Origins of the norm against chemical weapons

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In August 2013, the Syrian government allegedly used chemical weapons against its own civilians in what US Secretary of State John Kerry described as a ‘moral obscenity’.¹ The history of chemical and biological warfare is rife with misinformation, false accusation and propaganda,² but, if the allegation is well founded, this attack would represent the first state use of chemical weapons since the formation of the 1993 Chemical Weapons Convention (CWC), which bans their use, development and acquisition. US President Barack Obama warned that any such use by Syria would cross a global ‘red line’ and Britain’s Prime Minister David Cameron, despite acquiescing in the parliamentary vote against taking part in any military action, warned that a tough response was warranted to uphold ‘the international taboo against the use of chemical weapons’.³ Syria has since joined the CWC and agreed to the destruction of its chemical weapons stockpiles, but a striking feature of this unfortunate episode is the vehemence with which the chemical attack has been condemned, and the frequent appeals to a longstanding international norm against chemical weapons. This article examines the origins of this norm and explores the unique moral repugnance attached to the use of such weapons.

The emerging norm against poison

Attempts to prohibit the use of poison and disease as weapons of war have a surprisingly long history. For example, one of the earliest recorded expressions of constraint on poison weapons is found in the Hindu Laws of Manu, dating in oral form to c.500 BCE and recorded in Sanskrit in CE 150.⁴ However, the extent to which examples such as this can be seen as evidence for the existence of a coherent norm against poison weapons is doubtful.⁵ In the general sense, norms

⁴ For further discussion see Catherine Jefferson, ‘The taboo of chemical and biological weapons: nature, norms and international law’, PhD diss., Sussex University, 2009.
are taken to be the ‘collective understandings of the proper behaviour of actors’. Contemporary understandings of norms, however, are more likely to be placed in the context of institutions and/or international regimes. How far these early prohibitions on the use of poison can be compared to later, multilateral binding treaties is therefore questionable.

The first international agreement codifying the prohibition against poison weapons can be found in article 57 of the Strasbourg Agreement of 1675, signed by French and German forces. The agreement specifically prohibited the use of poisoned bullets and was valid only for the duration of the war. It was not until the latter half of the nineteenth century that comprehensive agreements on the conduct of war were discussed between states, when the growing internationalization of the world, industrialization and rapid technological innovation encouraged states to consider the potential of future warfare and its political and economic consequences.

The growth of peace societies and proto-human rights movements during this period also influenced intellectual efforts to humanize war. Though unilateral, the Lieber Code of 1863 (or, to give its full title, ‘Instructions for the government of armies of the United States in the field’) and the laws of war it codified had far-reaching influence. Named after its drafter, Dr Francis Lieber, the Lieber Code was primarily a response to the expansion of the US Army during the American Civil War, but it also constituted an attempt to codify the laws and usages of war on the basis of moral reasoning. While Lieber drew on a range of historical precedents, the code provided a significant theoretical contribution to the modern law of war in its identification of military necessity as a general legal principle in order to minimize suffering. Following from this principle, the Lieber Code contained provisions completely excluding the use of poison in warfare. The Lieber Code influenced subsequent agreements, and the principle of military necessity formed the basis of the law of war for much of the twentieth century.
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The principle of military necessity can also be identified in the St Petersburg Declaration of 1868, signed by 17 European powers, which prohibited the use of explosive, fulminating or incendiary projectiles weighing more than 400 grammes.\(^\text{17}\) The agreement soon became obsolete, but nevertheless the St Petersburg Declaration was the first multilateral treaty that attempted to ban the use of an entire class of weapon. The Brussels Declaration of 1874 also attempted to put restraints on the instruments of war, including through article 13(a), which prohibited the use of poison or poisoned weapons.\(^\text{18}\) This provision was apparently uncontested during negotiations, suggesting that the prohibition on the use of poison was by this time becoming a well-established component of the laws of war. The Brussels Declaration never took effect because of some states’ unwillingness to adopt it as a binding convention, but it laid the foundations for the rules for the conduct of war on land agreed at the Hague peace conferences of 1899 and 1907.

