

Italy:

Amnesty International have reported on the repeated use of electric shock batons by Italian police against newly arriving refugees and migrants, particularly to forcibly fingerprint people in police stations as part of the “hotspot” approach where newly arrived asylum seekers are screened, identified and their asylum applications initially assessed.²⁸ In repeated instances, those who refused to have their fingerprints taken were forced to comply through the application of electric shocks. Even children were subjected to such treatment.

A 16-year-old boy from Sudan arrived in Italy on 7 June 2016 having fled the conflict in Darfur, which killed his father, and hoped to join his brother in France. When he was disembarked in Sicily, he was taken to a police station and detained there. He told Amnesty International:

*“After three days... they took me to the ‘electricity room’. There were three policemen wearing uniforms, plus a woman without uniform ... The police then asked me to give fingerprints. I refused. **Then they gave me electricity with a stick, many times on the left leg, then on the right leg, chest and belly.** I was too weak, I couldn’t resist and at that point they took both my hands and put them on the [fingerprint] machine. I couldn’t resist.”²⁹*

²⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Electrical discharge weapons, CPT/Inf(2010)28-part, <https://rm.coe.int/16806cce1c> accessed 11 May 2017, para. 78. The European Court of Human Rights has also adopted this view (see Case of Anzhelo Georgiev and Others v. Bulgaria, judgment of 30 September 2014, para. 76).

²⁷ UNODC Resource book on the use of force and firearms in law enforcement, advance copy, May 2017, p. 82.

²⁸ Amnesty International, Hotspot Italy, How EU’s flagship approach leads to violations of refugee and migrant rights, EUR 30/5004/2016, October 2016.

²⁹ Ibid, p.18.

Kyrgyz Republic:

There are repeated allegations of police using electric shock batons to perpetrate torture and other ill-treatment to extract confessions and to punish. In 2014, the National Center of the Kyrgyz Republic for the Prevention of Torture, the country's NPM, received testimony that police tried to force a suspect to confess to murder while he was held at the Oktyabrsky district police station.³⁰ The subject alleges that he was made to sit in a chair and his hands were cuffed behind the chair. Police then placed him face down while still restrained and beat his legs with batons, put a plastic bag over his head and repeatedly applied electric shock to his heels and buttocks using an electric shock baton.

A Monitoring Mission made up of civil society organizations, defence attorneys and international organizations documented five cases of torture or other ill-treatment perpetrated using electric shock batons against persons suspected of or awaiting trial for alleged criminal activity in the Kyrgyz Republic in 2012, with one subject telling monitors *"They tied me to the chair with handcuffs and were using an electric shock baton."*³¹

Human Rights Watch reported that electric shock batons were used by police against gay and bisexual men in the Kyrgyz Republic. In one such instance, a subject alleges that he was subjected to torture and ill-treatment after being detained in August 2008:

"They tied my hands and knees, put me on my stomach. People without uniforms walked in, and anyone who wanted to put whatever they had in their hands [inside of] my anus. Then they would turn me on my back and beat me with batons.

*They did not stop there. **They took an electric shock weapon and put it near my anus. They didn't stick it inside but would put it next to my anus and shock me.** My mouth was gagged. And this kept on going until the evening. They would call their acquaintances and ask, "Do you want to see some fags?"*³²

Manufacture and trade:

Companies in many OSCE participating States are involved in the manufacture and trade of electric shock batons and other direct contact electric shock weapons. While some of these products are marketed to civilians for self-defence, Omega has documented the marketing of electric shock weapons by companies in OSCE participating States to the law enforcement or military communities.

Russian company March Group produces a range of electric shock weapons and promotes them to the police community domestically and in a range of other countries. On its website, the company lists dealers and representatives in OSCE participating States Belarus, Kazakhstan, Ukraine and Uzbekistan,

³⁰ NGO Coalition against Torture in Kyrgyzstan, *Torture in Kyrgyzstan: Current concerns and recommendations*, 18 May 2015, http://iphronline.org/wp-content/uploads/2015/09/torture_in_kyrgyzstan_may_2015.pdf accessed 11 May 2017 accessed 11 May 2017, pp. 6-7.

³¹ Monitoring Group (made up of civil society organizations, defence attorneys and international organizations), "Observance of the Right to Freedom from Torture in Closed Facilities of the Kyrgyz Republic. Monitoring. Response. Rehabilitation", Bishkek 2012, <http://www.osce.org/bishkek/100473?download=true> accessed 4 May 2017, pp. 55-56.

