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# **A Non-Conventional Approach to Disarmament**

## **Lessons from the BTWC and CWC**

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# Chemical and biological weapons (CBW)

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- Disarmament treaties
  - 1972 Biological and Toxin Weapons Convention
  - 1993 Chemical Weapons Convention
  
- Treaties cover
  - All preparations for CB warfare, i.e., as good as all steps of the armament dynamic
  - Delivery systems + payload (CB agents); support systems

# Nuclear weapons

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- Arms control treaties
  - Bilateral: SALT, START, SORT
  - Multilateral: PTBT, CTBT
  - Non-Proliferation Treaty
- Disarmament treaties
  - INF, Nuclear Weapon Free Zones, Moon and Other Celestial Bodies Agreement, Seabed Treaty, Antarctica Treaty
- Treaties cover
  - Discrete and isolated aspects of armament dynamic
  - Mostly delivery systems (missile + warhead), not payload (fissile & fission materials)
  - Well-defined terrestrial and spatial locations (prevention of armament)

# Armament versus arms control / disarmament

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## ■ **Armament:**

- Process of increasing weapon holdings (quantitative armament), replacing existing holdings with new ones (qualitative armament) or maintaining existing stockpiles (replenishment)
- Assimilation of weaponry in a state's military doctrine

## ■ **Arms control (inc. arms reductions):**

- Management of agreed quantitative or qualitative levels of weaponry → residual (or increased!) capacity
- **Weaponry remains part of military doctrine**

## ■ **Disarmament:**

- Total elimination of a discrete category of weaponry → no residual capacity
- **Elimination of weaponry from military doctrine**
  - Loss of skills on how to use the weaponry over time
  - May be most important impediment to future armament
- Backward and forward-looking dimensions

# Core components of a disarmament treaty viewed as a security regime (*CWC / BTWC model*)

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- **Prohibitions on**
  - Possession and acquisition
  - Use (directly or indirectly)
  - Proliferation (= technology transfers for illicit purposes)
  - Based on 'General Purpose Criterion' to deal with dual-use technology
- **Verification tools**
  - (National technical means)
  - Confidence-building measures
  - International organisation / National authorities
  - Reporting
  - On-site inspections and monitoring
  - *Their development is a core instrument to engage stakeholders in the treaty*
- **Conflict resolution mechanisms**
- **Emergency assistance**
- **'Non-security' clauses (cooperation for peaceful purposes)**

# Individual treaty commitment

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- Early international agreements limiting the use of weapons were void as soon as one party broke the *contract*
- In modern *disarmament* treaties, parties must abide by the obligations ‘*always, under any circumstances*’
  - Obligations stand even if another party breaks its commitments
  - No (re-)armament in case of threat or use of the prohibited weapon
  - No symmetrical deterrence
  - Valid in peace and war

# Security alternatives through non-prohibited means – 1

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- Replace the prohibited weapon category by a non-prohibited one
  - Armament dynamic in another domain
  - Adaptation of military doctrine
  
- Negative security guarantees (reinforced through verification)
  - Prohibition to possess (and use) the weapon
  - Obligation to eliminate weapons capability
  - Non-proliferation obligation

# Security alternatives through non-prohibited means – 2

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- Positive security guarantees
  - Emergency assistance in case of attack or threat
  - Defensive preparations (inc. international collaboration)
  - Technology exchanges
  
- Universality
  
- Diplomacy



# Impact of the perception of technology on policy choices – 1

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- *Value neutral*
- → ‘use’ of technology needs to be controlled
  - Possessor of weapon technology is problem (‘rogue state’ syndrome)
    - Cf. debate in the USA on gun ownership: ‘guns don’t kill; people do’
  - Lays foundation for non-proliferation paradigm
  - Laws of war: only restrict if use *has been proven* to be inhumane

# Impact of the perception of technology on policy choices – 2

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- *Having impact on society*
- → technology itself is viewed as problematic
  - ‘Weapon’ is the problem and needs to be controlled and eliminated
  - Gives preference to arms control and disarmament
  - Laws of war: restrict use *if potential exists* that this may be inhumane ( $\approx$  precautionary principle)

# Core questions

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- Why do we have primarily ***disarmament*** for chemical and biological weapons?
- Why do we have primarily ***arms control*** and ***non-proliferation*** for nuclear weapons?

# *My answer:*

## The 1925 Geneva Protocol – 1

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- Prohibits the use of CBW in armed conflict
  - Limited to contracting parties
  - Void as soon as breach → right of retaliation (made explicit by some states in reservations)
  - Part of the Laws of War / Humanitarian Law
    - No restriction on CBW acquisition / possession

# *My answer:*

## The 1925 Geneva Protocol – 2

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- Suffered several major violations (*but not in BW area*)
- **Nevertheless, it established a strong moral norm**
  - Proponents always had to go the extra mile to justify CBW
  - Prevented far-reaching *assimilation into military doctrines*
  - Prevented further ‘*conventionalisation*’ of use after World War 1 → special authority for use always required
  - Laid the foundation for comprehensive disarmament

# Was the Geneva Protocol relevant when it mattered? – 1

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- Colonial wars after World War 1
- Italy–Abyssinia (1935–36)
- Eve of World War II
  - Balance of terror between British and Germany → threat of strategic bombing with CW
  - Churchill & Roosevelt warning against Germany and Japan based on norm in Geneva Protocol
- No major CW attacks during World War II (causes are diverse), but option other than retaliation was actively considered by UK and US leaders
- Egyptian CW use in Yemen (1960s)
- 1980-88 Iran–Iraq war
  - Major violation of the Geneva Protocol; limited response from the international community
  - 1989 Paris Conference to restore the authority of the Geneva Protocol
  - Added urgency to the CWC negotiations

# Was the Geneva Protocol relevant when it mattered? – 2

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- **Impact:** Violations of the Geneva Protocol *demand* international response and continued to remind the world of unfinished business
- *Intriguing question: Was the Geneva Protocol saved by the atomic bombs?*
  - US preparations for 1946 invasion of Japan envisaged massive use of CW to avoid losses as suffered on Okinawa and Iwo Jima (*Project Sphinx*)
  - US & Japan not party to the Geneva Protocol until 1970s

# Quid nuclear weapons?

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- No equivalent to Geneva Protocol
- Closest: 1996 Advisory opinion by the International Court of Justice
  - Use of nuclear weapons in general against humanitarian law
  - However: could not exclude the '*extreme circumstance of self-defence, in which the very survival of a State would be at stake*'
    - Introduced notion of 'state survival' in international law
    - **Residual legitimising factor for use**, which is absent from Geneva Protocol → also helps to justify armament



# The first step to global zero?

## ***The Andalo Protocol on the prohibition of the use of nuclear weapons in armed conflict***

- Formalised declaration of intent not to use nuclear weapons
  - Simple text → contract type?
- Limited formal and no complex technical negotiation
  - Initiative by small group of states inviting other states to sign up
  - Potential for a large number of contracting parties:
    - Parties to Nuclear Weapon Free Zones
    - Most EU members
- Would start having customary law benefits similar to those of Geneva Protocol
  - Annual resolution submitted to UN General Assembly
  - No initial requirement to disarm or change force posture, but would put absence of nuclear disarmament in sharp relief
    - Cf. impact of UNGA resolutions on Geneva Protocol from mid-1960s onwards in connection to Viet-Nam war, which led to launch of negotiation of BTWC and CWC
  - Would close the rationale of 'existential survival' to legitimise NW
  - Strong moral statement, which will reinforce other arguments against retention of NW

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