HISTORICAL NOTES

CHALLENGING ENTRENCHED POSITIONS

The 1925 Geneva Protocol

The League of Nations' Only Arms Control Agreement

A WORKING PAPER SERIES ON THE HISTORY OF CHEMICAL AND BIOLOGICAL WARFARE
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The ***HISTORICAL NOTES*** working paper series contains passages from an ongoing, wide-ranging research project into the history of chemical and biological warfare whose story starts out with the question when our ancestors began manipulating poison. The research project focusses less on the discussion of individual incidents than on identifying and characterising social, cultural, political and scientific trends that helped to shape narratives of chemical and biological weapon use and the control of such warfare through human and civilisational evolution. It also aims to critically review our present-day (re-)construction and understanding of past events.

Being research in progress, the working papers do not necessarily reflect future conclusions. As part of the overall effort, new sources of information may be found. Or work on other parts of the project may lead to new insights or uncover trends and linkages between historical trends. As a result, certain sections may require revision.

From this perspective, questions, comments or criticism on the ***HISTORICAL NOTES*** are welcomed and encouraged.

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Even so, researching the database remains a complex process. I am therefore grateful to Mr Pierre-Étienne Bourneuf, Scientific Adviser at the UN Library and Archives in Geneva, for introducing me to the database structure and document-naming codes. Given that probes with personal keywords did not always yield satisfactory results, this understanding greatly helped with the systematic searches of discussions and outputs by individual bodies of the League. Pierre-Étienne also helped with several questions, especially in confirming that certain announced actions had not taken place.

Chapter 6 on Poland's role in adding bacteriological weapons to the Geneva Protocol was perhaps the most daunting challenge of this research project. For decades, experts in chemical and biological weapons have been speculating without much success on why the country, and more specifically, General Kazimierz Sosnkowski, pushed the emerging security challenge during the Arms Traffic Conference. A broad picture of Poland's interests began to emerge from a comprehensive literature survey. However, without the research assistance into the Polish archives by Ms Paulina Gonciarz of the Ministry of Defence in Warsaw, the chapter would have lacked much of its granularity. Her comments on early drafts and sending of Polish research articles, together with their translation into English, proved immensely helpful. My appreciation also goes to Dr Robert Peterson of the Danish Statens Serum Institut. His comments throughout the writing of

1. Almost 100 years old: Digitizing documents from the League of Nations archives, https://www.unops.org/news-and-stories/stories/almost-100-years-old-digitizing-documents-from-the-league-of-nations-archives. Accessed 21 July 2025.

the chapter, as well as his sharing of his own searches for Polish documents and press items, added not only texture but also depth to the narrative. Our frequent email exchanges also advanced my understanding of Poland's predicament in the 1910s and 1920s.

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Still, all responsibility for the contents in this issue of *Historical Notes* is mine only.

Jean Pascal Zanders
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Introduction

On Wednesday, 17 June 1925, the Conference for the Supervision of the International Traffic in Arms successfully concluded six weeks of negotiations with three agreements. One of them was the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*.[1] Of the forty-four participating delegations, twenty-six possessed plenipotentiary power to sign the Protocol before the closing of the Conference. Another twelve states affixed their signatures and ratified the document before its general entry into force on 8 February 1928.[2] As of June 2025, 147 states are party to the Geneva Protocol, as the legal instrument is commonly known.[3]

Despite being a mere single-page long, the agreement has limited the use of chemical weapons (CW) in armed conflicts and all but prevented the deliberate spread of disease as a method of warfare. Being part of the laws of war, it did not forbid the development, production and possession of chemical and bacteriological (biological) weapons (CBW). Still, it paved the way for the 1972 Biological and Toxin Weapons Convention (BTWC) and the 1993 Chemical Weapons Convention (CWC). In addition, it provides the legal foundation for the UN Secretary-General's Mechanism to investigate alleged CBW use. The 1998 Rome Statute, which established the International Criminal Court, uses Protocol language to declare CW use a war crime. (A later amendment added BW use to the list of war crimes but utilised the reference to biological and bacteriological agents in the BTWC.)

While today nobody contests the Geneva Protocol's contribution to the development of the norm against CBW, little is known about the factors that contributed to its emergence and negotiation. Why was the document a protocol and not a treaty? Given the supposed widespread abhorrence against CW after the massive and systematic use of gas

1. The full text is reproduced in Annex 1.

2. As the final paragraph indicates, the Geneva Protocol enters into force for each signatory Power on the date of deposit of its ratification. From that moment, each Power will be bound as regards other Powers that have already deposited their ratifications. The date of 8 February 1928 is the designated day of general entry into force of the agreement.

3. In documents of the League of Nations and contemporary academic literature, 'Geneva Protocol' refers to the Protocol for the Pacific Settlement of International Disputes, Approved by the Assembly of the League of Nations on 2 October 1924. *American Journal of International Law*, 19:1 (January 1925), Supplement: Official Documents, 9-17. This Protocol never entered into force.

during the First World War, why did it take almost seven years for the international community to translate this repugnance into a global ban? Why did the centuries-old customary prohibition of poison use, codified for the first time at the 1899 Hague Convention and restated at the 1907 Hague Convention, no longer suffice? How did the negotiators, seemingly out of nowhere, decide to include disease as a method of warfare in the Protocol? This issue of *Historical Studies* aims to answer these and many other questions.

Overview

Chapter 1 traces the evolution of the norm against the use of poison and poisoned weapons from Antiquity through the Middle Ages and the Early Modern Times to their codification in international law in 1899. However, the 1899 Hague Peace Conference yielded a second document addressing the use of poisonous substances in war, the Declaration (IV, 2). The latter accord used the different but related terminology of 'asphyxiating' and 'deleterious' gases. It pointed to a semantic bifurcation that unfolded through the 1800s. 'Poison' became associated with the naturally occurring toxic substances, whereas the newer terms referred to human-made toxicants. The harmful exposure of factory workers, the public and the environment to these substances gave rise to specific national legislation and international treaties in the 19th century. The proposal to ban the new toxicants from the battlefield had its roots in those regulations. Still, not everybody was convinced that these industrial chemical compounds would be less humane than other modes of warfare, more so as nobody had yet used them as a weapon. The refusal of two participating states to sign the Declaration confirmed the semantic split. From then on, poisons and asphyxiating or deleterious gases would follow their separate trajectories of prohibition, the latter leading to the Geneva Protocol.

The ***second chapter*** discusses the crafting of the 1919 Treaty of Versailles, which established the League of Nations and contained the peace arrangements with Germany. The League was eventually the institution under whose auspices the Geneva Protocol would be negotiated. However, nothing in the Covenant indicated that the regulation of warfare was a topic in which the international organisation could be involved. The League's ultimate aim was the elimination of war, not a particular type of warfare. In stark contrast to the League's lofty ambitions, the victors imposed a coercive disarmament regime on Germany. The strict conditions had multiple consequences, both for the German population and the Allies. In Germany, the so-called war guilt clause and the punitive reparations caused a lot of resentment. In the victorious countries, the spoils of war did not meet the expectations that governments had promised to recompense for the suffering caused by harsh war conditions. Moreover, President Woodrow Wilson disagreed fundamentally with the European demands, a significant factor in the US decision

not to ratify the Treaty of Versailles and negotiate a separate peace treaty with Germany. The League tried to fulfil its primary objective by seeking the lowest levels of national armaments and developing an arbitration system to resolve any disputes among its members. It also sought to establish a collective security system based on mutual assistance. For France, a neighbour of Germany, the latter setup was a fundamental prerequisite without which it refused to contemplate any reduction in armaments or military personnel. Great Britain and the United States baulked at transferring their sovereign authority on declaring war to an international body.

Chapter 3 describes how the issue of chemical warfare was introduced into the discussions in the League of Nations committees. It first examines Germany's prohibition on possessing, developing, producing, or importing CW as outlined in the Treaty of Versailles. The paragraphs in Articles 171 and 172 drew on the language in the Hague Declaration (IV, 2). They also contained the first legal explication of a CW, which comprised three parts and, as such, formed the forerunner of the definitions of a BW and CW in the BTWC and CWC. A couple of years later, many delegates came to regard the proscription as applying to other League members as well, which would influence the nature of CW-related discussions.

Meanwhile, the structure of the League of Nations and its principle of transparent decision-making were to play an important role. None of the former belligerents felt rushed to eliminate chemical warfare, and they continued their CW programmes. While the League Council ensured the interests of the major powers, the Assembly represented all League members on an equal footing. Moreover, the Assembly allowed delegates to raise matters of great urgency or public interest. Thus, chemical warfare entered the debates, and the responses given by the Council would provide clues on how to rephrase the CW problem so that it became more aligned with the League's core activities. A primary line of resistance to addressing CW was that the League was not in the business of developing new war regulations.

At the end of 1921, the United States convened the Washington Naval Conference to seek arms reductions among the five major powers: France, Great Britain, Italy, Japan and the United States. One of the committees on novel modes of warfare addressed asphyxiating or deleterious substances. All five delegations signed the resulting treaty, which addressed both submarine warfare and noxious gases, early in February 1922, and all except France ratified it. The agreement also promised that upon its entry into force, the United States, as the depositary state, would invite all other states to accede to it. The document, whose Article V contained the language that was to form the core of the Geneva Protocol, would dramatically change the nature of the CW debates in the League. Not only had the great powers committed themselves to a new rule of warfare, which meant that the League did not have to negotiate it, but the promise of universalisation also

galvanised the Assembly to ensure that all League members would adhere to it once the US invitation arrived.

Because France refused to ratify the Washington Treaty due to its disagreement with the provisions on submarine warfare, the US invitation never arrived. As analysed in ***Chapter 4***, this did not deter the proponents of abolishing chemical warfare in the Assembly. When more studies on future warfare came out and people began appreciating the implications of future (aerial) warfare with toxic chemicals for civilian populations, the new debates offered opportunities to reframe the CW question as one of technological development and armament that were contrary to the core objectives of the League of Nations. The committee on noxious gases in Washington reinforced those sentiments. It had concluded that it was impossible to regulate chemical warfare or CW production because most toxic compounds had essential industrial or commercial applications. Accordingly, it proposed to legalise chemical warfare against military land and naval targets and limit the restriction to civilian population centres only, all the while recognising that discrimination between combatants and non-combatants would not always be possible. US intervention blocked those recommendations, and the Conference adopted an alternative resolution that became Article V of the Washington Treaty.

With future threat scenarios in mind, the Assembly requested a study into the prospect of future chemical warfare agents. Meanwhile, the question of bacteriological warfare had also entered the debates, so the analysis was to include those possibilities as well. It contained the assessments and recommendations of invited chemists and bacteriologists. In 1924, the League approved the report and recommended that League members publish and distribute it to their population. No further action was undertaken.

That year, the first phase of the League came to an end. The immediate future foresaw the negotiation of an arms trade convention under the League's auspices in the spring of 1925, as well as preparations for a treaty regulating the armaments industry and, in a more distant future, a general disarmament treaty.

The Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War began on 4 May 1925. Six weeks later, on 17 June, diplomats lined up to sign not just the Arms Traffic Convention but also the Geneva Protocol. ***Chapter 5*** describes how US and Polish amendments to add CW and BW to the proposed regulation of the international arms trade, one of the League's core tasks, eventually led to the negotiation of a separate agreement outlawing chemical and bacteriological warfare. The process was complicated because delegates had to confront several profound questions, not all of which they were able to resolve. Due to the Conference's focus on weapons and munitions rather than on the humanitarian consequences of their use on the battlefield, the delegates had to engage with the international legal status and technical properties of CBW. The core of the debates centred on CW; the nature of the Polish amendment meant that any agreement on CW would apply *mutatis mutandis* to BW. At

the Washington Conference, diplomats had already encountered the dual-use nature of toxic chemicals and decided that, therefore, they could not prohibit the production of poisonous agents. It was one of the reasons why the committee on noxious gases suggested legalising chemical warfare. To regulate the international transfer of toxicants, the Geneva meeting had to come up with an approach to differentiate between legitimate poisonous substances and those used in warfare. It drew extensively on the scientific assessments by the chemists and the bacteriologists consulted by the League in 1923 and 1924. The task proved impossible because the chemical compounds were the same.

A legal corollary of the dual-use question was whether it was possible to regulate the international trade in toxic chemicals without an international legal regime banning chemical warfare. The delegates concluded that despite the Treaty of Versailles and the Washington Treaty, which had not yet entered into force, there was no such global ban.

A third serious matter concerned the security implications of the proposed trade prohibition for smaller states with limited industrial capacities. They potentially faced a situation in which nations with a large and advanced chemical industry could manufacture CW without any limitations. At the same time, the proposed trade restrictions would deny smaller nations the ability to acquire a retaliatory capacity unless they initiated CW production themselves. The latter suggestion went against the League's core objective of armament reductions and the limitation of arms production.

Due to these questions, the US CW proposal became detached from consideration of the Arms Traffic Convention, and it evolved into a separate document derived from Article V of the Washington Treaty. In the final stages of the Arms Traffic Conference, Poland reminded the participating states of its proposal to add bacteriological warfare to any agreement on CW in an impassioned speech. No delegate objected.

The ***sixth chapter*** delves deeper into how bacteriological methods of warfare became an international security concern on a par with chemical warfare and why exactly Poland was such an ardent proponent of its inclusion in any instrument regulating CW. Different factors played a role. During the First World War, several acts of sabotage involving cultivated bacteria occurred. While most incidents remained unknown at the time, the discovery of several vials with pathogens in the German legation in Bucharest was widely publicised.

During the First World War and the wars with Russia, Poland suffered several pandemics – typhus, cholera and the so-called Spanish influenza – killing hundreds of thousands of people and leaving the future independent state destitute. The head of the Polish delegation in Geneva, General Kazimierz Sosnkowski, played a central role in the Arms Traffic Conference. As a person firmly committed to Polish independence, he had led several military campaigns against Russian Imperial and Bolshevik forces amid the outbreaks of disease. The so-called Spanish influenza touched him personally. When Poland achieved independence after the First World War and gained international recognition

through its membership in the League of Nations, the country was aware of its precarious security condition, sharing long borders with Germany to the west and Russia to the east. It therefore sought maximal mutual security assurances. Unlike Germany, Bolshevik Russia did not participate in the Arms Traffic Conference and would hence not be bound by any agreement emerging from the Geneva Conference.

In 1924 and 1925, rumours in the international press, whether true or not, suggested that Russia had embarked on an offensive BW programme. So, when a technical amendment to include CW in the deliberations evolved into a separate international agreement laying out an overall restriction on chemical warfare, Poland insisted on the inclusion of pathogens as an emerging weapon in the Protocol as part of an overarching international security guarantee against a threat from its eastern neighbour.

The ***concluding chapter*** reflects on the contributions of the Geneva Protocol, the only significant achievement in weapon control by the League of Nations, to international security and disarmament, particularly to the BTWC and CWC, as well as other international instruments that draw on its ban on chemical and biological warfare.

1. The Geneva Protocol and its antecedents

The Geneva Protocol is barely one page long (See Annex 1). It does not call for the reduction or comprehensive elimination of chemical and bacteriological weapons (CBW). Instead, it limits itself to outlawing the use of both arms categories on the battlefield among states that have ratified or acceded to it. By addressing the moral and humanitarian implications of the use of toxic substances as a weapon of war, it is a typical legal instrument of its time. Yet, the terminology the negotiators utilised foreshadowed the need to resolve the challenges posed by the material characteristics of the agents and their everyday industrial and commercial utility. In 1925, the delegates realised that before they could disambiguate the dual-use dilemma and restrict the development, production, and trade of poisonous chemicals for warlike purposes, they had to universally delegitimise their use in battle. The agreement thus stood at the threshold of the shift towards arms control and disarmament.

The Geneva Protocol frames the prohibition on CBW use in two paragraphs. The opening preambular paragraph reiterates the existing disapprobation of chemical warfare and sets out the contemporary understanding of a chemical weapon:

> 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 civilised world [...].

The first operative clause invites states not yet party to an earlier international agreement banning chemical weapon (CW) use to join the prohibition and extends this prohibition to the use of bacteriological methods of warfare:

> 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 latter passage also specifies that ‘the High Contracting Parties... agree to be bound as between themselves according to the terms of this declaration’. This formulation has two significant consequences. First, the Geneva Protocol is a contract, meaning that if one party breaks it (by using CBW against another party), then the agreement no longer applies. Second, the phrase ‘agree to be bound as between themselves’ reinforces the

document's contractual nature. The parties pledged to each other rather than having committed themselves individually to the international rule. Given that the Protocol does not restrain the development, production and stockpiling of CBW, the implications are twofold. If a belligerent violates the agreement, then another party to the conflict has the right to retaliate with CBW. Furthermore, the Protocol does not constrain a belligerent if the adversary is not a party to the agreement, is not recognised as a sovereign state (e.g. a colony), or a non-state entity (e.g. an insurgent).

Multiple governments emphasised the point by expressing reservations or clarifying upon ratification or accession that they 'shall be bound by the Protocol only in relation to States that have ratified it or acceded to it and shall cease to be bound by the Protocol vis-à-vis any State whose armed forces or whose allies' armed forces fail to comply with the Protocol's provisions'.[1]

Notwithstanding, the Geneva Protocol represented a significant advance for the laws of war in the 1920s and has upheld the norm against CBW in the face of serious challenges. It also laid the foundations for the 1972 Biological and Toxin Weapons Convention (BTWC)[2] and the 1993 Chemical Weapons Convention (CWC).[3]

Antecedents of the Geneva Protocol

References to the history of the CBW norm often point to long-standing restrictions on poison use in many cultures. Unfortunately, history is more complicated. The mere fact that people some 2,000 years ago recorded proscriptions against poison use paradoxically points to a widespread practice. Moreover, many cited restraints actually forbade the assassination with poisonous substances of rulers and senior military officers. Before the early modern period (16th-18th centuries), only two prohibitions were recorded.

Antiquity and the Middle Ages

The ancient Indian treatise, the Manava Dharmashastra, more commonly known as the Manu Smrti (Laws of Manu), contains the oldest known rule against the use of poison in

1. International Committee of the Red Cross, Geneva Protocol, International Humanitarian Databases, https://ihl-databases.icrc.org/en/ihl-treaties/geneva-gas-prot-1925/state-parties?activeTab=#footnote-2. Accessed 17 February 2025.

2. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, opened for signature on 10 April 1972 and entered into force on 26 March 1975. UN Office for Disarmament Affairs, Biological Weapons, https://disarmament.unoda.org/biological-weapons. Accessed 17 February 2025.

3. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature in Paris on 13 January 1993 and entered into force on 27 April 1997. Organisation for the Prohibition of Chemical Weapons, Chemical Weapons Convention, https://www.opcw.org/chemical-weapons-convention. Accessed on 17 February 2025.

warfare. It is dated to around the 2nd or 3rd century CE. Chapter 7, 'The Law for the King', verse 90 exhorts a king:

> 'When he is engaged in battle, he must never slay his enemies with weapons that are treacherous, barbed, or laced with poison, or whose tips are ablaze with fire'.[4]

The listed categories cover four basic restraints on warfare: perfidy, excessively injurious arms, poisons and incendiary weapons.

However, a coeval text, *Kautilya's Arthashastra*, was replete with references and instructions on how to deploy poison in battle or as part of secret operations.[5] Book Twelve, 'On the Weaker King', chapter 4 even has a special section on 'Secret Deployments of Weapons, Fire, and Poison'. The possibility exists that the Arthashastra, compiled by a certain Kautilya from texts several centuries earlier, reflected an existing reality, whereas the Dharmashastra is aspirational. As scholar and translator Patrick Olivelle noted, 'It appears that Manu's narrative scheme here envisages a new king occupying a virgin territory. [...] Real life, however, is quite another matter; most kings would gain a kingdom either through inheritance or conquest.' While the approach allowed Manu to discuss all the points associated with statecraft,[6] reality surfaces in Dharmashastra, Chapter 7, verses 217-220, which instructs the king on how to avoid poisoning as an individual.

Such normative ambiguity also appears in the second text. The earliest book of Islamic jurisprudence to discuss poison in war is *Shara'i' al-Islam Fi Masail al-Halal wal-Haram*, written by Al-Muhaqiq al-Hilli in 1271-1272 (670 Hijri calendar). In the chapter Kitab al-Jihad, Section 2 on the Manner of Jihad, he wrote:

> Prohibited is to diffuse poison (use poisonous ingredients) over the enemy. Some legists say: it is *makruh* (reprehensible). The second view is more predominant among the *'ulama'*. If victory can never be achieved but only through this means, it becomes permissible then.[7]

A footnote in the English translation clarifies that when poison use 'causes depriving of a respected life, then the *makruh* becomes *haram* if victory can be achieved without it.

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4. Olivelle, P. (2005). *Manu's Code of Law: A Critical Edition and Translation of the Manava-Dharmashastra*. (Oxford: Oxford University Press), 159.

5. Olivelle, P. (2013). *King, Governance, and Law in Ancient India: Kautilya's Arthashastra*. (Oxford: Oxford University Press).

6. Olivelle (2005), 13.

7. Al-Muhaqiq al-Hilli (1271-1272). *Shara'i' al-Islam fi masa'il al-halal wal-haram*. Volume 1. Translated by Najafi, H. M. (2009) (Qom: Ansariyan Publications), 266.

But if triumph depends only on it, it becomes *wajib* then'. 'Wajib' refers to an obligatory act, with a failure to perform it being sinful.[8]

Whereas Al-Muhaqiq, a Shiite scholar, considered poison use banned in combat, he recognised that most Muslim scholars and leaders (perhaps belonging to the Sunni branch of Islam) held less restrictive views. Their opinions approached the more modern concept of 'military necessity', allowing departure from the commonly accepted customs and laws of war if the military objectives cannot be achieved in any other way. This element was also prevalent in the Arthashastra.

The appearance of customary law against poison use

No legal tracts on poison use in war emerged in ancient and medieval Europe. The early modern period set off with the discovery in 1492 and the subsequent conquest of the Americas. Several legal scholars concurrently began arguing for restrictions on poison warfare. The Spanish theologian Francisco de Vitoria (1480–1546) condemned the barbaric practices, including the mutilation or massacre of prisoners, the total destruction of villages, perfidy, and the poisoning of weapons.[9] Albericus Gentili (1552–1608), an Italian who fled to England, likewise enumerated the employment of poison, veneniferous substances and magic (hallucinogens) as acts prohibited in war. He also condemned the use of serpents.[10] According to the Dutchman Hugo Grotius (1583–1645), a belligerent may kill all enemy subjects, but their means to do so are not unlimited. He deemed the use of poison and poisoned weapons prohibited because it augmented the perils of wars too much.[11] These writers and later authors testified to certain practices in war that either were or ought to be banned.

Certain military formations adopted such bans as part of their codes of conduct. A pledge taken by German gunners in the late 15th century included an explicit prohibition against the construction or use of poisoned balls 'because the first inventors of our art thought such actions as unjust among themselves as unworthy of a man at heart and a real soldier'.[12] Article 70 of the first US Army Field Manual (1863) similarly stated that 'the use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war'.[13]

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8. Esposito, J. L. (2003). *Oxford Dictionary of Islam*. (Oxford: Oxford University Press), 334.

9. Barthélemy, J. (1904). François de Vitoria. Pillet A. (ed.), *Les fondateurs du droit international* [The founders of international law] (Paris: Giard et Brière), 31.

10. Nézard, H. (1904). Albericus Gentilis, in Pillet (ed.), 59.

11. Basdevant, J. (1904). Hugo Grotius, in Pillet (ed.), 207.

12. Siemienowicz, K. (1651). *Grand art d'artillerie* [Great art of artillery]. (Amsterdam), 299.

13. Lieber, F. (1863). *Instructions for the Government of Armies of the United States in the Field*. General Order No. 100. (New York: D. Van Nostrand), 19.

However, such unilateral expressions of behaviour on the battlefield did not bind other civilisations, cultures or political entities. For instance, belligerents of the same faith may have reciprocally upheld the code, but no restriction shielded infidels from poisonous substances or poisoned weapons. 'Barbaric' was how the Spanish conquistadores described the indigenous American peoples because they had not yet discovered Christianity. As firearms and canon were increasing the distance between opposing armies in Europe, thereby rendering poisoned projectiles obsolete, the word also applied to the natives' use of toxic darts and arrows. Later generations rephrased the term as 'primitive' and 'uncivilised'. Well into the 19th century, settlers and supporting troops did not hesitate to apply poisons, such as strychnine, to exterminate local tribes when occupying and colonising their lands.[14]

Codification of the prohibition

When opposing forces began viewing each other as equals, the conclusion of formal accords became possible. The 1648 Peace of Westphalia gave rise to the concept of the sovereign state. States evolved into equivalent players in international relations. Wars got depersonalised, and soldiers became state agents. Shortly thereafter, the first international accord constraining the use of poisoned weapons in war was concluded.

The Holy Roman Empire and France signed the bilateral Strasbourg Agreement on 27 August 1675. Article 57 forbade the future use of wired, poisoned, starry and other unusually shaped or formed bullets. Moreover, each side also committed itself to punish any person belonging to its troops found in the possession of such proscribed materials.[15] It has been suggested that this treaty arose from the use by Christoph Bernhard von Galen, Bishop of Münster, of incendiary devices containing belladonna alkaloids to produce noxious fumes during the siege of Groningen between 21 July and 28 August 1672.[16] A detailed Dutch account of the 1672 war mentioned von Galen's use of artillery-fired glowing cannonballs, bursting bombs, stinkpots (stench-spreading incendiary devices) and grenades but did not explicitly refer to any poisonous substances.[17]

In the second half of the 19th century, states began to codify international standards and norms for trade, telegraphy, and postal services in international conferences. Less

14. Lahti, J. (2017). *Wars for Empire. Apaches, the United States, and the Southwest Borderlands*. (Norman: University of Oklahoma Press), 153-154.

15. Vergleich so zwischen der Kayserlichen und Frantzösischen Armeen, so wol auch beiderseits Aliirten die die Außwechsel und racionirung der gefangenen betreffend, ist auffgerichtet worden in der Statt Staßburg den 27. Aug. 1675. (An agreement between the Imperial and French armies, as well as between allies on both sides, concerning the exchange and settlement of prisoners, was drawn up in the city of Strasbourg on 27 August 1675.) Handwritten document, Austrian archives. Electronic copy in author's possession.

16. Hilmas, C. J., Smart, J. K. and Hill, B. A. (2008). History of Chemical Warfare. Tuorinsky, S. D. (ed.). *Medical Aspects of Chemical Warfare*. (Falls Church, VA: Office of The Surgeon General, US Army), 11.

17. Fruin, R. (1972). *De oorlog van 1672* [The war of 1672]. (Groningen: Wolters-Noordhoff), 286 and 289.

than a decade after the battle of Solferino (1859), the practice extended to the customs and laws of war. Over the next three decades, the codification process accelerated. The Brussels Declaration of 27 August 1874 stated that belligerents do not have unlimited power in the adoption of means to injure an enemy. Among other instruments of war, poison or poisoned weapons are especially forbidden.[18] However, not all 15 participating European governments were yet prepared to accept it as a binding document and lack of ratification meant it never became law. Nevertheless, together with the Oxford Manual (which proposed outlawing the use of poison in any form), it laid the foundation for the agreements concluded at the Hague Peace Conferences in 1899 and 1907. Furthermore, towards the end of the 19th century, the outcomes of the many meetings striving to codify the laws of war (even when they did not produce a treaty) increasingly began to be reflected in national instructions guiding the conduct of armed forces in combat.

