

April 1989

ISRAEL

Use of U.S.- Manufactured Tear Gas in the Occupied Territories



National Security and
International Affairs Division

B-232961

April 13, 1989

The Honorable Ronald V. Dellums
House of Representatives

Dear Mr. Dellums:

This report responds to your letter of May 5, 1988, in which you asked us to consider the circumstances related to Israeli use of U.S.-manufactured tear gas in the occupied territories of Gaza and the West Bank. You provided, as an attachment to your letter, an account alleging Israel's improper use of U.S.-manufactured tear gas against the Palestinian civilian population.

These charges of improper use of tear gas by Israeli Defense Forces (IDF) are similar to others reviewed by the Department of State during this period. In reviewing these allegations, we examined (1) medical evidence on the effects of tear gas, (2) U.S. laws and policies pertinent to tear gas exports, (3) the extent to which U.S. laws have been applied on other occasions to restrict tear gas exports, and (4) the rationale used by the Department of State in its consideration of allegations of tear gas misuse by Israeli forces and whether such exports should continue.

Background

Since late 1987, when the Palestinian uprising began, the IDF has been involved in numerous confrontations with the Palestinian population living in the Israeli-occupied territories of Gaza and the West Bank. The IDF's response to the civil unrest has included the use of tear gas, produced principally by TransTechnology Corporation (through its subsidiary, Federal Laboratories, Inc.), the largest manufacturer of tear gas in the United States. Although available worldwide, Israel has relied primarily on U.S. commercial sources for its tear gas. Israel also produces tear gas in limited quantities.

From January 1987 through December 1988, the Department of State's Office of Munitions Control (OMC)¹ approved license applications to export approximately \$6.5 million worth of tear gas guns, grenades, launchers, and launching cartridges to Israel. According to U.S. and

¹OMC, under State's Bureau of Politico-Military Affairs, is responsible for regulating the commercial export of defense articles.

Israeli sources, only one kind of tear gas, known as "CS tear gas,"² has been used by the IDF in the occupied territories. CS is actually a white powder, rather than a gas, that can be dispersed (1) in prepacked containers such as hand grenades, (2) by small projectiles, or (3) by spray from a pressurized container. Upon dispersement, CS tear gas causes intense irritation of moist skin areas such as the eyes, mouth, nose, and sinuses. The burning sensation causes extreme discomfort, but the effects are supposed to disappear quickly after one leaves the contaminated area.

Tests conducted by physicians and toxicologists indicate that, when used properly, tear gas is a nonlethal response to riotous situations, causing neither serious nor permanent injury. Tear gas is used by military forces and civil police throughout the world.

Allegations of Tear Gas Misuse

During the early part of 1988, various claims were made to the Department of State that the IDF had misused U.S.-manufactured tear gas designed for outdoor use by throwing it into enclosed spaces such as mosques, hospitals, and private homes or by aiming it directly into crowds. This use allegedly resulted in numerous deaths, principally among the elderly and ill, and caused increased instances of miscarriages. One letter of allegation was accompanied by the names of 40 people who, according to the Palestinian human rights organization that compiled the list, died as the result of tear gas exposure. The dates reported for the casualties were from late December 1987 to April 1988, and the majority of the individuals listed were less than a year old or over 55.

Medical Evidence Linking Tear Gas to Fatalities Is Inconclusive

The misuse of tear gas could cause greater harm than that normally associated with its proper use. However, medical evidence we reviewed and experts we spoke with generally concluded that, when properly used, tear gas is one of the most humane forms of riot control. Its use is intended for purposes of crowd dispersement rather than for punishment.

In response to our questions, Israeli authorities acknowledged the risks associated with using tear gas. According to these officials, international

²CS, or orthochlorbenzalmalononitrile, the newest of riot control agents, was first developed by two scientists, B. B. Carson and R. W. Stoughton. The initials of their last names are used to identify the compound.

medical literature on deaths caused by inhalation of tear gas suggests that the deaths occurred only when the victims had other medical problems before being exposed to the gas, especially in the case of heart or lung disease. The organization, Physicians for Human Rights, similarly found that

“exposure to high concentrations of tear gas in small, enclosed spaces for ten minutes is potentially lethal, particularly to infants and children, the elderly, and those with respiratory and cardiac disease.”³

When tear gas is used properly, the risk of death diminishes significantly. A 1971 study for the British government concluded that the margin of safety in the use of CS gas is wide; consequently, there is a wide latitude in the doses that may be inhaled without injury. According to the Police Chemical Agents Manual, International Association of Chiefs of Police, Inc., tests conducted by physicians and toxicologists indicate that the CS gas safety factor makes it improbable that lasting effects or death could result from its proper use in riot control situations. This conclusion applied even to persons 50 years old with medical histories of allergies, hypertension, jaundice, or hepatitis. The manual also states, however, that injury or death is possible when the gas is used under unusual circumstances or when agents are improperly employed.

