

British Working Paper on Microbiological Warfare, August 6, 1968¹

The United Kingdom Delegation consider that the 1925 Geneva Protocol² is not an entirely satisfactory instrument for dealing with the question of chemical and microbiological warfare. The following points may be noted:

(i) Many states are not parties to the Protocol and of those that are parties many, including the United Kingdom, have reserved the right to use chemical and bacteriological weapons against non-parties, violators of the Protocol and their allies.

(ii) Jurists are not agreed whether the Protocol represents customary international law or whether it is of a purely contractual nature.

(iii) Even if all states were to accede to the Protocol there would still be a risk of large-scale use of the proscribed weapons as long as states have the right to manufacture such weapons and to use them against violators and their allies.

(iv) There is no consensus on the meaning of the term "gases" in the phrase "asphyxiating, poisonous or other gases and all analogous liquids, materials or devices". The French version of the Protocol renders "or other" as "ou similaires" and the discrepancy between "other" and "similaires" has led to disagreement on whether non-lethal gases are covered by the Protocol.

(v) The term "bacteriological" as used in the Protocol is not sufficiently comprehensive to include the whole range of microbiological agents that might be used in hostilities.

(vi) The prohibition in the Protocol applies to use "in war". There may therefore be doubt about its applicability in the case of hostilities which do not amount to war in its technical sense.

2. It is not to be expected that all these difficulties can be easily or speedily resolved. The United Kingdom Delegation suggest, however, that the problem might be made less intractable by considering chemical and microbiological methods of warfare separately. The Geneva Protocol puts them on an identical basis, but—

(i) As indicated in paragraph 1 (iv) above, there is disagreement on whether the ban covers all agents or only lethal ones. It would be extremely difficult to secure agreement on a new instrument banning the use of all agents of chemical warfare, particularly as some of those agents have legitimate peaceful uses for such purposes as riot control.

(ii) Chemical weapons have been used on a large scale in war in the past and are regarded by some states as a weapon they must be prepared to use if necessary in any future war, particularly as they fear they may be used against them. In any event, at the moment, they

¹ ENDC/231, Aug. 6, 1968.

² Senate Foreign Relations Committee, Subcommittee on Disarmament, *Disarmament and Security: A Collection of Documents, 1919-55* (Com. print, 84th Cong., 2d sess.), pp. 169-170.

would be reluctant to give up the manufacture of chemical agents and the right to conduct research, etc., in this field.

3. The United Kingdom Delegation recognize that verification, in the sense in which the term is normally used in disarmament negotiations, is not possible in either the chemical or the microbiological field. The difficulty, as far as the microbiological field is concerned, is that the organisms which would be used are required for medical and veterinary uses and could be produced quickly, cheaply and without special facilities either in established laboratories or in makeshift facilities. As far as chemical agents are concerned it seems unlikely that states will be prepared to forego the right to produce and stockpile such agents for possible use in war unless adequate verification procedures can be devised and applied and problems of definition etc. resolved. However, the use of microbiological methods of warfare has never been established, and these are generally regarded with even greater abhorrence than chemical methods. The United Kingdom Delegation therefore consider that in this field the choice lies between going ahead with the formulation of new obligations and doing nothing at all—in which case the risks and the fears of eventual use of microbiological methods of warfare will continue and intensify indefinitely.

4. The United Kingdom Delegation therefore propose the early conclusion of a new Convention for the Prohibition of Microbiological Methods of Warfare, which would supplement but not supersede the 1925 Geneva Protocol. This Convention would proscribe the use for hostile purposes of microbiological agents causing death or disease by infection in man, other animals, or crops. Under it states would:—

- (i) declare their belief that the use of microbiological methods of warfare of any kind and in any circumstances should be treated as contrary to international law and a crime against humanity;
- (ii) undertake never to engage in such methods of warfare themselves in any circumstances.

