

GAS WARFARE AND THE GENEVA PROTOCOL

In November, 1969 President Nixon announced that the U.S. would not use lethal and incapacitating chemicals in war except in retaliation for their use by an enemy, nor use biological agents under any circumstances. Nine months after this widely acclaimed step he sent to the Senate the 1925 Geneva Protocol, which we had signed but never ratified. The Protocol prohibits "the use in war of asphyziating, poisonous or other gases, and of all analogous liquids, materials, or devices." Nearly a hundred nations are parties to the Protocol but the United States, alone among major powers, is not. In presenting the treaty, Secretary of State William Rogers said: "It is the United States' understanding of the Protocol that it does not prohibit the use in war of riot-control agents and chemical herbicides." But the majority of nations that have stated their interpretation of the Protocol assert that it prohibits the use in war of all toxic chemical weapons, including tear gas and herbicides. Both of these substances had been heavily used by U.S. forces in Vietnam. Today, herbicide use has virtually ended, and the use of tear gas is only a small fraction of its 1969 peak of more than six million pounds. Nevertheless, the Administration has not changed the position it presented at the Senate Foreign Relations Committee hearings in March, 1971. Senators suggested that an interpretation that allowed the use of tear gas and herbicides might imperil the Protocol. After the hearings, the Committee sent a letter to President Nixon asking a re-examination of this question. This was hardly an unreasonable request, for Secretary Rogers had at the hearings revealed plans "to initiate a new review of riot control agents and chemical herbicides in the Vietnam conflict." Yet nearly a year later, the Committee has not received a reply, and is unlikely to commend the Protocol to the Senate with this question unresolved.

There is a strong case for a change in the Administration's position. A permissive reading of the Protocol is not justified by the document's historic observance, nor is it consistent with the traditional U.S. stand against any kind of CBW. Moreover, it is likely to weaken the treaty's restraints on more lethal weapons.

Tear gas was the first chemical agent used in World War I, our first and only experience with all-out chemical warfare. Starting in 1914, France and Germany made

massive use of a variety of tear gases in artillery shells and other weapons. In 1915 the gas war escalated following the German use of chlorine against French colonial forces at Ypres. Both sides raced to discover and use toxic agents more effective in defeating the newly introduced gas mask. Of the 275,000 U.S. casualties, more than one-fourth were caused by gas. It is not surprising that a prominent-section of the 1919 Versailles Treaty prohibits German possession of "asphyxiating, poisonous, or other gases"-- wording which was later incorporated into the 1925 Protocol.

Americans strongly favored further treaties. Almost without exception, the public and its leaders sought the prohibition of all chemical weapons, as well as the biological agents that were becoming thinkable. In 1922 a committee of distinguished citizens, chaired by General of the Armies John J. Pershing and including Secretary of Commerce Herbert Hoover, recommended the complete prohibition of "chemical warfare, including the use of gases, whether toxic or non-toxic." The top brass of the Navy advised the Administration that "there will be a great difficulty in a clear and definite demarcation between the lethal gases... as distinguished from those gases which simply disable temporarily." This view was the consistent U.S. policy until only a few years ago.

The U.S. took the lead in fashioning an international agreement. Indeed, we drafted and sponsored the Protocol. It is ironic that, 47 years later, our country could represent a major threat to its success. It is the oldest and most successful arms control treaty now in force. The United States would be a party but for an unfortunate episode that foreshadowed later difficulties in limiting arms. For although the U.S. military leadership generally supported the Protocol, a few saw gas as the "ideal weapon." Officers of the Army's Chemical Warfare Service joined with the American Legion and the industry-oriented American Chemical Society to block the treaty. Few Senators wished to oppose this powerful coalition. The Protocol was tabled and, though it remained on the Senate calendar in later years, was not considered again. In 1947 President Harry Truman withdrew it as "outmoded."

The U.S. had not suspended its support of the Protocol's principles, however. As President Nixon noted in his 1969 announcement, "Since 1925, this proposal has

been affirmed by the United States as a matter of policy." Until 1965 this observance included a self-imposed prohibition of tear gas in war. This fact was obscured at the 1971 Senate hearings when Secretary Rogers quoted a 1930 statement by a U.S. diplomat that seemed to show our opposition to restraints on tear gas. The event in question occurred at a preparatory session of the 1932 Geneva Conference on the Limitation of Armament. But it appears that the official- U.S. Ambassador Hugh Gibson- was speaking without guidance from Washington. There is no published record of any State Department cable to the delegation advising Gibson what position to take. Thus, he began his remarks by saying: "I had hoped that it would not be necessary to make a statement on this subject, as I confess that I am not in a position to offer a sound and valuable opinion on the problem." Two years later, when the Conference itself got underway, the U.S. left no doubt as to its stand. On four separate occasions, we approved of wording that explicitly prohibited "lachrymatory" or "irritant" substances. Indeed, our only reservation was that a ban on tear gas in war not prevent its domestic use-- a position with which all other nations concurred. The Protocol explicitly refers to "use in war" and "methods of warfare." No party to the Protocol and no legal authority has ever argued that the use of riot gas to control civil disorders is prohibited by the Protocol. The U.S. has, thus, always asserted its right to use gas for riot control at home, but distinguished this from its battlefield uses, which we opposed in principle. Our official position, as cabled to Geneva by Secretary of State Cordell Hull in 1933, approved of a complete ban, provided that "it did not prohibit the use of lachrymatory gases for domestic police purposes." This position was to be reflected in national policy and practice until well into the Vietnam war.