Origins of the Hague Conference

The original proposal for a peace conference, from which the first Hague Conference developed, was set in motion by Russia as early as 1894. The country’s poor economic situation, teamed with the realization that expenditure for rearming the artillery to the level of its enemies would bring the treasury to bankruptcy, stimulated disarmament proposals within the Russian government.\(^\text{19}\) Rather than being based purely on humanitarian idealism, then, the roots of the disarmament proposal can be traced to Russia’s need to promote peace to enable its own internal development. The Russian foreign office drafted a circular with the disarmament proposal and this document, once Tsar Nicholas II had given it his approval, was presented to all the governments whose representatives were accredited in St Petersburg.\(^\text{20}\)

The first Hague Conference met for two months from 18 May 1899; its final declaration was signed on 29 July 1899, entering into force on 4 September 1900. Twenty-six nations participated, including the United States, Brazil, China, Japan, Persia and Siam (Thailand) as well as the established European powers.\(^\text{21}\) While the conference achieved nothing in terms of disarmament in the literal sense, delegates did endeavour to revise the customary laws of wars (revisiting the draft code prepared at the Brussels Convention of 1874) and to consider the question of unnecessary suffering with respect to newly invented weapons. The final document consisted of four main sections and three additional declarations:


\(^{20}\) Ford, ‘The genesis of the first Hague peace conference’.

\(^{21}\) Best, ‘Peace conferences and the century of total war’, p. 623.

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Section II contained a provision in article 23(a) prohibiting the employment of ‘poison or poisoned arms’. The stipulation was apparently agreed without controversy. Indeed, the records of the conference indicate that the provision was directly lifted from article 13(a) of the Brussels Declaration, which suggests that the prohibition against poison had at this point become an uncontested norm. However, this provision constituted a prohibition distinct from that codified in Declaration II ‘on the use of projectiles the object of which is the diffusion of asphyxiating or deleterious gases’. Why, then, was a separate declaration negotiated against the use of ‘poison’ gases?

As well as revising the customary laws of war, delegates at the Hague Conference also considered proposals to limit new technologies of war. In so far as it was considered a weapon, poison seems not to have been considered a military technology; it was perhaps still perceived as an opportunistic weapon, and was certainly not a factor in considerations of the growing industrial–military complex. However, how ‘new’ technologies of war were selected for special treatment is an interesting and illuminating question. As historian Geoffrey Best asks: ‘Which [weapons] can be stigmatized as peculiarly horrible?—horrible injuries in war after all were nothing new. How can we legislate about weapons still on the drawing-board, whose effects cannot be calculated? In any case, what is really new and what is just an improvement on the existing?’

The Russian circular had proposed the following aims for discussion:

To prohibit the use in the armies and fleets of any new kinds of firearms whatever, and of new explosives, or any powders more powerful than those now in use, either for rifles or cannon.
To restrict the use in military warfare of the formidable explosives already existing, and to prohibit the throwing of projectiles or explosives of any kind from balloons or by any similar means.
To prohibit the use, in naval warfare, of submarine torpedo boats or plungers, or other similar engines of destruction; to give an undertaking not to construct, in the future, vessels with rams.

23 Best, ‘Peace conferences and the century of total war’, p. 626.
Expanding bullets (also known as Dum-Dum bullets, named after the arsenal at Calcutta which made them for the British Army in India) were also included on the conference agenda. What processes, then, led to the stigmatization of gas as an unacceptable technology of war?

The delegates in The Hague allocated the various proposals for weapons limitations to different commissions and subcommissions. The second subcommission of the first commission considered the subject of limiting explosives and was presided over by Jonkheer van Karnebeek, head of the Dutch delegation. During the first two meetings of the subcommission, delegates failed to reach an agreement on the choice of appropriate measures (e.g. calibre, firing rate, velocity) by which to limit new explosive devices. However, during the third meeting the Russian delegate Captain Scheine, under instruction from his government, submitted a proposal to prohibit ‘the use of projectiles loaded with explosives which spread asphyxiating and deleterious gases’. Two of the delegates present at the meeting noted that all projectiles loaded with explosives should therefore be forbidden, since they all generate injurious gases. The proposition was therefore clarified by Karnebeek to the effect that the prohibition should ‘relate solely to projectiles whose purpose is to spread asphyxiating gases and not to those whose explosion incidentally produces these gases’.

