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THE UNITED STATES AND THE GENEVA PROTOCOL OF 1925

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This paper outlines the history and present status of the 1925 Geneva Protocol for the prohibition of gas and germ warfare. The principal considerations bearing on possible United States ratification of the Protocol are presented and briefly discussed.

WHAT THE PROTOCOL PROHIBITS

The Geneva Protocol prohibits (1) "the (first) use in war of asphyxiating, poisonous, or other gases, and of all analogous liquids, materials or devices" and (2) "the use of bacteriological methods of warfare."

The Protocol does not prohibit research, development, testing, or production of gas or germ weapons. It does not prohibit the use of such weapons in reprisal against their first use by the enemy. It does not prohibit the use of riot control gases or other agents for police purposes. It does not prohibit the use in war of chemicals used for concealment ("smokes") or of flame throwers, napalm, or other incendiary weapons.

WHAT CONNECTION HAS THE U.S. TO THE PROTOCOL

The language of the Geneva Protocol dealing with gas derives from the peace treaties of World War I, which treated gas warfare as already prohibited and specifically forbade the manufacture and importation of war gases by Germany and her wartime allies. These provisions were incorporated in the bilateral treaties between the United States and the defeated powers.

On the initiative of the United States, an article based on the language of the peace treaties was incorporated in the 1922 Washington

Treaty on Submarines and Noxious Gases. At the urging of President Harding, Secretary of State Hughes, Senator Elihu Root, and a Presidentially appointed advisory committee of prominent citizens, the Treaty passed through the Senate with no dissenting votes. Although ratified by the United States, Great Britain, Italy, and Japan, the Washington Treaty never came into force because France, whose ratification was required, objected to its provisions on submarines.

The United States again pressed for a prohibition against gas warfare at the 1925 Geneva Conference on the Limitation of Arms, proposing language on gas essentially identical to the Washington Treaty. The prohibition was extended to cover "bacteriological methods of warfare" at the suggestion of Poland. The resulting treaty -- the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare -- was signed by representatives of thirty-eight nations on June 17, 1925.

The Coolidge Administration and the various supporters of the Protocol seem to have assumed the Senate would give its consent as readily as it had to the Washington Treaty. Almost nothing was done to prepare the case for ratification or to mobilize public support. Meanwhile, the Army Chemical Warfare Service, the American Legion, the American Chemical Society, and segments of the chemical industry organized the opposition. The arguments made against ratification were that the Protocol would be ignored in time of war and that poison gas was more humane than bombs and bullets. The Protocol was debated but not acted upon by the Senate -- apparently because the majority leader did not have the votes. It remained on the Foreign Relations Committee docket until 1947 when President Truman withdrew it, together with several other long-pending treaties.

By 1939, the Protocol had been ratified by forty-four nations, including all major European powers. At the outbreak of World War II, England,

France, and Germany exchanged assurances that they would abide by the Protocol. In 1943, President Roosevelt declared that gas warfare was "outlawed by the general opinion of civilized mankind" and that "we shall under no circumstances resort to the use of such weapons unless they are first used by our enemies." Japan is believed to have used gas against China before our entry into the war but otherwise gas was not used in World War II. The threat of retaliation provided a sanction; the restraint was reinforced by widespread abhorrence of gas and germs, and by military skepticism regarding their utility; however, it was the Protocol that placed gas and germs in a distinct category and provided a clear standard upon which the belligerents could base their conduct.

Since World War II, the United States has repeatedly declared its support for the no-first-use principle of the Geneva Protocol. In 1952, our representative at the United Nations Disarmament Commission declared our support for "the general objective of the (Geneva) treaty, the effective outlawing of poison gas and biological weapons against human beings". When President Eisenhower was asked at a 1960 press conference whether he planned a change in our no-first-use policy, he said "No official suggestion has been made to me, and so far as my own instinct is concerned, it is not to start such a thing first". During President Johnson's Administration, the United States supported resolutions passed in 1966 and 1968 by the United Nations General Assembly, calling for "strict observance by all states of the principles and objectives of the Protocol" and "inviting all nations that have not done so to accede to the Protocol".

Our statements supporting the objectives of the Protocol have generally stopped short of declaring that we will be legally bound by its provisions. The United States Army Manual, "The Law of Land Warfare", states that the Geneva Protocol is "not binding on this country". However,

in 1967 the Department of State held that "We consider that the basic rule set forth in (the Protocol) has been so widely accepted over a long period of time that it is now considered to form a part of customary international law". Whether or not this position is confirmed, it is clear that we are closely associated with the Protocol by virtue of our leading role in its promulgation, our practice over the years, and our recent statements at the United Nations and elsewhere.