³² Human Rights Watch, *"They Said We Deserved This": Police Violence Against Gay and Bisexual Men in Kyrgyzstan*, 2014, <https://www.hrw.org/report/2014/01/28/they-said-we-deserved/police-violence-against-gay-and-bisexual-men-kyrgyzstan> accessed 11 May 2017, pp. 40-41.

as well as in other countries including Iran, Israel, Saudi Arabia, South Africa and Vietnam.³³ According to its promotional material, March Group “is official supplier for all the military structures in Russia: Ministry of Internal Affairs, Special Police Forces, Head Department of the Penitentiary, Federal Bailiff Service, Federal Security Service, Federal Drug Control Service and etc.” In an interview with the “Military-Industrial Courier” published in December 2016, the Chief of the Military Police, of the Russian Ministry of Defence, said that the Military Police which currently are equipped with unspecified electroshock devices, will in future acquire the March Group AIR-107U electric shock baton.³⁴



Above left: March Group (Russia) electric shock batons on display at the Interpolitex 2011 exhibition, 24-29 October, 2011 in Russia (@Robin Ballantyne, Omega Research Foundation); **Above right:** HPE Polska (Poland) electric shock baton on display in company catalogue distributed at IDEX 2017, 19-23 February 2017 in Abu Dhabi, UAE. Note: image shows electric shock baton being applied on handcuffs.

HPE Polska is one of several companies based in the European Union that manufactures and/or markets electric shock batons for the military and police communities. These are included in the company’s “Tactical & Military Accessories Division” products. Since 2014 HPE Polska has exhibited its products at trade fairs in countries including Germany, Kazakhstan, Poland and the United Arab Emirates.

c. Chemical irritants

While Omega believes that the previous types of equipment discussed have no legitimate law enforcement purpose, it is also necessary to consider equipment which could have a legitimate function if used appropriately but which is often used in human rights abuses. Chemical irritants is one example of such equipment.

Chemical irritants (also referred to as Riot Control Agents [RCAs]³⁵) are designed to deter or disable an individual, by producing temporary irritation of the eyes and upper respiratory tract and are often

³³ <http://russian-shockers.com/contacts/predstaviteli.html> accessed 11 May 2017.

³⁴ Ivanovsky, V. and Falichev, O. Russian Military Police: With A Shield and the Law, Interview with Chief of the Military Police of the Ministry of Defense of the Russian Federation, Lieutenant-General Vladimir Ivanovsky, “Military-Industrial Courier.” (VPK), undated. An English translation of this interview was published on 27 December 2016 in South Front, <https://southfront.org/russian-military-police-with-a-shield-and-the-law/>, accessed 11 May 2017).

³⁵ Article 2 of the Chemical Weapons Convention (CWC) defines Riot Control Agents 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.”

used for riot control purposes as well as for arrest and restraint. The most commonly used chemicals include CN or CS (commonly called tear gas) and OC/Pepper and PAVA (commonly called pepper spray).

Chemical irritants are generally delivered through aerosol sprays, hand-thrown grenades, weapon launched projectiles/grenades, as well as via water cannon.

Physical/medical effects and human rights concerns: Physical effects can include lacrimal tearing of the eyes, breathing difficulties/coughing/choking sensation, chemical burns, vomiting, suffocation, severe allergic reaction/blistering of the skin, chest tightness and in extreme cases death (either through asphyxiation or toxicity). Often, these effects are accompanied by anxiety and panic. Several factors affect the toxicity level of chemical irritants, including the specific agent used, its concentration, the length of exposure, the environment in which it is used, and the vulnerabilities of those affected. Certain vulnerable groups, including elderly people, children, pregnant women or people with respiratory problems, are often the worst affected. When used in confined spaces or in conjunction with other types of equipment (e.g. mechanical restraints), there is an increased risk of physical injury, suffocation and death. In some instances, launched projectiles containing chemical irritants can, if they hit a person directly, cause penetration wounds, concussion, other head injuries as well as, in severe instances, death. There are no international standards regulating the concentration of the irritant chemical and this concentration varies greatly among manufacturers.

Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has highlighted the indiscriminate nature of tear gas, as it fails to differentiate “between demonstrators and non-demonstrators, healthy people and people with health conditions”.³⁶ The European Court of Human Rights has declared that “*the unwarranted use of tear gas by law enforcement officers is not compatible with the prohibition of ill-treatment*”.³⁷ Omega recognises the potentially legitimate purpose chemical irritants could serve in certain limited circumstances. However, due to their indiscriminate nature and the potentially serious injuries they can produce, chemical irritants should only be employed in the context of public gatherings when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting violent persons only, and even then only using the absolute minimum amount necessary must be used.³⁸

With regard to places of detention, the CPT has repeatedly recommended that pepper spray and tear gas should not be used in confined spaces, nor on an individual already brought under control, as well as expressing “serious reservations” about its use in open space, stating that there should be clearly

³⁶ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report submitted to the Human Rights Council, 21 May 2012, UN Doc. A/HRC/20/27, para. 35.