It is important to remember that, at this point, gas projectile weapons had not actually been developed. Although occasional references to ‘poison gas’ are found in antiquity, it was not until the late nineteenth century that the industrial-scale technology for mass-producing gases and their means of delivery existed. Ideas of gas warfare had begun to emerge around this period, including several proposals in Britain during the nineteenth century, but there is no evidence that gas projectiles had been seriously considered as a feasible weapon of war. The delegates of the subcommission were therefore dealing with a completely novel technology of war. Interestingly, the immediate response to the proposal challenged the notion that such a weapon was unnecessarily cruel. The views of the US delegate Captain Alfred Thayer Mahan are recorded in the meeting’s minutes: ‘Such projectiles might even be considered as more humane than those which kill or cripple in a much more cruel manner, by tearing the body with pieces of metal.’

Some debate then ensued over the nature of projectile gas weapons, with questions arising as to whether their use would be equivalent in barbarity to the

27 See Jefferson, ‘The taboo of chemical and biological weapons’.
28 The British naval officer Thomas Cochrane, later Admiral Cochrane, Lord Dundonald, recommended the use in combat of sulphur dioxide on several occasions, but the British government rejected the proposals owing to doubts over its effectiveness and because such use was considered against the rules of warfare. See Wyndham D. Miles, ‘Admiral Cochrane’s plans for chemical warfare’, Armed Forces Chemical Journal 11, 1957, pp. 22–3; Charles Stephenson, ‘Cochrane’s stink vessels: the secret war plans of Lord Dundonald’, Osprey Military Journal 2: 5, 2000, pp. 46–55. Proposals for chemical warfare were also made during the American Civil War: see Guy R. Hasegawa, ‘Proposals for chemical weapons during the American Civil War’, Military Medicine 173: 5, 2008, pp. 499–506.
poisoning of waters. While Scheine supported such a proposition, Mahan and Karnebeek argued otherwise. Mahan contended that the use of gas projectiles would involve 'neither useless cruelty nor bad faith', and Karnebeek argued that while poisoning water is treacherous, 'asphyxiating projectiles no more have this character than ordinary ones'.

Support was lent to Scheine’s proposal by another delegate, however, who argued that gas projectiles used against a besieged city could have a greater effect upon harmless civilians than would ordinary projectiles. The delegate of Austria-Hungary also expressed the opinion that death by asphyxiation was crueller than death by bullets. The link to poison was therefore not explicit, and did not automatically generate a stigma around the potential weaponization of asphyxiating gas. While one delegate did ask whether the subject would not be better placed within the remit of the subcommission dealing with the revision of the Brussels Declaration, no explicit reference to article 23(a) on the use of ‘poison and poisoned arms’ was made. Rather, linkages were made to civilian suffering and the psychological horror of suffocation. At this point, then, the relationship between the customary norm against poison and the ban on gas was neither obvious nor assumed. Rather than codifying a longstanding custom (though undoubtedly principles of the laws of war informed some of the delegates’ arguments), the proposed ban on the use of gas projectiles can be understood as an attempt to limit the potential of new weapons technologies.

Karnebeek asked the delegates of the subcommission whether their governments could consent to prohibiting the use of gas projectiles. Austria-Hungary, Denmark, France, Germany, Italy, Japan, Norway, the Netherlands, Sweden and Turkey responded positively but Mahan, for the United States, was opposed, reiterating that asphyxiating gases were not necessarily inhumane and adding that the US did not wish to limit potential means of warfare which might later on be usefully employed. The delegate of Siam also wondered whether gas projectiles might be considered more humane and reserved his vote until after consultation with his government. The delegate from Great Britain expressed doubt that an invention of the kind would indeed be made, but came down in favour of a prohibition. At the final conference, the proposal to prohibit asphyxiating gas projectiles was adopted with near unanimity.

The records of the conference therefore reveal the codification of two distinct norms that only in retrospect came to be viewed as connected. On the one hand, the norm against poison or poisoned weapons constituted the codification of a well-established law of war. On the other hand, the norm against the release by projectile of asphyxiating gas constituted an attempt to limit a novel—and as yet unexploited—military technology. The Hague Declaration of 1907, convened

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31 For an interesting discussion on the conception of technology as value-neutral in this context, see Price, *The chemical weapons taboo*, p. 17.
33 The US and Britain cast the only opposing votes. While Britain approved the ban, it did so on the condition that support for it be unanimous.
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by US President Theodore Roosevelt, reaffirmed the prohibition on the use of poison and the declaration against the diffusion of gas by projectile. However, despite the provisions of the Hague Declarations, the novel technology of gas warfare was soon to be exploited in the first wide-scale use of chemical weapons during the First World War.