WHAT COUNTRIES ARE PARTY TO THE PROTOCOL

A total of 84 nations are now parties to the Protocol -- 16 of them have ratified since the 1966 United Nations resolution. The parties include all NATO members except the United States, all members of the Warsaw Pact including the Soviet Union, and all nuclear powers (other than the United States), including the People's Republic of China. All major industrial nations except Japan and the United States are parties. The Protocol has been signed but not ratified by the United States, Brazil, El Salvador, Japan, Nicaragua, and Uruguay.

WHAT ARE THE MAJOR SECURITY IMPLICATIONS OF A NO-FIRST-USE TREATY COMMITMENT

While the Protocol places gas and germ weapons under the same prohibition, distinguishing several classes of weapons and their characteristics is useful in order to evaluate the security implications of ratification. This is done both in the context of strategic and of limited war.

Lethal Germ Weapons - These weapons operate by disseminating clouds of lethal disease germs over or up-wind from the target area, to be in-

haled by target personnel. The lethal effects would not occur until a number of days after attack. Very small quantities of disease germs would be sufficient to cover large areas: a light aircraft can deliver enough to kill populations over several thousand square miles.

Although diseases can be chosen that are normally not highly contageous, the extremely unnatural conditions inherent in military employment make it unintentionally possible to spread the disease far beyond the target area or to create a long-term epidemic hazard.

Since the attacker's choice of germs is wide and mixtures could be used, medical defense can be rendered ineffective. Significant protection can be provided only upon advance warning to a population previously provided with protective masks or air-filtered shelters and trained in their use. Reliable early warning systems have not yet been devised. Active defense against the delivery of germ weapons must be able to deal with a variety of offensive techniques, including aircraft and missile delivery and cloud dissemination by offshore ship or submarine or by land-based saboteurs.

We might wish to deter strategic nuclear attack upon ourselves by having the capability to retaliate with lethal germ weapons. The deterent threat posed by our germ weapons would be that of destroying populations. However, since our strategic nuclear forces already provide this capability we have no need to rely on lethal germ weapons and would lose nothing by giving up the option to use them first. Our major interest is to keep other nations from acquiring them.

If the nuclear non-proliferation treaty succeeds, the acquisition of lethal germ weapons would still remain as an alternative means for non-nuclear nations to acquire a strategic capability. Germ weapons that could threaten a large city are much simpler and cheaper to acquire than the corresponding nuclear weapons.

Although many non-nuclear nations could develop germ weapons, none is thought to have done so yet. We reinforce the political and psychological restraints against acquiring these weapons by strengthening the expectation that they will not be used. We do this more effectively with a binding treaty commitment than with statements of de facto policy. A treaty commitment would resolve much of the uncertainty that may have been aroused in the minds of others in recent years by our germ weapons development and testing programs at Fort Detrick, at Dugway Proving Ground and in the South Pacific, and by our construction of large-scale facilities for germ weapons production at Pine Bluff Arsenal.

Lethal Chemical Weapons - Modern lethal chemical weapons are the organophosphorous nerve agents first developed, but not used, by Germany in World War II. They are several hundred times more poisonous than the poison gases of World War I and are lethal when inhaled or when deposited as liquid droplets on the skin. The Soviets and ourselves have stockpiled a variety of tactical nerve gas weapons. Soldiers can be defended against them with masks and protective suits: however, the latter are cumbersome and tiring to wear. Fighting efficiency is severely reduced by the wearing of protective equipment and by the strict observation of various special precautions necessary to survival in a lethal chemical environment.

For tactical use against an enemy equipped with protective gear and able to retaliate in kind, chemical weapons would greatly complicate the battlefield without giving either side a major advantage; therefore, against sophisticated forces, we do not require an option for the first use of lethal chemical weapons. If the enemy possesses them, we remove the incentive for his first use by having protective equipment and chemical

weapons ourselves.

Lethal chemicals could be used in anti-guerilla warfare for territory denial and to attack enemy personnel sheltered from the effects of high explosive and flame weapons. However, the effectiveness of such operations would be largely nullified if the guerillas can devise or obtain protective equipment. Moreover, our first use of these weapons would seriously risk opening up sources for their supply to the enemy and to other dissident forces to which we may be opposed in the future. Lightweight munitions such as mortar cartridges and rockets containing nerve agent would enormously enhance the guerilla's disruptive and destructive capability, both against government troops and base camps and as terror weapons against cities. Government forces would often be compelled to encumber their soldiers and supporting personnel with protective equipment and would be confronted with demands for protection by urban populations. The guerillas, with their ability to disperse and to mingle with civilians, would offer no comparable targets. Therefore, the introduction of lethal chemicals into guerilla warfare would greatly escalate the level of violence and complicate combat operations without offering anti-guerilla forces any advantage.

