

# RIOT CONTROL AGENTS: THE CASE FOR REGULATION

**Anna Feigenbaum**

- *Producers of tear gas and other so-called “less-lethal” weapons*
- *take advantage of a deregulated market to the detriment of human rights*

## ABSTRACT

*Tear gas, first used in World War One, is increasingly becoming the weapon of choice for security forces across the globe. Anna Feigenbaum offers a bleak picture of how companies – with a particular focus on Condor in Brazil – are capitalising on this trend and reaping financial benefits by marketing it as a “non-lethal” weapon. She demonstrates how in reality categorising tear gas as “non-lethal” is at best misguided and at worst disingenuous. Feigenbaum sets out the historical reasons for this “non-lethal” categorisation of tear gas – ones which governments and big business are happy to rely on today despite the ever increasing body of evidence that shows the extreme human rights abuses that its use inflicts on civilian populations worldwide.*

## KEYWORDS

Less-lethal weapons | Condor | Police brutality | Protests

## 1 • Introduction

As Brazil prepares for the 2016 Summer Olympics, companies are snapping up profitable security contracts. Hosting mega-events, like the Olympics and the World Cup, allows a country to shine a spotlight not only on its tourist hot spots, five star hotels and fine cuisine, but also on its security sector. As security analyst David Evans writes, “Major events, and especially the Olympic Games, can change ways of working forever and can introduce new opportunities. It is the forward-looking companies that recognize this, and they seek to use the games to drive their business forward.”<sup>1</sup>

Brazil’s Condor Nonlethal Technologies (“Condor”) has taken full advantage of this business opportunity. Condor is one of the world’s leading suppliers of policing equipment and the largest company of its kind in Latin America.<sup>2</sup> The company is currently working night and day to fulfil product demands. With over 30,000 police planned to patrol during the Olympics, Brazilian journalists report that a “discreet policing” strategy will be used involving plain-clothes officers, x-ray systems and so-called “non-lethal” technologies.<sup>3</sup> More accurately named “less-lethal” weapons because they can and do cause death and serious injuries, Condor is part of a growing, international industry in military and police technologies.

As this article will discuss, over the past 100 years, dubious definitions, loose export regulations and the failure of governments to hold police or corporate manufacturers accountable for human rights violations have all given rise to a dangerous business in profiteering from protest and social unrest. Using Condor as a case study to examine how companies benefit from systems of deregulation and unaccountability, the article makes connections between the current security context in Brazil and the recent history of riot control. This article argues that protest profiteering is a global phenomenon, made possible through the transnational exchange of both weaponry and tactics for maintaining social and political control. Governments and businesses strike million-dollar deals—often outside the view of the public—that seek security through the weaponisation and militarisation of policing. Brazil, and its flagship security company Condor, holds a central position in this matrix of buying and selling riot control under the guise of respecting human rights and maintaining democracy.

## 2 • Condor as a Protest Profiteer

Since 1985 Rio de Janeiro-based Condor has developed over one hundred distinct products for the military, UN peacekeeping forces, special operations forces and mainstream law enforcement.<sup>4</sup> Today Condor produces a wide range of these policing and crowd control munitions. Condor products include Oleoresin Capsicum (“OC”), chemical agents that come in a variety of forms including as foam, gel and aerosol sprays. Condor also produces the chemical compound most commonly referred to as “tear gas” 2-Chlorobenzalmalononitrile (“CS”) that comes in 12 gauge, 37/38mm, and 37/40mm sizes.<sup>5</sup> Types of tear gas projectiles

include triple and multiple charges,<sup>6</sup> canisters that split into pieces to allow for greater coverage and more difficult “throw back” (where a civilian picks up and throws a projectile back toward police lines, or away from a crowd). Condor advocates that it spreads the less-lethal concept in accordance with the United Nations Basic Principles on the Use of Force and Firearms,<sup>7</sup> by “Agents Responsible for Law Enforcement” that was adopted by consensus in 1990s.<sup>8</sup>

Condor also supplies impact munitions including rubber-coated bullets and rubber pellets, smoke grenades that emit coloured smoke, stun grenades that emit blinding flashes of light, and flash bang grenades that emit both light and an intensely loud noise.<sup>9</sup> Most “less-lethals” companies carry products that additionally combine these effects together, such as Condor’s Multi-impact line. Condor also carries a North Atlantic Treaty Organization (NATO) specific line of these types of ammunitions and prides itself on being the only Latin American company invited to the 2011 North American Technology Demonstration event.<sup>10</sup> In 2015, at the major defence expo IDEX, Condor showed off its newest product line, 40mm x 46mm “high accuracy munitions” that the company claims will allow “the Armed Forces and the Police Forces to face various day-to-day situations with efficiency, safety and respect to the human rights.”<sup>11</sup> As discussed in greater detail below this appeal to human rights runs throughout Condor’s corporate identity.