5. The Convention should also include a ban on the production of microbiological agents which was so worded as to take account of the fact that most of the microbiological agents that could be used in hostilities are also needed for peaceful purposes. Thus the ban might be on production of microbiological agents on a scale which had no independent peaceful justification. Alternatively, the Convention might ban the production of microbiological agents for hostile purposes, or it might ban their production in quantities that would be incompatible with the obligation never to engage in microbiological methods of warfare in any circumstances.

6. Whatever the formulation might be, the ban would also need to cover ancillary equipment specifically designed to facilitate the use of microbiological agents in hostilities. In addition, the Convention would of course need to include an undertaking to destroy, within a short period after the Convention comes into force, any stocks of such microbiological agents or ancillary equipment which are already in the possession of the parties.

7. The Convention would also need to deal with research work. It should impose a ban on research work aimed at production of the

manufacture of chemical agents and in this field.

ation recognize that verification, in normally used in disarmament negotiations the chemical or the microbiological microbiological field is concerned, is used are required for medical and used quickly, cheaply and without shed laboratories or in makeshift ts are concerned it seems unlikely go the right to produce and stock- a war unless adequate verification lied and problems of definition etc. biological methods of warfare has are generally regarded with even methods. The United Kingdom n this choice lies between f new obligations and doing nothing and the fears of eventual use of ure will continue and intensify

tion therefore propose the early he Prohibition of Microbiological supplement but not supersede the tion would proscribe the use for agents causing death or disease by crops. Under it states would:—

use of microbiological methods of circumstances should be treated as crime against humanity; such methods of warfare them-

clude a ban on the production of worded as to take account of ical agents that could be used in al purposes. Thus the ban might agents on a scale which had no Alternatively, the Convention biological agents for hostile pur- n in quantities that would be in- r to engage in microbiological es.

t be, the ban would also need to 7 designed to facilitate the use s. In addition, the Convention ndertaking to destroy, within a omes into force, any stocks of y equipment which are already

l to deal with research work. It k aimed at production of the

kind prohibited above, as regards both microbiological agents and ancillary equipment. It should also provide for the appropriate civil medical or health authorities to have access to all research work which might give rise to allegations that the obligations imposed by the Convention were not being fulfilled. Such research work should be open to international investigation if so required and should also be open to public scrutiny to the maximum extent compatible with national security and the protection of industrial and commercial processes.

8. In the knowledge that strict processes of verification are not possible, it is suggested that consideration might be given *inter alia* to the possibility that a competent body of experts, established under the auspices of the United Nations, might investigate allegations made by a party to the Convention which appeared to establish a *prima facie* case that another party had acted in breach of the obligations established in the Convention. The Convention would contain a provision by which parties would undertake to co-operate fully in any investigation and any failure to comply with this or any of the other obligations imposed by the Convention would be reported to the Security Council.

9. As regards entry into force of the Convention, the appropriate international body might be invited to draw up a list of states (say 10-12) that it considers most advanced in microbiological research work. The Convention might come into force when ratified by all those states and a suitably large number of other states.

10. Consideration should be given to the possibility of including in the Convention an article under which the parties would undertake to support appropriate action in accordance with the United Nations Charter to counter the use, or threatened use, of microbiological methods of warfare. If such an article were included it might be endorsed by the Security Council in rather the same way as the Council welcomed and endorsed the declarations made by the United States, the Soviet Union and the United Kingdom in connexion with the Non-Proliferation Treaty.

Letter From Senator Cooper to Secretary of State Rusk on the Nonproliferation Treaty, August 12, 1968¹

DEAR MR. SECRETARY: Upon the return of Congress in September, the Senate Foreign Relations Committee will consider in executive session the Non-Proliferation Treaty.²

During testimony before the Committee on July 12, several questions were asked concerning the relationship of the Non-Proliferation Treaty to the Nuclear Test Ban Treaty and certain Acts of Congress. Under the Constitution the Non-Proliferation Treaty will become the supreme law of the land. It would be most helpful if I could be provided with answers to the following questions:

¹ *Nonproliferation Treaty: Hearings* [pt. 2], p. 485. Assistant Secretary of State Macomber replied on Sept. 5 (*post*, pp. 618-625).

² *Ante*, pp. 461-465.