U.S. Army toxicologists supported these conclusions; namely, that CS tear gas is a safe and effective riot control method if used properly. They also noted that a very high concentration of CS tear gas would be required to be lethal. CS gas is the preferred type of tear gas for riot control purposes.

In its March 1988 report, the Physicians for Human Rights noted that it had conducted a fact-finding trip in the occupied territories and could not confirm that deaths were linked to tear gas inhalation. Further, the report noted that the fact-finding group could not substantiate, in any way, rumors of an increase in miscarriages. Although allegations of large numbers of spontaneous abortions and miscarriages were widespread in the Palestinian community, the physicians who the fact-finding group spoke with had found no obvious change in the rate.

³“The Casualties of Conflict: Medical Care and Human Rights in the West Bank and Gaza Strip,” Report of a Medical Fact Finding Mission by Physicians for Human Rights, March 30, 1988.

According to the State Department, a doctor noted that other factors, such as the stress and excitement of being present during a violent confrontation, could have caused some miscarriages. According to Trans-Technology Corporation, physicians who visited the Gaza and West Bank areas reported that not enough verifiable evidence was available to make any scientific conclusion linking fetal deaths to tear gas.

In a June 1988 Amnesty International report, concern was expressed that a pattern of death appeared to follow exposure to high concentrations of tear gas. Amnesty International noted that it was in no position to verify the exact cause of death in every case. The report expressed the view, however, that the pattern observed was disturbing enough to warrant a thorough and urgent review of the IDF's use of tear gas and an immediate investigation into the deaths of civilians following exposure to tear gas.

A complicating factor, recognized by Amnesty International, is that Palestinians are, on the whole, reluctant to agree to post-mortems on their relatives' bodies, mainly for religious reasons. Frequently, bodies are retrieved before autopsies can be done.

U.S. Policy and Legislation Affecting Tear Gas Exports

The United States is concerned about allegations of IDF misuse of U.S.-manufactured tear gas because it is U.S. policy to advance all countries' observance of internationally recognized human rights. This policy is set forth in the Foreign Assistance Act, section 502B.⁴ OMC also considers U.S. foreign policies when determining whether to grant a license to export defense articles under the Arms Export Control Act, section 38.⁵

Section 502B of the Foreign Assistance Act establishes the legal framework of the U.S. government's policy on human rights, as follows:

"The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion."

⁴22 U.S.C. 2304.

⁵22 U.S.C. 2778.

As one of its goals, the act seeks to avoid U.S. identification with governments that deny their people such rights. To this end, the law stipulates that

“except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”

The term “gross violations” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of those persons, and other flagrant denials of the right to life, liberty, or the security of a person. Under section 502B, the State Department is required to submit an annual report to Congress on the human rights practices of countries being considered for security assistance programs.

The Arms Export Control Act, section 38, authorizes the President to control the import and export of defense articles and defense services and to designate those items to be considered as such. The actual licensing of defense articles and services for export is the responsibility of OMC, which derives its authority from the Secretary of State and, ultimately, from the President. Section 42⁶ provides the Secretary of State with authority to revoke, suspend, or amend any license for defense exports issued under section 38 whenever he deems it advisable. These provisions provide the State Department with an alternative to discontinuing all security assistance by allowing it to restrict individual exports.

OMC reviews applications for an export license to see if the proposed export complies with U.S. laws and regulations and is consistent with U.S. foreign policy objectives and national security concerns. Since OMC's licensing officers are not policy or technical experts in all areas, controversial export license applications are coordinated with various other agencies and other State Department offices, including the Bureau of Human Rights and Humanitarian Affairs, as appropriate.

⁶22 U.S.C. 2791.

U.S. Use of Legislation to Deny Exports of Tear Gas

The State Department has never formally invoked the sanctions of section 502B of the Foreign Assistance Act with respect to any country. However, OMC has disapproved individual license applications, submitted under the Arms Export Control Act, for exports to various countries, including applications for the sale of tear gas.