Of poisons and asphyxiating gases

By the end of the 1800s, technology and industrial development were pushing the armaments drive to unprecedented levels. Agrarian societies could no longer keep up with the pace and dropped far behind the industrialising countries. But in the more advanced nations as well, voices were expressing concerns about the rising weapon levels and the demands on national budgets to maintain and equip expanding standing armies with the latest military technologies. In 1899, the world's foremost powers convened for the first Hague Peace Conference. Armament reductions were formally on the agenda, as was the codification of the customs of war.[19]

The Peace Conference failed in its primary goal of arms limitations. The twenty-six participating states reached no agreement on qualitative or quantitative limits on national armies or armaments. But they succeeded in codifying the customs of war for the first time. Article 23 of the Convention (II) with respect to the Laws and Customs of War on Land listed poison and poisoned weapons as one of the outlawed means of combat.

In issuing three declarations touching upon novel types of weaponry and their use in combat, they still managed to bridge the gap between new technologies and the laws of war. Interestingly, one of the declarations returned to poison, but now as an innovative weapon. Under Declaration (IV, 2) concerning Asphyxiating Gases, the Contracting Powers agreed to abstain from the use of projectiles, the object of which is the diffusion of asphyxiating or deleterious gases. The same group of delegates thus considered poison as being subject to long-standing customs of war *and* as a future weapon. More significantly,

18. International Declaration Concerning the Laws and Customs of War, signed at Brussels, 27 August 1874. Schindler, D. and Toman, J. (eds.) (1973). *The Laws of Armed Conflicts. A Collection of Conventions, Resolutions and Other Documents* (Leiden: A. W. Sijthhoff), 25-34.

19. Carnegie Endowment for International Peace. (1921). *Documents Relating to the Program of the First Hague Peace Conference*. Pamphlet No. 36 (Oxford: Clarendon Press), 1-3.

the diplomats adopted the article banning poison use without any discussion, whereas they discussed the declaration, which used the different phrase 'asphyxiating gases', extensively. Ultimately, the United States refused to sign it, followed by Great Britain, because the US refusal meant the document lacked consensus.

Poisons and asphyxiating or deleterious gases harm living organisms through their direct toxic action. However, the negotiators clearly held different conceptions: poisons were naturally occurring substances while asphyxiating gases were the product of scientific and technological advancements. To motivate his opposition, the US naval delegate advanced the weapon's new technological qualities. He added that asphyxiating gases, as yet untested, may prove decisive in a future war while not causing superfluous suffering. The German delegate also contemplated the potential contribution of chemicals in war to the humanisation of warfare but did not block the declaration.[20]

Up to 1899, jurists deliberating the customary laws of war utilised a generic notion of 'poison' that covered toxic substances and, to a certain extent, disease. Scientific and technological developments that began in the late 19th century resulted in semantic shifts. The growing understanding that invasive particles caused infection rather than miasma first led to the extraction of disease from the concept of poison. Toxic compounds prepared by chemists or produced industrially resulted in the adoption of more specific terms, such as 'asphyxiating' and 'deleterious', to describe their impact on organisms. People thus began associating 'poison' with primitiveness and 'asphyxiating and deleterious' with civilisational progress. Put differently, whereas in the sphere of the customs and laws of war, 'poison' referred to a practice in a murky past, 'asphyxiating or deleterious gases' were products from scientifically and technologically advanced civilisations. Consequently, the scientific and technological artefacts gradually escaped from under the customary ban on poison use. However, the semantically updated prohibition was immediately contentious because it introduced technology-driven understandings of superfluous suffering that would continually evolve in relation to military objectives in war.[21]

Declaration (IV, 2) thus emerged when rapidly changing relationships between military art, science, technology, and industrial capacity were likely to challenge the relevance or interpretation of a new rule on the battlefield. Exactly that happened fifteen years later when German forces opened the cylinder valves to release a massive chlorine cloud against Allied trenches outside Ypres. The First World War also exposed another flaw:

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20. Zanders, J. P. (2015). The Road to The Hague. Zanders, J. P. (ed.) *Innocence Slaughtered*. (London: Uniform Press), 22-45.

21. For a detailed discussion of the semantic bifurcation process in the 19th century, Zanders, J. P. (2024). Falling Between the Cracks and by the Sides: Can Disarmament Treaties Respond to Scientific and Technological Developments? Shang, L., Zhang, W. and Dando, M. (eds.). *Essentials of Biological Security: A Global Perspective*. (Hoboken, NJ: Wiley), 13-16.

the Declaration's scope was too narrow. The Germans did not use *projectiles* to diffuse the asphyxiating gas.

The impact act of Declaration (IV, 2)

Although Declaration (IV, 2) did not survive the war, it prepared the ground for the Geneva Protocol. With the semantic differentiation between poison and asphyxiating gases, the norm against the use of toxic substances developed along two tracks (see graphic).

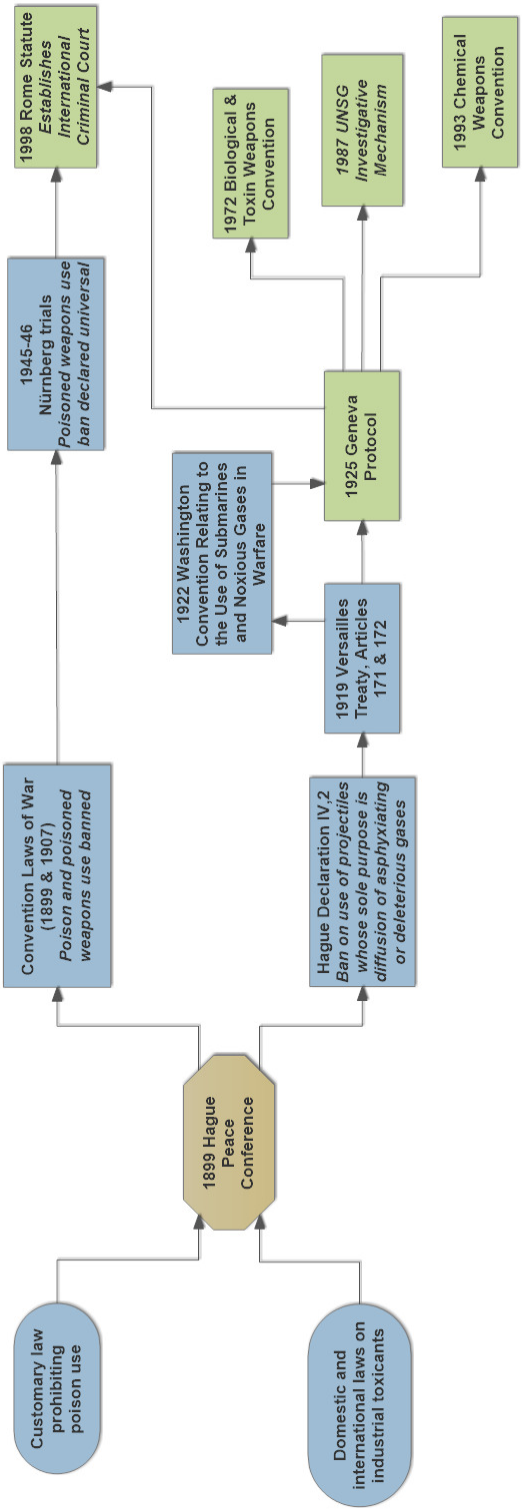
At the Second Hague Peace Conference in 1907, the Regulations concerning the Laws and Customs of War on Land, annexed to Convention (IV) respecting the Laws and Customs of War on Land, reiterated the ban on the use of poison and poisoned weapons. The International Military Tribunal of Nürnberg declared in 1946 the provisions of the 1907 Hague Convention, and therefore the prohibition on the use of poison and poisoned weapons, as universal irrespective of whether a state was a party to the accord or not.[22] The 1998 Rome Statute of the International Criminal Court declared that a violation of the interdiction is a war crime in both international and non-international armed conflicts.[23]

The language of Declaration (IV, 2) was carried over into the 1919 Versailles Treaty. The 1922 Washington Naval Treaty also referred to asphyxiating and deleterious gases. Both documents formed the basis for the Geneva Protocol, which in turn laid the foundations for the BTWC and the CWC.

22. International Military Tribunal (1947). *Trial of the Major War Criminals*. (Nürnberg, International Military Tribunal), 334.

23. Rome Statute of the International Criminal Court (Amended), opened for signature on 17 July 1998 and entered into force on 1 July 2002 as amended on 14 December 2017, Article 8, 2(b)(xvii) and (c)(xiii).

Evolution of the CBW norm



2. The Treaty of Versailles and the disarmament of Germany

Most consequential for the governance of security during the Interbellum was the Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles).[1] Besides the Covenant for the future League of Nations, it also put forward the Constitution of the International Labour Organisation.[2] Both institutions reflected contemporary views on why the First World War broke out and how arms reductions, collective security guarantees, the management of conflicts through arbitration, and the removal of economic and social inequalities, among other measures, might prevent another catastrophe. The League aspired to institute a collective security system in place of the pre-war balance-of-power strategies.[3] Despite this goal, the victorious powers excluded Germany and Bolshevik Russia from the initial deliberations, and neither country became an early member of the League. Suspicions about their intentions hindered discussions on arms reductions, conflict arbitration, and collective security arrangements. The US refusal to engage with the League for much of the inter-war period also severely undermined member state confidence in the security arrangements under consideration. The international organisation, which commenced its activities on 10 January 1920 and dissolved on 18 April 1946, failed dramatically in preventing the outbreak of the Second World War. Yet, it was instrumental for the evolution and expansion of international organisations after 1945. It also played an influential part in the advancement of the laws of war and the emergence of arms control and disarmament as a particular branch of international law, even while many League members viewed that goal as being outside the organisation's mandate.

The plan for an association of nations to manage international security relations gradually took hold during the final two years of the First World War. In contrast, limiting national weapon capacities emerged as a separate ambition in the months after the cessation of hostilities. More specifically, countries began worrying that nationalist, indepen-

1. Treaty of Peace between the Allied and Associated Powers and Germany (signed at Versailles on 28 June 1919 and entered into force on 10 January 1920). Internet Archive, https://archive.org/details/treatyofpeace-be00alli/mode/2up. Accessed 5 April 2025.

2. Treaty of Versailles (1919), Parts I and XIII.

3. The Czech statesman Dr. Edvard Beneš reportedly coined the term 'collective security' while working on the 1924 Protocol for the Pacific Settlement of International Disputes. Housden, M. (2012). *The League of Nations and the Organisation of Peace*. (Harlow: Pearson Education), 4.

dence, and terrorist and revolutionary organisations active in newly created countries in Eastern Europe and the colonies might illicitly acquire weapons from the huge surpluses along the frontlines and stored in national depots. While delegates at the Paris Peace Conference were preparing the peace treaties with Germany and the other Central Powers during the first half of 1919, the rising risk perception impelled them to open concurrent negotiations on an arms traffic convention. However, international policy priorities and other national interests soon interfered with arms reduction efforts and arms trafficking regulations.[4] This treaty, the Convention of Saint-Germain-en-Laye, did not enter into force. The League members succeeded in convening a second conference in 1925 to address the arms trade, from which the Geneva Protocol banning chemical and bacteriological warfare was to emerge.

So, while the League contributed significantly to the international management and arbitration of conflicts, made considerable progress in areas such as health, labour and human dignity, and generated agreements on varied aspects of the international economy, travel and communications, its principal objectives of reducing armaments, armed forces and military budgets remained unfulfilled. Ultimately, the Geneva Protocol was to be the international organisation's sole achievement in weapon control.[5] Yet, the committee work in the early 1920s and in response to the technical and legal challenges raised during the Protocol negotiations prepared the ground for disarmament after 1945.

Ending the First World War

On 11 November 1918 at 11 a.m. (French time), all fighting on land, at sea and in the air ceased. Six hours earlier, representatives from France, the British Empire and Germany had signed the Armistice at Compiègne, north of Paris. The cease-fire was in effect for thirty days, with the option for extension.[6] It was prolonged three times and expired with the entry into force of the Treaty of Versailles with Germany on 10 January 1920. During that period, the Allied and Associated Powers participating in the Paris Peace Conference had prepared the stern terms for the peace treaties with, besides Germany, each of the other four Central Powers (the Austro-Hungarian Empire having dissolved at the war's

4. Stevenson, D. (2006). Britain, France and the Origins of German Disarmament, 1916-19. *Journal of Strategic Studies* (29:2), 196.

5. League of Nations Treaty Series, United Nations Treaty Series, https://treaties.un.org/pages/LONOnline.aspx?clang=_en. Accessed 6 January 2025.

6. Armistice between the Allied Governments and Germany, 11 November 1918, Part 1, Article One and Part VI. Via Wikisource, https://en.wikisource.org/wiki/Armistice_between_the_Allied_Governments_and_Germany. Accessed 18 January 2025.

end). The respective documents also included the Covenant of the League of Nations. They are best known after the Parisian faubourgs or palace where they were signed.[7]

As a peace accord, the Treaty of Versailles also imposed the victors' will on the vanquished. Article 231 was its politically and psychologically most impactful provision: 'The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies'.[8]

Even though the provision was more than halfway down the treaty's 440 articles, the Germans found this dictated admission of guilt difficult to swallow. Days before the Armistice, the so-called November Revolution had heralded the collapse of the German Empire and paved the way for the proclamation of the Weimar Republic on 9 November 1918. Representatives of the newborn state signed the truce two days later. The Germans did not feel they had lost the war; the Allies had not occupied any of their territory, and their military and industry had survived intact. To France and Great Britain, however, these facts signified a substantial source of insecurity. They would define their policy stances during the Paris Peace Conference and in the League of Nations.

Despite the ambition to institute a new international security system outlined in the Covenant, much of the Treaty of Versailles aimed to diminish Germany's foundations of power. It demanded territorial adjustments, demilitarisation and economic compensation for losses incurred by the Allies. Besides the dispossession of its colonies (Cameroun, Togo, the territories in East and South-West Africa, islands in the Pacific and possessions in China), Germany had to cede territory to Belgium (Eupen-Malmedy area), Denmark (part of Schleswig), France (Alsace-Lorraine) and Poland (large parts of West-Prussia and Posen). These areas comprised 70,000 km² and 6.5 million inhabitants, over half of whom were reportedly German native speakers. The territorial forfeitures also entailed surrendering over 25 per cent of its coal and iron ore mines, which seriously diminished its economic power.[9] The German armed forces faced strict numerical restrictions: the

7. Besides the Versailles Treaty, the Covenant also made up Part 1 of the Treaty of Saint-Germain-en-Laye between the Allied and Associated Powers and Austria (signed on 10 September 1919 and entered into force on 16 July 1920), the Treaty of Neuilly-sur-Seine between the Allied and Associated Powers and Bulgaria (signed on 27 November 1919 and entered into force on 9 August 1920), the Treaty of Trianon between the Allied and Associated Powers and Hungary (signed on 4 June 1920 and entered into force on 16 July 1920), and the Treaty of Sèvres between the Allied Powers and the Ottoman Empire (signed on 10 August 1920), which was replaced by the Treaty of Lausanne between the Allied Powers and Turkey (signed on 24 July 1923). The Treaty of Lausanne did not include the Covenant.

8. Treaty of Versailles (1919), Part VIII Reparation, Section I General Provisions, Article 231.

9. Schmitt, H. (1989). The Treaty of Versailles: Mirror of Europe's Postwar Agony. Paper presented at the Treaty of Versailles: The Shaping of the Modern World, Virginia Humanities Conference (April 7-8), Mary Baldwin College, Staunton, VA, http://www.ctevans.net/Versailles/Papers/Schmitt/Schmitt_paper.html. Accessed 18 January 2025.

army had to limit its effectives to 100,000 active soldiers (without a ceiling on reservists) and the navy to six battleships, no submarines and a maximum complement of 15,000 men. The air arm was prohibited entirely.[10] In addition, Germany had to demilitarise the Rhine area for fifteen years. It also had to indemnify the Allies for war reparations. It had to pay 12 billion out of a total of 132 billion Goldmarks in advance, followed by annual payments of 2 billion plus 26 per cent of the value of the country's exports.[11] The Treaty of Versailles also required Germany to surrender large quantities of machinery, building materials, trains, and other vehicles, and to supply the Allies with coal, chemicals, dyestuffs, and fuels for many years. When the 1922 financial crisis forced Germany to default on its payments, Belgium and France occupied the industrial heartland in the Ruhr area.

None of the arrangements to disarm Germany had their roots in wartime considerations. The country's sudden collapse in the autumn of 1918 surprised the Allies, leaving the articulation of their peace aims underdeveloped.[12] The British draft proposal of March 1918 for an association of nations did not mention armament reductions. France only made a passing reference to it in its first outline three months later, reserving the question for subsequent consideration.[13] US President Woodrow Wilson pronounced his Fourteen Points in a speech to Congress on 8 January 1918. It included demands on Germany for the cessation of hostilities together with a vision for a 'general association of nations [...] specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states' (Point XIV).[14] The original concepts put forward by Great Britain and France also envisioned a league to prevent the recurrence of a devastating war through diplomacy and arbitration. However, Wilson transmitted his conditions for a cease-fire to the Germans in early October without consulting the Allies. The latter felt they had no choice but to accept the Fourteen Points.[15]

More controversial was the idea of mutual defence against external powers. While the United States did not favour the idea, France and Great Britain held divergent viewpoints on a post-war security structure. The root of the respective positions lay in the shifting pre-war balances of economic, social and military power. Between 1890 and the outbreak of the First World War, Germany's population had increased by a third to 66 million. Mining and industrial output exceeded that of Great Britain and France by large margins,

10. Treaty of Versailles (1919), Part V. Military, naval and air clauses, Section 1 Military clauses, Chapter I Effectives and cadres of the German army.

11. Lee, S. J. (1998). *The Weimar Republic* (London: Routledge), 36 and 43.

12. Sharp, A. (1991). *The Versailles Settlement: Peacemaking in Paris, 1919* (Basingstoke: Macmillan Education), 12.

13. Miller, D. H. (1928). *The Drafting of the Covenant* (New York: G. P. Putnam's Sons), 8 and 11.

14. Wilson, W. (1918). President Woodrow Wilson's Fourteen Points. National Archives, https://www.archives.gov/milestone-documents/president-woodrow-wilsons-14-points#transcript. Accessed 9 January 2025.

15. Sharp (1991), 13.

and the country dominated the global market in chemical and electrical commodities. Given the growing impact of science, technology and industrial strength on the development and production of military hardware, Great Britain found it increasingly harder to maintain its naval dominance across the world and counter Germany's swiftly increasing naval fleet. France lagged in industrial development, and its population grew modestly by 11 per cent to 39 million between 1800 and 1914. To sustain its army, it needed to conscript 80 per cent of the available young men. Meanwhile, the United States was overtaking all other countries, but internal expansion and development shrouded its ascendancy for outsiders. By the end of the First World War, the West European Allied Powers viewed US power as indispensable for achieving and maintaining post-war security.[16] Washington was less convinced about such a role. With France neighbouring Germany, Great Britain physically separated from the continent, and the United States an ocean away from Europe, options thus wavered between curbing Germany's resurgence and reintegrating it into the post-Versailles international system.

Contemporaries generally viewed the Treaty of Versailles with great resentment. To the people in the victorious Allied countries, it appeared to offer peace without victory. Rewards, if any, for the four years of human carnage and hardship appeared intangible. In the newborn Weimar Republic, the accord seemed like a stab in the back. However, the country was facing its own internal turmoil, mainly due to the rapid industrialisation and expanding government bureaucracy that uprooted the aristocracy's social roles. To its population, owing to easily absorbed disinformation spread by the military and conservative factions seeking to discard responsibility for starting the war, the Allied powers were out to exact revenge and destroy Germany. German foreign interactions, aggressive and aggrieved, left the Allies wondering how the country viewed itself in the post-war international order and fearful of military resurgence.[17]

The overall failure of the League of Nations as the premier instrument for managing conflicts and preventing war perpetuated negative perceptions. Over the past three decades, historians and other researchers have reached more nuanced conclusions. Access to national archives and international records enables the re-examination of negotiations, leading to a fresh appreciation of how politicians and diplomats approached the Paris Peace Conference. The newfound resources also shed light on the reasons for their flexibility, pragmatism and moderation, leading to their acceptance of obtainable compromises. They had limited margins for manoeuvre because of the domestic pressures from military, political and economic constituencies. Meanwhile, their electorates pushed them

16. Sharp (1991), 3-5 and 11. Stevenson (2006), 196.

17. Sharp (1991), 5.

with inflated expectations, while they also had to consider the often legitimate and reasonable demands by their fellow delegates.[18]

The myriad national positions and stakeholder interests that affected the Paris Peace Conference strained the drafting of the Treaty of Versailles and contributed to the failure of the Convention of Saint-Germain-en-Laye. They also impacted discussions in the League. Paradoxically, both treaties and the pressures that gave them their final shape enabled the introduction of chemical and bacteriological weapon (CBW) matters in League committees and created the opportunity for CBW to become part of the arms trade negotiations in 1925, eventually leading to the Protocol banning their use in war.

Disarming Germany

Germany's defeat was the unifying goal of the Allied powers. Once the guns fell silent, the coalition gradually became unstuck. Especially France, the UK and the United States began moving in different directions, one of the principal drivers being conflicting views on how to contain future German threats. Without any fighting on German soil or Allied forces occupying the country, the military-industrial complex survived unscathed under German administrative control. The foundations for reconstituting the country's military power remained intact.

While never an explicit Allied war aim, Germany's demilitarisation emerged as a priority in the first months after the cease-fire.[19] Concerns about Germany's prevailing military strength emerged during the Paris Peace Conference, particularly due to the country's ability to fulfil the military clauses in the Armistice agreement broadly within the specified time frames. They included the transfer of large amounts of major weapon systems to Allied control.[20] The precise numerical limits on the German army and navy, as well as the total ban on an air arm, in the Versailles Treaty reflected these concerns. Noteworthy is that these limitations preceded Article 231, the so-called War Guilt Clause, which laid the basis for the enormous reparation payments.

The articles in Part V, Chapter II of the Treaty of Versailles established the coercive disarmament and armament control measures through which the Allies sought to constrain Germany's military resurgence.[21] Articles 169 and 170 thus ordered:

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18. Schmitt (1989). Lee (1998), 42-43. Steiner, Z. (2001). The Treaty of Versailles Revisited. Dockrill, M. and Fisher, J. (eds). *The Paris Peace Conference, 1919* (Basingstoke: Palgrave), 15.

19. Jaffe, L. S. (1985). *The Decision to Disarm Germany*. (Winchester, MA: Allen & Unwin), 84. Stevenson (2006), 196 and 202.

20. Armistice between the Allied Governments and Germany, op. cit., Part I, Article Four.

21. Treaty of Versailles (1919), Part V. Military, naval and air clauses, Section 1 Military clauses, Chapter II Armament, munitions and material.

> Article 169
>
> Within two months from the coming into force of the present Treaty German arms, munitions and war material, including anti-aircraft material, existing in Germany in excess of the quantities allowed, must be surrendered to the Governments of the Principal Allied and Associated Powers to be destroyed or rendered useless. This will also apply to any special plant intended for the manufacture of military material, except such as may be recognised as necessary for equipping the authorised strength of the German Army.
>
> The surrender in question will be effected at such points in German Territory as may be selected by the said Governments.
>
> Arms and munitions which on account of the successive reductions in the strength of the German army become in excess of the amounts authorized by Tables II and III annexed in this Section must be handed over in the manner laid down within such periods as may be decided by the Conferences referred to in Article 163.[22]
>
> Article 170
>
> Importation into Germany of arms, munitions and war materials of every kind shall be strictly prohibited.
>
> The same applies to the manufacture for, and export to, foreign countries of arms, munitions and war material of every kind.

German disarmament, however, sowed discord among the victorious powers. Throughout the war, Allied propaganda had held out a variety of promises to maintain support for the war effort from suffering civilians and soldiers in the trenches. Those war aims the Allied governments had never synchronised with each other, and when they met in the Paris Peace Conference, the multiple domestic commitments limited their room for manoeuvre. For example, France and Belgium sought harsh punishments to compensate for the misery caused by the German aggression. Feeling less threatened by Germany's military, Great Britain had begun reducing its military capacities shortly after the Armistice. Both the political left and right urged cuts in military spending. The abolition of military conscription became a major theme in the December 1918 electoral campaign. Support for the League and its arms reduction, humanitarian and security objectives offered one way for channelling domestic pressures while keeping promises for lower national military spending in favour of social programmes or reduced taxation. In France, the government had to resist intense pressure for the complete demilitarisation of Germany to retain diplomatic room to manoeuvre. However, French insistence on retaining conscription to restrain Germany became a source of suspicion towards Paris in London. Yet, it saw in the

22. Article 163 deals with the first reduction of German forces to 200,000 within three months of the coming into force of the Versailles Treaty.

League a tool for maintaining the wartime alliance, which implied quasi-permanent security guarantees from Great Britain and the US in exchange for national arms reductions. For different reasons, both countries rejected the propositions, which included an international armed force under the League of Nations and international oversight of national arms production and troop numbers. The outcome left French public opinion disillusioned with the Covenant.[23] Moreover, the US had entered the war intending to achieve peace without retribution and with a vision for a general reduction of armaments. President Woodrow Wilson, therefore, opposed disarmament as a punishment for Germany. However, with the Senate's refusal to ratify the Versailles Treaty, the United States did not join the League and eventually concluded a separate peace treaty with Germany.[24]

The League of Nations

The League of Nations arose from the still-burning cinders of the First World War. Building on ideas for an international institution to maintain peace that circulated during the latter war years, a commission established by the Paris Peace Conference began drafting the Covenant, the League's founding document, in January 1919, just a mere month and a half after the Armistice.

Concerning security, the Covenant rejected the balance-of-power approach based on the Concert of Nations. The principal drafters felt that by the end of the 19th century, the focus of building political alliances for war prevention had shifted to the formation of military ententes for war preparation.[25] The new configuration of international politics was to be based on constructive and cooperative conflict management. Affirmative legal, social and economic policies would all contribute to conflict prevention.[26] The Covenant thus expanded on the processes of conflict arbitration that had emerged decades earlier and institutionalised the praxis through common action by its members. Besides leading

23. Stevenson (2006), 202-206.

24. Treaty concerning the re-establishment of Peace between Germany and the United States, singed in Berlin on 25 August 1921 and entered into force on 11 November 1921.

25. For the factors that contributed to this transition, Hildebrand, K. (1993). The Transformation of the International System: From the Berlin Congress (1878) to the Paris Peace Treaty (1919-1920). Ahmann, R., Birke, A. M. and Howard, M. (eds.). *The Quest for Stability: Problems of West European Security 1918-1957*. (Oxford: Oxford University Press), 24-25.

26. Housden (2012), 3-5. Among the bodies set up by the League in support of its ambitions were the Economic and Financial Organisation, the Health Organisation, the International Labour Organisation, the Mandates Commission, the Refugee Commission, the Slavery Commission, etc. The League also established the Permanent Court of International Justice to address international disputes. It was not part of the League of Nations but both organisations remained close associates. International Court of Justice, History, https://www.icj-cij.org/history. Accessed 6 January 2025.

consultations and arbitration efforts, the League had the authority to decide on diplomatic or economic sanctions, as well as on military intervention.[27]

Transparency in decision-making was another novelty. In the belief that closed negotiations and the insertion of secret clauses in mutual security treaties contributed to the way European states were drawn into the First World War, the League of Nations opted for open debate in its principal decision-making organs and to publicise its decisions.