A concluding but often overriding constraint on the tactical use of lethal chemicals, especially when the battlefield is on friendly soil, is that their large scale employment would inevitably cause heavy fatalities among undefended civilians in the combat zone and out to considerable distances downwind.

Lethal chemical weapons could be produced by non-nuclear nations to provide a limited capability for the attack of urban populations. Under meteorological conditions favorable to the attacker, a medium bomber or converted commercial air transport can deliver enough nerve agent to kill a high proportion of unprotected persons throughout the central region of a

large city - and future technical developments may well lead to the appearance of lethal chemicals with considerably greater area coverage capability than those now available. Moreover, chemical weapons and germ weapons are often considered together, so that proliferation of the former risks proliferation of the latter.

To summarize, where our forces face a lethal chemical threat, we can remove the advantage of their use against us by having the ability to defend ourselves and to retaliate in kind. However, the costs and complications of possible retaliation and of the proliferation of lethal chemical capability make the first use of lethal chemicals by us unattractive at any level of combat. Beyond that, it is in our interest to discourage non-nuclear nations from pursuing the development of strategic chemical weapons. If we can accept a treaty commitment against the first use of lethal chemicals, we undercut arguments in other countries for the development and deployment of these weapons and reinforce the restraints that have acted to keep them from being used.

Incapacitating Germ Weapons - Several infectious diseases which usually cause severe temporary disablement, but normally kill less than one or two percent of the persons infected, have been considered for use as incapacitating germ weapons. Like lethal germs, they can be dispersed over large areas as aerosol clouds to take effect after an incubation period of several days. Masks provide good protection but existing detection systems cannot be relied upon to give warning of surprise attack.

The functioning of these weapons is subject to great uncertainties. A germ weapon designed as an incapacitant might actually cause a very large number of deaths among enemy personnel and intermingled civilians. Conversely, it might cause too little incapacitation to be militarily effective.

Unlike lethal germ weapons, incapacitating ones are not potential deterrents but rather are weapons whose first use we might consider in certain unusual and extreme situations such as the entrappment of a large American force by unprotected enemy troops. In this situation, the employment of incapacitating germ weapons in forward and rear support areas might impede the enemy advance long enough to allow reinforcement or evacuation of our force. Of course, any decision to employ incapacitating germs must take into account their intrinsic uncertainty as well as the escalation and enlargement of the conflict that might result from the outbreak of germ warfare of any kind.

The facilities required for the production and delivery of incapacitating germ weapons are essentially the same as those for lethal ones. Furthermore, the Geneva Protocol does not distinguish between lethal and incapacitating germs nor is there any technical basis for a clear distinction. The long-term military benefit of our accepting the no-first-use commitment of the Protocol, especially when most other important nations have already done so, would be the reinforcement of existing restraints against the acquisition and possible use of all germ weapons, including lethal ones.

Incapacitating Chemical Weapons - These weapons include harassing agents which disable only during the period of immediate exposure as well as chemicals which incapacitate for several days. Both types are available to United States forces in a variety of munitions. The chemical agent is released as an aerosol cloud to be inhaled by target personnel. Gas masks provide adequate protection.

Our standard long-lasting incapacitating chemical, agent BZ, causes unpredictable and often violent behavior and can have severe side effects. Therefore, it is not regarded as a satisfactory incapacitating

agent. Although much effort has been expended searching for an effective long-lasting incapacitating chemical without these undesirable qualities, none has been found.

The principal harassing chemical now provided to the army is CS, developed by the British in the 1950's as a more effective agent than ordinary tear gas for dispersing rioters. Exposure to CS causes intense pain in the eyes and upper respiratory tract, progressing to the deep recesses of the lungs where it causes a feeling of suffocation and acute anxiety. These symptoms generally pass quickly after restoration to fresh air. The lethal dose for man is very much higher than that required to cause intense irritation. Nevertheless, very heavy or prolonged exposures, as may sometimes be experienced in confined spaces, would almost certainly cause permanent lung damage and deaths, especially among infants, ill persons and the aged. No long-term after-effects of moderate exposure to CS have been demonstrated; however, a thorough study of this possibility has not yet been made.

