

# Better Warfare through Chemistry?

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Marvin D. Denison

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In the long course of our current efforts with Syria, I constantly kept thinking about the precedent for our actions and kept coming back to a meeting in 1899 at The Hague called for the purpose of disarmament and peaceful conflict resolution. In current atmosphere of full disclosure, I must tell you that what follows is fully vetted, sourced, footnoted, and documented, but not in the version in the secretary's possession. Any comments as to alleged plagiarism will be noted, and as is usual practice in this society, ignored. So, with that brief background — return with me to the 19<sup>th</sup> century.

The end of the century was a remarkable time—progress seemed everywhere! Our splendid little war with Spain had just ended and the Europeans were looking forward to a new century of peace and prosperity with great anticipation. Czar Nicolas II took the initiative to convene a peace conference "with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and, above all, of limiting the progressive development of existing armaments". These parallel aims had several concrete origins. One was to obtain a reduction of military budgets, as the growing rivalry between the great industrialized European empires had begun to pose a major threat to the international system then existing. At the same time, he sought to reduce the suffering of war, especially by members of the armed forces. A parallel objective was to strengthen the systems available for the peaceful settlement of international disputes, especially through arbitration.

The Conference opened on the Czar's birthday, May 18, 1899. Twenty-six Governments were represented. The only Western hemisphere countries at the conference were the United States and Mexico. Brazil was invited but declined saying its "role in the Conference would be of no importance". They produced an amazingly complicated series of three treaties, called conventions, three



declarations, and six resolutions. These conclusions were also the beginning of what would become the norm after such meetings—acceptance with exceptions. The exceptions often modify the effect and virtually negate the outcome. However, the major points were these:

**(I) Convention for the Pacific Settlement of International Disputes**

This convention included the creation of the Permanent Court of Arbitration, which exists to this day. The section was ratified by all major powers, with reservations by three countries, the United State, Romania, and the Ottoman Empire.

*Nothing contained in the Convention may be interpreted as obliging the United States of America to deviate from its traditional policy of abstaining from intervention, interference and intrusion in the political questions or in the policy or in the domestic administration of any foreign state. It is likewise understood that nothing in the Convention shall be interpreted as implying the abandonment by the United States of America of its traditional attitude in respect of purely American questions.*

We clearly still wanted the Monroe Doctrine of the 1820s to carry into the new century.

*The Royal Government of Romania declares that in approving Article 18 of the Convention it does not commit itself in any way to obligatory arbitration.*

*The Ottoman Delegation, considering that the work of the Conference has been an enterprise of great integrity and humanity intended solely to strengthen the general peace while safeguarding the interests and rights of everyone, declares, on behalf of its Government, that it will accede to the overall draft that has just been adopted, on the following conditions:*

1. *It is formally understood that recourse to good offices, mediation, commissions of inquiry and arbitration is purely optional and could not in any circumstances take on an obligatory character or degenerate into intervention;*

2. *The Imperial Government will have to judge for itself in what cases its interests permit it to admit these means, nor should its abstention from them or its refusal to have recourse to them be considered by the Signatory States as an unfriendly procedure. It goes without saying that the means in question could never be applied to questions of a domestic nature.*

## **(II) Convention with respect to the Laws and Customs of War on Land**

This voluminous convention contains the laws to be used in all wars on land between signatories. It specifies the treatment of prisoners of war, includes the provisions of the Geneva Convention of 1864 for the treatment of the wounded, and forbids the use of poisons, the killing of people who have surrendered and the attack of undefended towns or habitations. Inhabitants of occupied territories may not be forced into military service against their own country and collective punishment is forbidden. The section was ratified by all the major powers.

## **(III): Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864**

This convention provides for the protection of marked hospital ships and requires them to treat the wounded and shipwrecked sailors of all belligerent parties. It too was ratified by all major powers.

## **(1) Declaration concerning the Prohibition of the Discharge of Projectiles and Explosives from Balloons or by Other New Analogous Methods**

This declaration provided that, for a period of five years, in any war between

signatory powers, no projectiles or explosives would be launched from balloons, "or by other new methods of a similar nature." The declaration was ratified by all the major powers.

**(2) Declaration concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Poisonous Gases**

This declaration stated that, in any war between signatory powers, the parties would abstain from using projectiles "the sole object of which is the diffusion of asphyxiating or deleterious gases." Ratified by all major powers, except the United States.

**(3) Declaration concerning the Prohibition of the Use of Bullets which can Easily Expand or Change their Form inside the Human Body such as Bullets with a Hard Covering which does not Completely Cover the Core, or containing Indentations.**

These were in the press called "Dum-Dum" bullets. Ratified by all major powers, except the United States.

