THE DEPLOYMENT OF LAW ENFORCEMENT EQUIPMENT IN CENTRAL ASIA AND THE SOUTH CAUCASUS

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SUMMARY

In recent years, Central Asia and the South Caucasus have seen a number of gradual trends in the development, transfer and use of law enforcement equipment, increasing the range of devices available to law-enforcement and security personnel. This has been partly spearheaded by changing international partners (China, Russia and the United States), but it has also been influenced by the emergence of local sources of production, the opportunities generated by the acceptance that police and security personnel require the means for employing a graduated use of force - thus creating a market for new technologies - as well as the desire for reform.

However, the increased availability and deployment of law enforcement equipment brings with it an inherent risk that without the proper infrastructure in place, such as controls over the trade in such devices, clear use of force guidelines and training, backed up by a robust monitoring and a judicial system capable and willing to hold perpetrators to account, police and security forces could use new technologies to wield excessive force, commit abuses and reinforce authoritarian practices.

ABOUT THE AUTHORS

Joe Farha and Kate Wraith undertook this research as Research Associates at the Omega Research Foundation. This report was written with grant funding from the Open Society Foundations. It uses data and research obtained during a European Commission funded project of the Omega Research Foundation into policing technologies and human rights, under the European Initiative for Democracy and Human Rights. Omega conducts investigative research into the development, transfer and use of military, security and policing equipment, as well as capacity building for organisations working on police and prison reform, law and human rights in the South Caucasus and Central Asia and worldwide.

INTRODUCTION

Torture, ill-treatment and the curtailment of fundamental rights are some of the issues that need to be addressed in Central Asia and the South Caucasus today. Although a number of police-reform programmes have been undertaken, an evaluation of the technologies that are being used by law enforcement and security personnel across the regions has not taken place.

Traditionally recipients of predominantly Soviet-manufactured technologies, since the fall of the Soviet Union, both regions have begun to look to new sources of supply in order to equip their personnel. Such sources include China and the United States, although an increasing number of companies from other regions, notably the European Union (EU), Israel and South Korea are also actively promoting and selling law-enforcement and security technologies in Central Asia and the South Caucasus. Local companies are also increasingly producing related technologies.

Due to concerns that the use of such devices could lead to, or help facilitate, torture, ill-treatment or the curtailment of fundamental rights, a number of issues relating to law enforcement and security equipment require scrutiny. In particular, the development and trade in such devices and the rules in place relating to their deployment, such as the training of end users and the implementation of use-of-force standards.

This study focuses on a range of technologies that are known to be deployed, transferred or currently marketed in the regions, such as crowd-control systems and other law-enforcement devices (e.g. electric-shock weapons and mechanical restraints). The equipment categories have been chosen because they are known to be deployed, or are specifically named as being authorized for use, by law-enforcement and security personnel in the regions.

The ease at which such devices may be misused, the questionable law-enforcement utility of some of the devices highlighted, and the well documented human rights abuses by state security personnel in Central Asia and the South Caucasus raise several questions. First, to what extent do the main sources of production exercise control over the trade of such devices? Second, what supporting structures are in place in recipient countries to ensure that such technologies are not misused? Supporting structures would include: (*a*) rigorous and independent selection and testing procedures prior to deployment of any technologies; (*b*) clear use-of-force guidelines relating to the use of such devices; and (*c*) independent oversight to ensure that excessive use of force or other abuses do not go unpunished.

STANDARDS RELATING TO THE DEVELOPMENT OF, AND TRADE IN, LAW ENFORCEMENT AND SECURITY TECHNOLOGIES

Currently, there are no regulations specifically covering the development or transfer of law enforcement equipment in international law. However, the existence of such devices and their application to torture and ill-treatment are referenced by international bodies and in international ‘soft law’, such as the United Nations (UN) Basic Principles on the Use of Force and

Firearms by Law Enforcement Officials (BPUFF) and the UN Standard Minimum Rules for the Treatment of Prisoners (SMR).[1]

There are also few regional controls on the trade in law enforcement equipment. At present, the only consolidated set of standards that specifically address the trade in certain law enforcement and security devices are contained within EU Council Regulation (EC) No. 1236/2005, 'concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment'.[2] To date, EC Regulation 1236/2005 is the most comprehensive set of binding international trade controls available and—while being list-based and therefore in need of updating in order to keep pace with advances in technology—represents a good template for establishing controls over the trade in specific law-enforcement equipment.