Disarmament made up one of the League's primary ambitions. In his speech to the US Congress on 8 January 1918, President Wilson laid out a fourteen-point plan for world peace, the fourth being: 'Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety'.[28] At the Paris Peace Conference, he successfully insisted on the inclusion of this aspiration in the Covenant. It was reflected in the first part of Article 8: 'The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and *the enforcement by common action of international obligations*' (emphasis added).[29] As the League's former Deputy Secretary-General Francis Paul Walters wrote, public opinion regarded, rightly or wrongly, the massive reduction of war establishments 'not only as the test of the League's success, but as almost the principal object of its existence'.[30]

The opening paragraph also pointed to what the Covenant's negotiators believed to be the principal cause of the First World War: armament competitions among states leading to an excessive accumulation of weaponry and a fuelling of geopolitical power politics. To ensure international security, they argued for the lowest possible level of armaments commensurate with national safety. The Covenant reflected the strong view that the privately owned armaments industry was another significant contributor to the outbreak of the war in 1914. It instructed the League of Nations Council to advise on 'how the evil effects attendant upon such manufacture can be prevented'. Still, it had to have due 'regard to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety',[31] the latter clause again reflecting the acute awareness of balancing disarmament with security.

Article 8 was a particularly powerful provision because its paragraphs were neither aspirational nor optional. They contained specific objectives that the League members had to achieve through multilateral engagement in the numerous committees and the

27. Versailles Treaty, Part I: The Covenant of the League of Nations, Articles 10-18.

28. Wilson (1918).

29. Versailles Treaty, Part I: The Covenant of the League of Nations, Article 8.

30. Walters, F. P. (1952). *A history of the League of Nations*. Reprint in one volume. (London: Oxford University Press), 500.

31. Versailles Treaty, *op. cit.*

principal decision-making bodies. Notably, a state ratifying the Treaty of Versailles explicitly 'recognises' that maintaining peace requires disarmament and 'agrees' that the private armaments industry is objectionable. Hence, a League member could not oppose addressing either of these topics. In this sense, Article 8 differed significantly from Article 11 of the Charter of the United Nations: 'The General Assembly *may consider* the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and *may make recommendations* with regard to such principles to the Members or to the Security Council or to both' (emphasis added).[32] The Charter does not foresee a similar option for the Security Council.

Although the Covenant introduced diplomatic and legal innovations, its negotiators had relied in many respects on 19th-century processes and experiences. In its approach, the body drew on diplomatic formats that, among other things, had contributed to the acceleration of processes for codifying the customs of war and limiting the impact of science, technology, and industrialisation on warfare in the final quarter of the 1800s. It has been pointed out that no matter how new the League claimed to be, what actually happened within its framework too often amounted to the pursuit of 'old' diplomacy rather than something more path-breaking and idealistic.[33] This view reflected the fact that the League remained a collection of sovereign states on which it had to rely to get things done. Whatever its aspirations, League membership was never universal. On top of this, the composition of the Council and its emphasis on unanimous decisions still weighted the organisation towards the traditional Great Powers of Europe and their requirements.[34]

Structure of the League of Nations

Instead of the earlier Concerts of Nations with the occasional large conferences of the most important powers, the world's first international security organisation had permanence in the form of a fixed location in Geneva and a standing secretariat with an international staff and a Secretary-General. The Council and Assembly were the League's two principal decision-making organs, each with its subsidiary bodies. The Assembly represented all League members.

32. Charter of the United Nations, Article 11, https://www.un.org/en/about-us/un-charter/full-text. Accessed 6 January 2025.

33. Sharp (1991), 62.

34. Housden (2012), 37.

The Council

The Council supervised the implementation of the Covenant and handled international disputes as they arose by unanimously deciding on an agreed course of action. The Covenant foresaw five permanent Council members representing the victorious Great Powers of the First World War and four non-permanent members elected by a two-thirds majority of the Assembly. With the inclusion of smaller states as non-permanent members, unanimous decision-making safeguarded Great Power interests because it bestowed on any state sitting on the Council *de facto* veto power.[35] As the US Senate refused to ratify the Versailles Treaty in March 1920,[36] the four permanent members were Britain, France, Italy and Japan.

A Council decision in September 1922, endorsed by the Third Assembly, increased the non-permanent membership to six.[37] The number would expand further: Germany received a permanent seat, and Poland and Spain occupied the two newly created semi-permanent seats in 1926. The year after Germany's withdrawal from the organisation in 1933, the Assembly endorsed the Council's nomination of the Soviet Union, which had just joined the international body. However, as the decade progressed, the future Axis powers also left the League, as did the Soviet Union in 1939. From the start of the Second World War until the League's dissolution in April 1946, Britain and France remained the sole permanent members. The Council initially held four main sessions annually, reducing it to three from 1929 until its final meeting in December 1939.[38]

The Assembly

Contrary to the Council, which safeguarded Great Power interests through permanent membership, the Assembly represented all League members. Initially, there were 42, rising to 55 in 1927. During its lifespan, around 63 states were members at one point or another. Each delegation consisted of three persons and had one vote. Because of this equal representation, the smaller powers controlled the Assembly.[39] They exerted their participatory power through their voting on candidate non-permanent Council members, their focus on a broad range of issues, the setting of the Assembly's agenda through the

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35.*Ibidem*, 33. The Covenant of the League of Nations (Art. 1 to 26), The Paris Peace Conference, Papers Relating to the Foreign Relations of the United States, Volume XIII, 1919 (Washington, DC: US Department of State, Office of the Historian), https://history.state.gov/historicaldocuments/frus1919Parisv13/ch10subch1. Accessed 29 December 2024.

36. Holt, W. S. (1978), Playing Politics with the League. In Stone, R. A. (ed.), *Wilson and the League of Nations*. (Huntington, NY: Robert E. Krieger Publishing CO.), 27-35.

37. Buell, R. L. (1929). *International Relations*. (New York: Henry Holt and Company), 708-709.

38. Housden, M. (2012), 12-13. The Covenant of the League of Nations (Art. 1 to 26) (1919).

39. Buell (1929), 698.

revision of proposals drawn up by the Secretary-General, and their ability to debate the urgent problems of the day. The press closely followed the Assembly's annual meetings (usually in September), enabling its members to have a global impact on public opinion and exert pressure on national politicians and government officials.[40]

Relationship between the Council and the Assembly

The Covenant did not define the relationship between the bodies. The First Assembly (1920) resolved that: 'The Council and the Assembly are each invested with particular powers and duties. Neither body has jurisdiction to render a decision in any matter which by the Treaties and the Covenant has been expressly committed to the other organ of the League. Either body may discuss and examine any matter which is within the competence of the League.'[41] Still, the Assembly was able to pressure the Council indirectly because of its power to nominate the non-permanent members, its control over the League's budget, and its examination of the Council's report during its annual meeting in September. As a parliament of nations, the Assembly also had the power to set much of the legislative agenda and frequently 'recommended' the Council to take a specific course of action, with which the latter body usually complied. As the Council met more frequently, it tended to focus on settling international disputes as specified in the Covenant and undertook other semi-judicial and administrative tasks.[42]

The Secretariat

The Secretariat was the League's administrative body. Staffed by around 700 international civil servants, it served the Council and Assembly and supported the work of the many committees.[43] It prepared the meeting agendas for both decision-making organs, oversaw the implementation of their decisions, and reported on the international organisation's internal and external activities. It comprised various functional sections corresponding to the League's main areas of work, including one for disarmament.[44]

Subsidiary bodies

Per Article 9 of the Covenant, the Council resolved to set up the Permanent Advisory Commission for Military, Naval and Air Questions, also known as the Permanent

40. Housden (2012), 13-14.

41. Buell (1929), 714.

42. *Ibidem*, 713.

43. Housden (2012), 14.

44. League of Nations Secretariat, UN Library and Archives Geneva, https://libraryresources.unog.ch/LON-Secretariat/overview. Accessed 1 February 2025.

Armaments Commission, on 19 May 1920. The states represented on the Council appointed a military, a naval, and an air representative, all of whom were military officers.

The Assembly had six main committees:

- First Committee: Constitutional Questions,
- Second Committee: Technical Organisations,
- Third Committee: Armaments and Blockade,
- Fourth Committee: Finances and Internal Organisation of the League,
- Fifth Committee: Humanitarian Questions, and the
- Sixth Committee: Enquiry into applications for admission of States to the League, and Political Questions.[45]

Relevant to the present study are the Third and, to a lesser extent, Sixth Committees.

On 25 February 1921, the Council resolved to establish the Temporary Mixed Commission for the Reduction of Armaments to consider the disarmament problem not only from the military perspective, but also from the social, economic, and political viewpoints.[46] This subsidiary body reported to both the Council and the Assembly and received administrative support from the Secretariat's Disarmament Section.[47] Unique to the Temporary Mixed Commission was the appointment of its members as private individuals who did not have to follow formal instructions from governments. Eventually, several key capitals increasingly objected to their lack of national accountability. The Commission wound up its activities in 1924.[48]

Controlling the arms trade: the shape of things to come

With the crafting of the Versailles Treaty underway, Great Britain and France jointly submitted a draft arms traffic convention to the Supreme War Council in April 1919.[49]

45. League of Nations Official Journal, Section: League of Nations Records to the Assembly. UN University (no date), https://archive.unu.edu/hq/library/leag_nat.htm. Accessed 30 December 2024.

46. Resolutions Concerning the Permanent Advisory Commission for Military, Naval and Air Questions, Adopted by the Council of the League of Nations, 19 May 1920. *American Journal of International Law* (14:4), October 1920, Supplement: Official Documents, 363-365. Aufricht, H. (1951), *Guide to League of Nations Publications*. (New York: Columbia University Press), 291.

47. After its establishment within the Secretariat in 1921, the Disarmament Section also provided administrative support for the Permanent Armaments Commission. Ikonomou, H. A. (2021). The Administrative Anatomy of Failure: The League of Nations Disarmament Section, 1919–1925. *Contemporary European History* (30:3), 7.

48. Webster, A. (2008) "Absolutely Irresponsible Amateurs": The Temporary Mixed Commission on Armaments, 1921–1924. *Australian Journal of Politics and History* (54:3), 374 and 387.

49. The Supreme War Council had its origins in the Rapallo Conference (5-7 November 1917) during which

The separate diplomatic initiative addressed the urgent problem of huge surplus weapons and munitions stocks remaining from the First World War. London had begun considering the matter in early 1917. Of particular concern was the risk that the arms would fall into 'undesirable hands', leading to anti-colonial uprisings in Africa and Asia. Terrorists and revolutionaries procuring such weapons was a second fear prompted by the February Revolt in Russia and amplified by the Bolshevik revolution in October 1917. British policymakers reached out to their French counterparts in part because France already had to confront spreading anti-conscription protests in North and West Africa during the war and could face future anti-colonial unrest in its overseas territories. Moreover, illicit arms shipments were reaching British territories in East Africa via French Somaliland. Given the ongoing collaboration on the Covenant and the Versailles Peace Treaty, the Paris Peace Conference appeared to London as the most opportune framework for considering the initiative. When approached, the United States shared the Anglo-French concerns about arms trafficking, more so as it was encountering gunrunning challenges in Central and South America. Washington confirmed its interest in signing the treaty after having submitted several amendments.[50]

On 10 September 1919, delegates of the Allied and Associated Powers and the newly formed Austria gathered in the Château of Saint-Germain-en-Laye, a faubourg west of Paris, to sign the peace agreement (known as the Treaty of Saint-Germain-en-Laye). The occasion also provided the opportunity for the signing ceremony of the Convention for the Control of the Trade in Arms and Ammunition (known as the Convention of Saint-Germain-en-Laye).[51] Twenty-eight countries inked the document, and more League members acceded in the following months. France was the convention's depositary state.

In essence, this agreement blended two distinct goals, each supported by a different coalition of decision-makers and opinion leaders. On the one part, it contributed to international security by denying arms transfers, unless government authorities issued an

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France, Great Britain and Italy resolved to coordinate the overall Allied military strategy. Its seat was in Versailles. The United States participated in its meetings from December onwards after adhering to the Rapallo Agreement. On 30 October 1918, it met for the first time to settle the terms of the armistices with Austria-Hungary, Germany and Turkey. It evolved into an interallied conference after admitting Belgium, Japan, Serbia and other belligerents. In January 1919, the Supreme War Council prepared the Paris Peace Conference. Admitted nations were grouped in three classes, those with general interests (the Supreme War Council members), those with particular interests (which included the members of the interallied conference and other concerned parties), and the states in diplomatic rupture with the Central Powers. The Supreme War Council negotiated the Covenant of the League of Nations; the Council of Ten was the main forum for discussing the peace terms for Germany. The structure of the Council of the League of Nations was derived from the organisation of the Paris Peace Conference. Fenwick, C. G. (1919). Organization and Procedure of the Peace Conference. *American Political Science Review* (13:2), 199-201. Sharp (1991), 19.

50. Barton, M. S. (2020). *Counterterrorism Between the Wars: An International History, 1919-1937*. (Oxford: Oxford University Press), 12-16.

51. Convention for the Control of the Trade in Arms and Ammunition, and Protocol. *American Journal of International Law* (15:4), October 1921, Supplement Official Documents, 297-313.

export licence or the transfer met the requirements of another High Contracting Party. It furthermore created so-called 'prohibited zones' covering volatile regions. For Great Britain and France, they comprised colonial possessions, especially in Africa, the Middle East and South Asia. On the other part, the convention satisfied the goals of the disarmament proponents. Arms supplying states were to submit a copy of the export licences to a Central Office to be established within the League, which it would then publish in line with the transparency aspirations of the Covenant.[52]

The Convention of Saint-Germain-en-Laye never entered into force. In the months after the signing ceremony, Washington all but ignored the arms traffic agreement. When the League commenced its meetings in January 1920, there was no US representation in Geneva, and the State Department left correspondence from the organisation unanswered. It was not until the end of July 1922 that the Secretary of State affirmed that the US could not guarantee the document's ratification. It asserted its right to furnish or deny arms to one side or another or both sides in a conflict. It also took exception to the prohibition of arms supplies to states not party to the arms traffic treaty, which impacted many Latin American countries. Furthermore, having not ratified the Versailles Treaty, it objected to the Central Office and the reporting obligations regarding authorised arms transfers. Finally, the agreement required the enactment of national legislation establishing effective control over the private armaments industry, which the Secretary of State asserted the Federal Government was not able to undertake.[53]

The principal cause of the failure of the Saint-Germain Convention, Washington's unwillingness to ratify a multilateral agreement it had helped to negotiate, was to bedevil the League's future arms reduction efforts. It would also lead to a second attempt to negotiate an arms traffic agreement in 1925.

52. Drexel, C. (1933). The Munitions Traffic. *North American Review* (236:1), 65-66. Silverlock, G. A. (2000). Issues of disarmament in British defence and foreign policy 1918-1925. PhD Dissertation (London: King's College London), 40-41.

53. Drexel (1933), 66-68.

3. Early consideration of asphyxiating gases and bacteriological agents

Nobody denies the role of the United Nations in negotiating multilateral disarmament and arms control treaties or further developing international humanitarian law. Such goals were not part of the League's mandate. According to the preambular paragraph of the Covenant, its mission was to promote international cooperation and achieve international peace and security through the concerted acceptance of established understandings of international law and actions in line with these understandings by the League's members.[1] Article 8 addressed the question of arms reductions, which, in the early 1920s, essentially meant lower national armaments, troop numbers and defence budgets. It also sought to curb the 'evil effects' of the 'manufacture by private enterprise of munitions and implements of war'.[2] The task at hand was 'to explore those aspects of the problem of disarmament which were not purely of a technical military character, but might properly be described as involving political and economical issues as well'.[3] At the outset, chemical or bacteriological weapons (CBW) were not part of the League's considerations.

Three factors contributed to chemical weapons (CW) entering the deliberations. First, the Treaty of Versailles imposed a total prohibition on CW possession, manufacture and importation on Germany. Second, the Assembly's ability to add new items to the League's agenda of work allowed the introduction of weapon control matters important to public opinion, such as poison gas. Finally, the 1921-1922 Washington Naval Conference yielded several arms limitation agreements, including one proscribing the use of asphyxiating gases in warfare. The document denied the League the ability to ignore CW any longer.

1. Treaty of Versailles (1919), Part I: The Covenant of the League of Nations.

2. *Ibidem*, Part I, Article 8.

3. League of Nations (1921). Report of the Temporary Mixed Commission on Armaments. A.81/C.321, 2.

Eliminating Germany's CW capabilities

Part V of the Treaty of Versailles imposed strict military, naval, and air restrictions on Germany.[4] Two articles addressed the country's CW capabilities:

> Article 171
>
> The use of asphyxiating, poisonous and other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany.
>
> The same applies to materials specially intended for the manufacture, storage and use of the said products or devices.
>
> The manufacture and the importation into Germany of armoured cars, tanks and all similar constructions suitable for use in war are also prohibited.
>
> Article 172
>
> Within a period of three months from the coming into force of the present Treaty, the German Government will disclose to the Governments of the principal Allied and Associated Powers the nature and mode of manufacture of all explosives, toxic substances and other like chemical preparations used by them in the war or prepared by them for the purpose of being so used.

They were the first legal provisions to express an unqualified ban on CW possession, manufacture or importation. They introduced baseline declarations on past weapon activities and capacities as a central disarmament concept.

German industrial secrets and norm development

Even so, the treaty articles were part of a coercive disarmament regime unilaterally imposed on Germany. The legal standard did not apply to the Allied Powers, which showed no inclination to eliminate their CW holdings and manufacturing capacities. Besides safeguarding their populations against future German aggression and ensuring the stability of the new Central and East European states against Germany and Bolshevik Russia, the European victors pursued a third priority through the peace settlement: reviving their economic infrastructure.[5] They, along with the chemical industry on both sides of the Atlantic Ocean, sought to close the science and technology gaps with Germany by appropriating laboratory and industrial data and processes under the guise of national security interests.

The power status, as conveyed by the presence and size of a national chemical industrial base, played an important part in those considerations. Germany's sophisticated organic chemical industry and its virtual world monopoly in areas such as dyestuffs and

4. Treaty of Versailles (1919), Part V: Military, Naval and Air Clauses.

5. Lee, S. J. (1998). *The Weimar Republic* (London: Routledge), 38-39.

pharmaceuticals underpinned its superior CW capabilities for most of the war. In contrast to the rest of Europe, the German chemical industry also had a surplus of production capacity, which it utilised effectively for testing new compounds and agent production without significantly hampering normal war requirements.[6] The Allies thus agreed on the principle of banning CW production in Germany.

However, the motives and methods for dismantling Germany's CW capacities caused a trans-Atlantic rift. Especially the production ban split London and Washington. While the Paris Peace Conference was forging ahead with the Treaty of Versailles, the British proposed on 28 April 1919 that Germany 'put the Allies in effective possession of all chemical processes [including drawings of plants, manufacturing instructions, and reports of research to date] used during the war... for the production of substances from which such things were or can be made'.[7] Those terms would have required the German industry to divulge all details, thereby revealing the secrets of its chemical manufacturing processes. In London's view, retention of its virtual world monopoly would enable Germany to restore its CW programmes at short notice.[8] Whatever the true motives behind the British proposal, the outcome would have handed the Allies one of their biggest spoils of war.

President Woodrow Wilson, suspecting that the Europeans were using the peace negotiations for unjustifiable economic ends, opposed the idea as being excessively unfair.[9] His stance prompted the chemical industries in the Allied countries to campaign in support of the British proposal. The US Chemical Foundation lobbied hard and tried to influence President Wilson directly by shrouding its commercial interests in national security rhetoric.[10] The position contradicted the private industry's earlier lack of interest in producing chemical warfare agents. During the war, leading US chemical manufacturers regarded diversification into CW production as too specialised. Furthermore, the

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6. Haber, L. F. (1986). *The Poisonous Cloud*. (Oxford: Clarendon Press), 157.

7. Brown, F. J. (1968) *Chemical Warfare. A Study in Restraints* (Westport, CT: Greenwood Press), 53.

8. *Ibidem*, 57.

9. Perry Robinson, J. P. (1971). *The Problem of Chemical and Biological Warfare. Volume I: The Rise of CB Weapons* (Stockholm: SIPRI and Almqvist & Wiksell), 235.

10. For instance, a telegram from Mr Francis Garvan, Alien Property Custodian and later President of the Chemical Foundation:

> Explain to President [the objectives of the Chemical Foundation and] [...] the fact that there must be no possibility of injuring the industry upon which rests, first our defence against explosive, gas, and germ future offensive of Germany; second, five hundred millions invested in the dye industry itself; third, the independence of all textile, paint, varnish, and other industries dependent upon the American dye industry; fourth, destruction of the present espionage system, only partially destroyed by war, through the German dyers' 'agents and representatives' in America; fifth, the general chemical development upon which modern industry so greatly relies; and sixth, the future of chemical medicine in America; in other words, the wresting from Germany of her destructive use of chemical science and turning it to our defence and the betterment of humanity.

The telegram reflected the Chemical Foundation's position. Brown (1968), 54–55 and 55, n. 5.

contracts offered lower profit margins than other war-related business. The Ordnance Department of the US Army, responsible for mobilising the wartime industrial base, thus had to contract second and third-tier companies to supply mustard agent and phosgene. None of the commissioned production plants seem to have started operations before the end of the war. Facing this indifference or lack of competence, the Ordnance Department began erecting a Federal arsenal at Edgewood, Maryland, at the end of 1917.[11] By the summer of 1918, agent production and weapon-filling installations were fully operational. The Ordnance Department transferred control of Edgewood Arsenal to the Chemical Warfare Service in June 1918.[12] Because of this record, President Wilson sensed that the chemical industry was seeking a commercial advantage when appealing to national security concerns. He remained adamant in his opposition to the British goals.[13]

London tabled a new resolution to handle the US objections. The amended conditions were just as demanding, but the British now associated the dismantlement of the German chemical industry with disarmament and the prevention of future threats:

> The German Government will disclose to the Allied Governments the nature and mode of manufacture of all explosives, toxic substances or other like chemical preparations used both in the war or prepared by them for the purpose of being so used, including the mode of manufacture of the synthetic and nitric acids used in the making of such explosives. As part of such disclosure the Allied Governments shall have the right to inspect all plants used for the manufacture, and shall receive from the German Government full particulars of the processes of manufacture in such plants.[14]

The revision satisfied nobody. Initial proposals for inspection and enforcement modalities were dropped from Article 172. Unsurprisingly, because France had expressed grave reservations about the effectiveness of arms reduction verification and enforcement during the drafting of the Covenant.[15] Consequently, the Allied military and the civilian industry could never be absolutely certain of having obtained all German chemical warfare secrets

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11. During the First World War, all governments of countries with a CW production programme eventually had to establish 'national factories' because of the weaknesses or incompetence in the private sector. Haber (1986), 156. The contracts proposed to the private industry were nevertheless huge. By the end of the war, the United States was manufacturing as much warfare agent as France and Great Britain combined and four times as much as Germany. Perry Robinson (1971), 276, n. 9. Government agencies thus assumed full responsibility for testing and manufacturing. Furthermore, they continued to run or maintain special plants after the war in case of a future chemical warfare threat.

12. Haber (1986), 167; Perry Robinson (1971), 276, n. 9.

13. Brown (1968), 55.

14. *Ibidem*, 55 and n. 6.

15. Stevenson, D. (2006). Britain, France and the Origins of German Disarmament, 1916-19. *Journal of Strategic Studies* (29:2), 206-207.

and critical manufacturing processes.[16] Even so, the scheme to secure German production secrets under the guise of disarmament contributed to Washington's reasons for abandoning the Treaty of Versailles and negotiating a separate peace agreement with Germany.

Contribution to the norm development

Notwithstanding the controversies, Articles 171 and 172 of the Treaty of Versailles formed an important stepping stone for the further development of the CBW norm. They confirmed the semantic bifurcation of poison and asphyxiating or deleterious gases manifest at the 1899 Hague Peace Conference. The German jurist Franz von Liszt drew a direct line from the Hague Declaration (IV, 2) to the Versailles Treaty in the 1925 edition of *Das Völkerrecht*.[17]

Both provisions also closely linked chemical warfare to scientific and industrial advancements. Progress became an integral part of future threat projections, encompassing novel agents, their delivery systems, and production capacities. Any subsequent restriction on CW would therefore have to consider those factors. Most significantly, the association led to the differentiation between the agents, their delivery systems and other equipment associated with production and storage in the characterisation of CW. As such, Article 171 is the earliest incarnation of the three-step definition of CBW in today's Biological and Chemical Weapons Conventions.[18]

The legal demands also shaped the treatment of CBW questions in the League of Nations. The Covenant and the reduction of the armed forces of Germany and the other Central Powers constituted separate sections of the respective peace treaties. Given that all League members had also contracted to the peace arrangements with Germany and its wartime allies, both provisions in the respective peace agreements embodied a one-sided prohibition. Yet, in the case of the Treaty of Versailles, the preambular paragraph of Part V connected the demilitarisation requirements with one of the League's main objectives. It stated that Germany undertook its obligations 'to render possible *the initiation of a general limitation of the armaments of all nations*' (emphasis added).[19] With the Covenant's overall objective of building an inclusive global community based on collective

16. Brown (1968), 56.

17. von Liszt, F. and Fleischman, M. (1925). *Das Völkerrecht*, Zwölfte umgearbeitete Auflage [The Law of Nations, Twelfth revised edition] (Berlin: Verlag von Julius Springer), 475.

18. Article I of the Biological and Toxin Weapons Convention identifies (i) the agent, (ii) origin or method of production and (iii) the weapons, equipment or means of delivery. https://front.un-arm.org/wpcontent/uploads/2020/12/BWC-text-English-1.pdf. Accessed 20 January 2025. Article II, 1 of the Chemical Weapons Convention identifies (i) the agent, (ii) munitions and devices for use with the agents, and (iii) other equipment related to the use of the agents. In addition, Article II, 8 defines a chemical weapons production facility. https://www.opcw.org/chemical-weapons-convention. Accessed 20 January 2025.

19. Treaty of Versailles (1919), Part V, Section 1 Military clauses, Chapter II Armament, munitions and material.

security, the major Allied Powers could not morally justify a prohibition applying uniquely to Germany. Despite their ongoing interest in offensive CW, they were not in a position to dismiss from the League's agenda the topics of chemical and, later, bacteriological warfare. The smaller League members were to see to that.

Using public opinion to introduce the question of chemical warfare

Lord Robert Cecil, politician, diplomat, one of the League's principal architects and an intense supporter of its goals, was the first to pry open the door to allow consideration of the implications of chemical warfare. Great Britain submitted a question about the use of asphyxiating gases as a weapon in warfare to the newly created Council in July 1920.[20] Its initial arguments were essentially humanitarian and aimed at mobilising the international scientific community in support of constraining the development of new agents. As noted in the previous chapter, the Permanent Armament Commission consisted entirely of military experts from the countries represented on the Council. It resolved that 'employment of gases is a fundamentally cruel method of carrying on war; though not more so than certain other methods commonly employed, provided that they are only employed against combatants'. Against non-combatants, such use would be 'barbarous and inexcusable'. It maintained that prohibiting or limiting the production of toxic agents in peacetime would not restrict their use in war and that banning research in laboratories was out of the question. Regarding the preparation of a regulation prohibiting the use of asphyxiating gases, the Commission posited that this was a question of international law and a problem for humanity, not one for it to consider.[21]

During the discussion of the Commission's recommendation, France suggested that the Council could not go any further than existing international law (notably, the 1907 Hague Convention and the disarmament articles in the Treaty of Versailles). Still, it conceded that the body could not refrain from expressing an opinion because of the press's awareness of the agenda item. The Council, therefore, condemned the use of poisonous gases. It also referred back to the Commission 'the consideration of the methods which might ensure an effective control of the production of gas'.[22] While the outcome ensured

20. Procès-verbal of the Eighth Session of the Council of the League of Nations, San Sebastian, 30 July-5 August 1920, 135.