³⁷ Case of *İzci v. Turkey*, judgment of 23 July 2013, para. 62.

³⁸ For more detailed recommendations on the use of launched chemical irritants for crowd control purposes, see the OSCE/ODIHR Human Rights Handbook on Policing Assemblies, <http://www.osce.org/odihr/226981?download=true> accessed 15 May 2018, pp. 78-80.

defined safeguards in place if it needs to be used exceptionally.³⁹ The ECtHR has endorsed these concerns and recommendations.⁴⁰

Omega considers that grenades, launched cartridges and any mass dissemination of chemical irritants (e.g. via large backpack-style sprayers) should be prohibited in confined spaces. Targeted use of chemical irritants (e.g. via hand-held spray) should only be resorted to when strictly necessary, proportionate and for the shortest possible time using the minimum amount of irritant necessary to reduce the level of violence and to re-establish control.

Illustrative examples of inappropriate use of chemical irritants: Chemical irritants are widely used in places of detention and for crowd control purposes in many OSCE participating States, and there are multiple reports of human rights violations perpetrated through the use of such equipment.

Turkey:

Turkish authorities' use of chemical irritants in response to the Gezi Park protests in 2013 has been widely criticised by human rights bodies and non-governmental organisations. Reports state that tear gas cartridges and grenades were fired or thrown into makeshift medical centres, ambulances and public shelters on numerous occasions during the period of unrest.⁴¹

The inappropriate firing of chemical irritant cartridges (on a flat trajectory rather than a high-angled shot and/or from close distances) was heavily criticised. Human rights organisations reported that at least 11 individuals suffered vision loss⁴² and at least two people died after being struck in the head by tear gas cartridges.⁴³ The ECtHR has recognised that the use of a launcher to fire of tear gas cartridges generates a risk of serious injury or death,⁴⁴ stating that firing tear gas cartridges directly at protesters is not an appropriate police action and constitutes a violation of the right to life and the prohibition of torture and other ill-treatment.⁴⁵

France:

Chemical irritants have been increasingly used in recent years against asylum seekers in certain OSCE participating States. The Bar Human Rights Committee of England & Wales (BHRC) has reported on

³⁹ See, for example, CPT, *Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015*, CPT/Inf (2016) 1, para. 94; CPT, *Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007*, para. 79; CPT, *Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 1 October 2013*, para. 40.

⁴⁰ Case of *Ali Güneş v. Turkey*, judgment of 10 April 2012, paras. 39-41.

⁴¹ See, Physicians for Human Rights, *Contempt for Freedom: State Use of Tear Gas as a Weapon and Attacks on Medical Personnel in Turkey*, pp. 18-19; FIDH, *Turkey: Gezi, One Year On*, https://www.fidh.org/IMG/pdf/turkey_avril_2014_uk_web.pdf accessed 15 May 2017, p.10.

⁴² Physicians for Human Rights, *Contempt for Freedom: State Use of Tear Gas as a Weapon and Attacks on Medical Personnel in Turkey*, September 2013, https://s3.amazonaws.com/PHR_Reports/Turkey-Protests-Report-September-2013.pdf accessed 15 May 2017, p. 9.

⁴³ FIDH, *Turkey: Gezi, One Year On*, May 2014.

⁴⁴ Case of *Abdullah Yaşa and Others v. Turkey*, judgment of 16 July 2013, para. 42.

⁴⁵ See Case of *Ataykaya v. Turkey*, judgment of 22 July 2014 and Case of *Abdullah Yaşa and Others v. Turkey*, judgment of 16 July 2013.

the routine, and often unnecessary and disproportionate use of tear gas on inhabitants of migrant/refugee camps in Calais and Grande-Synthe in France.⁴⁶ Volunteers and camp residents allege that French law enforcement officials have deployed tear gas without any obvious provocation in communal areas of the camps.⁴⁷

In 2016, OSCE Representative on Freedom of the Media Dunja Mijatović expressed her concern regarding acts of police violence against journalists covering public protests in France. The acts included several alleged instances of inappropriate use of chemical irritant grenades and aerosol sprays, including an incident on 17 May 2016, when “*police fired tear gas grenade at photo journalist Joël Labat when he was covering a demonstration in Place Denfert-Rochereau in Paris*”.⁴⁸

