

Discrimination and Non-Lethal Weapons; Issues for the Future Military

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Background

- Discussion in this paper is focused on weapons whose effects are INTENDED to not be lethal
 - For clarity, the weapons I am discussing are also NOT intended to permanently injure or maim
 - E.g. Weapons intended to permanently blind or to amputate limbs are not the subject of this discussion
- I use the term “Non-Lethal Weapons” (NLW), but these weapons may also be called soft-kill, less-than-lethal, sub-lethal etc
 - The effects of such weapons are intended to be temporary, relatively minor and reversible

NLW and the Military

- Military personnel are now involved in many operations other than traditional wars
- Such operations may require military personnel to perform duties where current military skills and equipment may not be appropriate
 - E.g. tasks routinely undertaken by police officers
 - Operations which demand that collateral damage be almost entirely eliminated
- NLW may enable military personnel to take more appropriate action in such situations

When Could NLW Be Useful?

- Many obvious situations especially in humanitarian, peace-keeping and counter-insurgency operations
 - Checkpoints
 - Situations involving human shields or when distinctions between combatants and non-combatants are unclear
 - On autonomous robots???



Examples of NLW

- Chemical Irritants & Riot Control Agents (RCAs)
- Flash-Bang & Stun Grenades
- Dazzling LASER devices
- Non-lethal firearm rounds
- Electro-Muscular Disruption Weapons (TASER)
- Under Development - Active Denial System



Active Denial System

- <http://www.youtube.com/watch?v=dmuyLlrSjxI>
- Tested on over 600 volunteers, through over 10 000 exposures to the ADS beam
- Volunteers have included journalists as well as a member of human rights watch
- Attempts also underway to manufacture a man-portable version of the device



Some General Problems with NLW

- Weapons not yet available for many situations where they are really needed
 - E.g. checkpoints & blocking points
- Some NLW may violate current international law
 - E.g. RCAs used a weapon of war banned by the 1993 Chemical Weapons Convention
- May be used as lethal force multipliers rather than lethal force avoiders
 - E.g. used in combination with lethal weapons to increase, rather than decrease, lethality
 - Moscow theatre siege of 2002

Jus in bello Considerations

- Some advocates seem to suggest (implausibly?) that NLW do no harm since they do not kill
- Many proponents of NLW seem to advocate their use in a manner which applies the principle of discrimination **AFTER** the use of force rather than before

A Common(ish) View

“Unlike the use of ordinary weapons, non-lethal weapons deliberately target civilian noncombatants so that the harm they suffer is no longer incidental but intentional. Targeting civilians in this way requires that one subject the principle of noncombatant immunity to a ‘lesser evils’ test that compares a small amount of intentional harm with a greater level of non-intentional harm that comes from using high explosives. If the former is significantly less than the latter, then there are moral grounds to targeting civilian noncombatants with non-lethal weapons.”

Michael L. Gross “The Second Lebanon War: The Question of Proportionality and the Prospect of Non-Lethal Warfare”
Journal of Military Ethics 7(2008)1-22, pp. 15-16.

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 - As used in the Moscow theatre siege of 2002
 - NLW appear to violate the principle of non-combatant immunity if used in this manner
- Lack of discrimination in use of NLW might result in an **INCREASED** overall level of harm

Use & Testing of NLW

- <http://www.youtube.com/watch?v=cNpT-IZLC4A>
- Usually tested;
 - With continual monitoring
 - On healthy individuals
 - In a controlled environment
- Often used;
 - Without continual monitoring
 - On people of varying levels of health
 - In an uncontrolled environment



Mission Creep

- When weapons introduced they are intended for use in certain cases; e.g.
 - An alternative to the use of deadly force
 - An option between “shout” and “shoot”
- But used in a much broader range of cases;
 - E.g. to compel non-violent persons to comply with directions
- Examples;
 - Use of Oleoresin Capsicum (OC) Spray by Qld police
 - Use of TASER by U.S. Police

