

POSSIBLE RULES CONCERNING THE USE IN WAR OF NON-LETHAL GAS

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The Geneva Protocol of 1925 prohibits the use in war of "...asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices..." From time to time, (1,2) it has been asked whether or not the prohibition extends to tear gas or to certain other non-lethal gases.

Without attempting to deal with the attendant international legal problems, it may, nevertheless, be useful to consider various alternative rules for governing the use in war of non-lethal gases and to evaluate the workability of such regulations under foreseeable wartime conditions. The following possible rules should be considered:

- A. Any non-lethal gas may be used in war for any purpose.
- B. Only specified non-lethal gases may be used in war and these may be used for any purpose.
- C. Only specified non-lethal gases may be used in war and such use must be confined to non-lethal purposes.
- D. No gases of any kind may be used in war, not even for non-lethal purposes.

- (1) Memorandum on Chemical Warfare, United Kingdom Delegation to the Preparatory Commission for the Geneva Disarmament Conference, Cmd.3747, Miscellaneous No.17 (1930).
- (2) United Kingdom Working Paper on Microbiological Warfare, Eighteen-Nation Committee on Disarmament, ENDC/231, August, 1968.

Whatever rule is chosen, it should possess the following attributes:

1. The definition must be clear. The designation "non-lethal gas" is not clear. Every gas, even tear gas, can be lethal in sufficient dose, or under certain conditions. The lethality of potential war gases forms an almost continuous spectrum, with no clear dividing line along the scale of lethality. This consideration argues strongly against rule "A".

If non-lethal gases are to be permitted, a clear definition could be achieved by specifying the exact chemical formulae of the allowed gases, as envisaged under rules "B" and "C".

2. The definition of gases to be allowed, if any, must not only be clear, it should lend itself to rapid, reliable, and sustained application under battlefield conditions. It ought not unduly tempt violations nor set the stage for escalation to prohibited gases. For example, an attack in which an allowed non-lethal gas is used in close battlefield coordination with conventional high explosive weapons in order to increase the effectiveness

of the latter would tempt escalation to more powerful gases. It would also facilitate arrangements for the employment of prohibited gases, for important aspects of the preparations for gas warfare are the same, whether the gas is poisonous or not.

The use of non-lethal gas in order to enhance the lethality of other weapons would rob the distinction between lethal and non-lethal gases of much of its significance. A largely insignificant distinction is unlikely to be observed either very scrupulously or for very long.

The above difficulties could be alleviated by confining the use of allowed gases to non-lethal purposes, making the actual effect of the regulation governing gas warfare consistent with the physiological distinction between lethality and non-lethality. Such confinement might be attempted in either of two ways. A direct prohibition against lethal use of allowed gases, that is rule "C", might be the more straightforward, but it does not seem likely that any clear line between lethal and non-lethal applications could be established or maintained. Therefore, rule "C" appears to be unworkable.

However, the use of allowed non-lethal gas might

be sufficiently confined to non-lethal purposes by less direct means. Under rule "B", one might allow only those gases that are generally unsuitable for large scale operations in support of lethal weapons. Ordinary tear gas, chloroacetophenone, may be such a gas. Useful for riot control purposes or for use on small areas, its mildness, relatively large weight requirements and its short persistence time in the open field make it generally unsuitable for large scale employment. A restriction under rule "B", allowing only chloroacetophenone, would not prohibit attempts to use this substance for lethal operations, but it might hold such use to relatively low levels without preventing employment for non-lethal purposes.

Although a restriction to tear gas under rule "B" would be quite clear and might provide a workable and lasting standard, there is no question but that the simplest rule of all is "no gas". There was no significant use of gas of any kind in World War II, demonstrating the workability of this standard in a very wide variety of military situations. The case for it has been succinctly stated by T.C. Schelling in his book Arms and Influence (Yale University Press, 1966).

'Some gas' raises complicated questions of how much, where, under what circumstances; 'no gas' is simple and unambiguous. Gas only on

military personnel; gas used only by defeding forces; gas only when carried by projectile; no gas without warning -- a variety of limits is conceivable ... But there is a simplicity to 'no gas' that makes it almost uniquely a focus for agreement when each side can only conjecture at what alternative rules the other side would propose and when failure at coordination on the first try may spoil the chances for acquiescence in any limits at all.

3. Lastly, it is clearly essential that rules covering non-lethal gases be accepted by the community of nations. Without a uniform standard, no standard is likely to last.