

The 1925 Geneva Protocol

SUMMARY AND ANALYSIS

Chemical and biological weapons are two types of weapons of mass destruction that are closely linked historically and to which similar constraints were initially applied. The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, was signed in Geneva on June 17, 1925. Known as the Geneva Protocol, in effect it banned the first use of both chemical and biological weapons. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, known as the Biological Weapons Convention, was signed on April 10, 1972, and entered into force on March 26, 1975. It prohibits the possession of biological weapons. A multilateral convention banning the possession of chemical weapons, the Chemical Weapons Convention, was negotiated in Geneva, signed in Paris on January 13, 1993, and entered into force on April 29, 1997.

Chemical weapons are essentially gas weapons; that is, chemical compounds that are in a gaseous state when activated and which are contained in shells, bombs, or spray tanks delivered by aircraft, artillery, or ballistic missiles. During World War I, both chlorine and mustard gas weapons were used. Although the far more deadly nerve gases had been developed prior to World War II, gas weapons were not used between major combatants in that conflict. Toxins are chemical compounds that are the product of processes involving biological organisms. Botulinus toxin, which causes botulism, is an example. Even though toxin weapons are inert, like chemical weapons, they are considered to be biological weapons because they are the product of biological processes. Biological weapons are essentially types of bacteria that are intended to be delivered in such a way as to cause disease. An example of a biological weapon is anthrax bacteria.

At the invitation of Nicholas II, tsar of Russia, an international peace conference was convened at The Hague in 1899 with the avowed purpose of limiting the increasingly destructive nature of warfare. The first Hague Peace Conference resulted in a signed declaration that outlawed the use of asphyxiating gases in war. The second Hague Peace Conference, in 1907, prohibited the use of poison or poisoned weapons. Thus, poison gas was declared to be an illegal weapon prior to World War I. Nevertheless, it was put to widespread use by both sides beginning at Ypres, Belgium, in 1915. (Some reports suggest that the French initiated the use of poison gases in World War I when they used tear gas grenades against the Germans in the first month of the war.) Before the war was over, the use of this weapon had caused more than 100,000 deaths and more than one million casualties. It was regarded as a particularly noxious weapon by the public, which led to further efforts to ban it in the 1920s.

At the end of World War I, the victorious Allies reaffirmed in the Treaty of Versailles the prewar ban on the use of poison gas in war and prohibited Germany from manufacturing such weapons. Similar provisions were included in peace treaties with Austria, Bulgaria, and Hungary. At the Washington Naval Disarmament Conference in 1922, the United States proposed that similar language prohibiting the use of poison gas in warfare be included in a treaty regulating the use of submarines. The U.S. proposal was adopted by the conferees, and the U.S. Senate subsequently approved the treaty without dissent. It never came into force, however, because the requisite French ratification was never obtained since France objected to the submarine provisions.

In 1925, at a conference held in Geneva on supervision of the international arms trade, the United States proposed a ban on the export of gas for use in war. At the suggestion of France, the conferees decided to negotiate a protocol prohibiting the use in war of poison gas; and pursuant to a proposal by Poland, the protocol was broadened to ban bacteriological methods of warfare as well. The result was the Geneva Protocol.

Signed on June 17, 1925, the Geneva Protocol restated the prohibition laid down previously by the Versailles and Washington treaties and added a ban on biological weapons. The protocol prohibits the use in war of chemical and biological weapons among parties. Being a rule of warfare, rather than an arms control agreement, it does not contain verification provisions. Because of reservations adopted by many parties upon ratification, the Geneva Protocol is generally an agreement prohibiting the first use in war of chemical and biological weapons among parties. The reservation adopted by France upon ratification in May 1926, is instructive in this regard. France declared that it is bound to the protocol's strictures only as in regard to relations with other parties, and it is released from its obligations under the protocol with respect to any enemy state or states whose armed forces or allies do not observe the protocol's provisions. The Netherlands (which became a party in 1930) and the United States adopted reservations to the protocol that bind each country to never use biological weapons against a party in any situation and to not use chemical weapons as long as such weapons are not employed against them. Other countries, such as Germany (1929), Switzerland (1932), and Mexico (1932), entered no reservations at all.