During Brazil’s heavy-handed policing of the 2014 World Cup, Condor products were widely on display. The company won a \$22-million contract, providing tear gas, rubber bullets, Tasers, light and sound grenades to police and private security forces during the event.<sup>12</sup> At the 2014 LAAD Defence and Security International Exhibition, Condor displayed its equipment in preparation for both the World Cup and the Olympics. Antonio Carlos Magalhães, Condor’s Institutional Relations Director said, “The factory today works 24 hours a day to handle Brazilian orders that have come in amid expectations (of protests) for the World Cup and afterwards for the Olympics, but also international orders. The company operates in 45 countries today.”<sup>13</sup> Such public showcases of Condor’s products have helped cement the company’s place as a world leader in militarised policing supplies.

Since the international use of tear gas has grown since the Arab Spring in 2011, Condor’s sales have soared. In 2011 and 2012 Condor’s products turned up on the streets of Egypt and Bahrain,<sup>14</sup> leading to international pressure on the Brazilian government to intervene. Responding to these humanitarian criticisms, in 2011 the Brazilian government claimed that no Condor products were being directly shipped to the region. This suggested that sales were going through an intermediary or nearby nation. In 2013, reports of use in Turkey also surfaced.<sup>15</sup> Four years later, Condor products are still turning up in Bahrain, where tear gas is consistently used against protocol, fired directly at people and into enclosed spaces, causing serious injuries and death. Government records show that between US\$10million and US\$50million in sales were made from Condor to Bahrain in 2014.<sup>16</sup>

“We always advise the right escalation of force”, promises Beni Iachan, a senior business analyst for Condor.<sup>17</sup> But in reality, there are reliable reports that Condor’s technologies

continue to be used intentionally by state forces to cause harm including allegedly the systematic torture of people in Bahrain and Egypt.<sup>18</sup> Investigative work done by the NGO Bahrain Watch connected Condor tear gas to the death of an elderly man in January 2015.<sup>19</sup> Abdulaziz Al-Saeed died at his home in Bilad Al-Qadeem due to tear gas inhalation. Photos of tear gas canisters taken outside his home by the “prominent Human Rights Defender Nabeel Rajab” showed the inner projectile of a multiple charge canister listed on Condor’s CS Munitions catalogue.<sup>20</sup>

Expired chemical agents bearing the Condor brand are also being used against civilians, most recently documented on the streets of Venezuela.<sup>21</sup> Tear gas canisters normally have an expiry date. The expiry date lets users know when the ammunition is no longer safe or effective to use. Expired tear gas is dangerous for a number of reasons. First, the mechanism that sets off the canister and grenade can become faulty. This can lead to injury for personnel using the device. It can also make incendiary devices increasingly likely to cause fires. Secondly, the chemical compound contained in the grenade may no longer be approved according to the most recent safety tests and certificates. Thirdly, it can be even more difficult to trace expired gas canisters to their point of sale. This is because less-lethal ammunitions do not have the same kind of tracking procedures as firearms, they can be moved between storage facilities with little or no publicly accessible documentation. Just as it is unclear whether Condor is directly supplying certain countries with these devices, it is also troublesome that expired gas is still in circulation on the streets. Old equipment is meant to be taken out of circulation and destroyed according to careful environmental protocols for waste disposal.

Such misuse of Condor’s products has put its 2010 promise to be a “pioneer in the dissemination of the ‘Non-Lethal’ concept in Brazil...through the controlled use of the escalation of force, without any harm to human rights”<sup>22</sup> under scrutiny. Condor’s for-profit interests now overshadow even rhetorical commitments to civilian safety. While Condor will not publicly divulge details of its profits, according to the CV of its Marketing Director, in 2014 the company had international sales of US\$ 50 million of non-lethal weapons/ammunitions.<sup>23</sup> In recent years, Condor has seen a 33% revenue increase via a new marketing strategy engaging an advertisement campaign around their depiction of the gradual use of force and increased trade show participation.<sup>24</sup> With these initiatives the marketing director has reportedly overseen an average sales growth of 90%<sup>25</sup> and has increased sales from 12 to over 40 countries, with new markets in Asia and Africa.<sup>26</sup>

