

Impact of Protocol Passage Diluted by Senate Compromise

A 50-year chapter in U.S. treaty history closed on 16 December when the Senate by a unanimous voice vote ratified the 1925 Geneva Protocol, which prohibits first use in warfare of chemical and biological weapons, and which the United States proposed two generations and several wars ago as a response to the use of such weapons in World War I. The move broke a 4-year deadlock between the Senate Foreign Relations Committee and the Administration over whether the treaty should be interpreted to ban first use of tear gas and herbicides, both of which were used in Vietnam. But the practical meaning of the new U.S. position on tear gas and herbicides is still unclear.

The protocol's historic passage was made possible by a surprising compromise on that very issue which was worked out secretly between the committee staff and the Administration last fall. Each side had been immovable since President Nixon submitted the protocol to the Senate in 1970 with the qualification that tear gas and herbicides were not covered. The committee objected strongly, sent the protocol back to the White House, and even refused to act on the 1972 biological weapons (BW) treaty* until the Administration altered its view. The BW treaty also passed the Senate last 16 December. It bans the development and stockpiling of biological weapons. To date 103 other nations are parties to the protocol and 37 others have ratified the BW treaty.

The compromise made possible a suitable sunset triumph for the committee's retiring chairman, J. W. Fulbright (D-Ark.), during his final weeks in the Senate. But it also evoked strong warnings from a number of authorities who were involved in the negotiations, including former U.S. Attorney General Elliot L. Richardson, Harvard international law expert Richard R. Baxter, and Harvard biology professor Matthew S. Meselson.

The gist of their objections, as expressed to the committee, was that the compromise permits the Administration to retain its view that tear gas and herbicides are not covered by the ban. Therefore, they say, it confuses the issue of what the Geneva Protocol really means and encourages other countries likewise to make similar exceptions. "The position that the executive branch has taken on this matter," Baxter testified to the committee on 10 December, referring to the compromise which was by then a *fait accompli*, "seems to me to have been the worst possible solution."

The protocol, as ratified, includes only one official modification, a formal reservation which empowers use of chemical weapons in a retaliatory manner and which 33 other parties have enacted also. This is a change from the last 4 years, during which the Administration insisted on submitting the protocol with an interpretation exempting it from covering all uses of tear gas and herbicides.

But in exchange for getting the protocol sent to the Senate intact, the committee, as in any other compromise, had to give up something. It allowed the Administration to announce a "national policy" to the ef-

fect that tear gas and herbicides are *not* covered by the protocol. A national policy carries less weight than a formal interpretation of a treaty; in fact, few other U.S. treaties have been accompanied by such unilateral, declaratory statements from the Executive. The "national policy" further states that the United States will renounce first use of herbicides and riot control agents except in five specific military situations.

All this was first announced publicly at a 10 December hearing, with Fred C. Iklé, director of the Arms Control and Disarmament Agency, speaking for the Administration. By that time, opposition to the compromise within the committee had withered, even by long-term opponents of any monkeying with the protocol's interpretation, such as Hubert Humphrey (D-Minn.). The committee simply incorporated Iklé's announcement in its report without endorsement or comment.

Opponents of this compromise, however, point out that the General Assembly, in an 80 to 3 vote taken in 1969, has interpreted the protocol to include tear gas and herbicides under its ban. In a 6 December letter to Fulbright, Richardson said:

We have the choice of perpetuating disagreement or securing a uniform international understanding of where the line against gas warfare is to be drawn. . . . The consequence of the Administration's position is to leave open for other countries the use of riot gas and herbicides in war under conditions which we have renounced. . . . This seems to be the worst of both worlds.

Baxter warned that the United States could be in trouble in another, Vietnam-type situation. Meselson told *Science* that he urged the committee to wait until it could get the Administration to not exempt tear gas and herbicides.

These worries are viewed as so much discussion over angels on the head of a pin by those who believe that the compromise is sound. One believer, obviously, is Iklé, who in an interview explained that U.S. failure to ratify the protocol was an obstacle to other arms control negotiations. "It is simply outrageous to keep other countries waiting. . . . It is important that our government can ratify treaties which other nations think are worthwhile," he said. And, as for the argument that the Senate could have held out and eventually won against the Joint Chiefs of Staff, Iklé said, "It is not at all a safe assumption to say that the mood will go toward stricter arms control in the next few years. It could go the other way." Some say that one reason for compromising now was that Fulbright's successor as chairman, John Sparkman (D-Ala.) was expected to be less sympathetic to the cause of getting the protocol passed.

Indeed, one factor propelling the National Security Council to compromise at this time may have been the fact that, in recent years, its staff has conducted at least three major classified studies of the protocol and of the military value of tear gas and herbicides. A source close to the council indicated that the staff there didn't want to make still one more study. Whatever its other faults, then, the U.S. government, like a dog with a bone, cannot chew on a subject for more than 50 years without getting tired of it.—DEBORAH SHAPLEY

* Official Title: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons.