

RIOT CONTROL AGENTS AND
UNITED STATES RATIFICATION OF THE GENEVA PROTOCOL

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INTRODUCTION

Before sending the Geneva Protocol to the Senate, we should decide how to deal with problems regarding the military use of (1) harrassing chemicals such as riot control agent CS, and (2) chemical herbicides. The issues raised by these two types of chemicals differ in important respects and merit separate consideration. This paper deals only with the former.

WHAT IS CS?

CS is a white solid which, when dispersed in the air as a fine powder or smoke, is highly irritating to the eyes, nose, respiratory tract, and, at higher doses, to the skin. Symptoms generally pass within minutes after exposure ends but when used in combat, dosages are sometimes high enough to cause severe skin burns and, possibly, occasional deaths. CS was developed by the British as a riot control agent in the 1950's and has been used by police in several countries including the U.S. It has been used by U.S. forces in Vietnam in increasing amounts since 1965. A total of some 14,000,000 pounds was used through 1969. CS is available in two forms: one dissipates within a few minutes; the other remains stable on the ground for several weeks after application, making areas unuseable by unmasked personnel.

POLICY OBJECTIVES

(1) Military. Since its introduction in Vietnam for limited defensive purposes and for situations in which civilians are intermingled with enemy soldiers, the use of CS has grown to cover the entire range of battlefield operations. The largest amount has been used to deny the use of terrain and field fortifications to the enemy. The next most common application is in direct engagement of the enemy during offensive combat operations, such as flushing enemy troops out of bunkers preceding high explosive

fire or infantry assault. The techniques used in these operations are not greatly dissimilar from those developed for more lethal chemical warfare agents.

Contrary to initial expectations, CS has seldom been used in Vietnam in order to spare civilian lives. A field study suggests that this is because mixed groups of enemy soldiers and noncombatants are rarely encountered. Before battles develop, civilians leave. Beyond that, when CS is used on mixed groups of military and civilians, it can have the opposite effect of forcing civilians out of their shelters into the line of fire.

CS is clearly effective against unmasked enemy personnel in certain battlefield situations. Field interviews show that it is considered useful by the majority of our troops who have used it. Still, we have no quantitative measure of how many American lives CS has saved or how many casualties its use has inflicted on the enemy.

If the enemy considered CS to be a serious threat, one expects that he would by now have procured masks from China and the USSR or from the open international arms market. This he has done, but only to a limited extent. In the northern half of South Vietnam NVA regulars are sometimes equipped with the excellent Soviet Shlem mask. Much more often, they carry the somewhat less effective Chinese communist mask. But the masks carried most commonly by Viet Cong forces are only rather ineffective field expedients.

Aside from Vietnam, CS would be useful to U.S. forces in the future if they face enemy personnel lacking masks. This restricts its utility mainly to guerilla wars. However, even for guerillas, the marginal cost of acquiring masks should not be prohibitive if they expect CS to be used against them.

(2) Arms Control. Vietnam marks the first time since World War I that U.S. forces have employed gas of any kind in combat. The sight of the United States Army using gas and wearing gas masks stimulates military organizations in other nations to procure gas masks of their own,

to initiate or expand chemical training, to upgrade chemical cadres, and to acquire chemical weapons. The main arms control risk in our use of CS is this increased worldwide emphasis on chemical warfare, after nearly fifty years of almost total disuse. We do not know if a new line can be established and held, allowing the use of harassing agents that are also used by local police but preventing the use of anything stronger. The difficulty is that the techniques and objectives of military employment of CS overlap substantially with other forms of chemical warfare. The easiest line to hold over the long run would be "no gas".

(3) International Agreement Regarding the Scope of the Geneva Protocol. After the December 1969 resolution in the United Nations General Assembly holding, by a vote of 80 to 3 with 36 abstentions, that the Protocol prohibits the use in war of all toxic chemicals without exception, there is little likelihood of getting widespread agreement to exempt CS from the Protocol. On the other hand, if we are willing to relinquish the use of CS in warfare, we could almost certainly obtain general agreement on the applicability of the Protocol to all anti-personnel chemicals. Although Britain recently declared that CS is not prohibited, the Cabinet was seriously divided and might be willing to accept such a uniform standard if it is re-emphasized that the Protocol in no way restricts the use of riot control agents for preserving domestic order.

The cost of continued division regarding the scope of the Protocol could be to weaken its psychological effectiveness as a barrier to chemical warfare and to make it difficult for us in particular to assume leadership in attempting to prevent the use of chemical weapons.