Tear gas and other harassing gases were the first chemical warfare agents employed in World War I. The total amount disseminated during the war was approximately 13,000 tons, equalling the amount of mustard gas used then. During World War II, Germany and the United States prepared large stocks of tear and other harassing gas munitions but refrained from using them. No gas of any kind was used on the battlefield in Korea. The first combat use of harassing gas by any major power since World War I has been in South Vietnam where our forces have employed agent CS since 1965.

Harassing agents can facilitate the attack or capture of unprotected enemy soldiers mingled with civilians when the alternatives would otherwise be to kill civilians or not to attack the enemy. However, these situations are generally uncommon in warfare because civilians usually

flee from firefights and because harassing agents can drive civilians who have found shelter back into the line of fire.

The chief use made of harassing agents in World War I and also in Vietnam has been to assist the conduct of ordinary military operations. Harassing agents are employed against the enemy to upset his fire, to deny him territory, and to drive him from cover to face attack by high explosive and flame weapons. Most of the approximately 7,000 tons of CS disseminated in Vietnam has been employed for these purposes, utilizing a variety of newly developed CS munitions including grenades, rockets, mortar and howitzer projectiles, high capacity spray devices, and several types of aircraft bombs.

The arguments for incapacitating chemicals in war are that they sometimes enable us to deal with enemy soldiers mingled with civilians and that they can enhance the effectiveness of ordinary military operations. However, once such chemical munitions are widely deployed, the occasions on which they might be employed in battlefield conditions or in preparation for bombing strikes greatly exceed the occurrance of mixed enemy population targets. This almost inevitable shift of use of chemical agents to increase enemy casualties in battle or bombardment has occured and has now become routine. Yet this cannot be considered a stable phase because the enemy's resort to the wide use of masks will cut its effectiveness and the eventual use of chemical weapons against us may well effect our operations more severely than those of the enemy.

The further hazard in our employment of incapacitating chemicals in war, particularly when done on a large scale in conjunction with ordinary military operations, is that it stimulates other nations to initiate or expand their own programs for chemical (and possibly germ) weapons and erodes the restraints on their use. Even if the first result is only the deployment of harassing agents on both sides in a future conflict, the introduction of weapons, defenses, and logistic arrangements all suited to

chemical warfare would facilitate the progression to more powerful and deadly agents. Once the long-observed rule of "no gas" has been abandoned, there is no unique and equally simple standard for international agreement on which agents and which means of employment are to be allowed.

THE STATUS OF INCAPACITATING CHEMICALS IN THE GENEVA PROTOCOL

Whether the Protocol prohibits the use of harassing agents and other chemical incapacitants is a subject of some dispute. On the only occasion when nations were canvassed for their views on this point, at a League of Nations Commission in 1930, Canada, China, France, the Soviet Union, and several other nations agreed with the declared British position that "The use in war of 'other' gases, including lachrymatory (tear) gases was prohibited." However, the United States delegate expressed hesitation over any commitment to refrain from the use in war of agencies used in peace time by domestic police and whose use in combat would be "more clearly humane than the use of weapons to which (nations) were formerly obliged to resort." The meeting ended without formal action but with an agreement to discuss the matter again. Two years later, the League Disarmament Conference unanimously recommended that the use of all gases, including tear gas, be prohibited in war. This view was accepted by the United States with the understanding that it did not apply to the use of tear gas for police purposes. However, the discussions were not directed at the Geneva Protocol but at devising a comprehensive disarmament treaty, an attempt that was disrupted by the approach of World War II. The question did not come up again until 1965 when questions were first raised about our employment of CS and other chemicals in Vietnam.

In response to these questions, our representative to the United Nations General Assembly in 1966 adhered to our 1930 positions, stating that the Protocol does not prohibit "the use in combat against an enemy, for humanitarian purposes, of agents that Governments around the world commonly use to control riots by their own people." At the time, this view was contested by the Soviet Union and its allies but not by other members of the United Nations. However, as the scale of CS usage in ordinary military operations has increased, our position has come under mounting attack. This July, United Nations Secretary General U Thant urged that the Protocol be interpreted to prohibit the use of all chemical agents in warfare. Shortly afterwards, India, Mexico, Pakistan, Sweden, and eight other nations at the Geneva Disarmament Conference proposed a resolution holding that the use in international conflict of "any chemical agent of warfare" is contrary to international law. These views have received substantial attention and are likely to have the support of most United Nations members.