The withdrawal of Germany and Japan in 1933 doomed the Conference, but the U.S. continued to press for restraints. In 1937 President Franklin Roosevelt declared: "It has been and is the policy of this government to do everything in its power to outlaw the use of chemicals in warfare." Throughout the Second World War, each side stockpiled huge amounts of chemical agents. But the U.S. never ordered the use of gas, and none was used against us. It is especially significant that not an ounce of the more than one million pounds of U.S. tear gas was ever used against the enemy, though much of it was combat-ready in the form of grenades, mortar shells, and tear gas pots. According to the official history of the Army's Chemical Warfare

Service, in cases such as "attacks upon Japanese caves and bunkers, or upon isolated positions, in the Pacific islands, the gases might have brought about surrender, or have driven the enemy into the open." Similarly, there were many opportunities for tear gas warfare in the Korean War but gas was quite deliberately never used in combat. This strict policy in no way interfered, however, with the use of tear gas off the battlefield.

The first U.S. involvement with gas warfare since 1918 was in late 1964 in Vietnam. Public outcry caused Washington to order a total ban. In March, 1965 Secretary of State Dean Rusk declared that the gas would be used only for "situations analogous to riot control." The original rationale was that tear gas would save the lives of civilians held hostage. But the enemy rarely used "human shield" tactics. Peasants learned to flee from firefights or to take cover. It was soon realized that tear gas could drive them from their shelters into the line of fire. Meanwhile, despite Rusk's assurance that "we do not expect that gas will be used in ordinary military operations," it became a deadly and ubiquitous military tool. It was an open secret that U.S. troops made massive use of gas to expose enemy soldiers to the line of fire. Indeed, before the present official silence, Brigadier General William Stone, then a top Army chemical warfare officer, told the House Appropriations Committee how the troops used gas: "It flushes out Charlie, gets him out of the bushes, and they are able to see who they are fighting." Only a month later, in July, 1969, he was more guarded, telling the House Armed Services Committee: "I would like to think that with all American soldiers, if a Viet Cong comes out of a hole or building and appears to want to surrender, we won't shoot him, but if he comes out firing, we will fire back." In reality such chivalrous use of tear gas has been exceedingly rare. Far more often, it has been used simultaneously with firepower to obtain maximum casualties. Since tear gas munitions were now in the field, their combat use expanded rapidly and the ban was quietly relaxed. A 1968 article in Army Digest asserted that tear gas was "helping to win battles and to achieve military objectives."

Dr. Herbert York, the Pentagon's research chief under President Eisenhower, in May 1970 indicated regret at his former belief "that some chemical and biological

weapons, especially of the non-lethal variety, . . . might, in some degree make war more humane. I have come to realize that the situation is very much more complicated than I had then thought. " If tear gas is less humane than originally thought, it is also disappointing as a weapon. High ranking U.S. officers in Vietnam have privately reported that tear gas has been of little military value. Just as in World War I, gas masks are now standard equipment for enemy soldiers, and the North Vietnamese have begun using tear gas themselves.

President Nixon inherited this problem from the previous administration, which bears major responsibility for this extraordinary escalation in chemical warfare. And it is harder to reverse a policy than to avoid it in the first place. Clearly, the simplest and most workable ban on gas warfare is one that covers all chemical weapons. The presence of tear gas and its stronger cousins on the battlefield clouds the important barrier between today's conventional warfare and the terrible possibilities that were only hinted at in World War I. No war is humane, but by international consensus the use of lethal gas is so undesirable as to merit special precautions. Former national security adviser under Presidents Kennedy and Johnson McGeorge Bundy testified at the 1971 Senate hearings on the Protocol that "a clear and agreed international understanding is much more important than the debatable combat value of herbicides and tear gas."

In December 1969 the United Nations General Assembly disagreed with the U.S. view of the Geneva Protocol. Eighty nations voted for an interpretation encompassing "any chemical agents." The U.S., Australia and Portugal (which uses herbicides against rebel forces in its African colonies) were opposed to the resolution, while 36 nations abstained. This decision might have been even more lopsided but for the decision of some of our allies to politely abstain rather than publicly differ with our stand. The Administration has argued that such a vote cannot determine a question of international law. Indeed, nearly half the parties to the Protocol have not yet indicated their view of the scope of the ban on gas. However, agreement would certainly be almost unanimous if the U.S. were to return to its traditional stand against the use of chemicals in war. If the Administration finds itself unable to adopt a complete ban outright, then an honorable and constructive course might be for the President to determine the opinion of countries that have ratified the Protocol, agreeing to accept their view if it is sufficiently unanimous. Another possible action is to ask

the U.N. to seek an opinion on the Protocol from the International Court of Justice at the Hague.

The present impasse over U.S. ratification may well be preferable to a unilateral decision that might erode the Protocol. And a major fight on the Senate floor might be just as damaging, whatever the ultimate outcome. But we tempt fate by leaving the question open. Our hesitation is hardly worthy of the traditional U.S. leadership and of the Administrations far-sighted initiatives to prevent gas and germ warfare. The responsibility has fallen to us to foster a worldwide consensus on the meaning of the 1925 Geneva Protocol. We must strengthen the world's oldest continuously effective treaty on war.

Christopher Leman
Harvard College, Class of 1973

Matthew Meselson
Professor of Biology
Harvard University

JULY, 1972, PRIVATE CIRCULATION, 6 PP.