21. Procès-verbal of the Tenth Session of the Council, Brussels, 20-28 October1920, Resolutions of the Permanent Advisory Commission for Military, Naval and Air Questions, Resolution VIII, 1 Asphyxiating Gases, 105.

22. Procès-verbal of the Tenth Session of the Council, 37.

that the League remained seized of CW, this early exchange held several implications for future discussions.

First, the Permanent Armament Commission's report revealed the League's reluctance to develop the laws of war further. The military officers comprising the advisory body had at best a minimal interest in armament reductions or battlefield weapon restrictions. Regardless, a much wider group of politicians, diplomats, and legal experts taking part in the meetings shared a disinclination to amend the customs and laws of war. The Covenant foresaw no such mandate, whereas its calls for national reductions in armaments and military spending, as well as curtailing the private armaments industry and international arms transfers, were specific. Another reason for the hesitance was the rather exalted idea among multiple delegates that the League aimed for nothing less than the elimination of war as an instrument to settle disputes between states. Viewed from this angle, the international organisation had no reason to waste resources on regulating specific modes of warfare such as the use of toxic agents. Still, the delegates' awareness of public and press interest meant that curtailing CW would eventually return to the table.

Second, the Permanent Armament Commission expressed the view that targeting non-military persons with war gases is 'barbarous and inexcusable'. Yet, during the Council meeting of October 1920, the Commission's President conceded that such gases harmed civilians as well as troops because they 'could not be regulated and limited to any well defined area'. Acknowledging the impossibility of preventing laboratory research and the production of combat gases, he underscored the Permanent Armament Commission's recommendation that 'an examination into the employment of gases should be authorized so as always to be in a position to provide against their eventual illicit employment'.[23] This call for legitimising research into chemical defence and protection paired nicely with the military mindset of the Commission's members. While supportive of the position not to engage in further improvement of the laws of war, the allusion to defence and protection also implicitly acknowledged that characterising the evolving CW threats merited continued scientific and technological investigation. This explication smoothed the path for reframing the humanitarian appeal.

The following year, Lord Cecil, this time seating as representative of the Union of South Africa (then a self-governing Dominion of the British Empire) in the Assembly's Third Committee on armaments, pointed out the contradiction in the Permanent Armament Commission's response to the British question on chemical warfare and the Council's lack of action. Utilising the Commission's points about poison gas being an evil of tremendous proportions and the inability to limit the consequences of its use to strictly military targets, he drove home that 'it has been stated that inventions have been made or perfected since the war whereby wholesale destruction of the civil population would be

23. *Ibidem*, 37 and 105.

possible by the dropping of poison bombs and the like from the air, nor is there any reason to suppose that the limits of invention in these fiendish devices have been reached'. He utilised this foresight to call on the Temporary Mixed Commission to explore and consider an appeal to the scientific community to provide comprehensive publicity for their research in the field of war gases. Without secrecy, Lord Cecil argued, the shared knowledge among nations would render the employment of such weapons impracticable and therefore improbable. The Second Assembly unanimously adopted all resolutions put forward by the Third Committee, thereby tasking the Temporary Mixed Commission with the question of chemical warfare.[24]

Third, the delegates began to come up against the dual-use nature of toxic chemicals. It would still take some time before they characterised the challenge. However, the awareness that many toxicants used on the battlefields have commercial applications too fed into the reluctance to strengthen the laws of war. As French delegate René Viviani argued in the first meeting of the Sixth Committee of the Assembly, 'It would be impossible to prevent the use of poisonous gases without preventing their manufacture, and this, owing to the nature of their composition, would be even more difficult in the case of poisonous gas than in the case of guns and ammunition'.[25] His comment mirrored the Temporary Mixed Commission's task to consider arms reductions not only from the military, but also from the social, economic, and political viewpoints. As the Vice-Chairperson concluded that they had to await further instructions and data from the Council, no further discussion on the matter took place in the Sixth Committee in 1920. However, by considering the economic relevance of poisonous substances as commercially manufactured goods and appreciating the need to curb their production for military purposes and international trade, CW would eventually be brought under agenda items on conventional weapons and munitions.

While chemical warfare was gradually insinuating itself into the League's agenda as a security topic, the United States began preparing for the Washington Naval Conference. Its outcomes were to have an impact on the poison gas deliberations that the League would have never been able to achieve on its own.

24. League of Nations (1921). The Records of the Second Assembly, Twenty-seventh Plenary Meeting, Annex A. Reduction of Armaments. Report of Committee No. 3 of the Assembly, 654-655 and 657.

25. League of Nations (1920). The Records of the First Assembly, Meetings of the Committees, Sixth Committee, First meeting (18 November), 249.

Of submarines and noxious gases

Reining in technology-driven armament dynamics had been the original, yet futile, goal of the 1899 Hague Peace Conference. The carnage of the First World War disillusioned many people with the constraints on warfare. They still desired to strengthen the humanitarian laws of war but had lost faith in their value once the war demons were unleashed. The rules might give the victor a ground of action, but they could not mitigate the brutalities and suffering.[26] They came to realise that armaments, rather than bolstering national security, were a source of instability in international relations. If war were to be abolished as a means of resolving disputes among nations, states would have to accept limits on national armament. As the League was already experiencing, national security and disarmament did not always go hand in hand, especially when some prominent states refused to engage in reciprocal security assurances.

In the early 1920s, the three major naval powers – Great Britain, Japan, and the United States – faced competing interests: balancing the qualitative and quantitative naval expansion of their rivals, the need for budgetary restraints, and public demands for arms reductions, all while maintaining their overseas and maritime security interests. The League promised collective security at the lowest possible levels of national armament; however, unwilling to commit to security guarantees, Washington had rejected the Treaty of Versailles. Tokyo had territorial ambitions on mainland Asia and in the Pacific Ocean, which the League did not endorse. London was wary of the Japanese and US investments in modern battleships, which, budget-wise, it could not match. The United States was perhaps the sole power that could afford large investments in military hardware; however, the public and political elites called for peace and reductions in armaments. Meanwhile, France feared a resurgent Germany most. With the United States and Great Britain declining security assurances, Paris refused any reductions in its military posture.

Against this backdrop, President Warren G. Harding called for ambitious reductions in naval and land armaments when he invited nine powers to the Washington Conference (12 November 1921 to 6 February 1922). His opening address captured the dual ambition of war prevention and arms control:

> I can speak officially only for our United States. Our hundred millions frankly want less of armament and none of war. Wholly free from guile, sure in our own minds that we harbor no unworthy designs, we accredit the world with the same good intent.[27]

26. Wright, Q. (1922). The Washington Conference. *American Political Science Review* (16:2), 292.

27. Harding, W. G. Opening Speech, 12 November 1921. US Senate (1922). Conference on the Limitation of Armament. 67th Congress, 2nd Session, Document no. 126, (Washington: Government Printing Office), 40.

However, only five countries participated in the naval arms limitation talks: France, Great Britain, Italy, Japan, and the United States. The Committee on Limitation of Armament established three subcommittees to examine toxic weapons, aircraft, and the rules of international law. Belgium, China, the Netherlands and Portugal joined the five for other issues on the conference agenda.

Of arms limitations and security vulnerabilities

Of the five main powers, four were League members. Unsurprisingly, US idealism encountered the arguments about vulnerabilities, security assurances, and defence readiness that had already been voiced in Geneva. Following President Harding's opening address, the Conference appointed Secretary of State Charles Evans Hughes as chairperson. In his acceptance speech, he surprised the delegates with 'a concrete proposition for an agreement for the limitation of naval armament,' which he proceeded to outline in great detail.[28] As he was moving to adjourn the meeting, French Foreign Minister Aristide Briand requested the floor to respond. Highlighting France's continuing anxieties and surrounding dangers, he concluded:

> If she is afforded the opportunity of obtaining the security which she has the right to demand, in order that peace may be assured, and if at the same time she is called upon to sacrifice some of her armament in order to secure that peace, France is ready to consent to these sacrifices ... if tomorrow her safety be assured, France is ready to say: 'Arms down!'[29]

The discussion on the bold US proposal continued in the second plenary session on 15 November. Great Britain characterised the announcement as a 'shock of profound surprise'. Lord President of the Council Arthur Balfour noted that it affected Great Britain and the British Empire more than any other nation for 'the hard brutal necessities of plain and obvious facts' rather than reasons of ambition or drawn from history or tradition. He remarked that it only touched upon the three largest navies (Great Britain, Japan and the United States), leaving the naval forces of other countries unaffected. He also raised the subject of submarines, a significant asymmetric threat to the British naval and merchant ships, for which the US scheme permitted a tonnage above what any nation then possessed. Referring to the situation in Europe, he also drew attention to the burden of land armament.[30] Admiral Baron Kato (Japan) argued that 'a nation must be provided with such armaments as are essential to its security', a requirement to be fully weighed in the

28. US Senate (1922), 46-50.

29. *Ibidem*, 51.

30. *Ibidem*, 65-70.

examination of the proposal.[31] Intervening last and drawing on the British and Japanese comments, Briand pointed out France's stake in the naval question and the need to also discuss the matter of the limitation of land armament. When concluding the session, the chairperson said that 'the great first step has been taken in this notable expression of approval in principle of what has been suggested by the American Government' and that the committees would examine the matters raised from a technical viewpoint. He also promised France the opportunity to address the subject of land armament at a suitable point.[32]

The suitable point arrived on 21 November, when the chairperson convened the third plenary session. Hughes may have been oblivious to the interconnectedness between arms reductions and collective security in Europe. When introducing the session on land armament, he stated without mentioning that the United States lay an ocean away from the former battlefronts and only had two neighbouring countries:

> So far as the Army of the United States is concerned, no question is presented. It has always been the policy of the United States – it is its traditional policy – to have the regular military establishment upon the smallest possible basis.[33]

Briand came straight to the point. France was in no position to accept reductions in land armaments and did not have the right to do so, given the grave elements of instability in Europe. Directly addressing the US delegation, he described their country's privileged situation: no entangled boundaries of nations, no hostile neighbours and no frontiers to give cause for anxiety. He insisted that France would do its utmost to end the era of bloody conflicts with Germany; however, given its past, it could not afford to relax and impair its strength. To underscore his point, he quoted from a recent book by General Erich Ludendorff: 'We must learn to understand that we live in an age of war; that for the individual, as well as for the State, strife is a natural phenomenon, and that this strife likewise has its foundation in the divine order of the world.'[34] After a long and detailed overview of the security challenges, he summed up the French arms reduction efforts already undertaken, adding that his country could do no more for the moment.

The debate on conventional arms reductions is beyond the scope of this study. But towards the end of his intervention, Briand pithily summarised France's fundamental stance that as long as Great Britain and the United States refuse to extend security assurances, his country could not contemplate disarmament:

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31. *Ibidem*, 71.

32. *Ibidem*, 74.

33. *Ibidem*, 76.

34. *Ibidem*, 77-80.

> ... if France must face alone a situation such as I have described without any exaggeration, such as it really is, then she must not be denied the opportunity of insuring her own safety within limits consistent with the needs of the present hour.[35]

Ultimately, the Washington Conference imposed no limitations on land forces or armaments.[36]

Echoes from Geneva

At the fifth plenary session on 1 February 1922, the chairperson announced that the Committee on Limitation of Armament had adopted resolutions concerning the conduct of submarines in war and the use of poison gas and combined them in a treaty to be presented to the Conference. Former Secretary of War and State Elihu Root read the text, prefacing it as follows:

> The United States of America, the British Empire, France, Italy and Japan, hereinafter referred to as the Signatory Powers, desiring to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, and to prevent the use in war of noxious gases and chemicals, have determined to conclude a Treaty to this effect, ...[37]

Article V of the Treaty of Washington in Relation to the Use of Submarines and Noxious Gases in Warfare prohibited 'the use in war of asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices'.[38] After having read out the treaty text, he concluded:

> It undertakes further to prevent temptation to the violation of these rules by the use of submarines for the capture of merchant vessels, and to prohibit that use altogether. It undertakes further to denounce the use of poisonous gases and chemicals in war, as they were used to the horror of all civilization in the war of 1914-1918.
>
> Cynics have said that in the stress of war these rules will be violated. Cynics are always nearsighted, and oft and usual the decisive facts lie beyond the range of their vision. We may grant that rules limiting the use of imple-

35. *Ibidem*, 87.

36. Wright (1922), 292.

37. US Senate (1922), 157.

38. A Treaty Between the Same Powers, in Relation to the Use of Submarines and Noxious Gases in Warfare, signed at Washington on 6 February 1922 and never entered into force, Article V (See Annex 2).

> ments of warfare made between diplomatists will be violated in the stress of conflict.
>
> We may grant that the most solemn obligation assumed by governments in respect of the use of implements of war will be violated in the stress of conflict; but beyond diplomatists and beyond governments there rests the public opinion of the civilized world, and the public opinion of the world can punish. It can bring its sanction to the support of a prohibition with as terrible consequences as any criminal statute of Congress or of Parliament.
>
> We may grant that in matters which are complicated and difficult, where the facts are disputed and the argument is sophistic, public opinion may be confused and ineffective, yet when a rule of action, clear and simple, is based upon the fundamental ideas of humanity and right conduct, and the public opinion of the world has reached a decisive judgment upon it, that rule will be enforced by the greatest power known to human history, the power that is the hope of the world, will be a hope justified.
>
> That power was the object of all the vast propaganda of the late war; that power was the means of determining the conflict in the late war; and that power, the clear opinion of the civilized world, stigmatizing as a violation of the fundamental rules of humanity and right a specific course of conduct, will visit a nation that violates its conclusion with a punishment that means national ruin.[39]

Despite the successful conclusion of the treaty, Root could not resist a sneer at some of the subcommittee members who had advocated legalising chemical warfare.

Considering the disinclination among many governments and delegates in the League to develop new or reinforce existing international rules, the turn the deliberations on asphyxiating gases took in Washington was not surprising. The appointment of the three subcommittees on aircraft, gases and subjects relating to the laws of war under the Committee on Limitation of Armament on 23 November 1921 was a manner to accommodate France given its unyielding resistance to any consideration of arms reductions unless other states were willing to establish 'in common an international force with the duty of maintaining order'.[40] The choice of subcommittee themes reflected not only France's standpoint, but also the doubts among the delegations about the value of international laws of war. Their hesitancy recalled the Permanent Armaments Commission's stance against the League developing rules of conduct on the battlefield when it had to address a question of poison gas. Yet, public opinion, as invoked by President Harding in his opening address, left them with no choice but to consider the matter. This, too, was reminiscent of earlier discussions in the League.

39. US Senate (1922), 161.

40. *Ibidem*, 247-248.

Chemical warfare almost legalised

In the context of the Washington Conference, a 'subcommittee' was a small group of representatives from the five main powers. It had no minutes and presented its recommendations in the form of a report with suggested resolutions for consideration by the Committee on Limitation of Armament. Within the confines of a subcommittee, public opinion held less sway.

The subcommittee on chemical warfare developed a logic that led it to recommend that CW use be legalised in a memorandum to the Committee on Limitation of Armament on 6 January 1922:

> The committee agreed more or less unanimously on the following points:
>
> (a) Chemical warfare gases have such power against unprepared armies that no nation dare risk entering into an agreement which an unscrupulous enemy might break if he found his opponents unprepared to use gases both offensively and defensively.
>
> (b) Since many high explosives produce warfare gases or gases which are the same in their effects on men, any attempt to forbid the use of warfare gases would cause misunderstandings at once in war – that is, one or both sides would in the first battle find men dead or injured from gas. The doubt would at once arise whether gas is actually being used as such or whether the casualties were due to high explosive gases. This could be made the excuse to launch a heavy attack with warfare gases in every form.
>
> (c) Research which may discover additional warfare gases can not be prohibited, restricted, or supervised.
>
> (d) Due to the increasing large peace-time use of several warfare gases, it is impossible to restrict the manufacture of any particular gas or gases. Some of the delegates thought that proper laws might limit the quantities of certain gases to be manufactured. The majority opinion was against the practicability of even such prohibition.
>
> (e) It is possible to confine the action of chemical-warfare gases the same as high explosives and other means of carrying on war. The language used in this connection was that 'it is possible, but with greater difficulty.' On this question, as in the case of (f) and (g) following, it was evident that among the representatives of the three nations thoroughly acquainted with chemical-warfare gases, namely, the United States, Great Britain, and France, there was less doubt as to the ability to confine these gases than among the Japanese and Italians, who know less about them.
>
> (f) The kinds of gases and their effects on human beings can not be taken as a basis for limitation. In other words, the committee felt that the only limitation practicable is to wholly prohibit the use of gases against cities and other large bodies of noncombatants in the same manner as high explosives

> may be limited, but that there could be no limitation on their use against the armed forces of the enemy, ashore or afloat.
>
> (g) The committee was divided on the question as to whether or not warfare gases from a method of warfare similar to other methods, such as shrapnel, machine guns, rifle, bayonet, high explosives, airplane bombs, hand grenades, and similar older methods. In this, as in (e) and (f), the United States, Great Britain, and French members (five in number), who know gas, were emphatic that chemical-warfare gases form a method of waging war similar to the older forms.[41]

The similarity to the arguments used in the Permanent Armaments Commission's opinion on chemical warfare is striking, but perhaps less surprising when considering that the Great Powers in the League Council, also present in Washington, acquiesced in that position. It is worth recalling that René Viviani had argued against the possibility of outlawing chemical warfare in the Sixth Committee of the Assembly in 1920. In Washington, he took over as head of the French Delegation after Briand's return to France late in November 1921.[42] While he did not take part in the subcommittee on poison gas, he was most surely involved in setting out France's positions. Still, the recommendations to the Committee on Limitation of Armament seemed to go much further than the opposition voiced in League committees. As the US-educated Japanese writer Sotokichi Katsuizumi recalled, the US experts in the subcommittee 'were firmly for the unrestricted use of poison gases'.[43]

The development can only be understood if one accepts that the anti-chemical warfare stance was not as prevalent as usually pictured in the literature and commentaries. By 1918, chemical warfare had become so ubiquitous that soldiers on the frontline lived permanently in a toxic environment and were always, however slightly, exposed to the gases' harmful effects. To them, and the people living behind the frontlines, gas had become one nuisance among so many, including rain, rats, disease, sniping and shelling.[44] Chemical weapons had become conventionalised. The highest decision-making levels had delegated the authority to employ poison shells to battlefield commanders. Protests were typically limited to individuals or gatherings of eminent scientists, and emerging peace movements tended to protest the war as a whole rather than specific forms of warfare.[45]

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41. *Ibidem*, 384-385.

42. *Ibidem*, 240.

43. Katsuizumi, S. (1922). *Critical Observation on the Washington Conference* (Ann Arbor, MI), 25.

44. Cook, T. (1999). *No Place to Run. The Canadian Corps and Gas Warfare in the First World War* (Vancouver: UBC Press), 177.

45. van Bergen, L. and Abbenhuis, M. (2015). Man-monkey, monkey-man: neutrality and the discussions about the "inhumanity" of poison gas in the Netherlands and International Committee of the Red Cross. Zanders (ed.), 221. Van den Dungen, P. (2015). Civil Resistance to Chemical Warfare in the 1st World War. *Ibidem*, 192-196.

By the time the International Committee of the Red Cross (ICRC) issued its appeal against the use of poisonous gases on 8 February,[46] advanced protection and gas discipline preserved soldiers from the worst consequences of exposure, a point post-war apologists of chemical warfare would never fail to make. Other weaponry and modes of warfare caused far higher casualty rates and exposed soldiers to intolerable levels of daily destruction, mutilation, and human suffering. On a strategic level, commanders faced escalatory pressures from the enemy's technological developments and innovative gas tactics. They needed to avoid any physical and psychological degradation of fighting capacity resulting from the opponent gaining the upper hand. Under those circumstances, the humanitarian appeal backfired on the ICRC as both Allies and Germans questioned the organisation's motives and bias.[47] Around the same time, legal writers and diplomats expressed their despondency about the international humanitarian law's inability to curb a war's excesses.

In the early 1920s, the political battlelines over CW became more entrenched. Institutional interests in the continuation of chemical armament grew stronger, on the one hand. Sharp differences between idealists and pragmatists over how to counter future chemical threats coloured the opposition debates, on the other hand.

Apologists within the military-scientific community deflected any argument that gas had not decisively influenced any battle. They argued that the early means of dissemination had been crude and highly dependent on wind factors. In later stages of the war, so they claimed, artillery was still considerably inaccurate. Moreover, more potent toxicants, such as Lewisite, an organoarsenic vesicant, did not reach the frontlines in time to prove their worth. Time and time again, they saw their view on the effectiveness in war proven right in the colonial campaigns. (But they usually failed to mention that the attacked could not retaliate and hardly possessed any protective equipment or shelters.) They built the core of their arguments along a line pioneered by the US naval delegate at the 1899 Hague Peace Conference, when he argued that future weaponry may still prove decisive and not cause superfluous suffering in wars to come.[48]

The advocates of chemical warfare also maintained that toxicants are humane compared to classical weapons. Essentially, they countered emotional repugnance with the mathematical rationale of statistics. For example, the British officially listed 180,983 of

46. International Committee of the Red Cross, Appeal against the use of poisonous gases, 8 February 1918, League of Nations (1920), Assembly document 20/45/137.

47. van Bergen and Abbenhuis (2015), 229.

48. Mahan, A. T. Report to the United States Commission to the International Conference at the Hague, on Disarmament, etc., with Reference to Navies. Brown Scott, J. (1909) *The Hague Peace Conferences of 1899 and 1907*. A Series of Lectures Delivered before the Johns Hopkins University in the Year 1908, Volume II (Baltimore, MD: Johns Hopkins Press), 37.

their soldiers as gassed, of whom no more than 6,062 or 3.3% were killed.[49] The popular press maintained similar arguments for many years after the war. One American piece published in 1935 posited that 24 per cent of US soldiers who had been injured by shrapnel or bullets subsequently died, while only two per cent of gas casualties proved fatal.[50] Such figures enabled them to present gas as a humane weapon that wounds rather than kills. The fact that many casualties appeared to recover completely after a more or less prolonged period reinforced their argument. There were, of course, no statistics yet on long-term or transgenerational effects. The humane characteristic weighed heavily in the discussions during the Interbellum. Only later declassified documents revealed that whole categories of casualties never made it into official statistics.[51]

In contrast to these macro-level arguments, opponents drew attention to the suffering of individuals, which went beyond the acceptable to put a soldier *hors de combat*, and the indiscriminate nature of gas clouds, which had caused innumerable civilian losses. Already during the early 1920s, strategic thinkers on air power, such as Italian General Giulio Douhet and US General William 'Billy' Mitchell, were advocating the integration of CW in aerial warfare.[52] Their writings led some to envisage apocalyptic chemical bombing raids against cities, producing human losses beyond anything experienced thus far. Having listened to a presentation by a chemical expert a few days earlier, Ellen Wilkinson, MP, predicted in a speech to the House of Commons on 11 July 1927 that 'the next war will be so destructive as to threaten the very existence of European civilisation'. She added that 'our cities will be not merely decimated but rendered utterly uninhabitable by chemical bombs'.[53] A split in the opposition to chemical warfare emerged when some people and organisations advocated peacetime preparations to protect populations from gas and assist victims. In the eyes of those seeking a total ban, such humanitarian pragmatism allowed for the possibility of chemical warfare. They viewed this as totally unacceptable.[54]

In humanitarian law, restraint on the use of a particular weapon is always proportional to the military objectives it supports. As people compared the relative inhumanness of

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49. Harris, R and Paxman, J. (1982). *A Higher Form of Killing* (London: Triad/Granada), 34.

50. Gilman, W. (1935). Devastating poison gas – the Army planes' ally'. *Popular Aviation* (17: 3), 145.

51. Harris and Paxman (1982), 34.

52. Douhet, G. (1921). *The Command of the Air.* Translated from Italian by Dino Ferrari. Reprinted in Project Warrior Studies (Washington, DC: Office of Air Force History, 1983), 58. Mitchell, W. (1921). Statement before the House Appropriations and Naval Affairs Committees (28 January), in 'Air Service plea fails to get funds', *New York Times*, 29 January 1921, 1. Wildenberg, T. (2014). *Billy Mitchell's War with the Navy: The Army Air Corps and the Challenge to Sea power* (Annapolis, MD: Naval Institute Press, ePub).

53. Wilkinson, E. (MP), Hansard, Series 5, Vol. 208, Commons, Sittings of 11 July 1927, Columns 1859–61. https://hansard.parliament.uk/commons/1927-07-11/debates/80e82daf-d41f-42ae-bf40-58edf5662744/CommonsChamber. Accessed 1 June 2025.

54. van Bergen and Abbenhuis (2015), 230.

different arms categories (for the most part without mentioning military objectives), the discussions became heated but ultimately pointless. They hardly advanced with the further articulation of the laws of war, which, of course, was the aim. For instance, in the subcommittee on submarines, some wondered whether the killing of women and children by torpedoing a ship in the middle of the night is more inhumane than gassing civilians behind the frontlines, or machine guns or shrapnel ripping soldiers apart. The reverse types of questions could be heard in the poison gas subcommittee. The conclusions were similar: the weapon cannot be banned at this time, and its prohibition should be the subject of a future conference. Typically, the subcommittee on aircraft assessed that it was impossible to restrict the use of aircraft in war or effectively limit the number of planes or pilots. Hence, it proposed that the Committee resolve that 'the use of aircraft in war should be covered by the rules of warfare as adapted to aircraft by a further conference which should be held at a later date', which the Committee on Limitation of Armament did.

However, in the full Committee on Limitation of Armament, the US representatives took exception to the subcommittee's conclusions in the memorandum on chemical warfare. The chairperson read out, on behalf of the US delegation, the report adopted by the advisory committee of the American delegation. This advisory committee was 'selected by the President, so as to represent prominent organizations of the country, designed to form a liaison between the conference and the public'.[55] The foresightful move prevented the monopolisation of viewpoints by the military experts in highly technical matters. The statement included the resolution 'that chemical warfare, including the use of gases, whether toxic or nontoxic, should be prohibited by international agreement, and should be classed with such unfair methods of warfare as poisoning wells, introducing germs of disease, and other methods that are abhorrent in modern warfare'. The advisory committee of the American delegation therefore recommended that 'Chemical warfare should be abolished among nations, as abhorrent to civilization. It is a cruel, unfair, and improper use of science. It is fraught with the gravest danger to noncombatants and demoralizes the better instincts of humanity'.[56]

Elihu Root then indicated that the Committee Chairperson had asked him to prepare a resolution based on the advisory committee's opinion. He explicitly cited Article 171 of the Treaty of Versailles and referred to the Hague agreements banning the use of poisons and asphyxiating gases before reading out the draft resolution:

> The use in war of asphyxiating, poisonous, or analogous liquids or other gases and all materials or devices having been justly condemned by the gen-

55. Wright (1922), 286.

56.US Senate (1922), 386.

