

FACULTEIT DER RECHTSGELEERDHEID
AAN DE RIJKSUNIVERSITEIT TE LEIDEN
F. Kalshoven

LEIDEN, 27th January, 1971.
Hugo de Grootstraat 27

Professor Dr. R.R. Baxter,
Law School of Harvard University,
CAMBRIDGE, MASS. 02138.
(U.S.A.)

Dear Professor Baxter,

Thank you for your kind letter of the 18th inst. and for the enclosed offprint of the article by you and Professor Buergenthal on "Legal Aspects of the Geneva Protocol of 1925", which I read with the greatest interest. It was in particular a pleasure for me to see that you hold the same views on reciprocity as a characteristic of the obligations resulting from the Protocol in view of the reservations attached thereto by a number of States and on the difference between the operation of reciprocity and reprisals, as I have defended in my book.

It may be of interest for you to know that a committee advising the Dutch Minister for Foreign Affairs in matters of disarmament and international peace and security has recently published a report on the desirability of a prohibition against the use of tear gas in armed conflicts. The report treats the question largely de lege ferenda. It arrives at the conclusion that such a prohibition is indeed desirable, mainly on the grounds that the use of tear gas is not militarily indispensable and that any use of gases in situations of armed conflict creates the risk of escalation. The interesting point is, that the committee report advocates this prohibition especially for internal armed conflicts. No such prohibition is thought necessary for situations of internal disturbances, not even if the task of quelling the disturbance is charged to the military: in such situations there will be - so the report says - no danger of escalation and the use of the gas can be strictly controlled. The report does not give a clear indication as to where the one situation ends and the other begins, other than by referring to the formula of "armed conflicts in which armed forces are engaged in hostilities" as a definition of non-international armed conflict. Even, the report accepts a mixing of the two situations: it emphasizes that in the event of an armed conflict the prohibition should only apply to the use of tear gas in the context of the hostilities, and should not cover the use of such gas, even by the military, as an anti-riot agent. I must confess that I have some doubts as to the tenability of these propositions. For your information I add that the title of the report is (in Dutch): "De wenselijkheid van een verbod van het gebruik van traangassen in gewapende conflicten"; it has been published in June 1970, by the "Staatsuitgeverij" at The Hague.

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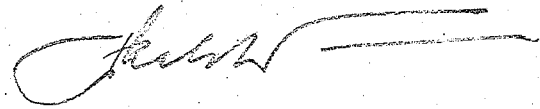
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As for the proofs of my book, you would have been free to keep them or to put them at the disposal of the panel of the American Society of International Law working on the subject of reprisals (as I had hoped would have been clear from my letters of 20 October and 28 December 1970). I am, however, glad that you have already found an opportunity to glance through the work, which will now appear shortly, and I am certainly grateful for your kind comments and wishes.

Yours sincerely,



FK/lc 27-1-'71.