### 3 • The Problem of Regulation

As with many other countries, Brazil’s regulation of less-lethal weaponry leaves open much room for corruption, error and unaccountability. According to a report by investigative journalist group Publica, all international sales of tear gas in Brazil go through Brazil’s Ministry of External Relations and the Ministry of Defence.<sup>27</sup> However, they do not keep

a record of how they are used after that, and sales figures are not made public. As Publica says, “[i]n this industry, the norm is a lack of transparency.”<sup>28</sup>

Despite their increased use as a deadly force, “riot control agents” remain exempted from the Chemical Weapons Convention that permits toxic gases to be deployed by law enforcement against civilians. While there are some regulations around the trade in tear gas at both national and international levels, how these are implemented varies from country to country. France, for example, has a high domestic production and law enforcement use of tear gas, but strict controls on their export to MENA region and African countries.<sup>29</sup> In other countries trade laws are more lax, making it easier for direct commercial sales to be made with little or no government oversight.<sup>30</sup> Like other technologies that can be classified as policing equipment, these agents often fall outside of arms sales restrictions. This leaves their trade even less regulated than products in the pharmaceuticals industry.<sup>31</sup>

The use of tear gas falls under some guidance from law enforcement bodies, as well as from the United Nations 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) that offer guidelines for policing with riot control. The Weapons Law Encyclopaedia summarises:

*The BPUFF provides that the ‘development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons’ and that ‘the use of such weapons should be carefully controlled’ (Principle 3). The BPUFF also requires that, ‘whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*

- *Exercise restraint in such use and act in proportion to the seriousness of the offence ...;*
- *Minimize damage and injury, and respect and preserve human life;*
- *Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.’<sup>32</sup>*

Although many manufacturers adopt these guidelines in their training and marketing materials, in reality they often do not translate on the ground when it comes to their application by law enforcement officials. Since these basic principles are not legally binding, their ability to regulate effectively the manufacture and use of riot control is limited.

So while the Brazilian government evades responsibility for monitoring how their exports are used, corporate manufacturers like Condor remain protected behind warning labels, despite the increasingly abusive deployment of their products. Since their early adoption in the post World War One period, the lax regulation of tear gas – and later flashbangs, rubber bullets and other riot control devices – has repeatedly been challenged by government officials, United Nations delegates, NGOs and medical associations.<sup>33</sup> While there are a myriad of forces at

play in keeping the trade in less-lethals poorly regulated, a major force shaping legislation and policy around this equipment dates back to Northern Ireland in the late 1960s.

#### 4 • “Consider as a Drug, Not as Weapon”

On 12 August 1969, the Bogside area of Derry, Northern Ireland became the first UK site of civilian tear gassing. In a 36-hour standoff with the police, Bogside residents faced a barrage of 14 grenades and 1,091 cartridges containing 12.5g of CS gas. The gas entered homes, indiscriminately harming children and the elderly. Media reports sent waves of public outcry, leading to the first wide-scale medical investigation into the effects of CS tear gas.<sup>34</sup>

An investigation was conducted between 1969-1971 by a group of medical experts led by the highly regarded doctor, Sir Harold Himsworth. While the Himsworth Committee was deemed independent, all of its members had military ties. One even worked as a researcher for the Ministry of Defence.<sup>35</sup> In the early stages of the review, Himsworth explained to his team that the effects of CS tear gas should be considered “from a standpoint more akin to that from which a drug is regarded than from that from which we regard a weapon.”<sup>36</sup>

This approach was derived from the United States, where testing and development at Edgewood Arsenal followed such clinical protocol. This distinction was both scientific—accounting for the toxicological measurements that determine tear gas “safety”—as well as a public relations ploy. Those people keen to promote and profit from the proliferation of less-lethal gases for law enforcement were keen to keep this class of chemical agents separate from regulations surrounding both small arms and chemical warfare.

Despite the testimony of local general physicians in Northern Ireland who accounted for various injuries and ill health effects, the Himsworth Committee found no reason to condemn the use of CS tear gas. Instead, the report declared CS tear gas safe for the masses without “evidence of any special sensitivity of the elderly, children or pregnant women.”<sup>37</sup> While it recommended caution when CS tear gas was used in enclosed locations, the committee’s findings were interpreted like a safety certificate or a Food and Drug Administration approval label.