> eral opinion of the civilized world and a prohibition of such use having been declared in treaties to which a majority of the civilized powers are parties –
>
> Now, to the end that this prohibition shall be universally accepted as a part of international law, binding alike the conscience and practice of nations, the signatory powers declare their assent to such prohibition, agree to be bound thereby between themselves, and invite all other civilized nations to adhere thereto.[57]

Consideration of the statement continued the next day. Representatives from the other powers associated themselves with it, which, with a few minor editorial modifications, became Article V of the Treaty in Relation to the Use of Submarines and Noxious Gases in Warfare.[58]

Discussion of the new rule in Central and South America

A year later, the Conference on Central American Affairs adopted the Convention for the Limitation of Armament. Five countries signed the agreement on 7 February 1923. Its Article V adopted the essence of the prohibition on CW use in the Washington Treaty:

> The contracting parties consider that the use in warfare of asphyxiating gases, poisons, or similar substances as well as analogous liquids, materials or devices, is contrary to humanitarian principles and to international law, and obligate themselves by the present convention not to use said substances in time of war.[59]

In addition, the Fifth International Conference of American States, held in Santiago, Chile from 25 March to 3 May 1923, recommended that participating states prohibit 'the use of asphyxiating or poisonous gases and analogous liquid material or devices as indicated by the Washington treaty of February 6, 1922'.[60] However, the text did not equal a legally binding instrument. On 11 April, Chile moved to exclude the topic of armament limitation from the conference agenda. Instead, it proposed separate negotiations between the nations concerned and a declaration of principles based on the treaties concluded at the Washington Naval Conference.[61]

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57. *Ibidem*, 388.

58. *Ibidem*, 815-817.

59. Convention for the Limitation of Armaments, signed by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua on 7 February 1923 and entered into force on 24 November 1924. *American Journal of International Law* (17:2), April 1923, Supplement: Official Documents, 116.

60. US Department of State (1924). Report of the Delegates of the United States of America to the Fifth International Conference of American States, Held at Santiago, Chile, March 25 to May 3, 1923. (Washington, DC: Government Printing Office), 21.

61. The Fifth Pan-American Congress. *Current History* (18:2), May 1923, 188.

The importance of the Washington Treaty for the League of Nations

The Treaty Relating to the Use of Submarines and Noxious Gases in Warfare never entered into force. France had already expressed grave reservations about the proposed national quotas for submarines throughout the Washington Conference. While it allowed the passage of the agreement, it never ratified it. That submarines and asphyxiating gases became part of a single treaty reflected the reality that, after several months of deliberations, the delegates managed to place restrictions on only two novel types of warfare.

The Washington Treaty generated excitement across the Atlantic Ocean. The new rule against the use of asphyxiating gases of warfare now existed and the main powers had signed it. Furthermore, Article VII stipulated that 'The Government of the United States of America will further transmit to each of the Non-Signatory Powers a duly certified copy of the present Treaty and invite its adherence thereto'. All League members could thus deposit an instrument of accession with the US government. The League launched a campaign to encourage all its members to do so. The Temporary Mixed Commission considered a similar initiative but eventually decided against taking further action because the US had not yet forwarded the treaty to the non-signatory states.[62] Lacking France's ratification, the United States was unable to fulfil the promise in Article VII.

Even so, a dam had broken, and the control of chemical (and bacteriological) modes of warfare became a recurring topic in Geneva.

62. League of Nations (1922). Report of the Temporary Mixed Commission on Armaments. A.31/C.631, Annex V: Draft Convention for the Extension of the Washington Naval Treaty to the Non-Signatory Powers of the League of Nations, 78-82.

4. Understanding future threats from chemical and bacteriological warfare

1922 was the year in which chemical warfare began featuring more frequently in League reports and discussions. The Assembly pushed the agenda forward despite resistance in the Council and, more specifically, the Permanent Armaments Commission. The Council and the Assembly were, in essence, co-equal but with separate competences. All League members made up the latter body, and each delegation had one vote. Smaller countries could advance their interests by building coalitions. The Assembly's Third Committee on the reduction of armaments prepared key decisions for the whole Assembly, while the Temporary Mixed Commission implemented the decisions by the Assembly and the Council. Lord Cecil continued to exert his considerable influence in the Assembly and its Third Committee to advance the cause against chemical warfare.

The two significant matters fuelling the debates in the League were, on the one hand, the outcomes of the Washington Naval Conference, and, on the other hand, the rising apprehension about future modes of chemical warfare, combined with the potential impact of science and technology on the development and production of novel toxic agents.

With the Washington Naval Conference having yielded a new international restriction on chemical warfare, the Third Committee looked into the possibility of extending the principles of the treaty to all League members. Following separate proposals by the delegates for Colombia and Australia, it resolved that 'the Assembly requests the Council to recommend the Members of the League and other nations to give their adhesion to the Treaty of Washington (February 6th, 1922) in relation to the use of asphyxiating gas and submarines in war and other similar matters'. Concrete action, however, was impossible because not all signatory states had yet ratified the Washington Treaty, and the United States could therefore not forward it to other states with an invitation for accession. Colombia, hence, suggested that the Assembly draw up its own convention outlawing chemical warfare. The delegate for Norway opposed the step because humankind could only abolish war, not humanise it. The key was to seek reductions in armaments. He furthermore argued that a thorough preparatory investigation of the subject matter should precede the transformation of the Assembly into a diplomatic conference mandated to draw

up an international code of laws. The Assembly decided to refer the question to the Temporary Mixed Commission for further consideration.[1]

Meanwhile, concern had increased among delegates about scientific and technological developments that could turn asphyxiating gases and other noxious substances into devastating weapons, especially if used against urban populations. The emergence of aeroplanes with more powerful engines extending both their range and bombload fed this ominous vision. As noted in the previous chapter, air power strategists, such as Douhet and Mitchell, were then advocating the integration of chemical weapons (CW) in aerial warfare. Their writings led some to envisage apocalyptic chemical bombing raids against cities, leading to human losses beyond anything experienced thus far. These appraisals helped Lord Cecil to reframe the humanitarian arguments.

As indicated earlier, the Second Assembly had resolved that the 'Temporary Mixed Commission be asked to examine – in consultation with the Permanent Advisory Commission – whether it is advisable to address an appeal to the scientific men of the world to publish their discoveries in poison gas and similar subjects, so as to minimise the likelihood of their being used in any future war'.[2] The following year, the Temporary Mixed Commission examined ways to implement the resolution. It addressed the question to the Committee on Intellectual Co-operation to advise on how to enlist the collaboration of scientists. This committee replied that it could not suggest any 'methods by which scientific men throughout the world can be induced to publish their discoveries concerning poisonous gases and the development of chemical warfare'. Consequently, the Temporary Mixed Commission concluded that the proposed exercise served no useful purpose and considered that even if such an appeal to scientists were made, it would not contribute to the achievement of the Assembly's aim to minimise the likelihood of toxic agents being used in any future war.[3]

Lord Cecil (South Africa) countered the setback. He pointed out possible future developments in chemical warfare and envisioned the discovery of even deadlier toxic agents:

> Nor is poison gas the only example of the future development of chemical warfare; explosives grow yearly in strength and destructive effect; bombs which in the late war were regarded as formidable are already of insignificant power compared with those which will be used in future wars, and there is the whole department of bacteriological attack which may be developed as science progresses.

1. League of Nations (1922), Records of the Third Assembly, 12-13 and 28-29.

2. League of Nations (1921). Records of the Second Assembly, Twenty-seventh Plenary Meeting, Annex A. Reduction of Armaments. Report of Committee No. 3 of the Assembly, 648.

3. League of Nations (1922), Records of the Third Assembly, Volume I, Annex 2 Report of the Temporary Mixed Commission for the Reduction of Armaments, Special Questions, VI, Use of Toxic Gas in War, 75-77.

He therefore appealed to his colleagues in the Temporary Mixed Commission to set up a small committee that could

> collect, partly from existing publications and partly by enquiries from experts, the facts necessary for such an exposition without trending upon any secrets or giving information which might be utilised in undesirable ways. What is wanted is not information as to the technical methods by which these things can be made or employed, but *as to what will be the result of their manufacture and use*.[4] (Emphasis added)

The italicised clause mattered because it moved the consideration of chemical warfare away from a ban under the laws of war and closer to some of the core issues under discussion in the League. The sharing of information aimed to inform the public about the evolving threats and thus enable governments to counter them with necessary measures to protect the population. Such steps would reduce the likelihood of chemical warfare, according to the reasoning. Hence, the Temporary Mixed Commission acquiesced to the requested small committee:

> Resolution VII (a) The Assembly, having considered the report of the Temporary Mixed Commission on the subject of the development of chemical warfare, approves its action in establishing a special Sub-Committee to report on the probable effects of chemical discoveries in future wars, and requests the Council and the Temporary Mixed Commission to take every possible measure to secure the fullest publicity for the report of this Sub-Committee.[5]

Lord Cecil's intervention was consequential for another reason as well. It included the first reference to bacteriological warfare in publicly available League records. As cited in the previous chapter, the report by the advisory committee of the American delegation made a passing reference to the hostile use of germs. Still, the delegates at the Washington Conference did not act on the topic. In contrast, Lord Cecil's intervention linked the feasibility of bacteriological warfare to scientific advancements, thereby providing a sufficient motive for the League to investigate the germ weapon as well.

The 'Special Committee on the probable effects of chemical discoveries', as the subcommittee was formally labelled, began its work in 1923. In his report to the Fourth Assembly, Edvard Beneš (Czechoslovakia) amplified the concerns about the impact of 'modern discoveries in the domains of chemistry and bacteriology' on the changing nature of warfare. 'War being in itself a relentless struggle for life, chemical and

4. *Ibidem*, 76.

5. League of Nations (1922), Records of the Third Assembly, Volume I, Reduction of Armaments: Report of Third Committee. Continuation of the Debate. Resolutions, 288.

bacteriological weapons emphasise the inhuman quality of this struggle and heighten the dangers of war to such an extent as to threaten the very existence of mankind and civilisation.' For this reason, the Special Committee, consisting of Lord Cecil (Great Britain once more), Vice Admiral John Roderick Segrave (Great Britain), General Alberto de Marinis (Italy) and Lieutenant-Colonel Édouard Réquin (France), consulted with eminent bacteriologists and chemists in preparing the report suggested by the Third Assembly.[6]

Despite opposition to the idea of scientists publishing their latest innovations in the fields of chemistry and bacteriology to enable societies to prepare for chemical and bacteriological warfare, the Special Committee solicited the opinions of thirteen internationally renowned scientists. Four of the eight invited chemists and four out of five bacteriologists responded:[7]

Chemists
- Prof. Angelo Angeli, Institute of Higher Studies, Florence
- Prof. André Mayer, Collège de France, Paris
- Senator Emanuele Paternò, 9th Marquess of Sessa, University of Rome
- Prof. Joaquin Enrique Zanetti, Columbia University, New York

Bacteriologists
- Prof. Jules Bordet, Pasteur Institute, Brussels
- Prof. Walter Bradford Cannon, Harvard Medical School, Boston, MA
- Prof. Thorvald Madsen, State Serum Institute, Copenhagen
- Prof. Richard Friedrich Johannes Pfeiffer, University of Breslau (Wrocław)

The Special Committee's report summarised the experts' insights and opinions. It discussed the various modes of chemical warfare, described the effects of the different types of chemical warfare agents on humans, animals and vegetation, and investigated the possibilities of protection against CW. It considered the possible effects of new discoveries. Mainly because the agents used in the First World War were in everyday industrial use in peacetime, the experts did not exclude the possibility but considered the discovery of new toxicants that affect other bodily functions unlikely. One expert also dwelt on the impact of gas use on a country's sources of wealth. He reflected on the possible consequences of large-scale air-delivered gas bombs filled with toxic agents against cities, industrial sites

6. League Of Nations (1923). Records of the Fourth Assembly, Minutes of the Third Committee, Annex 10 (Part II): Reduction of Armaments, Report of the Third Committee to the Fourth Assembly, 216.

7. League of Nations (1924). Report of the Temporary Mixed Commission for the Reduction of Armaments. A.16.1924.IX (30 July), 25. League of Nations (1923). Disarmament, R187-8 Dossier 6055, Review of the consequences of toxic gases in war (Correspondence with the experts). 'League asks facts on gas in warfare', *New York Times*, 17 July 1923, 7.

or mine pits and galleries. While the scenario was not implausible, he thought that it would no longer be a matter of purely chemical action, considering the evolution of high explosives and the emergence of new incendiary materials.

The CW part of the report concluded with a reflection on the problem of protecting the civil population, which still needed to be resolved. It also noted that a hostile neighbour with a large chemical industry would acquire an immense superiority if it were to conduct secret research into injurious substances, manufacture them in large quantities in any of its chemical works, and then launch an unexpected attack against an unprepared population. In this manner, the question of chemical warfare became one of international security and stability, and hence, touched on the League's ultimate goal of war prevention.[8]

The much shorter section on bacteriological warfare noted the absence of such weapon use during the First World War. Still, the experts could not rule out such a future possibility, given developments in bacteriology. Having typhus, cholera or plague in mind, they had difficulty imagining the military utility of germ warfare because the spread of microbes could neither be measured nor localised. The pathogens would affect the civilian population and cross borders, and the epidemic might continue after hostilities had ceased. They doubted the workability of preparing streptococci, staphylococci, anthrax spores or glanders bacilli for the poisoning of weapons as the germs would lose their potency if prepared beforehand and allowed to dry on metallic surfaces. They also questioned whether the agent, if placed in a projectile, might resist the shock of discharge, the heat, and the violence of an explosion. Only a release from an aeroplane of glass globes filled with germs presented a danger in their mind. There was less consensus in the group about the capacity to destroy a country's livestock or crops. In conclusion, the Special Committee posited that, although the bacteriological arm could not currently paralyse an enemy's defences, scientific progress may yet turn it into a formidable weapon in the future. Therefore, developments had to be monitored.[9]

The end of the beginning of the League of Nations

1924 was a turning point for the League. It was the year in which governments ended the internationalist and broader societal representation in the organisation. They did not extend the mandate of the Temporary Mixed Commission and took charge of the weapons control agenda. Great Britain and France, in particular, thought that disarmament initiatives, with their numerous security implications, were governmental prerogatives and should not originate with a body whose membership, while appointed by countries, sat in

8. League of Nations (1924). Report of the Temporary Mixed Commission, 25-29.

9. *Ibidem*, 29-30.

their own name. Commission proposals had also often fallen foul of institutional opposition in capitals or been rejected by a new government after elections. The Permanent Armaments Commission, established under Article 9 of the Covenant and comprising military officers accountable to their respective governments, also safeguarded national interests. The Temporary Mixed Commission had its supporters, mostly among smaller powers who could influence policy outcomes through their numbers and coalition-building strategies. It was the place where matters of weapon control not originally on the League's agenda could be explored and framed for diplomatic consideration. Yet, none of them came to fruition, the root cause being the League's lofty vision of war elimination based on the twin pillars of armament reductions to strictly minimal levels and mutual security assurances. In the pursuit of this grand ambition, the international organisation could not escape certain realities.

Foremost, the League did not enjoy universal membership. Non-members, such as the nascent Soviet Union, could pose serious present or future military threats because the arms reduction requirements did not apply to them. The United States, the great inspirer of the League's Covenant, had failed to ratify the Treaty of Versailles and resisted engaging with new diplomatic initiatives emerging from Geneva. Many League members, not least France, continued to view Washington as the premier guarantor of peace.

Second, countries had divergent threat perceptions. Great Britain, separated from the continent by a sea, had significantly reduced its military and naval power immediately after the armistice and felt less concerned about developments in Europe than about the rising disturbances in its overseas territories. France and Belgium harboured long-term concerns about Germany's economic, industrial, and military resurgence. They refused to draw down their military capacities or abolish conscription and were desperate for security assurances from their former allies. In the eastern part of Europe, the First World War had broken up empires, and most new countries were facing internal turmoil, fierce border disputes or existential threats from big neighbours.

Third, the large powers, in particular, shunned the proposed mutual assistance commitments, which included automatic obligations to come to the rescue of a third party or transfer sovereign authority to declare war to supranational decision-making.

Finally, the League's quest for deep military cuts sat uncomfortably with smaller countries, more so because their national industrial and scientific bases were too small to mobilise sufficient resources to face off an aggressor in time. The League's recurrent efforts to curb international arms transfers and private weapon producers in line with Article 8 of the Covenant sharply exposed those vulnerabilities.

With these issues dominating deliberations one way or another, the League's achievements in security governance, armament reductions, and arms traffic restrictions were eyed poorly at the end of 1924.

The Special Committee of the Temporary Mixed Commission submitted its report on the probable effects of chemical discoveries to the Third Committee, which in turn had the Fifth Assembly request the Council 'if it considers it desirable, to publish the report of the Temporary Mixed Commission and, if advisable, to encourage the work of making information on this subject generally accessible to the public'.[10] The League never officially released the report.[11] During its meeting of 30 September, the Council agreed with the opinion of Mr Beneš, rapporteur, that the 'formal Assembly resolution is in itself the best way to draw public attention to this issue', and that therefore, 'the Council has every right to hope that the government delegates who unanimously voted for this resolution will make every effort to give it the widest possible publicity in their respective countries'.[12] With the termination of the Temporary Mixed Commission's mandate, consideration of chemical and bacteriological warfare had reached its endpoint. No country, as far as is known, published the report.

In one of its priority areas, the restriction of the international arms trade, the League made little headway beyond bureaucratic efforts to register and publish national reports on arms transfers. When negotiating the Treaty of Versailles in 1919, states had already identified the arms trade as a significant contributing factor to the outbreak of the First World War. In a parallel diplomatic process, they concluded a separate treaty, the Convention of Saint-Germain-en-Laye for the Control of the Trade in Arms and Ammunition.[13] Despite its involvement in the negotiations, the United States withdrew from the multilateral engagements. It refused to ratify the Treaty of Versailles and disregarded the Convention of Saint-Germain-en-Laye. Consequently, the latter agreement never entered into force. The State Department withdrew its representation from Geneva and ignored correspondence from the organisation.[14]

Realising that the Convention of Saint-Germain-en-Laye was not going anywhere and that the United States had to be part of an arms trade agreement, the League set out to craft a new treaty in 1923. On 27 September 1924, the Fifth Assembly of the League of Nations resolved to convene a conference of members and non-members on questions of

10. League of Nations (1924). Records Of the Fifth Assembly, Text Of The Debates. Twenty-Second Plenary Meeting (27 September), 182-183.

11. Email correspondence with Mr Pierre-Étienne Bourneuf, Scientific Advisor, UN Library and Archives, Geneva, 18 March 2025.

12. Société des nations (1924). Procès-verbal de la trentième session du conseil, tenue à Genève du vendredi 29 août au vendredi 3 octobre 1924. Dix-septième séance, mardi 30 septembre 1924. Journal Officiel (octobre 1924) [League of Nations (1924). Minutes of the Thirtieth Session of the Council, held in Geneva from Friday 29 August to Friday 3 October 1924. Seventeenth meeting, Tuesday 30 September 1924. Official Journal (October 1924)], 1363-1364.

13. Convention for the Control of the Trade in Arms and Ammunition, and Protocol. *American Journal of International Law*, 15: 4 (October 1921), Supplement Official Documents, 297-313.

14. Drexel, C. (1933). The Munitions Traffic. *North American Review* (236:1), 66-68.

security, disarmament, and arbitration with the special task of producing a draft convention regulating the international trade in arms. This agreed-upon draft was to be completed by December 1924, together with comments by the governments of the world, so that it would be ready for consideration by a final acceptance conference in May or June 1925.[15]

15. League of Nations (1925). Proceedings of the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War. Held at Geneva, May 4th to June 17th, 1925. A. 13. 1925. IX. (September), 7.

5. Negotiation of the Geneva Protocol

Nothing in the wartime conceptions of an international organisation (starting in 1916), the preparation of the League of Nations' Covenant in 1919, or the diplomatic exchanges about the execution of the Covenant's obligations suggested that the control of chemical and bacteriological warfare was a diplomatic or legal priority. Indeed, had certain events played out differently, the Geneva Protocol might never have seen the light of day. The US refusal to ratify the 1919 arms trade Convention of Saint-Germain-en-Laye meant that the document never entered into force.[1] Without this rebuff, the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War (4 May-17 June 1925), which spawned the Geneva Protocol, would have never happened. Similarly, the US Senate's rejection of the 1919 Versailles Treaty took the country outside of the deliberations on disarmament and security in Europe. Armament levels, security questions and decisions on military interventions belonged constitutionally to the Senate's exclusive prerogatives and could therefore never be transferred to the authority of a multinational institution. Its rejection played a role in the convening of the 1921-1922 Washington Naval Conference.

League members explored multiple options to draw the recalcitrant Allied power into their deliberations. The agreements reached in Washington matched several disarmament ambitions under consideration in Geneva. Instrumental was that the United States had accepted them. One of the minor accords restricting gas warfare never entered into force, as Chapter 3 pointed out. Still, having signed the document, the British and French governments had to reconsider their positions on chemical weapons (CW) in function of the disarmament and security demands in the Covenant. In parallel, some Council and Assembly committees began investigating questions about chemical and, eventually, bacteriological warfare. However, aside from some reports and resolutions, their work yielded few tangible results by the end of 1924.

Meanwhile, the United States had become more receptive to closer collaboration with the League (without becoming a member) and thus participated in the arms trade conference. To general consent, the US delegate moved to restrict the trade in CW as well. The

1. Convention for the Control of the Trade in Arms and Ammunition, and Protocol, signed at Saint-Germain-en-Laye and Paris on 10 September 1919. *American Journal of International Law* (15:4), October1921, Supplement: Official Documents, 297-313.

Polish representative immediately requested that the proposed ban also be extended to bacteriological weapons.

Extending arms trade controls to chemical and bacteriological weapons (CBW) raised new problems. On the one hand, the delegates had to confront the dual-use characteristics of toxic agents, their precursors and related equipment. While they had encountered the issue before, they never had to resolve the problems it brought up. Earlier attempts to control CW had centred on the laws of war and the implications of their use on non-combatants rather than restrictions on the technologies proper. The delegates faced a similar issue with conventional small arms and munitions. Still, by categorising them in lists, they solved the question about the international trade in hunting and other non-military weapons.[2] With toxic agents, their widespread legitimate industrial applications and the brisk discovery of new compounds, they soon realised that a list-based approach was impractical.

On the other hand, limitations on the arms trade or international CW transfers touched upon the nexus between disarmament and security. This matter had sparked many debates since the League's inauguration in January 1920. 'Disarmament' was an obligation under Article 8 of the Covenant. It premised that the armaments competition before the First World War contributed significantly to international instability and the outbreak of hostilities. Accordingly, downsizing armed forces and their armaments to minimal national requirements (to be determined by the League of Nations) was to prevent a future conflagration. Nationalising and licensing the private armaments industry was a different facet of the same goal. To support the mandatory arms reductions, the Covenant envisaged mechanisms for binding arbitration in case of conflicts or imminent war as well as mutual (military) assistance.

Thus, the proposals to restrict the arms trade or transfers of CW potentially placed countries without an armaments or chemical industry at a considerable security disadvantage. CW possessors also inadvertently faced questions about whether the size and composition of their toxic arsenals were consistent with the Covenant's objectives. Without a solution for the dual-use problem of poisonous chemicals and absent a robust system to ensure mutual assistance, the inclusion of CW-related transfer restrictions in a multilateral arms trade convention proved impossible. Realising that controlling the trade in toxic compounds required a general prohibition on their use as a weapon on battlefields, the original US amendment also included the text of Article V of the 1922 Washington Treaty. Its insertion paved the way for the Geneva Protocol.

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2. Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, Chapter I: Categories. League of Nations (1925). Proceedings of the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War. Held at Geneva, May 4th to June 17th, 1925. A. 13. 1925. IX. (September), 32-35

Organisation of the Arms Traffic Conference

The Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War convened under the League's auspices in Geneva from 4 May until 17 June 1925. It aimed to finalise the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, whose draft the Temporary Mixed Commission had prepared in 1924 under a Council recommendation from December 1923.[3]

The new conference marked the United States' re-engagement with multilateral diplomacy. League members had bent over backwards to persuade Washington to participate, even to the point of stipulating that the new treaty was to avoid 'any clause which might render it difficult for the Government of the United States to ratify the Convention'.[4] The United States decided to observe the Temporary Mixed Commission's meetings in 1924.[5] In December, it announced its intent to participate in the conference. Congressman Theodore E. Burton was to lead the US delegation.

The Conference, under the presidency of Count Carton de Wiart (Belgium), held general discussions in plenary meetings at the opening and closing of the proceedings, namely on 4-6 May and again on 15-17 June. In between, the General Committee, also under his presidency, held twenty-six sessions. It undertook a first reading of the draft Arms Traffic Convention. Whenever a delegation raised a question of principle, the concerned articles were referred to the competent technical committee for further study or preliminary drafting. Four such technical committees were established in advance, two of which would address questions on CBW. The Military, Naval, and Air Technical Committee, chaired by General Kazimierz Sosnkowski (Poland), examined matters related to armaments and met nineteen times. The Legal Committee, chaired by Ambassador Petresco Comnène (Romania), considered legal questions and held seventeen sessions. At the outset, the General Committee also decided to establish additional subsidiary committees, but these have no bearing on the present discussion.[6] Annex 3 provides a chronology of the discussions in the various committees that led to the Geneva Protocol.

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3. League of Nations (1924). Minutes of the Third Committee, Annex 1. Report of the Temporary Mixed Commission for the Reduction of Armaments, I. Control of the International Trade in Arms, Munitions and Implements of War, 98-101.

4. League of Nations (1925). Conference for the Control of the International Trade in Arms, Munitions and Implements of War. C.758.M.258.1924.IX. (September), Document 3: Draft Convention for the Control of the International Traffic in Arms, Munitions and Implements of War, Submitted by Admiral the Marquis de Magaz to the Temporary Mixed Commission (January 21st, 1924), 61.

5. League of Nations (1924). Minutes of the Third Committee, Annex 1, Appendix II: Letter from the Minister of the United States in Berne to the Secretary-General of the League of Nations. Legation of the United States of America (Berne, February 2nd, 1924), 103.

6. League of Nations (1925). Proceedings of the Conference, 9.

The US and Polish chemical and bacteriological weapon proposals

In his opening statement during the second Plenary meeting on 5 May, Theodore Burton announced that he would introduce 'certain constructive modifications and suggestions' at the appropriate moment, including an important one concerning 'additional measures to deal with the traffic in poisonous gases, with the hope of reducing the barbarity of modern warfare'.[7]

The suitable setting was the General Committee, which, two days later, began the first reading of the draft convention. Burton intervened before the delegates began reviewing draft Article I and expressed 'the very earnest desire of the Government and people of the United States that some provision be inserted in this Convention relating to the use of asphyxiating, poisonous, and deleterious gases'. Reinforcing the importance of this topic to his country, he added: 'This subject has been brought to the attention of our Chief Executive (President Coolidge) and prohibition of the exportation of these gases would meet with his express approval'.[8] He then referred to the 1922 Washington Treaty, which prohibits the use of asphyxiating gases in warfare, and reminded the delegates that the agreement required the contracting powers to seek adherence from other states.