The question then is why? Our legal position regarding such weapons should have been well established by 1899.

General order #100 (1863-Lincoln)

*Art. 16. Military necessity does not admit of cruelty - that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility, which makes the return to peace unnecessarily difficult.*

The first Geneva conventions were held 1864 to protect the wounded. One attempt was held for a general conference in Brussels in 1874. On the initiative of Czar Alexander II of Russia the delegates of 15 European States met in Brussels on 27 July 1874 to examine the draft of an international agreement concerning the laws and customs of war submitted to them by the Russian Government. Since not all the governments were willing to accept it as a binding convention it was not ratified.

For our purposes, I call to your attention one provision:

Art. 13. According to this principle are especially ' forbidden ':

(a) Employment of poison or poisoned weapons;

Our ideas about weaponry in general evolved along with the technology in the last years of the 19<sup>th</sup> century. The growing industrial complexities also affected the military and their approach to combat. The adaptations of mass production to the battlefield resulted in a variety of new weapons around the turn of the century. Most devastating for the average soldier was the machine gun, particularly the Vicker's gun that would see so much action in WWI. Two problems emerged from the use of this particular type of weapon. First, it produced the "volley" effect of rank order firing of the classic ready, aim, fire of the 18<sup>th</sup> century- but only needing one gun emplacement rather than an entire line of soldiers. Second, it forced soldiers underground to escape the withering fire from the machines.

The logical way to force men above ground was to eliminate breathing in their below ground holes or trenches. GAS, heavier than air, forced men up where the machine gun could have its way.

Now, to the real issue. Since gas is certainly poison and since poison was forbidden by a half century of orders, rules, and practice...why would our delegation to the 1899 conference refuse to support the provisions outlawing such use?

The answer lies in the makeup of the delegation sent to be our representatives at the meeting.

Andrew White, Chair: former history professor, one of the founders and former president of Cornell University. He was our current ambassador to Russia, having previously served in the same capacity in Germany. (Just for fun, he was the first president of the American Historical Association) White noted in his diary “the queer letters and crankish proposals which come in every day are amazing...it goes without saying that the Quakers are out in full force.. The number of people with plans, schemes, notions, nostrums, whimsies of all sorts, who press upon us and try to take our time, is enormous”. He was forced to admit that they were evidence of a feeling more earnest and widespread than anything he had ever dreamed.

One of the strongest delegates was Capt. Alfred Thayer Mahan. For those looking for context—this is the officer and proponent of naval strength and author of the required reading, The Influence of Sea Power on History. Having him at a disarmament conference is much like the much clichéd bull in the china shop. Chairman White noted that having Mahan on hand prevented any of the delegation from being “sentimental”!

As well, William Crozier—soon to be the Ordnance Chief for the U.S. Army joined the conference fresh from serving as inspector-general for the Atlantic and Gulf coast defensive installations. Crozier and British general Sir John Ardagh



were the only advocates against the “Dum-Dum” declaration in which the conferees “agreed to abstain from the use of bullets which expand or flatten easily in the human body.”

(That’s a wholly different paper).

Seth Low: Columbia College President. Businessman in NYC and former mayor of Brooklyn. He endowed the library at Columbia with \$1 million. He will later serve briefly as mayor of the city of New York and end his public career as chairman of Tuskegee Institute.

At the July 4<sup>th</sup> reception during the conference he said:

*The United States of America have taken their name from the United States of the Netherlands. We have learned from you only that 'in union there is strength'; that is an old lesson, but also, in large measure, how to make 'One out of many'. From you we have learned what we, at least, value, to separate Church and State; and from you we gather inspiration at all times in our devotion to learning, to religious liberty, and to individual and National freedom. These are some of the things for which we believe the American people owe no little gratitude to the Dutch; and these are the things for which today, speaking in the name of the American people, we venture to express their heartfelt thanks.*

His mark as a conciliatory figure was very evident at his funeral when both J.P. Morgan and Samuel Gompers were listed as honorary pallbearers.

Frederick Holls: Columbia university Law; NYC. Holls was instrumental in persuading President McKinley to send a delegation to the conference. He was a close friend of Andrew White and his knowledge of French, Spanish and German made his selection as secretary and executive officer at the conference extremely useful to not just our party, but the entire conference. Beyond his passion for the

workings of international laws, he was an accomplished organist, demonstrating his skill at a July 4 reception hosted by the American delegation at the “new Church” (Nieuwe Kerk) in Delft. Its crypts are still in use as the burial place of the Dutch royal family.