The First World War: reactions to chemical warfare

Notwithstanding the extensive resort to gas warfare during the First World War, assessments of chemical weapons within the military establishment were mixed. On the one hand, the use of gas had proved advantageous in some tactical situations, and it had the potential to be overwhelming against an unprepared enemy. On the other hand, the function of gas remained specialized and could only rarely substitute for conventional weapons. Furthermore, the use of gas posed a heavy logistical burden. Yet beyond these battlefield considerations, most military leaders also felt a great antipathy towards the use of gas. Though the Hague norm had been broken, evidence of moral repugnance persisted in both military and public perceptions of poison gas.

After the war, a small number of military and medical officers became proponents of gas warfare. Arguments in defence of gas often rested on either a realist philosophy of war or assumptions about the relative humanity and controllability of gas. For example, Major-General Charles Howard Foulkes, Britain’s chief adviser on gas warfare, stoutly defended his role and became an outspoken supporter of gas warfare. In his view, once gas had been introduced in warfare, its use was a fair option, with humanitarian scruples marginalized in the quest for victory. Other proponents of gas warfare argued that gas was no more inhumane than conventional methods of warfare, some even that it was more humane. Edward Bright Vedder, chief of medical research at the US army’s Edgewood Arsenal in Maryland, argued: ‘Of course gas warfare is barbarous and inhumane, but so is all warfare. Is gas warfare more barbarous and inhumane than the other forms of warfare? … Are high explosives and shrapnel humane? Think of the torn and mangled bodies.’

On the basis of statistics from the First World War, Vedder argued that gas caused a smaller proportion of deaths than other weapons and caused less suffering than bullet wounds. However, had the war gone into a sixth year it is possible that the casualty figures from gas would have been much higher. Towards the end of the war all major belligerents had amassed significant supplies of chemical weapons,

37 Edward B. Vedder, The medical aspects of chemical warfare (Baltimore, MD: Williams & Wilkins, 1925), p. xii.
38 Vedder, The medical aspects of chemical warfare, p. xii.
and the proportion of gas-filled munitions was continually increasing. Moreover, new and more powerful agents were being investigated. In the spring of 1918 the US investigated Lewisite, a fast-acting vesicant that caused excruciating pain and systemic poisoning.\textsuperscript{39} The British had also produced a new agent, an arsenical smoke code-named DA, which was capable of penetrating even the more effective German gas masks within seconds. It caused severe agony and ‘the most appalling mental distress and misery’.\textsuperscript{40} Furthermore, Vedder’s claims of relative humanity failed to take into consideration the tremendous psychological impact of gas.

Despite its potential to increase suffering, Vedder argued that gas offered the contrary possibility of mitigating suffering:

Still further, gas warfare may be made as humane as desired. Other weapons cannot be so used. Once a bullet or shell has started, all control over it is gone, and the degree of injury produced is a matter of chance. But gas may be varied to suit conditions, and need not necessarily be lethal or produce serious suffering in order to obtain results.\textsuperscript{41}

Sharing this view, J. B. S. Haldane (who with his father J. S. Haldane had been involved in British gas experiments in the First World War) similarly argued that chemical weapons were more humane than high explosives or shrapnel, given their potential to be non-lethal. On the degree of suffering caused by gas, Haldane recounted his personal experience: ‘Besides being wounded, I have been asphyxiated to the point of unconsciousness. The pain and discomfort arising from the other experiences were utterly negligible compared with those produced by a good septic shell wound.’\textsuperscript{42} Haldane even envisaged a future chemical weapon that merely stupefied the opponent, causing no physical suffering at all. Arguments propounded by the likes of Vedder and Haldane focused on the potential of ‘non-lethal’ chemical weapons to offer a more humane alternative to high explosives, often ignoring the possibility that, rather than becoming less harmful, future developments could (and indeed would) yield more deadly munitions.