Before reading out the first version of the US draft proposal, he listed two significant difficulties. As the conference strived to control the international arms trade, the deliberations centred on weapon technologies rather than on the moral and humanitarian implications of their use in war. Seeking to prohibit the exportation of deleterious gases, he noted the need to trace 'the dividing-line between gases used in warfare and gases used for legitimate industrial purposes' and therefore proposed submission of the technical matter to the Military Committee. The second difficulty concerned the equality between CW-producing nations and the denial of non-producing countries from equipping themselves with such weapons as a consequence of the proposed arms trade restrictions. A political committee, he suggested, should consider this principle of evenness.

He then read out the first draft of the US proposal to be submitted to the Military Committee:

> The use in war of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices has been justly condemned by the general opinion of the civilised world, and a prohibition of such use has been declared in treaties to which a majority of the civilised Powers are parties. The High Contracting Parties therefore agree absolutely to prohibit the export from their territories of any such asphyxiating, poisonous or other gases, and all analo-

7. *Ibidem*, 130.

8. *Ibidem*, 155.

> gous liquids, intended or designed for use in connection with operations of war.[9]

Several countries endorsed and commented on the US initiative. General Kazimierz Sosnkowski (Poland) immediately proposed to add bacteriological warfare, insisting that 'such action [is] absolutely indispensable in order to render war less terrible by prohibiting barbarous weapons the use of which is a disgrace to our civilisation'.[10]

Associating himself with the US initiative, Joseph Paul-Boncour (France) commented that the Military Committee would have to 'define, if possible, the characteristics of gases and chemicals which cannot be utilised in war, or of those which can be utilised both for warlike and non-warlike purposes'. Rear-Admiral Augusto Carlos de Souza e Silva (Brazil) noted that to ensure the equality between producing and non-producing countries from the perspective of national security, 'the Convention on the Control of the International Trade in Arms, Munitions and Implements of War must be supplemented by a Convention on the private manufacture of arms. If therefore we adopt the American proposals, it will be in the hope that the draft Convention will provide guarantees that there will be no inequality between the various countries as regards the employment of poison gases.' He proposed to submit the question to the Legal Committee.

Another substantive comment came from Hungary. Dr Zoltán Baranyai highlighted the importance of protection against asphyxiating gases and therefore advanced that means of defence against chemical warfare be excluded from the export prohibition. He was sensitive to the issue because, like Germany under Article 171 of the Versailles Treaty, Article 119 of the Treaty of Trianon forbade Hungary the possession, manufacture and importation of CW.[11]

By the next morning, 8 May, the United States, Poland and Hungary had formally submitted their proposals. Burton introduced two alternative versions of his proposal. The first one corresponded to the text he had read out the day before. The second one avoided references to other treaties and called for the exportation prohibition and adequate penalties to apply in all territories under a state's jurisdiction or control:

> To the end of lessening the horrors of war and of ameliorating the sufferings of humanity incident thereto, the High Contracting Parties agree to control the traffic in poisonous gases by prohibiting the exportation of all asphyxiating, toxic or deleterious gases and all analogous liquids, materials and devices manufactured and intended for use in warfare under adequate

9. *Ibidem*, 155.

10. *Ibidem*, 156.

11. *Ibidem*, 155-157.

> penalties, applicable in all places where such High Contracting Parties exercise jurisdiction or control.[12]

Poland, contending that 'the materials used for bacteriological warfare constitute an arm that is discreditable to modern civilisation', requested that 'any decisions taken by the Conference concerning the materials used for chemical warfare should apply equally to the materials employed for bacteriological warfare'.[13] Hungary, finally, requested to insert the following phrase at the end of the US amendment: '... it being understood that such import and export prohibition shall not apply to methods of defence against asphyxiating, poisonous, or other similar gases employed as a means of warfare'.[14]

The meeting then adopted the President's proposal to refer the texts to the Military and Legal Committees. It also accepted his suggestion that the Legal Committee start first because it had no work in hand yet.[15]

Legal uncertainties

The Legal Committee formed a three-person subcommittee to study the CBW proposals on 11 May.[16] It reported back eight days later. Its members were unable to recommend a unified course of action. They proposed two alternatives. The first option would be to insert a special provision prohibiting the exportation of poisonous gases in the Arms Traffic Convention. The second one would be to abandon drafting an article. Instead, a provision under which the contracting parties undertake to prohibit the use of asphyxiating, poisonous and other deleterious gases could be inserted or annexed to the Final Act.[17]

A significant challenge had emerged during the deliberations: it did not seem possible to conclude that international law prohibited the use of toxic agents in war from a legal viewpoint. Dr Titus Komarnicki, legal adviser to the Polish delegation, noted that the Washington Treaty banning asphyxiating gases amounted to a moral condemnation and attempted to embody the prohibition in international law. Baranyai (Hungary) accepted

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12. Proposal of the Delegation of the United States regarding chemical warfare. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A.19, 7 May 1925. (League of Nations, Disarmament, Document 43927, Dossier 32639, Various documents, drafts & amendments to articles concerning chemical warfare discussed at the Arms Traffic Conference, Geneva, May 1925.)

13. Proposal by the Polish Delegation concerning bacteriological warfare. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A.23, 8 May 1925.

14. Amendment submitted by the Hungarian Delegation. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A.24, 8 May 1925.

15. League of Nations (1925). Proceedings of the Conference, 157.

16. *Ibidem*, 577.

17. *Ibidem*, 597.

that the agreement had not yet entered into force but countered that all parties to the Treaty of Versailles 'were expressly prohibited from using such weapons' under Article 171. Allan W. Dulles contended that the US proposal was intended to remain within the limits of the draft Arms Traffic Convention because otherwise delegates would be obliged to seek new instructions from their respective governments, thereby causing delays. As the United States had ratified the Washington Treaty, its position was clear.[18]

In the absence of a consensus view on the legal status of chemical warfare under international law, Mr Eduardo Cobian (Spain) reported the four main opinions back to the General Committee on 20 May with the request to either settle the matter directly or to communicate to the Legal Committee its decision on each one of the opinions with an indication how the Legal Committee should proceed. The options were:

> (a) Prohibition by means of an Article in the Convention of the exportation of asphyxiating, poisonous or other similar gases, and all analogous liquids, materials or devices;
>
> (b) A declaration, either in the Final Act or in a separate document, laying down that the use of the said gases in time of war is contrary to international law;
>
> (c) A statement in a suitable Article of the Convention that the use of gases in war is prohibited by international law;
>
> (d) To allow, in regard to the exportation of the means of defence referred to in the Hungarian amendment, an exception to be made to the conditions laid down in the Draft Convention.[19]

The Legal Committee would not again be involved in the consideration of CBW. Its report was significant for three reasons. First, it scrutinised the US proposal, together with the Polish and Hungarian amendments, in relation to Article 3 of the draft Convention. This provision proposed to authorise the High Contracting Parties to grant export licences for 'arms, munitions and implements of war', provided their 'use is not prohibited by international law'.[20] The unequivocal determination of whether CBW employment on the battlefield is illicit or not was therefore critical to integrating the US amendment into the Convention. The Legal Committee's hesitation implied that such a conclusion was wanting, and a separate document or declaration might be necessary to prohibit their use expressly. Second, the technical committees were to advise the General Committee on an article-by-article basis. The preparation and transmittal of the report on the US proposal, separate from the article review, *de facto* implied that no universal legal norm against the use of asphyxiating gases in war was in force. Third, if the General Committee were to

18. *Ibidem*, 597.

19. *Ibidem*, Part III Annexes, Annex 10. Reports of the Legal Committee, I. Chemical Warfare, 745.

20. *Ibidem*, Text of the Draft Convention Submitted to the Conference, Article 3, 18.

accept alternatives (a), (b) or (c), the delegates would still have to grapple with the dual-use nature of many toxic chemicals so as to prevent interference with their legitimate international trade.

Separation of CBW from the main convention

As it turned out, the General Committee forwarded the options to the Military Committee with a specific request to examine suggestions (a) and (d), which took it up in its 15th meeting on 26 May. Three days earlier, the United States had submitted a written statement replacing the proposal in document C.C.I.A.19 circulated to the General Committee on 7 May with a simpler and cleaner version that 'falls entirely within the scope of the draft Convention':

> The High Contracting Parties agree to prohibit the export from their territory of all asphyxiating, toxic or deleterious gases, and all analogous liquids, exclusively designed or intended for use in connection with operations of war.[21]

General Sosnkowski chaired the Military Committee and could, therefore, not advocate Poland's interests. Dr Komarnicki took on this role. Still, when presenting the General Committee's request, he noted that both options 'corresponded to the proposal of the United States of America and to the supplementary proposals of the delegations of Hungary and Poland', even as the text did not refer to bacteriological weapons, a consequence of the updated US proposal. He furthermore remarked that alternatives (b) and (c) deviated from the Military Committee's terms of reference, an opinion the United States shared.[22]

The delegates came straight to the point. They were virtually unanimous in their opinion that a ban on the trade in toxic chemicals had little to no value without an overall prohibition on chemical warfare. The highest support for the US proposal came from countries that had signed the 1922 Washington Convention and, perhaps surprisingly, Germany (which was bound by the Versailles Treaty). The Washington Convention had not yet entered into force, and, therefore, other states could not adhere to it. Hence, smaller powers tended to distinguish between refraining from CW use in war and disarmament, the latter concept implying the non-production of CW. Having a major power not take up

21. Statement by Delegation of United States relative to Chemical Warfare Proposal (C.C.I.A.19). League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A./C.T.27, 23 May 1925. Also reproduced in League of Nations (1925). Proceedings of the Conference, Annex 3 [Undated], 739.

22. League of Nations (1925). Proceedings of the Conference, 528.

the disarmament commitment signified that smaller countries would have to find means to manufacture poison gas for themselves if the US-proposed trade restrictions were to be adopted.[23]

General de Marinis, whose country, Italy, had signed the Washington Convention, discerned a hierarchy of importance between, on the one hand, the prohibition of gas and chemical warfare, and, on the other hand, the ban on international trade in gas. Without the former, the gas-producing powers would gain a disproportionate advantage to the detriment of the non-manufacturing countries. He added that 'international law contained no provision prohibiting the use of gas by countries' and continued that 'to prevent trade in gas, it would be necessary for all States to undertake not to have recourse to chemical warfare'. He concluded that 'the prohibition of the traffic in toxic products was in reality of far less importance than the wider undertaking – above all, from a practical point of view'. He was uncertain whether the Arms Traffic Conference could insert such a ban into the draft convention, but noted that the Legal Committee had left the option open.[24]

De Marinis' intervention shaped the subsequent discussion and prompted Komarnicki to propose a resolution for inclusion in the Final Act of the Conference:

> That all delegates should request their respective Governments to grant to the delegates at the forthcoming Conference on the Manufacture of Arms and Implements of War the necessary plenary powers authorising them to take in the name of their Governments engagements tending to the absolute prohibition of the use of toxic gases and methods of bacteriological warfare.
>
> Furthermore, the Conference requests the League of Nations to place on the agenda of the forthcoming Conference on the Manufacture of Arms and Implements of War the question of the prohibition of chemical and bacteriological warfare.[25]

In other words, Poland suggested moving the framing of an absolute prohibition on chemical and bacteriological warfare to an upcoming conference at the heart of the League's arms reduction mission. The delegates voiced their support for the idea.

The next morning, it was clear that the debate had taken a decisive turn. Delegates now had two draft resolutions before them. Great Britain and Italy had introduced a second text. In essence, it corresponded with the Polish submission but recommended convening a special conference rather than transferring the question to the Conference on the

23. *Ibidem*, 528-531. The concern applied particularly to the Soviet Union, which had declined the invitation to participate in the Arms Traffic Conference.

24. *Ibidem*, 531-532.

25. Resolution proposed by the Polish Delegation, Military, Naval and Air Technical Commission. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A./C.T.28, 25 May 1925.

Manufacture of Arms and Implements of War.[26] During the meeting, Ambassador Hugh S. Gibson presented a new version of the original US amendment:

> The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices having been justly condemned by the general opinion of the civilised world, and a prohibition of such use having been declared in treaties to which a majority of the civilised Powers are parties:
>
> The signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such prohibition, agree to be bound thereby as between themselves, and further agree to prohibit the exportation and importation of all such asphyxiating, poisonous or other gases.[27]

He acknowledged that certain parts fell outside the Military Committee's competence but thought that the General Committee could benefit from the body's insights.

Two new issues arose, namely, adherence of all gas producers to a convention prohibiting chemical warfare and whether the current or a future conference should negotiate the agreement. As had been the case in many League meetings, Russia's position outside of the association drove the security preoccupations of many Nordic and Eastern European members. While Germany was constrained by the CW clauses in the Treaty of Versailles and was participating in the Arms Traffic Conference, and the other Great Powers had signed the Washington Treaty on asphyxiating gases, Russia was a party to none of these arrangements. Ahead of the conference, Moscow had expressed reservations about restricting the arms trade and, in de Marinis' words, 'it would certainly make reserves concerning the use of toxic gases'. Russia's absence might impede the Arms Traffic Conference from concluding a convention. De Marinis also posited that the likelihood of Russia joining the Conference on the Manufacture of Arms and Implements of War, which Poland had suggested as a negotiation forum, was highly unlikely. He therefore supported the Anglo-Italian call for a special conference, which Russia might be persuaded to join.[28]

Switzerland challenged that the Polish and Anglo-Italian draft resolutions precluded any immediate progress on the CW question. Admiral de Souza e Silva (Brazil) observed that the Military Committee had already arrived at two important conclusions, namely (1) export restrictions would place non-producing countries at an enormous disadvantage and (2) a powerful nation remaining outside of the convention would also put producing countries adhering to the restrictions in a position of dangerous inequality. Meanwhile, the

26. Propositions by Delegations of Italy and Great Britain, Military, Naval and Air Technical Commission. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A./C.T.29, 25 May 1925.

27. League of Nations (1925). Proceedings of the Conference, 536.

28. *Ibidem*, 537.

technical committee had not yet begun considering solutions, and the Admiral proposed some practical steps.

Poland associated itself with the Anglo-Italian draft resolution after both countries had agreed to include bacteriological warfare in their text. De Marinis presented a comprehensive draft resolution that incorporated the committee's conclusions, as formulated by Brazil, and called for a special conference to prohibit chemical and bacteriological warfare. Gibson expressed disappointment about the lack of a recommendation based on the US draft but understood that several aspects of the proposal fell outside the technical committee's terms of reference. He reserved the right to return to the matter in the General Committee. Switzerland did likewise regarding its concern about the lack of immediate action. With the acceptance of some textual modifications to reflect a factual rather than a political reality, all delegations unanimously adopted the resolution text. Still, a few countries retained a preference for the US proposal, and some voiced their misgivings about the special conference's prospective element.[29]

The day concluded with the appointment of a drafting committee to prepare the report for the General Committee. In its summary of the discussions, it noted that a majority of the Committee thought that 'the prohibition of the exportation end importation of chemical and bacteriological arms would not have the effect of putting a stop' to future CBW use because such a ban 'would in no wise stop producing States from making use of this chemical arm' and it would be challenging to implement it 'as it is practically impossible to discriminate between chemical products used for industrial pharmaceutical or other purposes and those which may be used in chemical warfare'. The Committee also considered that 'the Delegates of the present Conference do not possess the necessary instructions to pronounce on' a 'universal undertaking on the part of all Powers to abstain from chemical and bacteriological warfare'. Therefore, it proposed to consider the convocation of a special conference at an early date, at which all States would be represented.[30]

The next day, 27 May, the Military Committee unanimously adopted the report.[31] At this point, it was all but sure that the Conference would not address the matter of chemical and bacteriological warfare as part of the Arms Traffic Convention.

29. *Ibidem*, 537-542.

30. Report on chemical and bacteriological warfare, Military, Naval and Air Technical Commission. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A./C.T.31(1), 27 May 1925.

31. League of Nations (1925). Proceedings of the Conference, 548.

Arriving at an open protocol

The General Committee considered the various proposals on chemical and bacteriological warfare at its seventeenth meeting on 5 June. Colonel E. Lohner (Switzerland) took the floor ahead of General de Marinis, rapporteur of the Military Committee, to clarify the purpose of a new proposal to the Conference for insertion in the Final Act. While closely following the text adopted by the Military Committee, he wanted the document to convey a more positive message and indicate that the delegates were making a definite advance. The document noted that many powers were already party to explicit prohibitions on asphyxiating, poisonous or other gases and all analogous liquids (namely, the Versailles and Washington treaties). It expressed the opinion 'that every effort should be made to conclude as soon as possible a universal Convention' to give 'practical effect to the prohibition of chemical and bacteriological warfare', thereby codifying it as a 'principle of international law and laying down definite rules as to its application'.[32] He thus sought to draw closer to the ambitions of the original US proposal. As he argued:

> The only real difference between the text proposed by the Rapporteurs and the suggestion which we have the honour to submit to you consists in the fact that, while the general report contains a formula by which the states signing the Convention on the trade in arms merely express their intention to secure the inclusion, at a later date, of the principle of the prohibition of chemical and bacteriological warfare in international law, we are of opinion that the Conference can proceed further and recognise the existence even now of this prohibition (at least as regards the means employed in waging chemical warfare) as a binding stipulation of international law.[33]

De Marinis responded by summarising the work and unanimously adopted conclusions of the Military Committee, while underlining the constraints placed on the technical committee's terms of reference. He listed the main security concerns that limitations on the export of poisonous chemicals entailed, including that they would not affect states with important chemical industries, increase the insecurities of nations with a small or non-existent chemical industrial base, and the absence of one major state from the conference.

The Swiss intervention provoked a host of reactions. While Japan was ready to accept the proposal that came out of the technical committee, its delegate preferred the Swiss proposal to first condemn the use of asphyxiating gases as a military device. Ambassador Burton spoke next. He appreciated the Swiss opinion that

32. Proposal by the Swiss Delegation: Resolution to be embodied in the Final Act. League of Nations, Receipt of Documents Branch, Distribution number C.C.I.A.63, 2 June 1925.

33. League of Nations (1925). Proceedings of the Conference, 307.

> every effort should be made to conclude as far as possible a universal Convention codifying the principles of international law and laying down definite rules as to its application. His proposal goes further than the others in that he maintains that the use of asphyxiating gas is now forbidden by international law and that that law should be re-affirmed and generally accepted.[34]

He then expressed the sentiment that it may not be necessary to convene a special conference. With more than forty states represented, it should be possible to prepare a resolution based on the text of Article V of the Washington Treaty. He concluded that in so doing, the delegates would have taken 'a very definite step towards the universal prohibition of gas warfare'. The document would also remain open for other countries to add their signature. To maintain the initiative in US hands and pressure other delegations, he announced that if the Arms Traffic Conference were unable to act, then President Coolidge was prepared to summon a special conference to conclude such an agreement.[35]

Almost all states that spoke aligned themselves with the Swiss and US proposals. Norway expressed its long-held view that the League should not regulate means of warfare but aim for the abolishment of war. The delegate did indicate that he would not oppose the work of the conference. France echoed the Norwegian sentiments, adding its long-standing demands for collective security and assurances that any country initiating war would face the united strength of the civilised nations.[36]

The session ended with the adoption of Burton's proposal and its referral to a drafting committee to finalise the text.

Finalisation of the draft protocol

The twentieth session of the General Committee, held on 8 June, began with the consideration of the protocol text prepared by the drafting committee.[37] A couple of states suggested some minor text amendments. However, General Sosnkowski, who had initially proposed adding bacteriological warfare to the original US amendment, noted its omission in the draft protocol. He argued most forcefully for its reinstatement:

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34. *Ibidem*, 310.

35. The Secretary of State to the Chairman of the American Delegation (Burton), 3 June 1925. 500.A14/286: Telegram. Office of the Historian, Papers Relating to the Foreign Relations of the United States, 1925, Volume I, https://history.state.gov/historicaldocuments/frus1925v01/d42. Accessed 1 June 2025. The Secretary of State to the Chairman of the American Delegation (Burton), 4 June 1925. 500.A14/294: Telegram. Office of the Historian, Papers Relating to the Foreign Relations of the United States, 1925, Volume I, https://history.state.gov/historicaldocuments/frus1925v01/d43. Accessed 1 June 2025.

36. League of Nations (1925). Proceedings of the Conference, 312-315.

37. Drafting Committee: Draft Protocol on Chemical Warfare. Receipt of Documents Branch, Distribution number C.C.I.A.74, 6 June 1925.

> The bacteriological weapon has, so far as production is concerned, several advantages over the chemical one. It can be manufactured more easily, more cheaply and with absolute secrecy. Furthermore, the bacteriological weapon is, by its very nature, capable of extending itself without constant regulation of the factors of time and space by those who are using it. It is sufficient to set this weapon in motion on a very small scale for its results to become more and more terrible and widespread. Unlike poison gas, the action of which is generally of short duration and restricted to a limited area, cultures of microbes, if once secretly let loose in any place, may, thanks to their speedy multiplication and their ever-increasing virulence, easily occasion epidemics affecting great masses of men, animals and even plants.
>
> Among the most deadly weapons in warfare against the human race, I might quote: cholera, typhoid fever, plague, tetanus, glanders and botulism. So far as animals are concerned, they may be infected in large numbers, for instance, by cultures of the germ of glanders, cattle plague, etc. Bacteriological warfare can also be waged against the vegetable world, and not only may corn, fruit and vegetables suffer but also the cultivation of useful plants, that is to say, vineyards, orchards and fields.
>
> Again, and this should be particularly emphasised, it is impossible to limit the field of action of bacteriological factors once introduced into warlike operations. The consequences of bacteriological warfare will thus be felt equally by the armed forces of the belligerents and the whole civil population, even against the desire of the belligerents, who would be unable to restrict the action of the bacteriological weapons to an area decided upon beforehand.
>
> How can we refrain from thinking of the horrors of future wars, horrors which will perhaps threaten whole races with extermination! We must set ourselves against that, in the name of civilisation and of humanitarian sentiment.[38]

He concluded by proposing the reinstatement of the reference to bacteriological methods of warfare. US Ambassador Burton replied that

> The subject of bacteriological warfare is not included in the instructions of the United States delegation. The scope of our authority, however, is so vast that it is possible for us to reach a decision on this amendment immediately. Bacteriological warfare is so revolting and so foul that it must meet with the condemnation of all civilised nations, and hence my delegation, so far as its action may be concerned, accepts this amendment proposed by the Polish delegate.[39]

38. League of Nations (1925). Proceedings of the Conference, 340. Annex 4 reproduces Sosnkowski's full intervention.

39. *Ibidem*, 341.

Following the adoption of the Polish amendment, the General Committee approved the protocol, subject to some final modifications by the drafting committee.[40] Two days later, on 10 June, it unanimously endorsed the final text.[41]

The delegates who had received their instructions in time signed the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare on behalf of their country on 17 June.[42]

France as the depositary of the Geneva Protocol

The Geneva Protocol is known after the city where the negotiations took place. Yet, France is the depositary state of the international agreement. With the fast increase of multilateral instruments in the 19th century, the multiplication of authentic copies of treaties became a protracted exercise. The practice gradually gave way to the designation of a central recipient, usually the capital of one or more states party to the agreement. With the establishment of the League of Nations, the international organisation became the repository of all agreements between states and the depositary of multilateral treaties.[43] The League would therefore have been the logical depositary for the Geneva Protocol.

However, the history of the Geneva Protocol is intricately linked with the postwar efforts to regulate the international arms trade and goes back to the preparations for the 1919 Peace Conference. President Wilson originally preferred a neutral country over a victor for the talks, suggesting Lausanne as a venue in October 1918. However, with social unrest stoked by the Bolsheviks intensifying throughout Switzerland in November, he started having second thoughts. Calm had returned two months later, and Wilson suggested having the Peace Conference in Geneva. All powers, including France, seemed won over to the idea when a national strike hit Switzerland. Consequently, the conference's formal opening eventually took place at the Quai d'Orsay in Paris on 19 January 1919.[44]

The Allied victors negotiated the Convention of Saint-Germain-en-Laye as they finalised the Treaty of Versailles, to regulate the international arms trade before the huge

40. Report of the Drafting Committee on the Protocol Concerning Chemical and Bacteriological Warfare. Receipt of Documents Branch, Distribution number C.C.I.A.90, 9 June 1925.

41. League of Nations (1925). Proceedings of the Conference, 365.

42. The full text is reproduced in Annex 1.

43. Caddell, R. (2023). Depositary. *Oxford Public International Law*. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e694. Accessed 15 June 2025.

44. Kunz, H. B. (1982). La Suisse, le Bolchevisme et le système de Versailles : Foyer de la révolution mondiale ou siège de la Société des Nations ? [Switzerland, Bolshevism and the Versailles System: Home of the World Revolution or Seat of the League of Nations?] *Revue Suisse d'Histoire* [Swiss Journal of History] (32), 154 and 156.

weapon arsenals left over from the First World War could fall into undesired hands (See Chapter 3). The document designated France as the depositary state. Opened for signature on 10 September 1919, the Convention for the Control of the Trade in Arms and Ammunition was not a League document. Notwithstanding, viewing its goals as central to its mission, the international organisation invested a great many resources in securing the necessary ratifications and setting up the bureaucracy to monitor the arms transfers. Yet, several key states stayed outside of the treaty despite having signed it. The absence of the United States, one of the biggest arms producers and exporters, weakened the convention's utility. When it informed other nations in July 1922 that it was unable to ratify it, the decision weighed heavily on the League's work. Washington also continued to refuse any engagement with the Geneva-based organisation.

The League ceased implementing the Convention of Saint-Germain-en-Laye and began exploring options for crafting a new treaty that would address the US objections. Concrete preparations started in February 1924. With a draft ready seven months later, the Council decided in December to hold the Arms Traffic Conference in May-June 1925.

The failure of the Convention of Saint-Germain-en-Laye and the overall political backdrop explain why France became the depositary for the Geneva Protocol. The new Arms Traffic Convention drew heavily on its predecessor. Most provisions were legally and politically sound, and most negotiating states had accepted them in 1919. Failures to ratify the treaty were primarily due to governments waiting for ratification by other countries, notably the United States and other major arms producers.[45] To avoid unnecessary renegotiation of treaty provisions, France stayed the designated depositary.

Placating the United States was the second reason. Multiple articles in the Convention of Saint-Germain-en-Laye referred to the roles and responsibilities of the League, which was a main ground for the US refusal to ratify the agreement. During the exploratory discussions on a new arms traffic treaty, the US delegate was adamant that any reference to the international organisation in the future document may cause the Senate to rebuff it. While he never raised any specific issues about the depositary, many people in Geneva felt that substituting the League for France was non-essential and might ultimately prove counterproductive.[46]

As the 1925 Arms Traffic Convention spawned the ban on CBW use, naming France as the depositary for the Geneva Protocol was consistent with the circumstances.

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45. Stone, D. A. (2000). Imperialism and Sovereignty: The League of Nations' Drive to Control the Global Arms Trade. *Journal of Contemporary History* (35:2), 219.

46. I am indebted to Mr Pierre-Étienne Bourneuf, Scientific Advisor, UN Library and Archives, Geneva, for looking into this question. Email correspondence, 19 March 2025.

6. Poland and the consideration of bacteriological methods of warfare

Why Poland raised the matter of bacteriological methods of warfare in the Arms Traffic Conference has puzzled many people interested in the history of chemical and biological warfare. Several factors fed the mystery.

