

Presentation for the Peace Palace Library Security Salon 2016

From Restriction to Prohibition: A Century of Continuous Struggle

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Good evening ladies and gentlemen,

This year's security salon is about chemical and biological weapons, current threats and future developments. But before we reflect on those challenges, in order to set the scene, I will look back and draw you a modest – but not complete – picture of the history of arms control and disarmament of chemical and biological weapons.

The principal treaties addressing these weapons are the 1925 Geneva Protocol, the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention. I will look at the conditions that led to the establishment of these treaties and how conflicts and crises set in motion the momentum to expand and strengthen the disarmament of chemical and biological weapons.

I refer to disarmament out of convenience, but in essence many of these treaties are a bit more complex than “just” disarmament. These treaties often contain pillars that are described as arms control, disarmament and non-proliferation. And these terms refer to the very different types of rules.

Disarmament usually relates to the prohibition to develop or possess a certain type of weapon and an obligation to disarm or destruct such weapon; whereas arms control implies the continued existence/presence of a weapon and has an aim to establish restrictions for such a weapon; while non-proliferation relates to rules governing various related activities, such as for example the trade, transfer or transshipment of weapon components, delivery systems, materials, agents, and dual-use items.

Some of the treaties combine these pillars whereas other treaties focus on one particular aspect. Even the terminology may differ. For example, in the context of the Chemical Weapons Convention, many documents and experts usually refer to preventing the *reemergence* of chemical weapons rather than non-proliferation. The preference to describe it as reemergence relates to very nature of the chemical industry and the fact that chemical agents are dominantly present in civilian life. This is in stark contrast with, for example, the nuclear industry and nuclear material, where non-proliferation seems more fitting.

More strikingly, what especially distinguishes treaties on chemical and biological weapons disarmament is the fact that they are not just about weapons, essentially these treaties govern certain aspects of civilian industry and research. For example, when we look at Art. 2 of the CWC we see that chemical weapons are defined as, among others, toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention and as long as the types and quantities are consistent with such purposes. Combined with the general purpose criterion, this basically means that the CWC prohibits all toxic chemicals and their precursors, unless allowed under the Convention. The BWC is even more ambitious, Art. 1 prohibits States Parties to develop, produce, stockpile or otherwise acquire or retain biological agents of types and in quantities that have no justification for peaceful purposes. The basic way to read that Convention is that it governs biology; everything in biology is prohibited unless it has justification for peaceful purposes.

Now if we look at their origin, arms control and disarmament find their origin in international humanitarian law, or also known as the law of armed conflict. A body of law that arose in the 19th century to govern the conduct of combatants during war by reconciling military necessity with the principle of humanity. For modern arms control and disarmament the 1867 St. Petersburg Declaration is of particular importance. Note that the agreement itself does not address Chemical and Biological Weapons as such, it restricts certain types of exploding bullets in certain situations, but nevertheless it is of great historical value. In earlier times societies adopted rules

restricting certain weapons, for example, the use of concealed weapons or weapons of poison, for reasons of honouring the notion of chivalry or out of religious fidelity. The St. Petersburg Declaration was the world's first true multilateral arms control agreement and the first one which introduced the principle of humanity as a reason *as such* to restrict the use of weapons and methods of warfare.

The Declaration states that the object of war – and with that they refer to the object of weakening military forces of the enemy during war – would be exceeded by the employment of arms which uselessly aggravate the sufferings of disable men, or render their death inevitable. Of course in the geopolitical realm cynicism remained and reciprocity reigned as the basic *modus operandi* to arrange international security; nevertheless the St. Petersburg Declaration did set in motion a new way to identify and prohibit the use of certain categories of weapons and methods of warfare. Combined with the ongoing industrial revolution, a momentum arose for states to limit the development of new armaments.

It is very fitting that this event takes place here at the Peace Palace Library. More than a century ago it was the first Hague Conference which produced the first international agreement on restricting chemical weapons. The 1899 Hague Declaration IV restricted the Use of Projectiles the Object of Which is the Diffusion of Asphyxiating or Deleterious Gases. I say restricted and not prohibited as there were many limitations on and conditions to the binding force of this Declaration. Soon after the second Hague Conference produced the 1907 Hague Convention on the Laws and Customs of War on Land, Art. 23 of which prohibits the employment of poison or poisoned weapons. Despite this progressive momentum, the outbreak of World War I, and especially its prolonged duration beyond what was initially expected by the belligerents, undid the achievements of the Hague Conferences, at least on preventing chemical warfare. In April 1915, the first large scale gas attacks were conducted by Imperial Germany in an attempt to break the stalemate in the trenches. The imperial military command reasoned that since Hague Declaration IV restricted the use of gas “*projectiles*”, releasing poisonous or asphyxiating gases into