Those chemists who approved of gas warfare had typically been institutionally connected to it in some way. However, neither this level of optimism about gas warfare, nor Foulkes’s enthusiasm, was shared by all in the military establishment. Indeed, many felt that the use of gas undermined their professional code of honour. It simply was not chivalrous. General Peyton March, Chief of Staff of the United States Army during and after the First World War, was prompted to condemn chemical weapons after a visit to a hospital in France where he saw over a hundred women and children suffering the effects of gas. They had been living near the trenches, and the gas from the front had travelled to their homes. As Marsh recounts: ‘War is cruel at best, but the use of an instrument of death, which, once launched, cannot be controlled, and which may decimate non-combatants—women and children—reduces civilization to savagery.’\textsuperscript{43}

\textsuperscript{39} The Germans had also investigated Lewisite, among other compounds, earlier but had rejected it: Robinson,\textit{ The problem of chemical and biological warfare}, vol. 1, p. 50.


\textsuperscript{41} Vedder, \textit{The medical aspects of chemical warfare}, p. xiii.

\textsuperscript{42} Haldane, \textit{Callinicus}, p. 21.

Not only did the use of gas lack heroism, then, it also threatened to harm non-combatants, undermining a longstanding distinction considered crucial to the military profession.\textsuperscript{44} Even in Germany, pleas of Kriegsraison or necessity of war were advanced after Ypres to justify the use of gas, and postwar literature often stressed that the responsibility for the gas warfare initiative rested with civilian chemists, not soldiers.\textsuperscript{45} General Berthold von Deimling, the commanding general of a German corps at Ypres, admitted that ‘the commission for poisoning the enemy just as one poisons rats struck me as it must any straightforward soldier; it was repulsive to me’.\textsuperscript{46}

Thus the distinction made in the text of the Hague Conventions between poison on the one hand and gas projectiles on the other was, for many, blurred, and poison gas came to represent one of the more striking psychological horrors of the war. A deep dread and almost irrational fear of gas was experienced. Even Foulkes noted, with some exasperation, that men wanted to ‘get the stuff off’ as soon as possible, comparing their apprehension of gas to an irrational fear of snakes.\textsuperscript{47} But was that fear really so irrational? The fear of gas was based not simply on a sense of unfamiliarity,\textsuperscript{48} but on the prospect of a process as instinctual as breathing becoming a source of contamination and death. Literature on the psychology of fear of asphyxiation is limited, but one source suggests that the fear of death by suffocation is greater than the fear of death by bleeding wounds.\textsuperscript{49}

The psychological impact of gas was immediately recognized on the battlefield, and was significant enough to ensure that psychological instruction was incorporated into military training. A British peacetime infantry manual dealing with anti-gas instruction even commented on what was ‘almost superstition’ attached to gas.\textsuperscript{50} Fear of the unknown was amplified by the fear of the insidious way in which gas worked to destroy the body from within by contaminating that which was normally taken for granted. Even the imagery of the gas mask evoked nightmarish visions, turning the soldier into a ‘horrible kind of demon or goblin’.\textsuperscript{51}

Towards the end of the war, chemical weapons were so frequently used that many have claimed the initial fear provoked by gas was replaced by grudging acceptance.\textsuperscript{52} However, the psychological impact of gas may have gone deeper.

\textsuperscript{45} Brown, \textit{Chemical warfare}, n. 84.
\textsuperscript{46} Brown, \textit{Chemical warfare}, p. 41.
\textsuperscript{48} Haldane, for example, thought that people needed to be educated to understand that gas was no worse than other weapons.
\textsuperscript{49} Brown, \textit{Chemical warfare}, p. 178, n. 75.
\textsuperscript{52} Tim Cook, ‘“Against God-inspired conscience”: the perception of gas warfare as a weapon of mass destruction, 1915–1935’, \textit{War and Society} 18: 1, 2000, p. 61. However, the panic created by the unanticipated use of chemical weapons should not be underestimated. For example, in 1985 French Foreign Legion troops in Corsica were briefed on a mock chemical warfare training exercise in which a plane was to emit water vapour at low altitude. The vapour was replaced with a harmless, inert red substance but the troops were not notified. Believing a serious mistake had occurred, troops panicked and many experienced psychosomatic effects similar to symptoms expected in a
than simply an initial emotional reaction. Studies in the field of military psychiatry have examined the long-term psychological effects of poison gas among chemical warfare survivors of the First World War. In a qualitative study of experiences of veterans who had been exposed to mild gassing (taken from a sample of First World War files held by the British War Pensions Agency), it was found that veterans’ emotional response to gas exposure inspired strong beliefs that framed interpretations of subsequent ill-health.53 The study suggests that the systemic nature of poison gas played a key part in framing ideas and beliefs about the capacity of chemical weapons to cause enduring harm to health. In another qualitative study of the psychological effects of chemical warfare, psychiatrists examined the relationship between chemical weapon exposure and post-traumatic stress disorder (PTSD). It was found that chemically exposed victims experienced higher PTSD rates than persons exposed to non-chemical warfare, suggesting that the psychological impact of gas has lasting effects.54