First, only four research papers have delved into the Geneva Protocol negotiations.[1] They primarily draw on national archives, cite specific passages from statements, or situate the negotiations within the broader context of controlling chemical and biological weapons (CBW) and scientific and technological developments of the 1920s. Any mention of the Polish contribution and bacteriological warfare relies on General Kazimierz Sosnkowski's statement on 8 June 1925, reminding the General Committee of his earlier amendment proposal. These authors have expertise in CBW policies. Save one historian, their background is in the sciences and political science. In contrast, historians chronicling Poland's political, social and military transformation in the first half of the 20th century treat the country's engagements in the League of Nations in terms of its reestablished independence in 1918, the need for asserting its newfound national legitimacy domestically and internationally, and the obvious challenges of defending its territorial integrity given the long borders with Germany in the west and the new Bolshevik regime in the east. Their different purposes mean that both strands of research have essentially remained disconnected from each other.

Second, from the 1930s until well after the Cold War, Poland remained silent on its contribution to the Geneva Protocol. This may be related to the contentious political roles played by General Sosnkowski during and after the Second World War. Two papers attempted to fill this gap: one from 1970, which sought to restore Sosnkowski as a historic

1. Mierzejewski, J. (2003). General Kazimierz Sosnkowski: The Creator of the First International Prohibition of Bacteriological Weapon Usage. *FEMS Circular*, no. 54 (Federation of European Microbiological Societies), 10-11. Mierzejewski, J. and van Courtland Moon, J. E. (1999). Poland and biological weapons. Geissler, E. and van Courtland Moon, J. E. (eds.). *Biological and Toxin Weapons: Research, Development and Use from the Middle Ages to 1945*. SIPRI Chemical & Biological Warfare Studies 18. (Oxford: Oxford University Press), 63-69. Walker, J. R. (2016). The 1925 Geneva Protocol: Export Controls, Britain, Poland and Why the Protocol Came to Include 'Bacteriological' Warfare. *Harvard Sussex Program Occasional Paper*, no. 5. (Brighton: University of Sussex). Zanders, J. P. (2015). The Road to Geneva. Zanders, J. P. (ed.). *Innocence Slaughtered*. (London: Uniform Press), 238-272.

personality among the Polish émigré community in the United States, and a second one, appealing to celebrate the 70th anniversary of the Geneva Protocol and highlight the Polish contribution.[2]

Ultimately, many archival resources were lost or destroyed during the Second World War. Soviet forces also transferred documents to Moscow after occupying Poland and the eastern part of Germany in 1945. (The German occupier had relocated significant parts of the national archives to Berlin.) Surviving records may still be stored in Russian vaults. Nearly all information on Poland's initiative, therefore, comes from the minutes of League meetings and government archives from other countries.

This chapter examines how the proposal to link bacteriological warfare to the US amendment on toxic chemicals aligns with Poland's geopolitical considerations, threat perceptions, and Sosnkowski's life experiences.

Sabotage with bacteriological agents and pandemics

The First World War witnessed several deliberate incidents involving cultivated infectious materials in several countries. Back then, the preparations and acts of sabotage were not well known.[3] However, most belligerent and neutral states were aware of the discovery of pathogens in the German legation in Bucharest. While Romania was still neutral – it entered the war on the Allied side on 17 August 1916 – German diplomatic couriers had transferred (apparently explosive) devices and six vials with cultures of anthrax and glanders from the Consulate in Brassò, Hungary to Bucharest. The bacteria were intended to infect horses and horned cattle by mouth or via contaminated fodder. In 1917, the Romanian government published the findings in a widely distributed pamphlet.[4]

Polish authorities were surely aware of the Bucharest incident. Professor Jules Bordet mentioned it in his response to the Special Committee of the Temporary Mixed Commission's questions, implying broad awareness in the League.[5] More specifically, Aleksander Skrzynski was the rapporteur of the Assembly's Third Committee (Reduction of Armaments) in 1924 and he was therefore familiar with the Special Committee's conclusions

2. Jajko, W., editorial assistant (1970). General Kazimierz Sosnkowski, the United States and the Ban on Bacteriological Weapons. *Polish Review* (15:2), 105-113. Mierzejewski, J. and Goldblat, J. (1992). Protokól Genewski z 1925 roku [Geneva Protocol of 1925]. *Wojskowy Przeglad Historyczne* [Military Historical Review] (142:4), 269-273.

3. Wheelis, M. L. (1999). Biological sabotage in World War I. Geissler and van Courtland Moon (eds.), 35-62.

4. Romania (1917). Microbe-Culture at Bukarest. Discoveries at the German Legation From The Rumanian Official Documents. Note from the Rumanian Ministry for Foreign Affairs to the Governments of Neutral States. (London: Hodder & Stoughton), 8-10.

5. League of Nations (1924). Report of the Temporary Mixed Commission, 30.

on bacteriological warfare.[6] Previously, he served as a Minister Plenipotentiary in Bucharest (1919-1923). As Foreign Minister, he appointed Sosnkowski as a representative to the League on 25 January 1925.[7]

Moreover, several severe epidemics ravaged Eastern Europe during the war. Poland suffered repeated outbreaks of louse-borne typhus because of various armies occupying the territory. Poor sanitary conditions and food shortages sustained cholera epidemics. After the Armistice, large numbers of Polish repatriates and prisoners of war returned home, and people fleeing the civil war between the Bolsheviks and the White Russians also crossed the new border in the west. Between 1916 and 1923, the country suffered over 400,000 typhus cases and a death toll of more than 140,000.[8] The health emergency forced the League to act. In November 1920, the Council dispatched an expert commission to report on the prevailing conditions as to typhus and cholera in Poland.[9] It established the Health Organisation to combat epidemics after the first International Health Conference in 1921 and set up health centres in affected regions.[10] Furthermore, the so-called Spanish influenza pandemic hit Poland in three waves between 1918 and 1920, killing between 200 and 300 thousand people.[11] With those health crises ravaging the Eurasian continent, Poland witnessed the destructive power of infectious diseases firsthand.

Allegations of Bolshevik bacteriological warfare and armament

Humans are the only reservoir for epidemic typhus. Treating infected persons and handling the deceased pose a high risk of contagion, requiring health workers to wear protective clothing and masks and follow strict sanitary protocols. Before the First World

6. League of Nations (1924). Records of the Fifth Assembly, Plenary Meetings, Text of the Debates, Reduction of Armaments, 182. Cienciala, A. M. (2007). A Forgotten Foreign Minister of Interwar Poland. *Polish Review* (52:1), 115-120.

7. Polish Wikipedia, 'Kazimierz Sosnkowski', https://pl.wikipedia.org/wiki/Kazimierz_Sosnkowski. Accessed 21 March 2025.

8. Balinska, M. A. (1995). Assistance and not mere relief: the Epidemic Commission of the League of Nations, 1920-1923. Weindling, P. (ed.). *International Health Organisations and Movements, 1918-1939*. (Cambridge, NY: Cambridge University Press), 82. Anstead, G. M. (2024). The Maturation of the International Health Crisis Response: The Polish Typhus Epidemic of 1916–1923 Compared to the African Ebola Virus Disease Epidemic of 2013– 2016: Part I, the Polish Epidemic. *Epidemiologia* (5), 729.

9. League of Nations Assembly (1920). Report of the Special Commission on Typhus in Poland. Document 20/48/124. (Geneva, League of Nations).

10. Holt, H. (1921). The League of Nations Effective. *Annals of the American Academy of Political and Social Science* (96), 2-3 and 7-8.

11. Grabowski, M. L., Kosinska, B., Knap, J. P., and Brydak, L. B. (2017). The Lethal Spanish Influenza Pandemic in Poland. *Medical Science Monitor* (23), 4480.

War, typhus was endemic in several Russian territories. In the trenches, Russian soldiers lived in 'shockingly unsanitary' conditions, which helped to spread diseases.[12] Moreover, when retreating, they implemented scorched-earth tactics, leaving the lands destitute and people homeless.[13] The civil war (1917-1921), following the October Revolution, uprooted more than 17.5 million people, or approximately 12 per cent of the Russian population (as estimated in 1917). Meanwhile, the fighting between the Bolsheviks and the White armies caused the already rampant typhus epidemic in western Russia to spread far and wide, eventually reaching Vladivostok on the Pacific coast.

The Polish territories and Austrian Galicia (which became part of the newly independent Poland after the war) did not fare better. Poor sanitation and hygienic practices were commonplace in impoverished areas with low literacy rates. Furthermore, at the war's end, millions of refugees and prisoners, many diseased, returned to their lands or moved out of Poland into neighbouring countries.[14] Internal displacement spread the typhus epidemic westward into the centre of Poland. The young country inherited a seriously deficient medical infrastructure, having been ransacked by withdrawing German units. With foreign assistance, notably from the United States, Poland established a centralised health infrastructure, including newly created regional and local hospitals, medical facilities, and disinfection stations in a sanitary zone that eventually extended 1,000 kilometres along the eastern border.[15] However, the Bolshevik invasion in February 1919 and subsequent battles destroyed most of the sanitary facilities then in place, and the territories got reinfected. The fighting also set off a new massive relocation while prisoners of war languished in squalid, overcrowded camps. Once again, the disease spread. Even with international assistance, the circumstances precluded containment.[16]

Did the Bolsheviks manipulate the recurring epidemics to gain a military upper hand? Christopher Blackburn, a historian specialised in the early 20th century history of Poland with the University of Louisiana at Monroe, asserted as much in 2021:

> An often unexamined aspect of the Polish-Bolshevik War is the Bolshevik use of typhus as a crude biological weapon aimed at weakening the new Polish state and reducing its ability to resist the advance of Communist forces against Warsaw. When viewed in the context of overall Bolshevik goals and tactics, it becomes clear that the spread of disease, destruction of medical

12. Morse, J. (1915). *An Englishman in the Russian Ranks*. (Stroud: Nonsuch Publishing, 2006 edition), 159.

13. Anstead (2024), 731.

14. Gatrell, P. (2004). War, Population Displacement and State Formation in the Russian Borderlands, 1914-24. Baron, N. and Gatrell, P. (eds.). H*omelands: War, Population and Statehood in Eastern Europe and, Russia, 1918-1924*. (London: Anthem), 10-13.

15. Balinska (1995), 92. Blackburn, C. (2014). The rebirth of Poland: American humanitarianism after the Great War. *Studia Historyczne* [Historical Studies] (4), 533.

16. League of Nations Assembly (1920), 4-5. Anstead (2024), 729. Blackburn (2014), 531 and 537.

> facilities, and disruption of quarantines were all part of a prevailing strategy intent on weakening the Polish state and sowing despair among the populace.[17]

If the claim is accurate, then the next questions for this study are whether the Poles were aware of the use of typhus as a crude bacteriological weapon and whether the knowledge informed Sosnkowski's statement to the Arms Traffic Conference.

Some contemporary observers may have implied a deliberate intent behind the recurrent typhus outbreaks. When summarising Poland's plight during the Bolsheviks' revolutionary wars, Winston Churchill reproached Russia for the various epidemics ravaging eastern Europe, seemingly insinuating that it might have exploited typhus as a method of warfare:

> ... a poisoned Russia, an infected Russia, a plague-bearing Russia; a Russia of armed hordes not only smiting with bayonet and with cannon, but accompanied and preceded by swarms of typhus-bearing vermin which slew the bodies of men ...[18]

More suggestive is Colonel Harry L. Gilchrist's memorandum circulated in the League of Nations. In it, the leader of the US Medical Service team attached to the Polish Ministry of Health and future Commander of the Chemical Warfare Service described how the Bolsheviks deliberately drove infected persons to Poland:

> It is a known fact that the commanders of the Bolshevik armies are ridding themselves of typhus fever cases by sending them in armoured cars to shift for themselves in Polish territory.[19]

In support of his bacteriological warfare claim, Blackburn also cited a January 1920 report by Bolshevik Cavalry Commander Semyon Budyonny that his troops were 'in the grip of a terrible epidemic of typhus, and field hospital [sic] were packed chiefly with typhus cases.' The officer further lamented that 'this was bound to affect the fighting efficiency of our troops'. From the experiences of the typhus epidemic, Blackburn continued, Russian leaders became convinced that, if properly used, the disease could be an effective weapon against the enemies of Bolshevism.[20] Hence his assertion, cited earlier, that the

17. Blackburn, C. (2021). When Typhus Rode a Red Horse: Weaponizing Disease During the Polish-Bolshevik War. *Przeglad Historyczno-Wojskowy* [Historical and Military Review] (22:2), 89-90.

18. Churchill, W. S. (1929). *The World Crisis, Volume IV: The Aftermath 1918-1922*. (New York: Charles Scribner's Sons), 274.

19. Gilchrist, H. L. (1920). Poland typhus situation and international action. Memorandum (11 March). Copy circulated in the League of Nations, Dossier 1719, Document 3659, Subject: Typhus in Poland (30 March), 1.

20. Blackburn (2021), 92. Even though he cited from an unreferenced paragraph in a book published in 2002,

spread of disease and destruction of sanitary facilities were part of a strategy to weaken the Polish state.

Nevertheless, there are grounds for questioning the conclusion. First, should one take Churchill's literary flourish literally or was his reference to 'vermin' an allegory for the Russian soldier? Absent any further elaboration, he likely aimed to denigrate the notoriously unsanitary, lice-infested Bolshevik foot-soldier when calling for a sanitary (and an anti-Bolshevik) buffer along Russia's western borders and support for Poland.[21] Likewise, Gilchrist did not dwell on his observation that the Bolsheviks seemed to expel typhus victims forcibly from territories under their control. Nothing he wrote suggests the expulsions aimed to infect the Poles. The following paragraph, which refers to General Anton Ivanovich Denikin, a leader of the anti-Bolshevik White movement, indeed implies that Gilchrist was commenting on the connection between war fighting and the unyielding typhus outbreaks:

> When Denikin's armies retreated before the Bolsheviks, and the Polish armies were incited to occupy the vacant territory, which they are still engaged in a new and unbelievable large source of typhus fever was opened up. Certain of the larger towns, such as Winnica, were found to harbor thousands of cases without the least care or attention having been given them. As a rule, Denikin's garrison's left behind were garrisons of typhus fever.[22]

Gilchrist also noted that thousands of typhus-suffering refugees from Russia and Ukraine fled west, whom the Poles initially did not bar from entry into the country.[23]

The interaction between war fighting and the epidemic also features prominently in the detailed report dated 28 July 1922 by Dr L. Tarassevitch to the Health Committee of the League of Nations. The Bolshevik physician cited a regional medical officer, Dr Guikkel, to describe the impact of the fighting and capture of Ufa, a town about 1,200 kilometres east of Moscow, by the White Army under Admiral Alexander Koltchak in the spring of 1919. After their passage through the region, a typhus epidemic broke out, resulting in over 93,000 cases in the first year and an additional 70,600 cases in the second year, primarily among soldiers. Sanitary conditions were dismal, and the repeated passages of the belligerent armies had destroyed entirely the sanitary organisation. Guikkel estimated

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the actual claim is from Alibek, K. (1998), Behind the Mask: Biological Warfare. *Perspective* (9:1), 1. https://open.bu.edu/server/api/core/bitstreams/4212677b-bdf0-4ba5-a685-71cf41dde14a/content. Accessed 17 May 2025.

21. Weindling, P. J. (2000). *Epidemics and Genocide in Eastern Europe 1890-1945*. (Oxford: Oxford University Press), 149.

22. Gilchrist (1920), 1.

23. *Ibidem*. Also: Zielinski, K. (2004). Population Displacement and Citizenship in Poland, 1918-24. Baron and Gatrell (eds.), 100.

that at least 10 per cent of the population in the region got typhus, with a mortality rate of up to 20 per cent in cities.[24] Drawing on Soviet research, David Patterson presented a more complex picture of how the typhus epidemic spread to opposing armies. Bolshevik reinforcements arriving from the west infected the civilian population in the province and town of Perm and led to heavy casualties among Koltchak's White Army. Fresh Red troops in turn contracted typhus from the retreating Whites, all the while spreading the disease further east, including to Ufa.[25]

Quoting Tarassevitch's report, Blackburn claimed 'that typhus helped the Red Army to defeat the [White] Army of Koltchak' and that 'the epidemic raged so fiercely, especially during the period of Denikin's retreat, that, in many areas, the whole population was infected'.[26] Yet, Tarassevitch did not assert that the Red Army capitalised on the epidemic. His report made only a passing reference to 'the armies of Koltchak' and did not name Denikin.[27]

Everything considered, it is challenging to sustain the allegation of crude Bolshevik bacteriological warfare against Poland. While it is true that their systematic destruction of sanitary installations exacerbated the epidemic, the extremely severe spread of typhus was mainly due to military operations since the summer of 1914, causing poverty, overcrowding and mass displacements of people. In 1920, outbreaks continued outside the season of maximum incidence, and the typhus reached areas far removed from its natural reservoirs.[28] Research yielded no primary sources or other indicators that Polish officials, medical staff or international humanitarian organisations surmised bacteriological warfare in some way.

A different question is whether Bolshevik Russia and the fledgling Soviet Union already had a bacteriological weapon (BW) programme in the first half of the 1920s, and whether Poland was aware of such activities. Ken Alibek, as well as Milton Leitenberg and Raymond Zilinskas, situate the start of the Soviet BW programme in the late 1920s.[29] Nevertheless, there are some indications that bacteriological research may have started almost a decade earlier. As previously noted, Alibek asserted that the typhus pandemic between 1918 and 1922 kindled Bolshevik interest in infectious disease. By 1928, the

24. Tarassevitch, L. (1922). Epidemics in Russia Since 1914. Report to the Health Committee of the League of Nations. League of Nations, Health Section, Epidemiological Intelligence, Dossier 17928, Document 24576 (October), 36.

25. Patterson, K. D. (1993). Typhus and its Control in Russia, 1870-1940. *Medical History* (37:4), 375.

26. Blackburn (2021), 92.

27. Tarassevitch (1922), 36-37.

28. League of Nations (1920). Report of the Special Commission on Typhus in Poland. Assembly Document 20/48/124, 4-5.

29. Alibek, K. (1999). *Biohazard*. (New York: Random House), 32-33. Leitenberg, M. and Zilinskas, R. A. (2012). *The Soviet Biological Weapons Program: A History*. (Cambridge, MA: Harvard University Press), 16-19.

interest had turned into a BW research and development programme.[30] However, both British and German intelligence reported that Russia may have started offensive BW research in the early 1920s, with initial work undertaken at Fort Aleksandr I at Kronstadt on Kotlin Island, 32 kilometres west of Saint Petersburg (Leningrad, as of 26 January 1924). In August 1899, the fort became a specialised anti-plague facility. Officially named the 'Imperial Institute of Experimental Medicine's Special Laboratory for the Production of Anti-Bubonic Plague Preparations in Fort Aleksandr I' in 1901, it received the additional tasks of producing anti-plague preparations, sera and anti-cholera sera by 1905. It appears that much of the work at the Kronstadt facility was transferred to the Territorial Institute of Microbiology and Epidemiology of South-East Russia at Saratov in 1918.[31] Located on the Volga, 860 kilometres southeast of Moscow, Saratov and its environs eventually became a central hub of Soviet CBW activities.

It is not entirely clear whether Poland was aware of the British and German intelligence concerning Bolshevik Russia's BW-related activities. Still, some Polish newspapers mentioned a Bolshevik bacillus bomb in the summer of 1924 based on an article in the British Daily Telegraph of 25 July. For instance, the Przeglad Felczerski (Felczer's [Feldsher's] Review) wrote in its September issue that 'the Soviet Society [of Friends of Chemical Defence & the Chemical Industry] has set up a section on bacteriological warfare'. It continued: 'At the initiative of the society, bacteriological laboratories in St. Petersburg and Moscow are to produce bombs loaded with cholera and plague microbes. The testing of these bombs is to take place in a specially designated location in the Astrakhan region', and concluded: 'It is obvious that the Bolsheviks intend to test bombs loaded with microbes primarily on Poland in the event of war'.[32] The item in The Daily Telegraph was part of a series of reports in Western newspapers, published between 25 July 1912 and August 1925. Whether the British Secret Intelligence Service was leaking the information to pressure the Soviet Union or Russian sources planted the stories to instil fear in the West remains unclear.[33]

The press items allow for a reasonable assumption of threat awareness among senior Polish decision-makers in the lead-up to the 1925 Arms Traffic Conference. In 1992,

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30. Alibek (1999), *op. cit.*

31. Rimmington, A. (2018). *Stalin's Secret Weapon: The Origins of Soviet Biological Warfare*. (Oxford: Oxford University Press), 117-118.

32.'Morowa zaraze przygotowuja bolszewicy' [The Bolsheviks are preparing a plague], *Przeglad Felczerski*, September 1924, 13. https://www.jbc.b.uj.edu.pl/Content/887819/NDIGCZAS059891_1924_009.pdf . Accessed 26 May 2025. See also: 'Morowa zaraze przygotowuje da nas bolszewicy' [The Bolsheviks are preparing a plague for us], *Express Pomorski* [Pomeranian Express], 6 August 1924, 2. https://kpbc.umk.pl/Content/238167/PDF/KM_01061_1924_084.pdf. Accessed 26 May 2025.

33. Rimmington, A. (2025). 'How the Western Press Reported in 1925 on World's Deadliest Weapon – the Soviet "Bacillus Bomb"'. *Medium* (22 March). https://medium.com/@t.rimmington/how-western-press-reported-in-1925-on-worlds-deadliest-weapon-the-soviet-bacillus-bomb-c5fd09059172. Accessed 22 March 2025.

Aleksander Wysocki wrote in the Bulletin of the Military Archive Service that 'the information obtained by Branch II of the General Staff [Military Intelligence] about the Soviet Union's attempts to load cannon shells with "bacilli" in the mid-1920s was not disregarded. There is no evidence of Polish scientists' involvement in the development of aggressive methods of bacteriological warfare (in 1925).'[34] No statement by the Polish delegation in Geneva hinted at such knowledge. By contrast, as evidenced by the parliamentary ratification debates, the country had become conscious of Russia's offensive BW programme and secret collaboration with Germany on chemical matters between the conclusion of the Geneva Protocol negotiations and its consent on 4 February 1929.

The person of General Kazimierz Sosnkowski

General Kazimierz Sosnkowski emerges as a protagonist in the Geneva Protocol negotiations. Whether he acted on Warsaw's instructions or at his behest remains uncertain. For decades, he was an obscure figure, as evidenced by the low-key memorial mass in his honour at the Field Cathedral of the Polish Army in Warsaw on 4 November 2000, marking the 75th anniversary of the signing of the agreement. During this ceremony, the Polish Microbiologist Society and the Military Health Service unveiled a plaque with the following inscription:

> In eternal memory among coming generations of Gen. K. Sosnkowski and his magnificent deed of establishing the international ban on bacteriological weapons as set forth in the Geneva Protocol 1925. In the jubilant year 2000 of the Christian era and the 75th anniversary of the Protocol signing.[35]

That it took three-quarters of a century to commemorate Poland's contribution has a lot to do with the country's history and Sosnkowski's part in its politics. Beginning in the 1990s, historians have authored more detailed biographies, but these tend to concentrate on his political and military contributions.

He was born in Warsaw on 19 November 1885 in Russian Poland. The era was one of considerable social transformation, during which a significant percentage of the population emigrated to Western Europe and the United States.[36] It was also a time of political

34. Wysocki, A. (1992). Zarys przygotowan obronnych do wojny biologicznej prowadzonych w Polsce w latach 1918-1939 [Outline of the defensive preparations for biological warfare conducted in Poland in the years 1918-1939]. *Biuletyn Wojskowej Sluzby Archiwalnej* [Bulletin of the Military Archival Service] (No. 23), 93. Reference by Ms Paulina Gonciarz, Ministry of Defence, Poland, e-mail correspondence, 27 March 2025.

35. Mierzejewski (2003), 11.

36. Zubrzycki, J, (1953). Emigration from Poland in the Nineteenth and Twentieth Centuries. *Population Studies* (6:3), 248-272.

upheaval, and multiple patriotic groups sprang up to reclaim independence. Sosnkowski joined the Polish Socialist Party, helped to organise the armed revolt, and then engaged in the military movement. He collaborated with several figures who were to rise to prominence during the First World War and in the political and military organisation of Poland after it had recovered independence in 1918.

In the First World War, he was a senior military officer in the Polish Legions, combatting the Russians under Austrian command. He was appointed commander of the Warsaw Military District after the Armistice and became Vice Minister for Military Affairs in March 1919, and Minister the following year. Through his organisational skills and development of military doctrine, the Polish armed forces successfully staved off the Soviet invasion in 1919. They ultimately defeated the Bolsheviks in the 1920 battle of Warsaw after a Bolshevik counteroffensive had turned the Polish push into Ukraine into a rout.[37]

During the epidemics that swept through Poland, Sosnkowski suffered personal tragedy. On 18 December 1918, as the first wave was peaking in Warsaw, his ten-year-old daughter Zofia Sosnkowska succumbed to the so-called Spanish influenza. A week later, he also fell gravely ill and did not return to duty until May, having been appointed Vice Minister of Military Affairs. Grief-stricken, his wife Stefania (née Sobanska) was meanwhile admitted to a psychiatric hospital. They divorced about a year later.[38]

He fled to France and Great Britain after the German and Soviet occupation of Poland in 1939 and eventually joined the Polish government in exile. Later in the war, he was appointed Commander-in-Chief of the Polish Armed Forces. However, he had a conflicted relationship with the British and the Soviets, which, at the British request, later led to his dismissal as Commander-in-Chief.[39] These elements, together with his staunch anti-communist views, meant that the person of General Sosnkowski became largely invisible in Western historical accounts and unspoken of in post-war communist Poland. The spring 1970 issue of The Polish Review, a journal published by the University of Illinois Press on behalf of the Polish Institute of Arts & Sciences of America, opened with a biography of Sosnkowski that drew heavily on his speech lamenting the omission of any reference to bacteriological warfare at the end of the Arms Traffic Conference.[40] The article essentially sought to rehabilitate Sosnkowski among the Polish diaspora, but otherwise it largely went unnoticed.

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37. Schwonek, M. R. (1997). Kazimierz Sosnkowski and the Foundations of Polish Military Policy, 1918-1926. *Polish Review* (2:1), 47-48, 51 and 55.

38. Litynski, G. (2020). The Forgotten Epidemic in Poland (1918-1920). *Polish Medical Society* (27 April), https://www.pamsm.org/post/the-forgotten-epidemic-in-poland-1918-1920. Accessed 26 December 2024. Polish Wikipedia, 'Kazimierz Sosnkowski'. Schwonek (1997), 54 and 56.

39. Polish Wikipedia, 'Kazimierz Sosnkowski'.

40. Jajko (1970), 105-113.

Poland's underplaying of Sosnkowski's role in the negotiations complicates the understanding of his motives for pressing for the inclusion of bacteriological warfare in the Geneva Protocol. After the war with Russia, he remained actively involved in various aspects of domestic politics until Foreign Minister Aleksander Skrzynski appointed him as a representative to the League of Nations on 25 January 1925. By that time, the Polish authorities were conscious of the emerging threats posed by bacteriological agents. They knew of Germany's preparations for sabotage with bacteriological agents in Romania. Besides the published report on the plot, Skrzynski had a diplomatic posting to Bucharest immediately after the war. He furthermore served as rapporteur of the League Assembly's Third Committee and was, therefore, aware of the Temporary Mixed Commission's conclusions on chemical and bacteriological warfare. Given Sosnkowski's propensity for detail, one may, in the absence of primary documents testifying to the fact, assume with reason that he would have familiarised himself with the analyses. Moreover, the typhus, cholera and so-called Spanish influenza pandemics deeply traumatised the Polish nation. To Sosnkowski, the confrontation with infectious disease was tangible and deeply personal. Yet, the record of the Geneva Protocol negotiations reveals no references to those events or circumstances.