Further, certain riot control agents, in particular o-chlorobenzylidene malononitrile (CS), chloroacetophenone (CN) and Dibenzo(b,f)-1,4-oxazephine (CR), do feature on the controlled lists of equipment subject to trade controls by the EU and the Wassenaar Arrangement.[3] These control lists do not, however, cover a full range of riot control agents and their means of delivery, such as pelargonic acid vanillylamide (PAVA) or oleoresin capsicum (OC)—commonly found in 'pepper sprays'.

On a national level, aside from European states bound by EC Regulation 1236/2005, the USA is the only state known to have comprehensive controls on the export of law enforcement equipment. Controls over the trade in law enforcement devices in Central Asia and the South Caucasus, where publicly available, often do not specifically reference law-enforcement equipment.[4] There are many cases in which curbs on the ownership of

[1] Basic Principles of the Use of Force and Firearms by Law Enforcement Officials, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>; and Standard Minimum Rules for the Treatment of Prisoners, <http://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>.

[2] Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, as amended (July 2014) <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1431721163635&uri=CELEX:02005R1236-20140720>.

[3] Common Military List of the European Union (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) as updated (2015/C 129/01), adopted by the Council on 9 Feb. 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2015:129:FULL&from=EN>; and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, <http://www.wassenaar.org/controllists/2014/WA-LIST%20%2814%29%202/WA-LIST%20%2814%29%202.pdf>.

[4] Many states do not make the complete lists of goods subject to trade controls publicly available. E.g. Kazakhstan's control list references 'usual military equipment' but does not disaggregate further. See 'On export control: Law of the Republic of Kazakhstan dated July 21st, 2007, N 300', <http://www.vertic.org/media/National%20Legislation/Kazakhstan/KZ_Law_on_Export_Control.pdf>. A 2009 Saferworld report states that Kazakhstan controls 21 different categories of military equipment and that Kyrgyzstan 'currently controls 18 categories of equipment for export and 13 for import'. See Farha, J. and Isbister, R., *The Arms Trade Treaty and Military Equipment: The Case for a Comprehensive Scope* (Saferworld: London, July 2009), pp. 6, 11. Further, a presentation by the Deputy Director of the Institute of Radiation Problems of Azerbaijan states that a list of controlled equipment for export was established by Decision No. 42 of the Cabinet of Ministers in 2006 and that this is the 'unified control list of the EU'. See Gabulov, I., 'Export control system and Dual-Use Expertise in the Republic of Azerbaijan', <http://www.stcu.int/documents/reports/distribution/unoda2013/Export_Control_System_and_Dual_Use_Expertise_in_Azerbaijan_Republic.pdf>.

firearms have been implemented and these have occasionally stretched to other types of less-lethal equipment, for example, Kazakhstan lists electric-shock weapons and tear-gas dispensing devices as self-defence weapons that require a permit to own or trade.[5] Traditionally, however, there have been far fewer attempts to regulate the trade in, and use of, law-enforcement and security equipment.

Sources of transfer to Central Asia and the South Caucasus

An analysis by the authors of the sources of transfer to Central Asia and the South Caucasus has indicated that, although Russian companies still predominate in states that maintain close strategic alliances with Russia (e.g. Armenia), actors from China and the USA are increasingly active in the regions. This includes the provision of assistance in the form of training programmes by individual states or multilateral bodies such as the Organization for Security and Co-operation in Europe (OSCE), as well material assistance through the provision of equipment.

In relation to the development of manufacturing capabilities in the regions, there are examples of local production, in particular of kinetic-impact ammunition. Joint-venture agreements have also been implemented, which allow for the manufacture of technologies under licence in states in the regions. However, the majority of new law enforcement and security technologies being deployed are manufactured externally.

RECOMMENDATIONS

General recommendations

There is a clear need for security personnel to be given the tools to allow them a graduated response to situations requiring force. The use of firearms should be a last resort and needs to be guided by clear instructions on when it would be permitted. All instances of the use of force must adhere to the principles set out in international standards such as the UN Basic Principles on Force and Firearms, the UN Standard Minimum Rules on the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).[6]

Every piece of equipment (including more rudimentary devices such as handcuffs) used by security forces should be independently evaluated against a clear set of use-of-force standards.[7] The use of 'less lethal'

[5] Kazakh Authority of Internal Affairs, 'Regulation of voluntary reimbursable deposit of citizens illegally stored firearms, ammunition and explosives', <http://www.kostanaypolice.kz/en/gosuslugi/lisenziya>.