The public response to gas warfare expressed a similarly emotional reaction. Indeed, the response of the British press to the first chlorine gas attack was one of horror and moral outrage, portraying the German use of gas as an illegitimate act of inhumanity.55 However, during the later years of the war, as the use of gas gathered momentum on both sides, little on gas warfare was published. An appeal was made by the ICRC in February 1918 to all belligerents to abjure the ‘barbarous innovation’ of poison gas,56 but as gas came to be used extensively by Allied troops, press condemnations diminished considerably. By the time of the Armistice, however, the issue had attracted renewed interest, and it was eventually taken up by the newly formed League of Nations.

Formation of the Geneva Protocol

The question of Germany’s chemical warfare capabilities was addressed during the Versailles peace conference, and it was agreed that Germany should be forbidden to manufacture chemical weapons. However, given Germany’s strong organic chemical industry, it was feared that in the event of future conflict, Germany would quickly be able to reassemble a chemical warfare capability. The British therefore proposed that an article be included in the peace treaty obligating Germany to disclose details of the manufacturing process they had used for the production of genuine chemical weapons attack. See Alastair Hay, ‘Surviving the impossible: the long march from Srebrenica. An investigation of the possible use of chemical warfare agents’, *Medicine, Conflict and Survival* 14: 2, 1998, p. 144.

53 Edgar Jones, Ian Palmer and Simon Wessely, ‘Enduring beliefs about effects of gassing in war: qualitative study’, *British Medical Journal* 335: 7633, 2007, pp. 1313–15. For further discussion of the implications of the study, see also Edgar Jones and Neil Greenberg, ‘Long-term psychological consequences among chemical warfare survivors of World War I and their current relevance’, *Psychiatric Annals* 37: 11, 2007, pp. 724–8. Veterans with severe respiratory illness were excluded from the study in order to focus on those whose beliefs were not grounded in objective pathology directly related to the war.


55 See e.g. *The Times*, 29 April 1915, p. 9.

of war materials. This, however, would mean the loss of commercial secrecy for Germany, and the proposal was rejected by US President Woodrow Wilson, who suspected that the military negotiations were being exploited for economic ends.\textsuperscript{57} Despite vigorous lobbying for acceptance of the British proposal, Wilson did not yield.

One result of the campaigning, however, was that it brought the issue into the public domain and ensured that chemical warfare was on the agenda of the League of Nations. In May 1920, the League asked its Permanent Advisory Commission on Military, Naval and Air Questions (PAC) to examine the issue of chemical weapons ‘with a view to some agreement being reached’ internationally.\textsuperscript{58} On 20 October 1920, the PAC provided a report condemning the employment of gases against non-combatants but arguing that gas was no crueller than any other methods of warfare against combatants. At this point, then, an international ban on chemical weapons was by no means certain. However, the Council of the League, adamant in its condemnation of the use of poison gas, decided to refer the issue of regulation to the Permanent Commission. The Commission suggested that the League’s member governments should address the question of what penalties should be imposed upon states making use of poison gas. The ICRC also mobilized support for a ban on chemical weapons, appealing to members of the League to reach agreement on an absolute prohibition of poison gas in warfare.\textsuperscript{59}

In the meantime, alarmist reports about the ‘terrors of future warfare’\textsuperscript{60} were spreading in the press, warning of a new, ‘especially deadly’ poison discovered by the US Chemical Warfare Department.\textsuperscript{61} Adding to public fears was the spectre of delivery of chemical and even biological weapons from aircraft. In response, those lobbying in favour of chemical weapons, particularly those institutionally connected to chemical weapons programmes, maintained that chemical warfare capabilities were necessary for national security and argued that gas was a relatively humane method of warfare compared to the suffering caused by high explosives.\textsuperscript{62} These views came under attack from other scientific organizations, however, and in September 1921 the British Association for the Advancement of Science pressed for an international ban on chemical warfare.\textsuperscript{63}