More intriguingly, a telegram dated 9 June from Skrzynski to the Polish delegation in Geneva authorised General Sosnkowski to sign in the name of the Government, under the reserve of ratification, the Protocol prohibiting the use of asphyxiating, toxic or similar gases. However, the missive did not mention bacteriological warfare. Likely, the Foreign Ministry had considered the version of the draft protocol that prompted Sosnkowski's intervention the day before Warsaw dispatched the instructions. Yet, the omission of an instruction to include BW in the text raises the question of the degree to which Sosnkowski was personally invested in the issue.[41]

The fragility of regained statehood

While the previous analysis offers a wealth of background, it does not present an apparent reason, whether personal or national, for Sosnkowski's proposal regarding bacteriological warfare. At the outset of the Arms Traffic Conference, he introduced the amendment to the US proposal without any lengthy justification. He remained mostly silent on the topic until his impassioned intervention on 8 June as he was chairing the Military Committee.

41.Télégramme (copie) adressé à POLDELEGAT, Genève, Varsovie, le 9.VI à 17:00, arrivé Genève, le 9.VI à 20:50. Copie conforme, Genève, le 10 juin 1925, Premier Secrétaire de la Délégation. [Telegram (copy) addressed to POLDELEGAT, Geneva, Warsaw, 9.VI at 17:00, arrived Geneva, 9.VI at 20:50. True copy, Geneva, 10 June 1925, First Secretary of the Delegation.] Electronic copy provided by Ms Paulina Gonciarz, Ministry of Defence, Poland.

As a neutral moderator of the debates, he could not promote national positions. Thus, whenever a newly proposed text overlooked the bacteriological warfare angle, Dr Komarnicki, the legal adviser, reminded delegates of the Polish amendment. Yet, he, too, never supplied much in the way of justification or motivation for the addition.

During the six weeks of negotiations, the US chemical weapons (CW) proposal evolved from an amendment to the draft Arms Traffic Convention to a standalone international agreement open to all states. The Polish suggestion regarding bacteriological weapons was a minor, yet significant, technical addition to extend the scope of the original proposed modification. The discussions in the Legal and Armament Committees saw the language on CBW gradually being separated from the Arms Traffic Convention, eventually leading to the proposal to have an explicit ban on CBW use at the disarmament conference planned shortly after the Arms Traffic Conference. Poland acquiesced to the idea. However, some states insisted that, having touched on the subject matter, the Conference should issue a strong statement condemning the use of CBW. This suggestion evolved into the drafting of the protocol based on the treaty language agreed at the Washington Conference in 1922. As a separate agreement that intended to establish a new general rule affecting security, military preparedness, and conduct on the battlefield, it contradicted the long-standing position of some states that the League should not involve itself in elaborating or crafting new laws of war. In the end, these states did not press the issue because the core paragraph drew on the prohibition as already expressed in Article 171 of the Treaty of Versailles and Article V of the Washington Treaty.[42] Still, the draft agreement raised a security dilemma. Without general adherence to the prohibition or sufficient countermeasures, abiding states risked being placed at a consequential military disadvantage when facing a neighbour with a powerful scientific, industrial, or military base.

Such security considerations fit into Poland's overarching goals for participating in the arms trade conference. They were also a driving force in Sosnkowski's military and political career.[43] When addressing the plenary meeting of the Arms Traffic Conference for the first time on 6 May 1925, Sosnkowski discussed the insecurities in the international system because of certain countries' refusal to cooperate or regulate security problems in any form. While not naming Russia, by now the Soviet Union, he deplored

> the absence from this Conference of the great neighbour State whose frontiers march with hers for some 1,500 kilometres. This being the case, the Polish delegation, however keen its anxiety that all countries in the world should cooperate in the great work of peace, is obliged to model its entire policy to

42. League of Nations (1925). Proceedings of the Conference, 307 and 309.

43. For instance, Schwonek, M. R. (1994). *Kazimierz Sosnkowski, the Polish Army, and Polish State-building*. PhD Dissertation. (Columbus, OH: Graduate School, Ohio State University), 212, 245, 251, 288 and 308.

> accord with the exigencies of the situation created by the refusal of the Power to which I have just referred to take part in the Conference.

He continued:

> Loyally adhering to the great ideals proclaimed by the Covenant of the League, the Polish delegation thinks that the Conference should carefully examine the question whether some of the provisions of the proposed Convention do not, so far as its practical effects are concerned, tend to create a certain inequality, in point of fact, between the countries adhering to the Convention, placing those States which do not produce arms and war material in their own territory in a disadvantageous situation as compared with the producing States.
>
> The disadvantages of this situation will be enhanced in the case of States which desire loyally to conform to the principles on which sincere co-operation between States is based, and which do not belong to the group of producing States, but which are neighbouring upon other countries which are producers of arms and whose efforts are directed to escaping from the provisions of the Convention.[44]

The next day, when submitting the US proposal relating to the transfer of toxic gases to the General Committee, Theodore Burton echoed Poland's security concerns:

> The prohibition of exportation would make it possible for producing nations to supply themselves with these very barbarous implements of warfare while the non-producing nations would be denied the opportunity of doing so. I am sure it will be one of the main objects of this Conference to place the producing and the non-producing countries, if possible, on the same footing, in accordance with the principle of equality.[45]

As seen previously, the text of Article V of the Washington Treaty preceded the US amendment to ensure that a comprehensive legal rule supported the trade restriction. Burton had no mandate to extend the proposal to another armaments category, but he nevertheless consented to Sosnkowski's proposal to add bacteriological weapons.

On 17 June, the day on which the delegates signed the Arms Traffic Convention and the Geneva protocol, Sosnkowski valued the US presence at the negotiating table and recognised its input, mentioning explicitly the 'admirable proposal' concerning chemical warfare.[46] Notwithstanding, he also clearly articulated the security dilemmas that the

44. League of Nations (1925). Proceedings of the Conference, 138.

45. *Ibidem*, 155.

46. *Ibidem*, 450.

types of agreements just concluded pose for many members of the League of Nations, suggesting that new approaches might be necessary in the future:

> From these protracted and labourious discussions we have learned one experience, which I think is a very valuable one. This relates to the general methods to be followed in dealing with questions of security and disarmament. At the very opening of our debates we met with serious difficulties, due to the fact that, though it was our business to establish control of the trade in arms, we were not at the same time discussing the question of the manufacture of arms. These difficulties were overcome, thanks to the goodwill and conciliatory spirit which was so characteristic of all the delegations. I do not think, however, that we shall always be able to work on the same lines, attacking the great problems of security and disarmament from the opposite direction to that which the actual state of affairs would seem to suggest.
>
> In future, I fancy, we shall not be able to proceed on these lines: we shall have to adopt the only logical and efficient method, and begin with an examination of the questions relating to security. When these questions are settled, no greater difficulties can arise in the process of constructing the scheme of disarmament. Let us hope that this will be the tendency of the forthcoming discussions of the sixth Assembly of the League of Nations, which will undoubtedly deal to a very great extent with questions of international security.[47]

Poland's role in the Geneva Protocol revisited

There is no denial that Poland contributed considerably to the Geneva Protocol. In his final remarks to the Conference, General Sosnkowski highlighted the Polish delegation's input prompted by the US insertion of CW transfers into the negotiations. He acknowledged that the Conference achieved great success. Yet, conscious of the security dilemmas it created for many states, he also cautioned that the document's future relevancy depended on its universalisation:

> The Protocol prohibiting Chemical and Bacteriological Warfare, which has been signed on the spot by a large number of countries, and to which we must hope that other civilised countries will adhere in the very near future, represents a great step forward in international relations. We may be sure that the prohibition embodied in this Protocol will very soon be incorporated in international law throughout the world.[48]

47. *Ibidem*, 449.

48. *Ibidem*, 450.

After regaining its sovereignty in November 1918 and receiving recognition of its independence through the Treaty of Versailles, Poland exhibited many incipient traits of a mid-level power. However, it shared long borders in the east and west with two large and powerful states that had shortly before occupied and fought long battles on its territory. In the Polish mindset, the existential fragility never faded. The League's Covenant offered guarantees for its self-determination.

Besides the wars with the Bolshevik revolutionaries, the country suffered for years from repeated pandemic waves of typhus, cholera and the so-called Spanish influenza. Destroyed infrastructure, millions of displaced people, and rampant poverty demanded League intervention for humanitarian relief and reconstruction.

While scholars have focussed on the intrinsic security threats posed by bacteriological weapons as conveyed in Sosnkowski's speech, Poland's impact on the Geneva Protocol negotiations lay in its ability to project mid-power security concerns into a weapon control-security debate that from 1924 on had become dominated by conflicting great-power interests. In 1919, the United States had already stepped away from the Saint-Germain-en-Laye Arms Traffic Convention for similar reasons. The following year, it declined to join the League of Nations in part because of the ways in which France and Great Britain wished to exact economic and political retribution against Germany. However, the League continually suffered from self-doubt about its ambitions in Washington's absence. When the League's entreaties were successful in 1924, the US return to Geneva fundamentally altered the British and French game play, allowing for a greater role for smaller powers. So, when the US tabled its CW amendment, Poland latched on, and its BW proposal could not be dismissed out of hand (even though the submitters of alternative or new versions forgot it more than once).

Was the idea to insert bacteriological warfare Sosnkowski's or Warsaw's? If the former, did the general coordinate with the Foreign Ministry? Lacking archives that document correspondence between Geneva and the Polish capital, the roots of the initiative will likely remain unclear. The League clearly prepared the draft convention without direct US involvement but took US concerns and preferences into consideration to ensure the country's participation in the conference. Theodore Burton likely communicated his intent to submit the CW amendment to other country representatives, after which Sosnkowski consulted with him about adding BW. With Burton lacking a mandate from capital to extend the US proposal to another weapon category, both delegates probably agreed that Sosnkowski could introduce the addition.

At that moment, Sosnkowski would have been aware of at least some German attempts to disseminate cultivated bacteria deliberately. He might have picked up on the press reports about Soviet BW-related armament activities and secret Russo-German collaboration under the secret clauses of the Rapallo Treaty to develop and produce new weapons, including toxic agents. Although these news items may have been factually incorrect or

deliberately planted, how he and the Polish government assessed them at the time is relevant (but unknown). Sosnkowski would also have studied the reports and conclusions on CBW developments by the various League committees during the first half of the 1920s. While the consulted biological scientists viewed bacteriological warfare as a future possibility in their expert analyses, they did not consider it an immediate threat. Given his personal experiences and Poland's struggles to overcome the many large-scale infectious disease outbreaks, that conclusion might not have been particularly reassuring, more so, as chemical warfare was also unleashed upon the Allies in 1915 after many decades of advancements in chemistry and chemical industrial production.[49]

Elaborate justification of the BW proposal, a technical addition to an amendment, might not have appeared opportune at the outset of the conference. Shaping a new piece of international law with profound security implications was a matter altogether different. When, in early June, states had to consider a draft protocol that (once again) omitted the bacteriological dimension, Sosnkowski made his urgent final appeal, drawing on the dire projections voiced in several League committee meetings. The background to it all was the fear that a country like the Soviet Union – Germany, while not a League member, did participate in the conference – might one day acquire a bacteriological warfare capacity. Staying outside diplomatic processes and refusing to sign treaties on international security or limiting armaments, its CBW use would be unconstrained against states that abide by the international prohibition.

Assuming that appreciation of the wider security threats posed by military, scientific and industrial inequalities between states if not all them were to be bound by the same international legal constraints on new weapon technologies may have been the main reason for Poland's successful insertion of bacteriological warfare into the Geneva Protocol, then the final outstanding question is why Theodore Burton signalled the US acceptance of the Polish amendment after Sosnkowski's impassioned intervention on 8 June. Was it the General's oratory flourish? Or was there more?

In February 2020, historian Andrzej Krajewski hinted that Poland had acquired intelligence on a Soviet BW programme:

> in the mid-1920s, Polish intelligence gained information that the USSR is also conducting experiments with pathogenic microbes. These facts convinced the Americans to support Poland. As a result, in the final version, the Geneva Protocol was extended to include a ban on the creation and use of biological weapons.[50]

49. *Ibidem*, 340.

50. Krajewski, A. (2020). Naukowcy i rzady uwielbiaja zabawy z wirusami [Scientists and governments love playing with viruses]. *Dziennik Gazeta Prawna* [The Legal Gazette] (7 February). https://wiadomosci.dziennik.pl/swiat/artykuly/6437413,wirus-zabawa-naukowcy-rzady.html. Accessed 12 June

A senior military figure with an excellent standing as a politician and diplomat, such as General Sosnkowski, can reasonably be expected to have been briefed on the latest military intelligence and to have received the authorisation to transmit the intelligence to his US counterpart. In the broader context of the geopolitical insecurities regarding the Soviet Union, which were acute for Poland and a threat perception shared by the United States, this detail would certainly explain why Poland insisted on inserting bacteriological warfare into the deliberations and how Sosnkowski eventually secured unanimous endorsement of the amendment. For all that, the substance of the Polish intelligence or the nature of the US-Polish interactions remains unknown at the time of writing.

2025.

Conclusion: The legacy of the 1925 Geneva Protocol

Article 8 of the Covenant of the League of Nations placed armament reductions at the centre of the new international organisation's mission. Members were to reduce their military capacities to the lowest levels needed for national security. However, states retained their fear that one country might secretly build up its armed forces and launch an attack, to which the invaded nation could no longer respond. There was a need for security guarantees and mutual assistance to prevent such a situation from arising. However, countries' threat perceptions varied considerably, and governments were not willing to surrender their sovereign decision-making capacity to declare war to an international organisation. The League made little progress in resolving these matters.

Chemical warfare was initially not on its agenda, nor did the Great Powers display much interest in the issue. It gradually crept up in discussions because it was possible to raise all matters of security importance in the Assembly. During these exchanges, bacteriological warfare emerged as a separate security concern. Given that the Assembly represented all League members and each had one vote, the Temporary Mixed Commission, whose members sat in their own names rather than as representatives of their governments, investigated topics further and reported back to both the Assembly and the Council. Through a mix of manoeuvres, the Temporary Mixed Commission and the Assembly were able to circulate a report drawing on the expertise of leading chemists and bacteriologists on possible scientific and technological developments that could contribute to future chemical and bacteriological warfare.

The story of the early development of the norm against chemical and bacteriological (biological) weapons (CBW) might have ended then. In 1924, League members abolished the Temporary Mixed Commission, and attention shifted to negotiating an Arms Traffic Convention and another treaty aimed at limiting armaments and the production of weapons. The United States, which did not ratify the Treaty of Versailles and thus not the Covenant, resisted participating in the League's activities. However, it reversed its position and, after observing the preparations, joined the negotiation of the Arms Traffic Convention as a non-member. At the outset of the Conference in May 1925, it submitted a proposal to restrict the trade in toxic chemicals, noting the difficulties in distinguishing between their use for peaceful and warlike purposes. Poland immediately submitted to address bacteriological weapons as well.

The gambit had several ramifications. First, the Arms Traffic Conference addressed the international trade of weapons and munitions. Delegates were consequently preoccupied with technologies rather than the consequences of their use on the battlefield. With the US proposal, chemical weapon (CW) control became for the first time a technical issue in a diplomatic forum, and it directed attention to the chemical agent. This technical angle confronted the delegates with the dual-use characteristics of toxic chemicals, and they had no good tools to distinguish between legitimate and illegitimate purposes.

Second, given the dual-use dilemma, the diplomats realised they could not interdict the trade in toxic gases without a universal prohibition on their use in war. The United States had introduced its proposal as a country that had signed and ratified the Washington Treaty outlawing chemical warfare. Yet, that treaty had not by then entered into force and would never do so. The US amendment, therefore, included a paragraph based on the treaty's Article V. However, this approach implied that, rather than being universal, the prohibition on use would apply only to the states party to the Arms Traffic Convention. The insight signified that the delegates had to craft a universal ban as part of the Arms Traffic Treaty, as a resolution inserted in the Final Act, or as a separate document.

Third, the question of restricting the export of toxic gases became entangled with national security concerns. Non-producing countries would have no reply when facing a rival with a big chemical industrial base. Powerful nations abiding by the international norm could face an attacker not party to any legal restraints on CW. This realisation reinforced the need for a global norm to which all states had to adhere. Moreover, it brought to the fore that only disarmament – a global ban on CW development and production – could eliminate the threat for everybody. The Arms Traffic Conference had no mandate for disarmament. Before deciding on an agreement open to all states, the delegates intended to take up the topic in the preparations for the future disarmament conference, which was already under consideration in 1925. This anticipation, voiced by several representatives at the Arms Traffic Conference, explains why the document was called a protocol rather than a treaty.

Fourth, Poland made sure that bacteriological warfare remained on the agenda. Initially, the proposal represented a mere technical addition to the US amendment submitted at the start of the Arms Traffic Conference. It required little explanation, and nobody opposed it. However, the evolving nature of the debates altered the context in which delegates framed the challenges posed by chemical and, therefore, bacteriological weapons (BW). After delegates dropped once again a reference to bacteriological warfare from consideration in the final stages, General Sosnkowski rose to make an impassioned plea to have the weapon category reinserted. Given that the emerging Geneva Protocol was to be a universal declaration of a norm, BW required clarification in line with what the League had been developing for CW over the preceding years. The inclusion of BW laid

the foundations for the Biological and Toxin Weapons Convention (BTWC) five decades later.

Fifth, as delegates did not want to defer the establishment of a global norm to an unspecified future conference, they decided on a separate agreement that would be open to all states to sign. With that decision, they laid the groundwork for disarmament and resolving the dual-use dilemma. Over the next years, League committees would investigate the numerous technical questions raised during the Arms Traffic Conference. Eventually, they developed the General Purpose Criterion (GPC) to distinguish between legitimate and proscribed purposes for the use of toxic substances. The British draft treaty presented in 1933 to the Conference for the Reduction and Limitation of Armaments included an early iteration of the GPC. Decades later, the GPC was to become a core component of the definition of a BW in the BTWC and a CW in the Chemical Weapons Convention (CWC).

Sixth, the Geneva Protocol, as an accepted universal norm against chemical and biological warfare, offered the legal foundation for the UN Secretary-General to investigate CW allegations in the Iran-Iraq war in 1987. The UN General Assembly and Security Council adopted resolutions establishing the UN Secretary-General's investigative mechanism (UNSGM).

And finally, the 1998 Rome Statute establishing the International Criminal Court drew on the language of the Geneva Protocol to define CW use as a war crime. (An amendment later added BW use to the list of war crimes, but the phrasing reflected the more modern terminology in the BTWC.)

Virtually all scholars argue that, due to its longevity, impact on the conduct of war, and contributions to modern conventions and legal instruments, the Geneva Protocol has become part of customary international law, binding upon all states. A remarkable feat for a document that is, in fact, a one-page contract that a state concluded with any other party to it. Consequently, if a party were to breach the contract, the Protocol would no longer apply in respect of the violator. As the document pertains to the laws of war, it did not require a party to eliminate its chemical or biological arsenal; therefore, that party could lawfully retaliate in kind. Many states ratified or acceded to the Protocol with reservations that underscored the contractual nature. They also extended this understanding to other parties and non-signatory states allied with the offending belligerent if they were to violate the prohibition, too.

No party reneged on the Geneva Protocol concerning biological warfare. However, the commitment was broken several times as regards CW use, notably during the 1935-1937 Italo-Abyssinian war, the 1980-1988 Iran-Iraq war, and the current Russian invasion of Ukraine.

After the Paris Conference in January 1989 to restore the Protocol's authority, the understanding emerged that the ban applied to internal wars as well, to prevent a repetition

of Iraq's extensive CW use against its Kurdish population. Syria, a party since December 1968, used nerve agents and chlorine against its population between 2013 and 2018. The UNSGM mission of August 2013 confirmed Syria's violation of the norm, and under intense pressure from Russia and the United States, the country acceded to the CWC two months later. The Organisation for the Prohibition of Chemical Weapons (OPCW) oversaw the destruction of its CW holdings. It conducted several investigations into CW attacks, resulting in international sanctions against the regime and restrictions on the country's rights as an OPCW member.

Still, quietly pushing CW to the margins of military doctrine and denying a more prominent role for BW are beyond any question the core reasons why the Geneva Protocol prepared the ground for disarmament. Indeed, governments found it increasingly difficult to justify expenditure in offensive CBW programmes, having announced in advance that they would not use those weapons on the battlefield (first).

The analysis of how the Geneva Protocol influenced national decision-making, impacted armed conflicts and laid the foundations for disarmament will be part of a future issue of *Historical Notes*.

Annexes

Annex 1: Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

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 civilised 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 to-day'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.

Annex 2: A Treaty Between the Same Powers, in Relation to the Use of Submarines and Noxious Gases in Warfare

Signed at Washington, 6 February 1922

[...]

ARTICLE V

The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world and a prohibition of such use having been declared in Treaties to which a majority of the civilized Powers are parties,

The Signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such a prohibition, agree to be bound thereby as between themselves and invite all other civilized nations to adhere thereto.

Annex 3: CBW sessions at the 1925 Arms Traffic Conference

Date	Level	Action
5 May 1925	Plenary, 2nd meeting	US announces CW initiative
7 May	General cmte, 1st meeting	US and Poland present proposals in detail
8 May	General cmte, 2nd meeting	Consideration US and Polish proposals; referral to the Legal cmte
11 May	Legal cmte, 2nd meeting	Election CBW sub-cmte
19 May	Legal cmte, 8th meeting	Consideration report by CBW sub-cmte
20 May	Legal cmte, 9th meeting	Approval report by CBW sub-cmte
23 May	Military cmte, 12th meeting	Request for new US text
25 May	Military cmte, 13th meeting	Consideration report Legal cmte and new US text
26 May	Military cmte, 14th meeting	Continuation debates and appointment drafting cmte for report
26 May	Military cmte, 15th meeting	Statement by Great Britain
27 May	Military cmte, 16th meeting	Adoption report
5 June	General cmte, 17th meeting	Report of General Rapporteurs
8 June	General cmte, 20th meeting	Consideration draft protocol prepared by the drafting cmte; Sosnkowski's intervention
10 June	General cmte, 22nd meeting	Consideration revised draft text by drafting cmte; adoption protocol text
16 June	Plenary, 6th meeting	Adoption general report of General cmte
17 June	Plenary, 7th meeting	Approval of the agreements; Signature of the instruments of the conference

Annex 4: General Sosnkowski's statement to the Twentieth Meeting of the General Committee, 8 June 1925

On behalf of the Polish delegation I beg to draw the attention of the Conference to an omission in the draft Protocol on Chemical Warfare which has just been submitted to us, an omission due, perhaps, to a misunderstanding.

I have already had the honour, at the beginning of our discussions, to lay before you a proposal to the effect that all decisions taken by this Conference should also apply to means of bacteriological warfare.

I have no desire unduly to detain you by a detailed account of all the terrible consequences for the human race should bacteriology, that science the beneficent results of which are known to us all, become the servant of the instincts of hate and destruction. May I, however, briefly remind you of the fact that in this new field progress has recently been made which compels reflection.

Remember that the use of asphyxiating gases and other chemical methods in warfare was, before the world war, still in the field of theory. No military leader, no scientist, sufficiently realised the whole extent and all the disastrous consequences of the use of chemical weapons which were revealed to us by the last war.

One might even say that the results of the first experiments in the use of gases as an offensive and defensive weapon were a surprise to those who made them. The results of bacteriological warfare would certainly exceed the horror of all the devastation caused by the use of chemical methods in warfare. Bacteriological measures for warlike purposes have developed during recent years in a formidable manner and this would enable them to be turned into a system of destruction both ingenious and sinister.

The bacteriological weapon has, so far as production is concerned, several advantages over the chemical one. It can be manufactured more easily, more cheaply and with absolute secrecy. Furthermore, the bacteriological weapon is, by its very nature, capable of extending itself without constant regulation of the factors of time and space by those who are using it. It is sufficient to set this weapon in motion on a very small scale for its results to become more and more terrible and widespread. Unlike poison gas, the action of which is generally of short duration and restricted to a limited area, cultures of microbes, if once secretly let loose in any place, may, thanks to their speedy multiplication and their ever-increasing virulence, easily occasion epidemics affecting great masses of men, animals and even plants.

Among the most deadly weapons in warfare against the human race, I might quote : cholera, typhoid fever, plague, tetanus, glanders and botulism. So far as animals are concerned, they may be infected in large numbers, for instance, by cultures of the germ of glanders, cattle plague, etc. Bacteriological warfare can also be waged against the vegetable world, and not only m ay corn, fruit and vegetables suffer but also the cultivation of useful plants, that is to say, vineyards, orchards and fields.

Again, and this should be particularly emphasised, it is impossible to limit the field of action of bacteriological factors once introduced into warlike operations. The consequences of bacteriological warfare will thus be felt equally by the armed forces of the belligerents and the whole civil population, even against the desire of the belligerents, who would be unable to restrict the action of the bacteriological weapons to an area decided upon beforehand.

How can we refrain from thinking of the horrors of future wars, horrors which will perhaps threaten whole races with extermination ! We must set ourselves against that, in the name of civilisation and of humanitarian sentiment.

Bacteriological warfare is all the more formidable since it m ay be carried on secretly by the most primitive methods and by use of intermediaries who cannot be dealt with. Behind the front, even at a very great distance, secret agents may infect human beings, drinking-water and food, either directly or indirectly,

by means of domestic animals or parasites (e. g. rats), or by means of bacteriological bombs thrown from aeroplanes.

No agent could arrive at so considerable a result by chemical methods, for he would require a very large technical equipment. In the case of bacteriological warfare the question is much simpler: a single man having a small number of cultures of microbes in a small receptacle, easy to handle, may obtain incalculable results. Just as medicine, in spite of the enormous progress made by science in the last few years, has not yet at its disposal absolutely effective means of protection, just so the human race is in many cases powerless and might, in case of bacteriological warfare, fall a victim in this savage struggle. The actual results and also the moral consequences of such a war would therefore be terrible. Great masses of men, animals and plants would be exterminated.

I desire then to remind you, gentlemen, that all the discussions which have taken place at this Conference with regard to chemical warfare referred also to bacteriological warfare. The Military, Naval and Air Technical Committee, indeed, when considering this question, discussed these two methods of war simultaneously and its report and the text which it proposed simultaneously referred to both chemical and bacteriological warfare. The same method of procedure was adopted by all the other Committees dealing with this problem and the general report places bacteriological methods alongside those used in chemical warfare. The problem was also treated from this point of view in the proposal of the Swiss delegation which suggested that similar measures should be adopted in respect of these two methods of warfare. If you read the Minutes of the seventeenth meeting of the General Committee, which had on its agenda the problem of chemical and bacteriological warfare, you will also see that the speakers who took part in the debate dealt with these two questions together.

It would thus be impossible to point to a single moment during the course of this Conference at which it might be supposed that it was intended to exclude the problem of bacteriological warfare from our debates and decisions. Taking all these circumstances into account, I propose to you that we should complete the Protocol submitted to us, as follows:

In the third paragraph of the draft concerning chemical warfare, we would say: “declare that the High Contracting Parties, so far as they are not already parties to treaties prohibiting such use, accept this prohibition, and extend it to means of bacteriological warfare, and agree to be bound thereby as between themselves.”