Joseph Choate: As a Republican reformer, he roused public support against both the Tweed Ring and Tammany Hall. Dedicated to public service, he was a founder of the Metropolitan Museum of Art and the American Museum of Natural History and an active participant in charitable enterprises. As ambassador to England from 1899 to 1905, he helped forge a new era in Anglo-American relations. Such achievements are representative of his distinguished extralegal career.

President William McKinley named him U.S. ambassador to Great Britain in 1899

Choate's time in London was a pleasant and prestigious one, but he was sometimes known to ruffle the more formal English aristocracy. Once, as guest at a manor home, he was reportedly mistaken for a butler by an English aristocrat, who gave the ambassador the command, "Call me a cab," according to his biographer.

Choate allegedly replied, "You are a cab." He returned to the United States in 1905, at the age of 73, and devoted his final years to the aims of international peace organizations. In 1907 he headed the American delegation to the Second Hague Conference for the reduction on world armaments.

Stanford Newel: a Republican lawyer from St. Paul Minnesota had been our ambassador to the Netherlands for 2 years. Newel graduated from Yale University in 1861 and Harvard Law School in 1864, afterwards practicing law in St. Paul. Newel served as a Delegate to numerous city, county and state conventions. He served as Chairman of the Minnesota Republican Party for six

years, and was a Delegate to the Republican National Conventions of 1884 and 1892.

In 1897 President William McKinley appointed Newel as Ambassador to the Netherlands, and he served until 1905.

In 1903 Newel was named United States Ambassador to Luxembourg. He was the first individual to hold this position, and served while continuing to carry out his responsibilities as Ambassador to the Netherlands.

While this diverse group had various personal opinions and beliefs, they differed to the military men in regards to the provisions relating to weaponry, including poisons.

Future meetings were held in 1907 that extended the discussions. A 1915 meeting was cancelled because of WWI!

Post-war renewed the call for a ban on such poisonous weapons after their devastating success in the war. The Washington Disarmament Conference of 1922 took the initiative of introducing a provision into a treaty on submarines and noxious gases virtually the identical wording of the 1899 gas protocol. The U.S. Senate gave its advice and consent to ratification of this treaty without a dissenting vote. It never entered into force, however, since French ratification was necessary, and France objected to the submarine provisions. Three years later, a Geneva conference adopted another protocol on the subject of poisonous gases.

**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;

Before World War II many countries, including all the great powers except the United States and Japan, ratified the protocol. Although the Senate Foreign Relations Committee favorably reported the protocol in 1926, there was strong lobbying against it, and the Senate never voted on it.

When they ratified or acceded to the protocol, some nations -- including the United Kingdom, France, and the USSR -- declared that it would cease to be binding on them if their enemies, or the allies of their enemies, failed to respect the prohibitions of the protocol.

Although Italy was a party to the protocol, it used poison gas in the Ethiopian war. However, the prohibitions were basically honored during World War II. Here, I must note that the concentration camp executions and flamethrowers used during that war are a different category of usage altogether, but not the topic for tonight. Referring to reports that the Axis powers were considering gas attacks, President Roosevelt on June 8, 1943:

“Use of such weapons has been outlawed by the general opinion of civilized mankind. This country has not used them, and I hope that we never will be compelled to use them. I state categorically that we shall under no circumstances resort to the use of such weapons unless they are first used by our enemies.”

After the war, President Truman withdrew the 1925 protocol from the Senate. Little attention was paid to the protocol for several years thereafter. During the Korean War the Communist side accused the United States of using bacteriological weapons, but at the same time they rejected American proposals for international investigation of their charges. In the Security Council, the Soviet Union introduced



a draft resolution calling on all U.N. members to ratify the protocol. At that time the United States was not willing to agree to prohibit the use of any weapons of mass destruction unless they could be eliminated through a disarmament agreement with effective safeguards. On June 26, 1952, the Soviet resolution was rejected by a vote of 1 to 0, with 10 abstentions (including the United States, the United Kingdom, and France).

In 1966 the Communist countries strongly criticized the United States for using tear gas and chemical herbicides in Vietnam. In the General Assembly, Hungary charged that the Geneva Protocol and other provisions of international law prohibited the use in war of these agents. The United States denied that the protocol applied to nontoxic gases or chemical herbicides. Joined by Canada, Italy, and the United Kingdom, the United States introduced amendments to a Hungarian resolution that would have made the use of any chemical and bacteriological weapons an international crime. In its final form the resolution called for "strict observance by all states of the principles and objectives" of the protocol, condemned "all actions contrary to those objectives," and invited all states to join. Arthur Goldberg, our new ambassador following Adlai Stevenson's death, equivocated on adherence, declaring that it would be up to each country to decide whether or how to adhere to the protocol, "in the light of constitutional and other considerations."