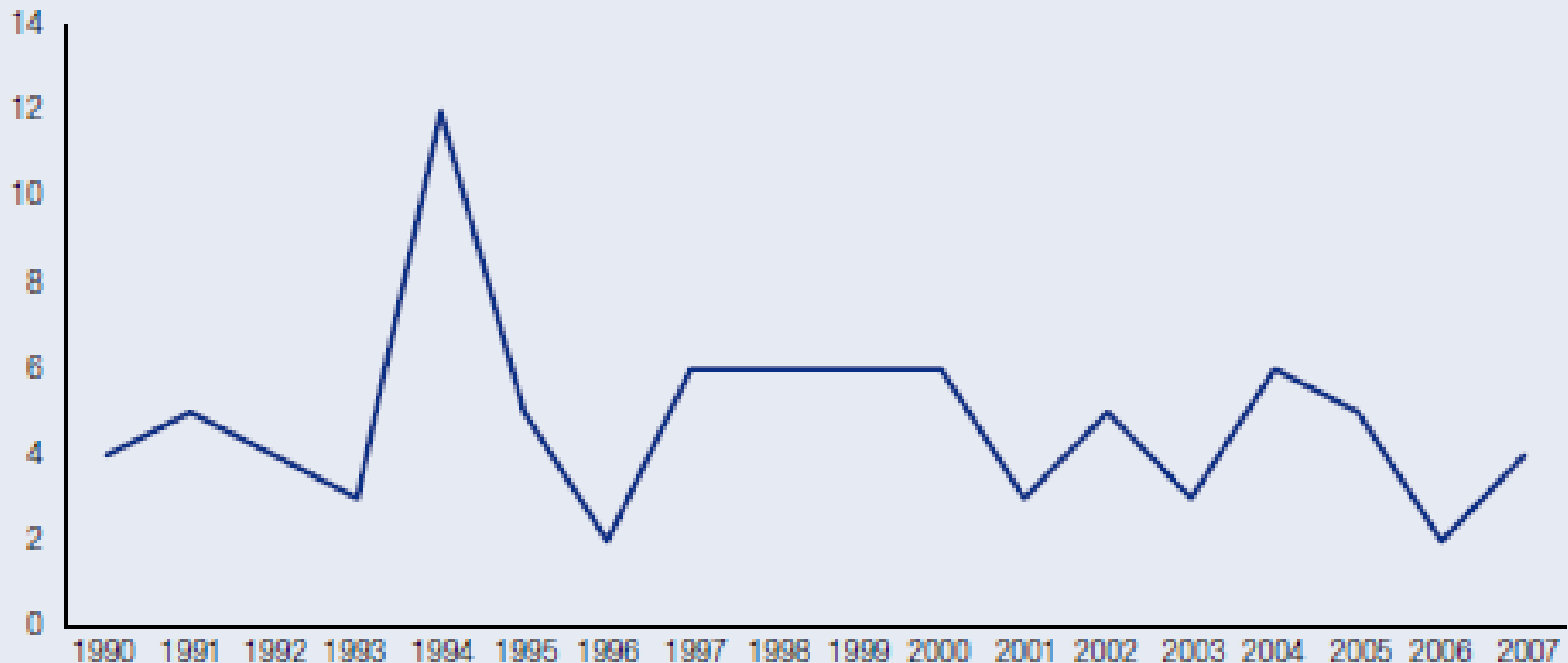
Use of O.C. Spray in Queensland

- State of Queensland (the Sunshine State)
 - Size over 700, 000 sq miles
 - Population approx 4 million, over 70% in greater Brisbane area
 - Approximately 10, 000 police
- Oleoresin Capsicum (OC) Spray introduced in Queensland in 2000 after a one year trial
- Sold to the public as giving police an alternative to the use of deadly force



Use of OC Spray by Qld Police

Figure 14: Police shooting deaths, 1990–2007 (number)



Source: AIC NDICP 1990–2007 [computer file]

- Includes all people shot by police and all people who shot themselves in the presence of police

OC Spray Use in Queensland

- Total number of OC Spray incidents between January 2001 and December 2002 =

2226

- Suspect was armed in only about 15% of cases
- Used routinely to deal with violent and potentially violent offenders
- Often used on non-compliant offenders