The Assembly of the League of Nations set up the Temporary Mixed Commission on the Reduction of Armaments (TMC) in 1921 to investigate what these new methods of warfare would mean to civilian populations as well as to combatants, and the TMC appointed a special subcommittee to investigate the issue of chemical warfare.\textsuperscript{64} However, before the subcommittee’s report was published, further

\textsuperscript{57} Robinson, \textit{The problem of chemical and biological warfare}, vol. 1, p. 235.
\textsuperscript{60} \textit{The Times}, 15 March 1921, p. 12.
\textsuperscript{61} Robinson, \textit{The problem of chemical and biological warfare}, vol. 1, p. 238.
\textsuperscript{62} Robinson, \textit{The problem of chemical and biological warfare}, vol. 1, p. 242.
\textsuperscript{64} Goldblat, \textit{The problem of chemical and biological weapons}, vol. 4, p. 46.
developments towards gas disarmament were being pursued outside the League through the 1921–2 Washington Conference on the Limitation of Armaments.

The Washington Conference, convened by the United States, referred the issue of chemical warfare to a subcommittee. The subcommittee concluded that it was not possible to limit the use of chemical weapons against armed forces, but that the use of gases against non-combatants should be limited as far as practically possible.  

However, the US Secretary of State, Charles Evans Hughes, had formed an advisory committee that urged a total prohibition on chemical weapons. This recommendation seemed to reflect the views of the US population at large. A national public opinion poll, conducted by the Advisory Committee for the US delegation to the Washington Conference, found that of those sampled, 366,975 were in favour of a complete ban, while only 19 were in favour of retaining restricted use as recommended by the subcommittee.  

On 6 February 1922, mainly owing to the diplomatic efforts of the US delegation, the Washington Naval Treaty was signed by the United States, United Kingdom, France, Italy and Japan. Article V prohibited the use of ‘asphyxiating, poisonous or other gases and all analogous liquids, materials or devices’ as ‘justly condemned by the general opinion of the civilised world’.  

However, the French failed to ratify the treaty because of a clause dealing with submarines, so it never came into effect. Remaining hopes for gas disarmament fell to the League of Nations.

On 27 September 1924, the Fifth Assembly of the League of Nations requested that a draft convention drawn up by the TMC relating to the control of international trade in arms, munitions and implements of war be submitted to both member and non-member governments. Convened under a resolution of the League Council, the Conference for the Supervision of the International Trade in Arms and Ammunition and in Implements of War met at Geneva on 4 May 1925. At the conference, the US representative immediately placed the restriction in trade of chemicals with potential chemical weapons applications on the conference agenda, suggesting that all international trade in gas weapons should be prohibited. However, the proposal was challenged on the grounds that it would discriminate against states unable to manufacture chemical weapons of their own. As the Brazilian representative pointed out, it would create unfair inequality between producing and non-producing states, especially as chemical weapons were an effective means of defence for weak countries. During the course of the discussion, the Polish representative also addressed the issue of bacteriological weapons and urged that all decisions taken on chemical warfare should apply equally to

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69 Goldblat, *The problem of chemical and biological weapons*, vol. 4, p. 58.
70 Goldblat, *The problem of chemical and biological weapons*, vol. 4, p. 59.
71 Goldblat, *The problem of chemical and biological weapons*, vol. 4, p. 59.
bacteriological warfare. 72 This proposal was met with unanimous agreement, the US representative reproaching bacteriological warfare as ‘so revolting and so foul that it must meet with the condemnation of all civilised nations’. 73

Despite the general feeling that the use of chemical and biological weapons needed to be controlled, arriving at a suitable prohibition in trade was problematic. As the Italian representative pointed out, controlling trade in materials required for chemical and biological weapons could not be effective because of their legitimate peacetime applications. 74 Nevertheless, while the difficulty of prohibiting trade in dual-use material was acknowledged, the Swiss representative stressed the need to arrive at a formal condemnation of chemical and biological weapons. 75

It was finally agreed to sign a protocol appended to the final resolution of the conference, outlawing the use of chemical and bacteriological weapons. The Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare was signed on 17 June 1925. 76 However, in the course of the conference discussions, no reference was made by any country to the scope of the prohibition, and the final protocol contained no provisions for enforcing the norm against chemical and biological weapons. Many countries ratified the protocol between 1925 and 1930, including Britain and France, though some ratified with the reservation that it would cease to be binding if an enemy failed to respect it. Thus, since the protocol banned the use of chemical and biological weapons and not the weapons themselves, and owing to its contractual nature, the protocol came to be seen as essentially no more than a ‘no-first-use’ agreement under international law. 77

