

FOUR QUESTIONS REGARDING U.S. CBW POLICIES

Matthew Meselson
Harvard University
Cambridge, Massachusetts

1. Does the United States consider that all nations, including the U.S., are bound by the rules of the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases and of Bacteriological Methods of Warfare?

Background. Sixty-three nations have ratified or acceded to the Geneva Protocol of 1925, twenty-one of them since World War II. The United States introduced and signed the Protocol at Geneva, but the Senate did not ratify it. However, most jurists hold that the basic rule of the Protocol is part of customary international law, binding on all nations alike, whether they have ratified it or not. Successive administrations since 1925 have voiced support for the principles of the Protocol and in 1966 the United States co-sponsored and voted in favor of a resolution of the General Assembly of the United Nations calling for strict observance by all states of the principles and objectives of the Protocol.

Several official statements suggest that the U.S. now views the prohibitions of the Protocol as binding upon all nations. Other official statements suggest the opposite. United States acceptance of the former view is suggested in a letter of December 22, 1967, from Assistant Secretary of State William B. Macomber, Jr. to New York Congressman Benjamin S. Rosenthal, which states

We consider that the basic rule set forth in this document has been so widely accepted over a long period of time that it is now considered to form a part of customary international law.

In contrast, Army Field Manual 27-10, "The Law of Land Warfare," published in 1956, states that

The United States is not a party to any treaty now in force that prohibits or restricts the use in warfare of toxic or non-toxic gases...the United States Senate has refrained from giving its advice and consent to the ratification of the Protocol by the United States, and it is accordingly not binding on this country.

This view seems also to be reflected in the prepared testimony of Deputy Secretary of Defense Cyrus Vance, presented on February 7, 1967 to the Subcommittee on Disarmament of the Senate Foreign Relations Committee.

"We have consistently continued our de facto limitations on the use of chemical and biological weapons. We have never used biological weapons. We have not used lethal gases since World War I and it is against our policy to initiate their use."

2. Administration officials have put forward the view that international law does not prohibit the use in war of tear gas in order to save lives in situations resembling those under which responsible police forces use tear gas in controlling riots. However, no clear policy seems to exist for other non-lethal chemicals, especially those more powerful than tear gas. Does the United States believe that international law prohibits or restricts the use in war of non-lethal chemicals other than those chemicals used by responsible police forces in the control of riots?

3. Does the United States consider that international law prohibits or restricts the use of tear gas in war when such use is intended to kill - for example, as when tear gas is used in preparation for artillery or aerial bombardment?

Background. On March 24, 1965 Secretary Rusk stated that

"The anticipation is, of course, that these weapons be used only in those situations involving riot control or situations analogous to riot control."

In contrast to the apparent intention of Secretary Rusk and the Department of State, the New York Times reported on February 22, 1966 that in Viet Nam super tear gas was dropped from the air over a large area in preparation for a B-52 raid. The Defense Department was quoted as stating that the purpose of the gas attack was to force Viet Cong troops to the surface where they would be vulnerable to the fragmentation effects of the bomb bursts. On May 10, 1968 the Los Angeles Times reported that U.S. planes had dropped several tons of super tear gas on enemy positions before beginning an infantry assault. On September 10, 1968 the New York Times reported the routine use of super tear

gas to drive the enemy into the open before bombing and artillery attacks. The chemical used in these cases, CS, is currently employed on a large scale, mainly for combat purposes not related to riot control.

4. Is it against United States policy and do we consider that it would violate international law to initiate the use of relatively non-lethal antipersonnel biological weapons?

Background. Deputy Secretary Cyrus Vance, in the testimony referred to above, stated that

"It is clearly our policy not to initiate the use of lethal chemicals or lethal biologicals."

This and other official statements leave unclear the U.S. position regarding the initiation of biological warfare with weapons intended to cause relatively non-lethal diseases.