Ratification of the Geneva Protocol by the United States was a special matter, however. Unlike the agreement reached at the Washington Naval Conference, the protocol encountered serious difficulties in the U.S. Senate. The U.S. delegation to the Washington Naval Conference included a U.S. Senator, which may explain that agreement's favorable reception in the Senate. The Senate Foreign Relations Committee reported the protocol favorably, but because of strong lobbying against it by the Army Chemical Warfare Service and the chemical industry, it was not brought to a vote on the Senate floor. Thus, although a significant number of countries, including most of the great powers, ratified the protocol in the late 1920s and early 1930s, by the time World War II broke out, the United States had not. Nevertheless, President Franklin D. Roosevelt announced on June 8, 1943, that the use of weapons covered by the Geneva Protocol had been "outlawed by the general opinion of civilized mankind." Further, the United States believed that, in view of its widespread recognition for almost twenty years, by 1943 the first-use constraint established by the protocol had become part of customary international law. However, the United States still did not ratify the protocol, and in 1949 the Senate returned to President Harry S. Truman a number of older treaties that had not been ratified, including the Geneva Protocol.

In 1966, the United States was criticized in the United Nations (UN) for the use of riot control agents (tear gas) and chemical herbicides in the Vietnam War. Hungary charged that the use of tear gas and chemical herbicides in war was prohibited by the Geneva Protocol, the obligations of which, President Roosevelt had said, the United States would respect. The

United States argued that the protocol did not apply to nontoxic gases and herbicides. In its final form, the resolution introduced by Hungary, which was adopted by the UN General Assembly, simply called for strict observance by all states of “the principles and objectives” of the protocol and for universal adherence to it.

Debate over the interpretation of the protocol continued in 1969. In that year, in a foreword to a UN report¹ on chemical and biological weapons, the UN secretary general appealed for a “clear affirmation” that the protocol prohibits the use in war of all chemical and biological agents. Discussion in the Conference of the Committee on Disarmament (CCD) in Geneva indicated that most countries represented there supported the secretary general’s interpretation, although the United Kingdom argued that only parties to the protocol had the right to interpret it.

The disagreement led to introduction in the UN General Assembly of a resolution proposed by twenty-one countries asserting that the use in war of all chemical and biological agents was contrary to international law. The United States took issue with the resolution’s interpretation and argued that it was inappropriate for the General Assembly to use resolutions to interpret treaties. Nevertheless, the resolution was adopted by a vote of 80 to 3: the United States voted no, along with Australia and Portugal, and thirty-six countries abstained, including France and the United Kingdom.

While the debate was under way, President Richard M. Nixon announced on November 25, 1969, that he would resubmit the Geneva Protocol to the U.S. Senate for advice and consent to ratification. He reaffirmed the U.S. policy of renunciation of the first use in war of lethal chemicals (adding to this renunciation incapacitating chemicals, but not riot control agents and tear gas). He also announced the unilateral renunciation of biological weapons. Some countries began to express support for the U.S. interpretation on chemical weapons. In 1930, during a discussion in Geneva, the United Kingdom had asserted that the Geneva Protocol covered tear gas. In 1970, however, the British foreign secretary stated in Parliament that, while this remained the British position, the riot control agent CS (what the United States was using in Vietnam) was not harmful to humans, unlike older tear gases, and therefore was not covered by the protocol. In the same year, the foreign minister of Japan asserted during debate on ratification in the Japanese Diet that the protocol did not cover tear gas and herbicides. Japan was the first militarily significant state to ratify the protocol after the debate over its interpretation, and it did so with U.S. understanding as to its coverage.

In the transmittal documents dated August 11, 1970, that accompanied the protocol back to the U.S. Senate, Secretary of State William P. Rogers set forth a reservation that provided that the United States retained the right to retaliate in the event of a chemical weapon attack and asserted an interpretive understanding that the protocol did not cover riot control agents and chemical herbicides. The Senate Foreign Relations Committee, however, refused to accept the interpretation contained in Secretary Rogers’s letter. The committee chairman, Senator William J. Fullbright, stated that in his view and that of many committee members it would be in the interest of the United States to either ratify the protocol without “restrictive understandings” or to defer action until this became possible. As a result, the committee took no action on the protocol and held in abeyance approval of the Biological Weapons Convention, which was before it as well.