[6] United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1431721163635&uri=CELEX:02005R1236-20140720>

[7] E.g. OSCE guidelines on the use of handcuffs for the Armenian police recommends: 'Handcuffs as a special means for active protection can be very useful but if not applied correctly and locked; the offender monitored and the handcuffs released as soon as possible long-term injury can be caused. Handcuffs that are incorrectly applied are the wrong type, intended for short-term use, or left on once the offender has arrived at a secure location may result in breaches of human rights, as their intended purpose has not been followed.' See OSCE, 'The Republic of

weapons, in particular launched kinetic-impact devices and projectile electric-shock devices, should be assessed by the same standards attributed to firearms.

Any device that does not have a demonstrably legitimate law-enforcement function, in line with international standards, and that is not subject to independent and robust testing and training regimes prior to introduction, should be withdrawn from service and destroyed. Where law-enforcement technologies are deployed, care should be taken that 'function creep' does not occur and that the rules governing their use are robust enough to ensure that they are not used inadvertently or on purpose in situations not envisaged when they were first deployed.

Equipment-specific recommendations

All electric-shock devices whose primary function is one of the application of direct contact electric shock, (stun batons, stun guns, shock shields and body-worn electric-shock weapons) should be prohibited for use by law-enforcement and security personnel. Any stockpiles of equipment, if currently held, should be destroyed and the use of such systems expressly prohibited by law.

The evaluation, testing, training and use of all projectile electric-shock devices should be scrutinized. Such devices should not be deployed as standard-issue weapons and the use-of-force criteria against which they are held should be the same as firearms.

Multiple-point and fixed-restraint devices, such as restraint chairs using metal shackles, wall cuffs and thumb cuffs should be expressly prohibited.

In relation to the deployment of launched kinetic-impact devices and riot control agents, all states should declare what devices, including what chemical agents and means of delivery, are cleared for use—as well as what training and standards are in place to guide the use of such systems. States should also declare the procedure for disposing of expired systems.

Governments should suspend the use of long-range acoustic devices with an alert or other function whose medical and other effects are not fully known, pending a rigorous, independent inquiry by appropriate experts (e.g. medical, legal, police) and based on international human-rights standards. Specific guidelines for use should then be drawn up based on the results of independent scientific studies.

All states should impose robust trade controls over law-enforcement equipment, containing lists of controlled and prohibited items, as well as establishing control over associated activities such as promotion and brokering. Consideration should also be given to establishing end-use controls such as a catch-all clause or targeted end-use clause into trade-control regulations in order to ensure that equipment of concern not explicitly featured on control lists is not transferred and in order to cover new technologies as they are developed. Any data held on licence applications for the trade in such devices should be made publicly available.

Armenian Police: Guidelines for the activities of officers of the police units involved in public order management and for the use of physical force, special means and firearms by these officers during mass disorders', <http://polis.osce.org/library/f/3986/3485/GOV-ARM-RPT-3986-EN-3485>, p. 23.

All producer states should make public the criteria currently applied to the export-licensing process for law-enforcement equipment in their jurisdictions. Where list-based controls are in place, there should be a presumption of denial regarding equipment that has no purpose other than the commission of torture or other ill-treatment. No licences should be granted for the export of law-enforcement equipment where there are grounds to suspect that it may be used for torture or ill-treatment or where the end user has a history of abuse or repression.

Existing standards such as the UN SMR and the UN BPUFF should be regularly evaluated to ensure that they are in line with the current developments in law-enforcement technologies and tactics. All states should develop comprehensive use-of-force guidelines, explicitly stating when force may be used, what equipment is deployed for use and incorporating human-rights components. All training programmes (for equipment and techniques) should be independently evaluated.

There is a need for multilateral bodies engaged in the region, in particular the OSCE, the Council of Europe and the European Union, to establish a coherent set of criteria for best practice relating to the trade and deployment of law-enforcement equipment. At present, different bodies appear to be promoting conflicting strategies, especially in relation to what equipment is permissible for deployment.

As well as promoting standards for the use of force, multilateral organizations and individual states conducting reform programmes should develop a set of guidelines for establishing independent selection, testing and evaluation regimes for equipment being deployed by security personnel—in addition, and separate, to any that have already been carried out by companies manufacturing or promoting equipment.

ABBREVIATIONS

CS	o-chlorobenzylidene malononitrile
CN	chloroacetophenone
CR	Dibenzo(b,f)-1,4-oxazephine
EU	European Union
EC	Council Regulation (European Union)
PAVA	pelargonic acid vanillylamide
OC	oleoresin capsicum
OSCE	Organization for Security and Co-operation in Europe
UN BPUFF	United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
UN SMR	UN Standard Minimum Rules for the Treatment of Prisoners

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