The report’s findings caused outrage among many of the general physicians who had consulted on the Committee’s report. Dr. Raymond McClean, a well respected doctor in Derry who went on to become the city’s mayor, challenged the report’s evaluation of CS tear gas as a drug, questioning how the political situation in Northern Ireland could be reduced to a set of side effects and insubstantial sociological factors. Drawing on his own experiences of increasingly violent repression and internment in Northern Ireland, McClean spread word that “the real purpose of this report must remain in serious question.”<sup>38</sup>

Dr McClean was far from alone in his objections to the Himsworth’s committee. In fact, two years before the final report was released, the British Society for Social Responsibility in

Science pre-emptively criticised the enquiry. The Society felt that although the Himsworth committee was already serving as an official investigation team, it was important to look beyond the clinical and include social scientists perspectives “if it is to make the necessary inquires about the effects of the use of CS gas—not merely on the eyes and lungs of those who consulted doctors, but on the whole group of people affected.”<sup>39</sup> But Himsworth had no interest in human experience. Suggestions that the psychological conditions of riot situations could have physiological impacts were brought up in his final report only to be separated out from the “real effects” of CS tear gas. The final report treated bodily reactions as side effects; as if they were the result of personal dysfunctions or rare allergies to an everyday product, rather than human bodies responding to air poisoned by chemical weapons.

Despite objections from within the medical community, for the next two decades the Himsworth Committee report served as a key justification for the international community to continue its deployment and development of riot control agents. Business interests, alongside military and government interests in maintaining social control proved much more powerful than doctors’ records and human rights testimony. Most clinical trials of tear gas—and later those of other less-lethal weapons—were conducted in highly secretive, defence research establishments like Edgewood Arsenal (US) and Porton Down (United Kingdom). This meant that the motivations shaping the study of human impacts of these weapons were determined by military priorities—designed to defend against the enemy combatant, not protect civilians. In addition, these studies were often highly classified and not available to anyone without high levels of security clearance. This means that those in the medical community are unable to scrutinise the studies upon which claims to the safety of less-lethals are based.

While incidents of human rights abuses using less-lethal weapons sometimes entered policy and public debate, the mantra of the Himsworth Committee remained the dominant position. In a June 1988 report, Amnesty International recorded up to 40 deaths resulting from tear gas, as well as thousands of cases of illness. According to the report, as part of their operations, Israeli forces had thrown tear gas into houses, clinics, schools, hospitals and mosques, often deploying it in residential areas with children and elderly people.<sup>40</sup> Upon review of these human rights violations in relation to the US export of US\$ 6.5 million worth of tear gas to Israel between January of 1987 and December of 1988, the Department of State cited the Himsworth Report’s findings that “the margin of safety in the use of CS gas is wide.”<sup>41</sup> They concluded that suspending tear gas shipment “would be inconsistent with US efforts to encourage the use of restraint by Israel and could work to the disadvantage of the Palestinian population in the occupied territories.”<sup>42</sup>

In the 1990s, CS tear gas and pepper sprays proliferated. The mass production of aerosol dispensers made these control agents mobile, coming in handheld form, strapped to the equipment belts of security and law enforcement officers. In the 1990s aerosol pepper sprays began to be deployed to police across the US.<sup>43</sup> Soon after, similar handheld sprays of CS tear gas were dispatched to police across the globe.

In a 1993 catalogue for the Milipol Security Expo, Israeli manufacturer ISPRA explained this blurry line between drugs and weapons, introducing its new line of pepper spray:

*Taking into consideration the sensitivities of the European Public and bearing in mind the new aim of environment preservation, ISPRA has developed the Protectojet Model 5 OC ... OC stands for Oleoresin Capsicum, which is an extract of natural pepper plant. Although the OC is used in the food and drugs industry, it was successfully converted by ISPRA's skilled staff, to be used from Protectojet Model 5, taking advantage of its tremendous power as a tearing and irritating material. Once dispensed from our Protectojet it becomes an effective deterrent device.<sup>44</sup>*

ISPRA's approach to marketing this pepper spray aerosol is emblematic of the less-lethal industry's public relations efforts to make their products sound "organic" and safe, while at the same time, able to cause intense pain.

## 5 • 100 Years of Unaccountability

ISPRA's dual promise of safety and threat has been part of the advertising of riot control agents since they first came onto the commercial market in the 1920s. For example, an early brochure for Lake Erie Chemical Company promised that their tear gas would deliver, "An Irresistible Blast of Blinding, Choking Pain" in which "No permanent injury is possible."<sup>45</sup> Their sales brochure also highlighted the lack of regulation surrounded the trade in tear gas, promising customers that their product "does not come under law prohibiting possession of dangerous and deadly weapons."<sup>46</sup> In other words, Lake Erie used the unregulated status of tear gas to help market the product as a tool for law enforcement.

