

## Senate Struggles With Riot Control Agent Policy

- [Arms Control Today](#)

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Fearing that military commanders were not using riot control agents, particularly tear gas, because of overly cautious interpretations of U.S. law and treaty obligations, Sen. John Ensign (R-Nev.) introduced an amendment to the recent fiscal year 2006 defense authorization bill that critics said threatened to undermine the Chemical Weapons Convention (CWC).

The Senate adopted the amendment Nov. 9 by a vote of 98-1 but only after Ensign agreed to changes in the text and provided assurances that he was not attempting to change current U.S. policy. The final conference version of the defense authorization bill, adopted by the House and Senate in December, includes the amendment.

“We think they [the State Department] are misinterpreting the current policy which has existed for some time now in the United States,” said Ensign on the Senate floor Nov. 8. “We now need to clarify it so that our warriors know exactly that they can use riot control agents under specific uses.” His concerns echoed those of Secretary of Defense Donald Rumsfeld, who told a congressional committee in February 2003 that the restrictions on agent use were a “straightjacket” hurting the ability of soldiers in Afghanistan to use nonlethal force. ([See ACT, March 2003.](#))

U.S. policy regarding the use of riot control agents is governed by overlapping sets of laws and obligations. The CWC, which entered into force in 1997, clearly prohibits the use of such agents as a “method of warfare.” However, in 1975 President Gerald Ford signed Executive Order 11850, which permits the use of such agents only in “defensive military modes to save lives.” The executive order included several examples of permitted uses, such as controlling prisoners of war or when civilians are being used to mask attacks. In addition, the Senate’s 1997 CWC resolution of ratification made clear that Executive Order 11850 would remain the policy of the United States. The U.S. exception has not been formally challenged by other CWC states-parties.

To provide further clarification, Ensign introduced a two-part amendment in July to the defense authorization bill. The first section was a “Statement of Policy” that appeared to expand the use of the agents. The phrase “in combat and in other situations for defensive purposes to save lives” appeared to establish “combat” as a new and distinct category where the use of riot control agents was permissible.

However, when Ensign reintroduced the amendment Nov. 8, the “Statement of Policy” had been changed to a “Restatement of Policy.” Three words, “in combat and,” had been removed, and the new version retained the “defensive purposes” language of Executive Order 11850.

The new text also reaffirmed that only the president, consistent with Executive Order 11850, may authorize the use of riot control agents, which was absent in the original amendment text.

In addition to the changes, several senators repeatedly asked Ensign during the amendment’s floor debate Nov. 8-9 to reassure them that the amendment in no way changed current U.S. policy. For many, such as Senate Foreign Relations Committee Chairman Richard Lugar (R-Ind.), support for the amendment hinged on the understanding that “it in no way modifies, changes, reinterprets, or otherwise revises the laws of the United States regarding the use of [riot control agents] in war to save lives, nor in any way affects U.S. compliance with our international obligations. This amendment creates no new law, and changes no U.S. policy.”

Sen. Joseph Biden (D-Del.), who described himself as a “steadfast supporter” of the CWC, agreed to

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support the amendment but urged “that the limited nature of this amendment be made more explicit in conference.” The text of the conference report, however, falls short of the strong assurances sought by Biden, Lugar, and others and simply notes that the amendment “would restate current U.S. policy on riot control agents, and require a report on the use of riot control agents by members of the Armed Forces.”

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