Manufacture and trade:

There are a large number of companies either producing or trading chemical irritants and their means of delivery in OSCE participating States. The activities of the following companies demonstrate the diverse geographical spread of the trade in chemical irritants:

- Lamperd Less Lethal (Canada) produces a range of less lethal weapons, and claims to be the only company offering “Aerial Burst Pepper Spray Grenades for riot and crowd control” which are designed to be fired from a 40mm launcher and “can cover an area of 200 sq.ft. with powerful yet harmless OC pepper spray”.⁴⁹ According to the Lamperd Less Lethal website, the company recently sold 300 40mm launchers to the Canadian Federal Government and is working on deals worth a total of \$20-30 million in Oman, Kuwait and Qatar.⁵⁰
- Alma DK (Kazakhstan) provides an example of Central Asian production of chemical irritant devices. Alma DK’s products include hand grenades designed for indoor use that release “an immense gas and smoke emission of irritant action” and 12 gauge ammunition that releases CN irritant on impact.⁵¹ Since 2013, the company has displayed its products at international trade fairs for the military and police communities in Kazakhstan, Uzbekistan, Azerbaijan and the United Arab Emirates.⁵²
- French company SAE Alsetex, part of the Lacroix Group, manufactures a wide variety of grenades as well as aerosol and backpack-style sprayers of various sizes for the dissemination of chemical irritants. As well as supplying French law enforcement agencies, the presence and

⁴⁶ Stephen Cragg QC and Gráinne Mellon, *Report: Camps at Calais and Grande-Synthe (France): Policing and Access to Justice*, Bar Human Rights Committee of England & Wales (BHRC), July 2016, para. 72.

⁴⁷ *Ibid*, para. 66.

⁴⁸ OSCE Press Release, “Recent police violence against journalists during demonstrations in France disturbing, says OSCE Representative”, 3 June 2016, <http://www.osce.org/fom/244686> accessed 16 May 2017.

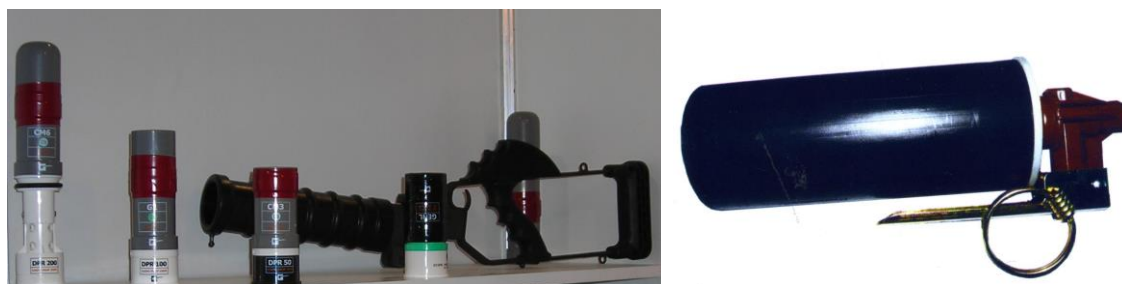
⁴⁹ Lamperd Less Lethal, Report to United States Securities and Exchange Commission, filed on 21 November 2016, <http://www.otcmarkets.com/edgar/GetFilingPdf?FilingID=11699760> accessed 16 May 2017.

⁵⁰ <http://llllico.com/presentation/> accessed 16 May 2017.

⁵¹ Alma DK promotional materials distributed at IDEX 2017, Abu Dhabi, 19 – 23 February 2017.

⁵² http://www.almadk.kz/en/398-o_kompanii.html accessed 16 May 2017.

use of SAE Alsetex products has also been widely documented including in Côte d'Ivoire,⁵³ the Democratic Republic of the Congo⁵⁴ and Bahrain.⁵⁵



Above left: SAE Alsetex chemical irritant cartridges and launcher on display at SOFEX 2012 May 2012 in Amman, Jordan; **Above right:** Alma DK “Hand gas and smoke grenade of irritant action” from company catalogue distributed at IDEX 2017, 19-23 February 2017 in Abu Dhabi, UAE.

ii. Existing control regimes

The trade in specially designed tools of torture (e.g. body-worn electric shock equipment, spiked batons) and other equipment which is frequently misused (e.g. chemical irritants, kinetic impact ammunition [commonly called “rubber bullets”]) is largely unregulated in many countries, especially in comparison to controls on transfers of most types of conventional military weapons and munitions. It is important that strict and consistent controls are established and effectively implemented to help prevent torture and the excessive use of force. The following examples are intended to demonstrate the existence of good practice which could be built on in the future.

