

Executive Summary

Dangerous ambiguities and weaknesses in the CWC control regime

The Chemical Weapons Convention (CWC) is a multilateral treaty that proscribes the development, production, stockpiling, transfer and use of chemical weapons and requires their destruction within a specified time period. As well as prohibiting the more lethal chemical weapons such as nerve agents and blistering agents, the CWC covers a wide range of chemicals within its scope of regulation including certain so-called 'non-lethal' weapons such as riot control agents (RCAs) and incapacitants. A review of the CWC and its related mechanisms and structures has highlighted the following limitations in both design and implementation of the control regime with regard to RCAs and incapacitants:

Serious weaknesses in the CWC's textual architecture:

A number of Articles detailing States Parties' obligations are ambiguous and there is a lack of clarity regarding their inter-relationship. Such ambiguity is exacerbated by the lack of definition of certain key terms used in the Convention. For example, although RCAs are defined under the CWC, the scope and nature of their permissible use in situations of armed conflict and in law enforcement operations are ambiguously regulated, due in part to the Convention's failure to describe and demarcate 'method of warfare' and 'law enforcement'. The situation is even more uncertain regarding incapacitants, which are not specifically defined under the Convention.

Limitations in declaration and transparency mechanisms:

Whilst the Convention establishes declaration and transparency mechanisms for three groupings of Scheduled chemicals, the comparable mechanisms that relate to RCAs have severe limitations. Furthermore, there are no effective declaration or transparency mechanisms for those incapacitants that are not Scheduled chemicals.

Failure of States Parties to fully utilise multilateral consultation and investigation mechanisms:

Although States Parties have employed bi-lateral consultation mechanisms, the potentially powerful multilateral consultation, investigation and fact-finding procedures that could be applied to cases of concern under the Convention, have never been utilised. The consequences of this apparent failure by States Parties to use such mechanisms are exacerbated by the very circumscribed ability of the OPCW Technical Secretariat to undertake independent information gathering and monitoring activities. For example, there are no formal mechanisms for the Technical Secretariat to receive and act upon information provided by the media, NGOs or academia. Furthermore, the Technical Secretariat cannot undertake consultation, investigation and fact-finding mechanisms unless requested to do so by a State Party.

Failure of oversight bodies to respond to possible breaches:

There has been a marked failure by the OPCW oversight and policy making organs to effectively monitor implementation of the Convention with regard to RCAs and incapacitants and to take action where reports of possible breaches of the Convention have become public.

Questionable State practice

Whilst the international governmental community has been unable or unwilling to address the dangerous ambiguities and weaknesses in the CWC regulatory regime, a number of countries have permitted activities that may undermine (and potentially breach) the Convention and/or may be in contravention of relevant international law, in the following areas:

The misuse of riot control agents:

- **Law enforcement:** A survey of the use of RCAs by law enforcement officials highlights reported human rights abuses utilising RCAs in at least 35 countries from 2004 to 2008. The survey reveals that RCAs have reportedly been used in a variety of human rights abuses including suppression of the right to assembly, excessive use of force, ill-treatment and torture. In some instances misuse of RCAs, particularly in enclosed spaces, has reportedly resulted in serious injury or death. As well as potentially breaching international human rights standards or agreements, some of these actions may also be inconsistent with Articles 2.1 or 2.9 of the CWC.
- **Military:** The reported use of an RCA by Turkish armed forces against armed Kurdish fighters in 1999 and subsequent reports in 2004 of the training of Turkish anti-terrorist forces in the use of RCAs for such military operations, may potentially have breached Article 1.5 of the CWC.
- **Private military and security companies:** The reported misuse of an RCA by a US private military company in Iraq in 2005 highlights potential difficulties with interpretation and application of the CWC with regard to private military and security companies.

Development and use of incapacitants

In October 2002, Russian Federation security forces employed a still unidentified incapacitant in their attempt to free approximately 800 hostages held by Chechen armed fighters. Although the majority of the hostages were saved, over 120 were killed by the incapacitant and many more suffer long term health effects.

Subsequently, Russia, the Czech Republic and the US have undertaken research into incapacitants and/or possible delivery mechanisms. Reports indicate that a number of other States including China, France and the UK, as well as NATO and the European Defence Agency, have shown interest in this area. Concerns about State research into incapacitants are exacerbated by the extremely rapid advances in relevant science and technology, particularly genomics, synthetic biology, biotechnology, neuroscience and the understanding of human behaviour.

Means of delivery and dispersal

Although the CWC includes munitions and means of delivery within its definition of chemical weapons, there is continuing ambiguity as to the type and specifications of those means of delivery that are permissible (primarily for law enforcement operations) and those that are prohibited under the Convention. Research for this report has uncovered evidence of the manufacture of munitions by Russian and Turkish companies which may potentially breach Articles 1.1 and 1.5 of the Convention.