Nevertheless, the achievements of the Geneva Protocol were significant. Reflecting public revulsion at chemical and biological weapons, and their rejection (for the most part) by many in the military, the formation of the Geneva Protocol represented both a legal and a moral condemnation of these methods of warfare. The aim of the League of Nations had ostensibly been achieved: the use in war of chemical and bacteriological weapons was banned. Moreover, the Geneva Protocol reaffirmed and codified a much earlier norm against the use of poison in war: ‘The ancient customary-law prohibition of fighting with poison, that has levered itself on with the treaties of Strasburg, St. Petersburg, Brussels and the Hague against the ground-swell of a rising military technology, after being severely weakened by the chlorine cylinders of Ypres, had suddenly recovered and expanded and made a new imprint on the public conscience.’ 78

72 Geopolitical vulnerability and inferior technological development, as well as past disease patterns, made Poland particularly sensitive to the threat posed by biological weapons in the years following the First World War: see Jerzy Witt Mierzejewski and John Ellis van Courtland Moon, ‘Poland and biological weapons’, in Erhard Geissler and John Ellis van Courtland Moon, eds, Biological and toxin weapons: research, development and use from the Middle Ages to 1945 (New York: Oxford University Press, 1999), p. 67.

73 Geissler and van Courtland Moon, eds, Biological and toxin weapons, p. 67.

74 Goldblat, The problem of chemical and biological weapons, vol. 4, p. 65.

75 Goldblat, The problem of chemical and biological weapons, vol. 4, p. 65.


77 Since the protocol was based on a contractual agreement between the signatories, use by one nation would have technically broken the contract and legitimized use by other nations.

The importance of the Geneva Protocol lay not so much in creating an enforceable legal position based on international law in the strictest sense as in its articulation of the norm against use of chemical and biological weapons—a means of warfare ‘justly condemned by the general opinion of the civilised world’. 79

The legacy of the norm today

The norm against the use of chemical weapons, then, has a long and, at times, ambiguous history. The roots of the prohibition on the use of gas projectile weapons as codified in the Hague Conventions can be understood as an attempt to limit the potential of new weapons technologies rather than as an expression of the much earlier norm against poison weapons. However, with the widespread use of chemical weapons in the First World War, and intense and visceral reaction against this form of warfare, this distinction between gas weapons and poison began to blur. In articulating a norm of non-use of chemical and biological weapons, the formation of the Geneva Protocol represented a reaffirmation of a longstanding taboo attached to the use of poison and disease as weapons. But what is the legacy of this norm today?

The Iraqi chemical attack on the Kurdish town of Halabja in 1988 was one of the largest chemical weapons attacks directed against an urban and predominantly non-combatant area to be recorded in history. Yet the perpetrators were never expressly held to account for this crime. 80 At the time of the chemical weapons attacks in Syria, several commentators suggested that a similarly muted response could risk undermining the norm against chemical weapons and potentially legitimize future use. As one commentator noted: ‘At stake is nothing less than the preservation of one of the most important global norms to have emerged over the past century.’ 81

High-level negotiations between US Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov took place from 12 to 14 September 2013, resulting in an agreed Framework for Elimination of Syrian Chemical Weapons. Following this agreement, Syria acceded to the CWC and has cooperated with the CWC’s implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW), in the destruction of its chemical weapons stockpiles. In addition to providing a workable solution upon which the international community could agree, and averting a possible military response, this outcome reflects an international will to uphold the norm against chemical weapons.

These events have also raised the profile of the OPCW in the public domain. In recognition of the significance of the OPCW’s efforts to rid the world of chemical weapons, and underlining the importance of upholding the norm against their use, the Norwegian Nobel Committee awarded the 2013 Nobel Peace Prize to the

80 Robinson, Alleged use of chemical weapons in Syria.

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Origins of the norm against chemical weapons

OPCW, stating: ‘The conventions and the work of the OPCW have defined the use of chemical weapons as a taboo under international law.’ As well as codifying a longstanding norm against chemical weapons, then, the CWC and the activities of the OPCW serve to further strengthen the taboo attached to their use.