In 2006, the European Union (EU) established the first multi-lateral instrument to prohibit the international trade in equipment which has no practical use other than for the purposes of executions, torture or other cruel, inhuman or degrading treatment or punishment and to control the trade in a range of policing and security equipment often misused in the perpetration of such human rights violations.⁵⁶ The EU Torture Trade Regulation covers the trade of all EU member states and the binding controls introduced apply to a range of equipment often not found on EU member states’ military or dual use export control lists. For example, the Regulation prohibits the import, export, transfer, promotion and brokering of body-worn electric shock devices and controls the export of other electric shock equipment intended for use by law enforcement, including electric shock batons. As for chemical irritants, OC and PAVA are controlled by the EU Torture Trade Regulation, while others including CS and CN are controlled under the Common Military List of the European Union.

⁵³ UN Group of Experts on Côte d'Ivoire, Final Report, prepared in accordance with paragraph 14 of Security Council resolution 1980 (2011), issued by the UNSC on 14 April 2012, UN doc. S/2012/196, para. 58.

⁵⁴ Amnesty International, *If You Resist We'll Shoot You: The Democratic Republic of the Congo and the Case for an Effective Arms Trade Treaty*, 2012, pp. 36-37.

⁵⁵ Americans for Democracy and Human Rights in Bahrain, “France NCP announces agreement regarding French-manufactured tear gas in Bahrain”, 25 July 2016, <http://www.adhrb.org/2016/07/france-ncp-statement-regarding-oecd-complaint-filed-tear-gas-company/> accessed 17 May 2017.

⁵⁶ European Union, Council Regulation (EC) No 1236/2005 of 27th June 2005 Concerning Trade in Certain Goods Which Could Be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (EU Torture Trade Regulation).

In the US, the Export Administration Act of 1979 controls various types of law enforcement equipment which are set out in the Commerce Control List. Under this instrument the level of control applicable to different types of equipment varies. For example, body worn electric shock equipment's inclusion in ECCN 0A982 of the Commerce Control List means that a license is required for export to all destinations other than Canada regardless of end use. However, there is no stated policy of presumption of denial in place. A stricter degree of control is exerted over "'Specially Designed' implements of torture" (including, for example, thumbcuffs and spiked batons – see ECCN 0A983), the export of which requires a licence for all destinations and a stated policy of presumption of denial of applications is in place.⁵⁷

Although Omega considers both of these instruments as examples of good practice, both still contain weaknesses and loopholes which require rectifying to strengthen and broaden the controls. This demonstrates how challenging it is to ensure trade controls keep pace with technological innovation and patterns of use and abuse of law enforcement equipment. Nonetheless, these instruments may help to inform the improvement of existing control regimes and the creation of new ones, though it is also vital to take into account the particular challenges facing different regions and countries.

⁵⁷ See Bureau of Industry and Security, Export Administration Regulations, 19 January 2017, §742.11.

iii. Recommendations

To the OSCE

- The Omega Research Foundation recommends that the OSCE, including its Office for Democratic Institutions and Human Rights (ODIHR) and its field operations (FO), carries out a detailed study of the trade in and use of inherently abusive equipment and equipment which could have a legitimate function if used appropriately but which is often used in human rights abuses, with a view to **identifying and addressing gaps in the regimes controlling trade and use** currently in force.
- The Omega Research Foundation recommends that the OSCE, including its Office for Democratic Institutions and Human Rights (ODIHR) and its field operations (FO) increase efforts to effectively **monitor, document and report on the equipment used** in cases of excessive force in both custodial and non-custodial settings, including acts of torture and other ill-treatment.

To OSCE participating States

- Give due consideration to the need for multilateral action in the form of **Human Dimension Commitments regarding the control of the law enforcement equipment trade** and engage constructively in any processes initiated by the OSCE to further investigate this matter.
- Prohibit the production, promotion, trade, transfer and use of law enforcement equipment which has no practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- More effectively control the trade in all law enforcement or other equipment that can have legitimate uses but which is prone to being used for torture and other ill-treatment.
- Ensure that domestic legislation, protocols and guidelines governing the use of force and firearms and all other law enforcement equipment are in compliance with international human rights law and standards and are effectively implemented by officials exercising law enforcement duties, and ensure independent oversight and accountability for such use.



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