The merits of this debate are unclear. There is no question that the use of poison gas in World War I caused the protocol to be negotiated, and that the prohibition on the use of

¹ UN Secretary General U Thant. *Foreword to Health Aspects of Chemical and Biological Weapons: Report of a WHO Group of Consultants*. Geneva: World Health Organization, 1970.

poison gas was what the Hague conventions negotiators had in mind. Chemical herbicides were unknown in 1925, so the negotiators could not have had them in mind. Riot control agents and chemical herbicides were not used in Vietnam as weapons themselves, but as adjuncts to other weapons, since used alone they are generally not lethal. The distinction between the two materials is that tear gas, used in conjunction with other weapons, may lead to immediate casualties (somewhat akin to the direct effect of poison gas), but herbicides used to defoliate forests normally would cause casualties over time. On the other hand, the protocol, by its title, prohibits “poisonous, asphyxiating and other gases,” and in 1930 the United Kingdom had taken the position that tear gas was covered (while later exempting CS).

In 1974, the Ford administration began a new effort to obtain ratification of the Geneva Protocol (and of the Biological Weapons Convention). A compromise was painstakingly worked out by the U.S. Arms Control and Disarmament Agency (ACDA), acting as mediator between the Senate Foreign Relations Committee and the Department of Defense: the committee agreed to not rebut interpretation of the protocol coverage presented by the administration, and the administration agreed to “renounce as a matter of national policy” in an executive order first use in war of riot control agents and chemical herbicides. The first use in war of chemical herbicides was barred, except to control vegetation on U.S. military bases and around their immediate defensive perimeters. The first use in war of riot control agents was barred, except in defensive military modes to save civilian lives: examples included control of rioting prisoners of war; situations in which civilians are used by the enemy as a screen; rescue missions, such as retrieving a pilot downed behind enemy lines; and protection of rear-echelon areas in order to, for example, protect convoys from civil disturbances, terrorists, and paramilitary organizations. In a carefully prepared question-and-answer session before the committee, ACDA Director Fred Ikle was asked what legal impediment there would be to subsequent presidents broadening the permissible use of riot control agents and chemical herbicides. Ikle responded that there would be none, but that the policy was “inextricably” linked to Senate consent to ratification of the protocol. Therefore, such a change, he said, would be “inconsistent with the history of the ratification, and could have extremely grave political repercussions and, as a result, is extremely unlikely to happen.”²

Ikle’s testimony was presented on December 10, 1974; on December 12, the committee voted unanimously to report favorably on the Geneva Protocol and the Biological Weapons Convention. The committee, in its report, indicated that it attached particular importance to the exchange between its members and Director Ikle. The full Senate voted its approval, also unanimously, on December 16, 1974. The Geneva Protocol and the Biological Weapons Convention were ratified by President Gerald R. Ford on January 22, 1975, and the U.S. instrument of ratification of the protocol was deposited with France on April 10, 1975, just two months shy of fifty years after it was first signed.

Thus, U.S. ratification of the Geneva Protocol in 1975 raised, but did not settle, some of the interpretive questions related to the by then worldwide prohibition on the use in war of chemical and biological weapons. As foreshadowed by President Roosevelt’s statement in 1943, because of widespread and long-standing adherence to the principles of the Geneva Protocol, the constraints of the protocol—at least the constraints on first use—have become part of customary international law, binding on all states without regard to whether they are parties to it.

² *Arms Control and Disarmament Agreements: Text and Histories of the Negotiations*. Washington, D.C.: United States Arms Control and Disarmament Agency, 1990. pp. 13–14.

PROTOCOL FOR THE PROHIBITION OF THE USE IN WAR OF ASPHYXIATING, POISONOUS OR OTHER GASES, AND OF BACTERIOLOGICAL METHODS OF WARFARE

Signed at Geneva June 17, 1925
Entered into force February 8, 1928

The Undersigned Plenipotentiaries, in the name of their respective Governments:

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the World are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

Declare:

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.

The High Contracting Parties will exert every effort to induce other States to accede to the present Protocol. Such accession will be notified to the Government of the French Republic, and by the latter to all signatory and acceding Powers, and will take effect on the date of the notification by the Government of the French Republic.