President Nixon announced on November 25, 1969, that he would resubmit the protocol to the Senate. He reaffirmed U.S. renunciation of the first use of lethal and incapacitating chemical weapons, adding a renunciation of biological agents as well.

In a report of August 11, 1970, to the President, Secretary of State William Rogers recommended that the protocol be ratified with a reservation of the right to retaliate



with gas if an enemy state or its allies violated the protocol. He also reaffirmed the position that the protocol did not apply to the use in war of riot-control agents and herbicides. President Nixon resubmitted the protocol to the Senate on August 19.

The Foreign Relations Committee did not accept the Administration's interpretation regarding riot-control agents and herbicides. In a letter of April 15, 1971, to the President, Chairman William Fulbright said many members thought that it would be in the interest of the United States either to ratify the protocol without "restrictive understandings" or to postpone action until this became possible. Action on both the chemical and biological proposals was tabled.

The 1972 election and the controversies in 1973-4 surrounding both Vice President Agnew and President Nixon put any new initiatives in the lap of the new administration.

In the latter part of 1974, the President Ford launched a new initiative to obtain Senate consent to ratification of the protocol (and simultaneously of the Biological Weapons Convention). The new approach was set forth to the Committee by ACDA Director Fred Ikle on December 10, when he announced that the President, while reaffirming the Administration's view as to the scope of the protocol, was prepared "to renounce as a matter of national policy: (1) first use of herbicides in war except use...for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters; (2) first use of riot-control agents in war except in defensive military modes to save lives such as:

(a) Use of riot-control agents in riot-control circumstances to include controlling rioting prisoners of war. This exception would permit use of riot-control agents in riot situations in areas under direct and distinct U.S. military control;

(b) Use of riot-control agents in situations where civilian casualties can be reduced

or avoided. This use would be restricted to situations in which civilians are used to mask or screen attacks;

(c) Use of riot-control agents in rescue missions. The use of riot-control agents would be permissible in the recovery of remotely isolated personnel such as downed aircrews (and passengers);

(d) Use of riot-control agents in rear echelon areas outside the combat zone to protect convoys from civil disturbances, terrorists and paramilitary organizations."

In addition, Dr. Ikle testified, *The President, under an earlier directive still in force, must approve in advance any use of riot-control agents and chemical herbicides in war.*

Two days later, on December 12, the Committee voted unanimously to send the protocol and the convention to the Senate floor and on December 16 the Senate voted its approval, also unanimously.

President Ford ratified the protocol and the convention on January 22, 1975.

Responding to the extensive use of chemical weapons between belligerents in the Iran-Iraq war and the increasing number of chemical weapon-capable states, President Reagan, in an address to the U.N. General Assembly on September 26, 1988, urged the Parties to the Protocol and all other concerned states to convene a conference to review the rapid deterioration of respect for international norms against chemical weapon use. Hosted by France, 149 states met in Paris, January 7-11, 1989, for a Conference on Chemical Weapons Use. In the Final Declaration, the states "solemnly affirm their commitments not to use chemical weapons and condemn such use." Among other things, they also recognized the importance of the Geneva Protocol, reaffirmed the prohibitions as established in it, and called upon all states which had not yet done so to accede to the Protocol.

In all the heated discussions of the past summer regarding Syrian use and abuse of chemicals, I thought it instructive to attempt an explanation of the legal positions of the United States over time. This brief history of our convoluted positions has revealed a couple of central points.

1. While we have postured against such weapons, we have deployed and stockpiled great quantities of an amazing array of such weapons.
2. The United States is destroying these stockpiles with the ultimate goal being their elimination by 2023.

For more than 25 years, we developed and tested chemical weapons destruction methods and procedures, destroying more than 363,000 pounds of chemical agents and more than 40,000 munitions during that time. Almost 30,000 tons were disposed of by last year, but the job is far from finished. A base in Pueblo, Colo., holds 2,600 tons of mustard gas inside more than 800,000 weapons.

(and...now... the KY connection)

The Blue Grass Army Depot, near Lexington. This facility is the army's sole source for "non-standard ammunition" for Special Forces and is the location of final disposition for much of the chemical reserves stored in their bunkers. It currently stores 523 tons of chemicals. At both sites the government is building specialized disposal factories.

The **Chemical Weapons Convention (CWC)** is the current arms control treaty that outlaws the production, stockpiling, and use of chemical weapons and their precursors. The full name of the treaty is the **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction** and it is administered by the Organisation for the Prohibition of Chemical Weapons (OPCW), an intergovernmental organization based in The

Hague, Netherlands. The treaty entered into force in 1997. This is the treaty and organization that is currently overseeing the chemical weapons discovery and destruction operation in Syria and the same organization that just won the Nobel Peace Prize.