the wind would not violate the Declaration, or so it was reasoned. The ensuing gas warfare between Imperial Germany, the United Kingdom and France brought about a new experience of the horrors of industrialised warfare. Soon after the war, in 1922, the Great Powers would convene at the Washington Naval Conference to once again limit the development of armaments. The Great Powers adopted the Treaty relating to the Use of Submarines and Noxious Gases in Warfare. It never entered into force, as it was never ratified by one of the Powers, namely France. However, soon after, in 1925 the Geneva Protocol was adopted. Its language was clearly based on the lessons learned from WWI, as it aimed to restrict chemical weapons in a more comprehensive way. The Protocol prohibited chemical weapons as such, rather than just gas projectiles, by adding to asphyxiating and poisonous gasses the broader and catch-all term “or other gases”; and by expanding the prohibition to include also “all analogous liquids, materials or devices”. The Geneva Protocol also introduced the prohibition on bacteriological methods of warfare. It was therefore the first attempt to prohibit comprehensively an entire category of weapons. Nevertheless there were once again limitations. The various reservations by states parties reduced the Protocol to a no-first-use commitment, thereby eroding the intended aim of *prohibiting* chemical weapons into that of *restricting* chemical weapons. Moreover, the High Contracting Parties agreed as to be bound by the Protocol, only as between themselves, in other words: the Powers would not be bound by this Protocol in their relations with colonies.

Unlike Hague Declaration IV, the Geneva Protocol did achieve its aim of preventing warfare for the duration of WWII. During the war all belligerents did stockpile large quantities of Chemical Weapons in order to retaliate should a chemical attack occur. To this end, for example, the US shipped large quantities of chemical weapons to Britain for potential use in the European theatre of the war. It is not clearly understood why the belligerents never used chemical weapons, especially why Nazi Germany never used chemical weapons when allied troops were advancing into Germany. Some say that it may have to do with Hitler’s experience of being injured in a chlorine gas attack during WWI. Whatever the reason may be, the achievement of the Geneva Protocol in preventing chemical and biological warfare was, in a certain

way, also a pyrrhic victory. Indeed during the war chemical and biological agents had not been used on the battlefield, but chemical agents did see extensive use in the concentration camps of Europe against non-combatants. Moreover unimaginable chemical and biological experiments were conducted on humans, often with a lethal result, by army researchers of Imperial Japan.

At the end of World War II, it became clear, especially after demonstration of the destructive power of the atomic bombs, that the world was in need of more comprehensive rules restricting and prohibiting the development of armaments; rules which did not only apply in times of armed conflict, but rules which would also be applicable in times of peace and in situations outside the context of armed conflict.

Such comprehensive arms control and disarmament became one of the principal pillars for international peace and security under the United Nations system. And while the Cold War toned down the more ambitious goals of the international community, the disarmament agenda nevertheless enjoyed much support, including the agenda item on the establishment of a comprehensive chemical and biological disarmament convention. However, as the Cold War became hotter, the importance of a deterrence policy by means of strategic weapons grew, including that of chemical and biological weapons. No progress was achieved on this front until two events generated new momentum. In 1969, in what was then, the Eighteen-Nation Committee on Disarmament, the British Delegation proposed separating the disarmament efforts on biological weapons from the efforts on chemical weapons disarmament, and by proposing a biological weapons convention with a minimal design that was to be expanded at a later stage.

The British proposal and international support for it, in combination with President Nixon's unilateral renunciation of the strategic value of biological weapons for the US' deterrence policy, paved the way to negotiations on and the adoption of the 1972 Biological Weapons Convention. The Convention is the world's first global disarmament treaty, ordering the elimination of an entire category of weapons, and

prohibiting its future acquisition by whatever means and retention. So not just a prohibition in times of armed conflict, but also in peace time. This success, however, came at a price. To this day the Biological Weapons Convention lacks a verification regime. And one question which remains unanswered is whether the Convention can still provide security and resilience; especially in view of the changes that the world has seen since the 1970s.

As for chemical weapons disarmament, they remained a strategic deterrence asset for a longer duration of the cold war. Mankind repeated some of the tragedies of the earlier wars before making progress in this field. During the Iran-Iraq war in the 1980s chemical warfare was extensively used by Saddam's forces, both against Iranian combatants and civilians; as well as against the Kurdish population in Northern Iraq. Saddam's systematic attacks against the Iraqi Kurdish population led to the changing of the restrictive wording of 'war' as used in the Geneva Protocol, being reinterpreted as to mean 'armed conflict', not just international but also and non-international. Moreover, in 1984, the Australia Group was established to create a common export controls regime by industrial nations in order to avoid the misuse and exploitation of the international market for dual use items. The images of chemical attacks by Iraq, combined with the reduced value of chemical weapons as a strategic deterrence asset for the major military powers of the world, and the willingness and valuable input of the chemical industry, finally gave impulse for productive negotiations on a Chemical Weapons Convention, which was successfully adopted in 1993. And despite the long time the negotiations took, the negotiations did achieve in creating the world's first global disarmament treaty, ordering the elimination of an entire category of weapons, prohibiting its future acquisition by whatever means and retention, *with* a verification regime.

However, as you will hear from my fellow panellists, and as we saw on television in the past years, this is not the end of the road of our common goal to secure the world from the dangers of chemical and biological warfare.