(4) Achieving Senate Approval for the Protocol. The best assurance of favorable Senate action on the Protocol would be a detailed prior agreement among the four members to whom the rest of the Senate will look for leadership--Fulbright, Mansfield, Scott, and Stennis. Any plan for handling the issue of riot control agents to which all four of these men agree would receive strong support from the rest of the Senate. However, in a letter to the President, Sen. Fulbright has already indicated his preference for an extension of the United States interpretation of the Protocol to include tear gas. If he adheres to this position after the Protocol is

submitted, he can keep it in the Foreign Relations Committee while attempting to build support for his position in committee hearings. Since he controls the timing and topics of hearings, several lines of argument would probably be developed, including (1) growth of the use of CS far beyond its initial justification for "humanitarian" purposes (2) increasing enemy use of gas masks and gas (3) arms-control arguments against CS (4) legal opinion that CS is not permitted by the Protocol, and (5) international opposition to our interpretation of the Protocol. Much of this would provide vulnerable targets for senators who have been unable to find an effective means of expressing opposition to the Viet Nam War and could lead to a bruising debate. Such a development might render the Senate unable to muster a two-thirds vote, or it could keep the Protocol bottled up in committee for months, robbing it of the initial momentum of Presidential submission and possibly imperiling its approval at a later date. If this seems likely, consideration should be given to delaying submission of the Protocol until it can be substantially decoupled from the issues of the war. Since most senators at present know too little about the issue to predict how it will develop in the course of debate, soundings should be conducted especially carefully.

The above discussion anticipates that the Protocol is submitted to the Senate with our present understanding that CS is not prohibited and with no change in the scale and manner of its use in Vietnam. We should consider the opposite possibility. Upon submitting the Protocol, the President could agree to extend our interpretation of its scope to cover riot control agents, and he could order the combat use of CS halted. The more military-minded members of the Senate would probably oppose this move, and the firm support of Sen. Stennis would be required if a two-thirds majority is to be achieved. Considering the recent unanimous vote in the Senate for limitations on chemical and biological weapons, careful soundings should be made before renouncing this option.

This analysis suggests that the Protocol could come into serious difficulty if we either (1) continue our present use and policy for CS, or

(2) couple ratification to a complete reversal of that policy. This brings us to a consideration of alternatives intermediate between the two extremes.

A POSSIBLE COURSE OF ACTION

(1) Defensive use only. Before submitting the Protocol, new guidelines could be issued restoring something like the original doctrine of humanitarian use. Detailed implementation could be left to the discretion of field commanders. However, for many missions, CS would no longer be authorized. These could include artillery and infantry attacks on fortified enemy positions, application to areas remote from American ground forces, and flushing of caves and bunkers. Still allowed would be the use of CS as a defensive tactic where the intent is to avoid contact and not to inflict casualties on the enemy. This change in guidelines would reduce our use of CS to a small fraction of the present amount and consideration should be given to stopping the use of the persistent form of CS altogether. Hand-held munitions such as grenades would be retained, but the longer range and higher capacity munitions would be retired. The policy of returning to our original guidelines can be related to the ongoing reduction in U.S. participation in offensive combat missions and can be described as an enforcement of our original humanitarian guidelines for the use of riot control agents in war.

(2) International Agreement on the Protocol. The above steps could be combined with an understanding that ultimate U.S. policy for the use of riot control agents in war remains flexible and that if a sufficiently large majority of other parties to the Protocol signify in an appropriate manner that they will abide by a uniform interpretation, we would be willing to accept that standard for ourselves. One mechanism for doing this involves the International Court of Justice. A two-thirds vote of the General Assembly during its session next autumn can bring the interpretation of the Protocol before the Court for an advisory opinion. The opinion could then go back to the UNGA, presumably in the autumn of 1971, for an

expression of agreement. The involvement of the Court may well take place whatever we do. If it does, we would avoid an awkward situation by anticipating it now and agreeing to abide by an interpretation that is advised by the Court and approved by the major parties to the Protocol in the General Assembly. Additionally, if we are willing to give up in due course the use of CS in war, the mechanism of the Court would allow us to derive the full arms control benefit of our concession. We would emerge in a strong position to discourage other nations from any employment of anti-personnel chemicals in war.

The combination of revising our guidelines for the use of CS in Vietnam now, and supporting an orderly international effort to define the meaning of the Protocol at a later date, should secure the support of Sen. Fulbright and those who might agree with his position. There is, of course, a hazard that some other members of the Senate would be unwilling to go along with this procedure. Certainly, Sen. Stennis should be carefully consulted on this point before a final decision is made.