According to State Department officials, section 502B(a) of the Foreign Assistance Act requires a persuasive level of evidence that human rights have consistently been violated. Because security assistance to an offending country generally must be discontinued, consideration is given to the effect that such a determination might have on other U.S. foreign policy interests (such as regional stability). According to a Defense Institute of Security Assistance Management publication, U.S. human rights policy involves highly subjective and situational considerations. In a State Department policy statement, it was noted that "human rights considerations will be weighed with other foreign policy concerns. In short, [State] must decide human rights issues on a case-by-case basis, but in the light of American principles."⁷

Under the Arms Export Control Act, section 38, State has used its authority to deny approval of applications for exports to various countries in consideration of U.S. human rights policy. While the countries' activities would not preclude the issuance of a license on legal grounds, the approval of certain defense exports was considered counter to U.S. principles and foreign policy. Occasionally, these export applications involved the export of tear gas. In the late 1970s, for example, State denied applications for tear gas exports to South Korea based on foreign policy considerations. According to the State Department, it suspended these commercial sales to South Korea in response to a wide range of human rights abuses, not to specific charges of misusing tear gas.

Considerations of Denying Tear Gas Exports to Israel

In its report to Congress on countries' human rights practices,⁸ the Department of State noted that the most significant human rights problem for Israel in 1988 derived from the uprising of Palestinians in the West Bank and Gaza. However, State has reviewed specific allegations of IDF misuse of tear gas in the occupied territories and has concluded that there was insufficient evidence to suspend the export of tear gas and related articles.

⁷Department of State, Current Policy No. 293, July 14, 1981.

⁸"Country Reports on Human Rights Practices for 1988," Feb. 1989, by the Department of State, submitted to the Senate Committee on Foreign Relations and House Committee on Foreign Affairs.

The Department of State's opinion is that the IDF has occasionally used tear gas improperly and carelessly by employing it in enclosed areas but that this practice does not appear to be widespread. Also, the State Department does not have any medical evidence to support a direct causation between tear gas inhalation and the number of deaths and miscarriages reported. According to State's human rights report to Congress, figures compiled from press, Palestinian, and Israeli government sources indicate that 366 Palestinians were killed in 1988 as a result of the uprising. While exact figures are unavailable and estimates vary, State reported that at least four deaths resulted from tear gas used by the IDF in enclosed areas.

While the U.S. government has taken no action to withhold exports of tear gas to Israel, sales of tear gas were suspended in April 1988 for a 4-month period by TransTechnology Corporation until the Israeli government provided assurances that its tear gas products were being properly used. The Israeli government provided those assurances in August 1988, and sales were subsequently resumed. In response to our inquiries, the government of Israel denied knowledge of any misuse of tear gas. According to the Department of State, a determination to suspend tear gas shipments to Israel would be inconsistent with U.S. efforts to encourage the use of restraint by Israel and could work to the disadvantage of the Palestinian population in the occupied territories.

In response to allegations made by a pro-Arab interest group, TransTechnology concluded that

"to withdraw this product which was designed to be non-lethal in its use and by doing so to leave the control of rebellions or uprisings to lethal methods is, in our sincere opinion, a disservice to the best human rights interests of the majority of people concerned. While we are aware of the possibility of our products being misused and causing harm to innocent civilians, we believe that injuries and destruction would be much more prevalent where no such crowd control method is available."

According to the Department of State, it continues to monitor the conflicts in the occupied territories and has expressed its concerns to the highest levels of the Israeli government regarding use of excessive force against Palestinian demonstrators.

Objectives, Scope, And Methodology

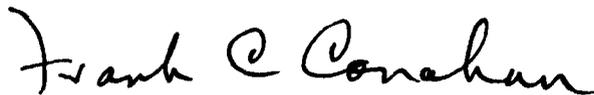
We reviewed the reported circumstances related to Israel's use of U.S.-manufactured tear gas in response to the uprising in the occupied territories of Gaza and the West Bank and the question of whether this use

had violated U.S. laws. We interviewed officials from the Department of Defense, the Department of State, and TransTechnology Corporation. We also received information from Israel's Ministry of Defense through the Israeli Defense Mission in New York. Our review was conducted from June to December 1988 in accordance with generally accepted government auditing standards.

As agreed with your office, we did not obtain written agency comments on this report. However, we discussed our findings with officials at the Departments of State and Defense and have incorporated their comments as appropriate.

We are sending copies of this report to the Secretaries of Defense and State; the Director, Office of Management and Budget; and other interested parties. This report was prepared under the direction of Joseph E. Kelley, Director, Security and International Affairs Issues. Major contributors to this report are listed in appendix I.

Sincerely yours,



Frank C. Conahan
Assistant Comptroller General

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