

Senate Committee on Armed Services

Subcommittee on Readiness and Management Support

**“U.S. Policy and Practice with Respect to the Use of Riot Control Agents by
the U.S. Armed Forces”**

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on behalf of the Department of Defense

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Chairman Ensign, Ranking Member Akaka, members of the subcommittee, it is my pleasure to appear before you today to testify regarding **“U.S. policy and practice with respect to the use of riot control agents by the U.S. Armed Forces.”**

Mr. Chairman, I would like to begin by recognizing your work on this important issue. Like you, this Administration wants to ensure that our men and women in uniform have the full range of options available to them to carry out their mission. Your amendment on riot control agents to the National Defense Authorization Act for Fiscal Year 2006 has furthered this cause. The Presidential report required by this Act is comprehensive and will be provided in the coming weeks. We have surveyed and cataloged regulations, guidance, and training on riot control agents. We have obtained inputs from the Military Departments and views of the Combat Commanders. The information I will share with you today is similar to and consistent with the information that we have compiled for the report.

The policy governing the use of riot control agents by the U.S. Armed Forces is expressed principally in the Chemical Weapons Convention, the resolution of ratification of the Chemical Weapons Convention, and Executive Order 11850. The Administration agrees with the policy statement in the National Defense Authorization Act for FY2006, section 1232 (the "Ensign Amendment"); namely, "It is the policy of the United States that riot control agents are not chemical weapons and that the President may authorize their use as legitimate, legal, and non-lethal alternatives to the use of force that, as provided in Executive Order 11850 (40 Fed. Reg. 16187) and consistent with the resolution of ratification of the Chemical Weapons Convention, may be employed by members of the Armed Forces in war in defensive military modes to save lives, including the illustrative purposes cited in Executive Order 11850."

As you are well aware, the capabilities of weapons or weapons systems, both non-lethal and lethal, utilized by our military, and tactics and procedures for their use, are inherently sensitive. Riot control agents are one of the non-lethal weapons that our military may use under certain circumstances and thus most of the issues covered by the report will need to be addressed in closed session.

I also would like to note that when I refer to "riot control agents" in my testimony today I am referring to chemicals not listed in a Chemical Weapons Convention schedule which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. This includes for example, tear gas and pepper spray. I am not referring to the broader class of non-chemical non-lethal weapons that may sometimes be used for riot control or other similar purposes such as foams, water cannons, bean bags, or rubber bullets.

The Department of Defense has issued regulations, doctrine, and training materials providing guidance as to when riot control agents may be used. As I have noted, the primary legal bases for these materials are Executive Order 11850, Renunciation of Certain Uses in War of Chemical Herbicides and Riot Control Agents, which was issued by President Ford in 1975, and the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (commonly referred to as the “Chemical Weapons Convention”), which the United States ratified in 1997. I need to emphasize that use of riot control agents must comply with applicable law, including treaties and the law of war. Any use must be consistent with our obligations under the Chemical Weapons Convention and any use must be consistent with Executive Order 11850.

It may be difficult for many Americans to understand why their Armed Forces can use riot control agents in only defined circumstances when they see their local law enforcement agencies using them effectively every day. The United States military must operate within the parameters of the Chemical Weapons Convention and Executive Order 11850, which constrain the ability of our Armed Forces to use riot control agents in offensive operations in wartime and do not apply to our colleagues in law enforcement.

The Military Departments have established requirements that personnel receive training on riot control agents before they are authorized to carry or employ them. I would note that this is not the typical training that recruits receive during boot camp to teach them to protect themselves against chemical agents, but specialized training on riot control agent deployment.

Annual training of service members also provides an opportunity for supplemental training in the use of riot control agents. For example, in accordance

with the Geneva Conventions of 1949 and the Hague Convention of 1907, military personnel who may employ riot control agents, such as Military Police, are required to receive annual instruction on the law of armed conflict, which includes the subject of the permissible use of riot control agents, when relevant to operational duties.

I would emphasize, as I have just explained, that Department of Defense, Military Department and Combatant Command directives, doctrine, regulations, operational plans, and training materials are consistent with U.S. law and policy on the use of riot control agents, namely the Chemical Weapons Convention and Executive Order 11850. This includes authorization and approval guidance, as well as employment procedures and practices.

Before U.S. military personnel may use riot control agents, they must have the proper authorization. Pursuant to Executive Order 11850, Presidential approval is required prior to riot control agent use in war in defensive military modes to save lives. Separate regulations delegate to the Secretary of Defense advance authority to authorize the use of riot control agents in peacetime. However, certain peacetime uses of riot control agents have been delegated to the Combatant Commands and Chiefs of Services such as uses at U.S. facilities and installations for riot control, installation security, civil disturbance operations training, and noncombatant emergency evacuation operations.

When U.S. Armed Forces have employed riot control agents, they have done so in accordance with U.S. and international law, policy, and regulations both in the United States and abroad.

In conjunction with the preparation of the report required by the Ensign Amendment, we initiated a review of the authorities applicable to the use of riot

control agents under various circumstances in light of the changing environment in which armed conflicts are taking place. In such a dynamic environment, the peacekeeping, law enforcement, and traditional battlefield roles of deployed units may be present at different times within the same theater of operations. The use of riot control agents will be evaluated based on the particular unit or mission involved and the particular facts and circumstances of the mission at the requested time.

I would like to conclude by highlighting the continuing validity of Executive Order 11850. Executive Order 11850, which has not been modified or rescinded since it was issued, remains in effect.

Thank you again, Mr. Chairman, for your personal attention to this issue and I would be happy to respond to any questions you may have in closed session.