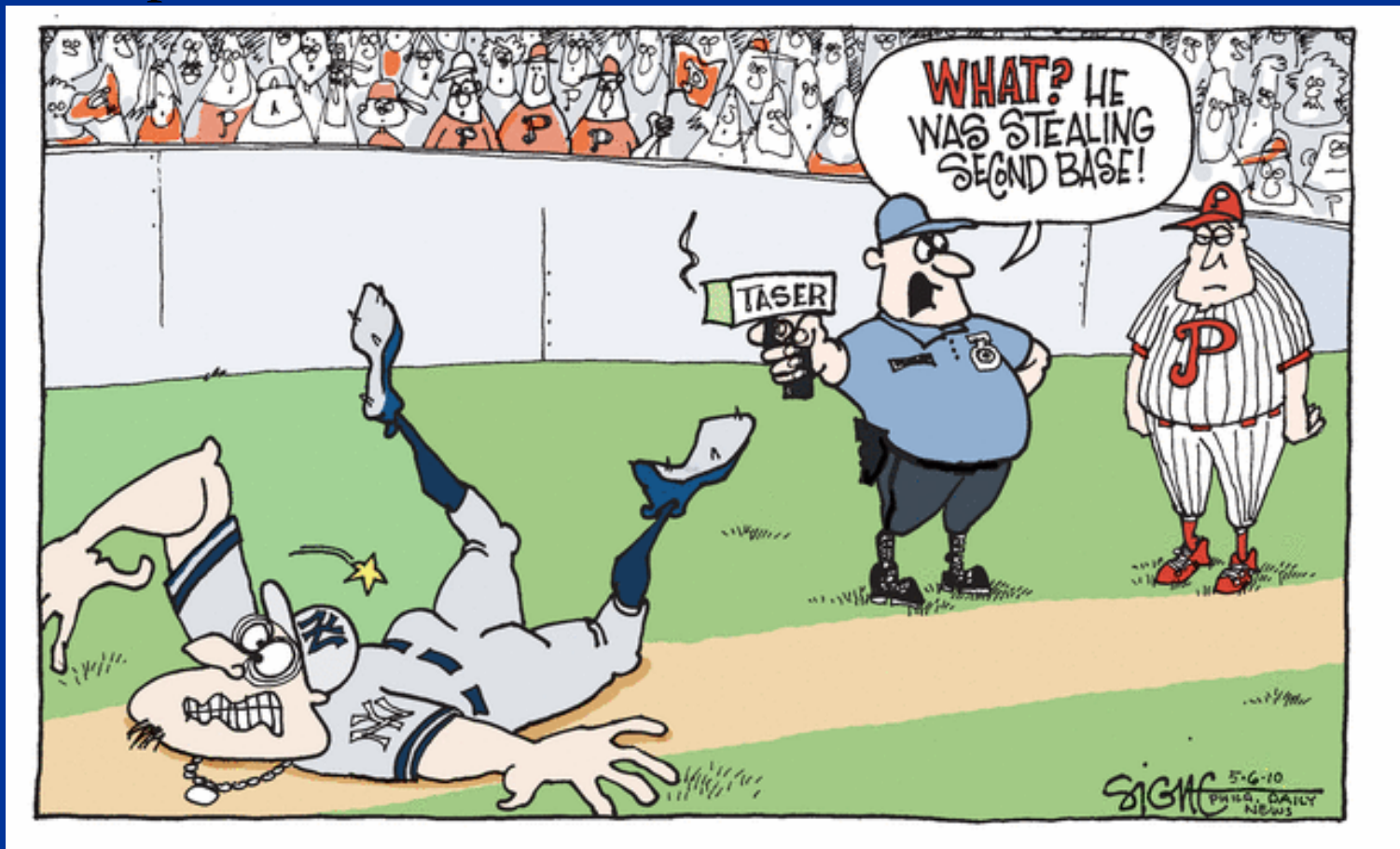
Poor Guidelines for Use?

The Qld Police Operations and Procedures Manual strongly discourages the use of OC spray in certain circumstances. These include:

- against people offering passive resistance (e.g. sitting down and refusing to comply with instructions)
- as a crowd-control measure (e.g. for crowd dispersal at a demonstration or industrial dispute)
- against the driver or occupants of a vehicle where there is a danger of the vehicle going out of control and injuring the occupants or other people
- against juveniles, except in extreme circumstances where there is no other reasonable option to avoid the imminent risk of injury

Use of TASER by US Police

- http://www.youtube.com/watch?v=LJ_Whe6dD-M
 - Texas
- <http://www.youtube.com/watch?v=Uy3CIFjwgBM>
 - Philadelphia



Risk and NLW

- Availability of NLW usually reduces the level of risk to which police officers are exposed, BUT
- Simultaneously reduces the perceived level of risk to which such officers can acceptably be exposed
- It appears that the less highly trained a user is, the more likely they are to either;
 - Inappropriately use NLW, OR
 - Use NLW before it is necessary
 - Sheffield Village, Ohio Incident



- <http://www.youtube.com/watch?v=KWaCD6jIH5Q>

Through My Crystal Ball ...

- If long-range NLW are developed (i.e. suitable for use at military checkpoints etc) and if such NLW are routinely issued to general military personnel, then they will be used on a routine basis
 - They will NOT only be used in situations where troops might open fire if NLW were not available
 - They will lead to civilian deaths which could have (and should have) been avoided
- If relatively reliable anaesthetising NLW are developed they will be used on civilian populations in a relatively indiscriminate manner, in violation of current principles of non-combatant immunity
 - The overall level of harm caused by such operations will be higher than current operations using conventional weapons

The Perfect Non-Lethal Weapon?

- The weapon's effects are temporary and reversible without any medical intervention
- The weapon's effects are unpleasant enough to ensure compliance with the directions of the user
- Perfect non-lethal weapon is also perfect for abuse