The present Protocol, of which the French and English texts are both authentic, shall be ratified as soon as possible. It shall bear today's date.

The ratifications of the present Protocol shall be addressed to the Government of the French Republic, which will at once notify the deposit of such ratification to each of the signatory and acceding Powers.

The instruments of ratification of and accession to the present Protocol will remain deposited in the archives of the Government of the French Republic.

The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other powers which have already deposited their ratifications.

IN WITNESS WHEREOF the Plenipotentiaries have signed the present Protocol.

DONE at Geneva in a single copy, this seventeenth day of June, One Thousand Nine Hundred and Twenty-Five.

**States which have deposited instruments of ratification or accession,
or continue to be bound as the result of succession agreements
concluded by them or by reason of notification given by them
to the Secretary-General of the United Nations:³**

Afghanistan, Angola, Antigua and Barbuda, Argentina, Australia (1ab), Austria, Bahamas (1ab2), Bahrain, Bangladesh, Barbados (2), Belgium (1ab), Belize, Benin, Bhutan (6), Bolivia, Botswana (1ab2), Brazil, Bulgaria (1ab), Burkina Faso (Upper Volta), Burma (1ab2), Cambodia, Cameroon,

³ Dates of signatures and ratifications for each State Party can be found in the appendix.

Canada (1ab), Cape Verde, Central African Republic, Chile (1ab), China, People's Republic of (1ab), China (Taiwan) (8), Comoros (7), Cuba, Cyprus, Czechoslovakia (1b), Denmark, Djibouti (7), Dominica, Dominican Republic, Ecuador, Egypt, Estonia (1ab), Ethiopia, Equatorial Guinea, Fiji (1ab), Finland, France (1ab3), Gambia, Germany (GDR/FRG), Ghana, Greece, Grenada (1ab), Guatemala, Guinea-Bissau, Guyana (1ab2), Holy See, Hungary, Iceland, India (1ab), Indonesia, Iran, Iraq (1ab), Ireland, Jordan (1abd), Kenya, Kiribati, Korea, North, Korea, South (1ab), Kuwait (1abd), Laos, Latvia, Lebanon, Lesotho, Liberia, Libya (1bd), Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives (Islands), Mali, Malta, Mauritius, Mexico, Monaco, Mongolia (1b), Morocco, Nepal, Netherlands (1cd), New Zealand (1ab), Nicaragua, Niger, Nigeria (1ab), Norway, Pakistan, Panama, Papua New Guinea (1ab), Paraguay, Peru, Philippines, Poland, Portugal (1ab), Qatar, Romania (1ab), Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent & The Grenadines, Saudi Arabia, Seychelles (1ab2), Sierra Leone, Singapore (1ab2), Solomon Islands, South Africa (1ab), Spain (1ab), Sri Lanka, Sudan, Suriname (1c4), Swaziland (1ab2), Sweden, Switzerland, Syrian Arab Republic (1d), Tanzania, Thailand, Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Tuvalu, Uganda, Union of Soviet Socialist Republics (later Russia) (1ab), United Kingdom (1ab5), United States (1c), Uruguay

(1abcd) With reservations to Protocol as follows:

a-binding only as regards relations with other parties.

b-to cease to be binding in regard to any enemy States whose armed forces or allies do not observe provisions.

c-to cease to be binding as regards use of chemical agents with respect to any enemy State whose armed forces or allies do not observe provisions.

d-does not constitute recognition of or involve treaty relations with Israel.

(2) By virtue of agreement with former parent State or notification to the Secretary General of the United Nations of succession to treaty rights and obligations upon independence.

(3) Applicable to all French territories.

(4) Applicable to Suriname and Curaçao.

(5) It does not bind India or any British Dominion which is a separate member of the League of Nations and does not separately sign or adhere the Protocol. It is applicable to all colonies.

(6) Deposited accession on June 12, 1978, but the French Government asked that accession take effect on date of notification by them Feb. 19, 1979.

(7) Included in declaration by France. Continued application has apparently not been determined.

(8) Effective Jan. 1, 1979, the United States recognized the Government of the People's Republic of China as the sole legal government of China.