In this way, early advertisements marketed tear gas on the grounds of effectiveness, while at the same time elevating the moral status of chemical "by-products" from the World War One. "There are many instances on record in which tear gas could have been used with a consequent saving of human life", one claimed.<sup>47</sup> In another, tear gas was purported to be as "innocuous and efficacious as the family slipper."<sup>48</sup> This apparent harmlessness meant that police did not need to wait for orders or for violence to break out before deploying the weapon. Rather, tear gas could be applied without qualms "the moment the mob appears and begins to form."<sup>49</sup>

In the post World War One period promotional writing on tear gas struck a careful balance between selling pain and promising harmlessness. The psychological impacts set tear gas apart from bullets, working to demoralise and disperse a crowd, without firing live ammunition. Through sensory torture, tear gas forces people to retreat. These features pronounced the novelty value of tear gas in a market where previously only the truncheon



and bullets were available to officers. The invisibility and ephemerality of tear gas would also provide for better police-public relations. Alleviated from the backlash that comes with shooting a man, officers could disperse a crowd with “a minimum amount of undesirable publicity.”<sup>50</sup> Instead of traces of blood and bruises, tear gas evaporates from the scene, its damage so much less pronounced on the surface of the skin, or in the lens of the camera.

## 6 • Conclusion

One hundred years later, these weapons, now referred to as “less-lethals” or “riot control agents” are seeing rapid growth. National and international pressure to appear democratic and humane exists alongside civil unrest around the impacts of climate change, austerity, war and growing wealth inequalities. A business information company, Visiongain, published its 2015-2025 market report for police equipment. The report observes an “increasing use of non-lethal weapon systems, even in countries usually invested in lethal-force systems.”<sup>51</sup> As smaller manufacturers team up with larger ones, both horizontal and vertical integration are taking place in the industry. Product partnerships like the one between Ripple Effect and Condor allow for the sale of integrated technology systems (ammunition + launcher), benefiting both manufacturers.

Meanwhile, networks like NewCo Safety’s Network of Competence brings together companies in the Middle East, India, North America, South America and Europe, enabling them to share tenders and negotiate profitable supply chain strategies. In October 2014 Condor appointed Canadian military veteran and engineer Tawfiq Ghadban as regional manager based in Abu Dhabi, responsible for 30 countries across the Middle-East, North-Africa, Central-Asia and Turkey.<sup>52</sup>

Currently, many African and Middle Eastern countries are embracing less-lethals. Since riot control agents are tolerated and regularly deployed by leading Western powers, and often promoted by Western democracies, countries can generally use them to suppress protest without coming under too much international scrutiny. Even in countries like Bahrain, Turkey and Brazil, where human rights groups have condemned the abusive and excessive use of riot control, little has been done to hold governments, police departments or corporate manufacturers accountable.

Because less-lethal weapons are not well regulated under international law or trade policies, it remains relatively easy for security forces to acquire large quantities of them without public scrutiny or human rights oversight. For riot control manufacturers like Condor, a good market is one where you can easily move your product. In business terms, less-lethal weapons create and then fill a growing niche – the demand for political control without too much blood. The appearance of reasonable force is maintained, in part, through the continued fiction that riot control agents are safe – that these are law enforcement equipment and not chemical weapons.

## NOTES

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- 30 • For an overview see Weapons Law Encyclopedia, “Riot control agents,” accessed October 16, 2015, <http://www.weaponslaw.org/weapons/riot-control-agents> and for detailed accounts of regulation in riot control see Omega Research Foundation, “Publications,” accessed October 16, 2015, <http://www.omegaresearchfoundation.org/publications/>.
- 31 • Significantly, the Weapons Law Encyclopedia suggests that more attention could be given to how Human Rights laws are applied to riot control agents, noting that “international and regional treaties covering these rights, including the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the African Charter on Human and People’s Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Inter-American Convention Prevent and Punish Torture” (Weapons Law Encyclopedia, “Riot”). For further discussion see Michael Crowley, “The Use of Riot Control Agents in Law Enforcement,” Chapter 11 in *Weapons Under International Human Rights Law*, ed. Stuart Casey-Maslen (Cambridge: Cambridge University Press, January 2014).
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