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Recommended Citation

Giovanello, Sean P.. "Riot Control Agents and Chemical Weapons Arms Control in the United States." *Journal of Strategic Security* 5, no. 4 (2012): 1-18.

DOI:

<http://dx.doi.org/10.5038/1944-0472.5.4.1>

Available at: <http://scholarcommons.usf.edu/jss/vol5/iss4/6>

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Abstract

This article examines the issue of riot control agents as it relates to the subject of chemical weapons arms control at the international level and, more specifically, implications for the United States. The article examines how the issue of riot control agents has complicated efforts for the United States to enter into and ratify chemical weapons-related arms control agreements. The article provides an overview of chemical weapons, examines the relevant arms control agreements, explores why and how riot control agents influence debates over the merits of these treaties, and explains why riot control agents remain a contentious issue in chemical weapons arms control and foreign policy in the United States.

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Abstract

This article examines the issue of riot control agents as it relates to the subject of chemical weapons arms control at the international level and, more specifically, implications for the United States. The article examines how the issue of riot control agents has complicated efforts for the United States to enter into and ratify chemical weapons-related arms control agreements. The article provides an overview of chemical weapons, examines the relevant arms control agreements, explores why and how riot control agents influence debates over the merits of these treaties, and explains why riot control agents remain a contentious issue in chemical weapons arms control and foreign policy in the United States.

Introduction

Chemical weapons arms control has generally been a difficult endeavor for the United States. Various arms control efforts over the decades faced opposition, delay, and even defeat despite the morally dubious nature of chemical weapons. The issue of non-lethal riot control agents (RCA), for instance, usually appears as one of the leading aspects of these debates, whether it is in the form of interagency disagreement, pressure from veteran's groups, or chemical weapons arms control treaty opponents within the United States Senate. Indeed, the issue of riot control agents contributed to serious opposition to ratification in the case of the Geneva Protocol of 1925, as well as the Chemical Weapons Convention (CWC) during

the 1990s. In each case, the President and treaty supporters eventually acquiesced to the demands of supporters of riot control agents. As a result, the use of riot control agents remained allowable under certain circumstances by the United States military. In both cases, however, the legitimization of riot control agents for military purposes placed the United States outside the expanding international norm related to chemical weapons possession and usage. Paradoxically, the championing of riot control agents as a tool of war placed the United States outside the very international nonproliferation regime that the United States worked diligently to support and deepen.

This article examines the puzzle as to why riot control agents, with their marginal military utility, have significantly influenced chemical weapons arms control agreements in the United States over the course of multiple decades and eras in international politics. The article examines the place of riot control agents in chemical weapons arms control treaty ratification debates. The article begins with a brief overview of chemical weapons and the history of chemical weapons arms control, with an emphasis upon the role of riot control agents in these discussions. Specifically, the argument will explore the role of riot control agents in explaining why the ratification efforts for two major chemical arms control treaties faced such serious opposition in the United States.

Chemical Weapons

Chemical weapons are toxic chemicals that are designed to cause "death, temporary incapacitation or permanent harm to humans or animals."¹ The use of chemical weapons dates back thousands of years where they were used in Greece, Rome, and India, as well as the modern day region now known as the Middle East. Efforts to limit, regulate, and delegitimize chemical weapons date back to ancient times as well.² In the last century, chemical weapons have been used both on and off the battlefield by both state and non-state actors. In some instances, cult organizations, like Aum Shinriyko, have used chemical weapons as a tool of terror. The most widespread and horrific use of chemical weapons took place during World War I, when both sides deployed chemical munitions. Both the United States and the Soviet Union built up extensive stockpiles of chemical weapons throughout the Cold War. Efforts to regulate chemical weapons in the twentieth century included the Geneva Protocol of 1925 and the more stringent CWC, which entered into force in 1997. Regardless of these international standards and increased international pressure, many states have still refused to abandon their chemical weapons programs and destroy existing chemical weapons stockpiles.³

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Chemical weapons are generally broken into four distinct categories: 1) blister agents; 2) blood agents; 3) nerve agents; and 4) harassing agents.⁴ Riot control agents fall under the category of harassing agents. Blister agents, such as mustard gas, cause burns and large blisters on the victim's skin. They affect the eyes, lungs, and skin of the victim. Blood agents are generally inhaled and affect the blood of the victim. Nerve agents, such as Sarin and Tabun, can produce a variety of effects depending on the dosage. These effects include choking, paralysis, nausea and hallucinations. Harassing agents are also known as riot control agents. They are generally not lethal and have been used in war time and for law enforcement purposes.

Riot control agents are non-lethal chemical weapons designed to incapacitate victims temporarily rather than causing long-term injuries or death from exposure. Tear gas is probably the most widely utilized and well-known riot control agent. Pepper spray, known as Capsaicin, is also a widely utilized riot control agent. Consequently, the debate over riot control agents has proven contentious as these types of agents are generally considered non-lethal, more humane, and are legally utilized in domestic law enforcement. International efforts to regulate the use of riot control agents, including the CWC, only ban the use of riot control agents as a weapon of war, but do not ban their use as a tool of domestic law enforcement.

Chemical Weapons Arms Control

While it is important to note that prohibitions against chemical weapons date back to the ancient world, the modern chemical weapons nonproliferation regime begins much later in history. Efforts to regulate chemical weapons can be broken into three distinct eras: 1) Pre World War I; 2) Post World War I; and 3) the Cold War era and beyond. The key efforts and documents from each area are discussed below, with more detailed attention paid to two specific treaties—the Geneva Protocol of 1925 and the CWC.

Prior to World War I, efforts toward chemical weapons arms control focused upon limiting or regulating the use of chemical arms, rather than banning their development or possession by states. These agreements were not narrowly focused upon the issues of chemical weapons arms control. Instead, each agreement sought to codify rules of war and limit the use of certain tactics and weapons related to chemical use. These agreements included the Saint Petersburg Declaration, the Brussels Declaration, and the documents produced by the Hague Conferences of 1899

and 1907. The Saint Petersburg Declaration of 1868 agreed to by the Great Powers of the day, limited the size of projectiles that could contain "fulminating or inflammable substances."⁵ The Saint Petersburg Declaration also placed a lower limit (nothing smaller than) on the size of such projectiles and, as such, allowed for the possession and use of larger scale artillery shells containing these substances. The Brussels Declaration, while never ratified, stated that poison weapons were "especially forbidden" under the rules and laws of war of the day.⁶ The United States, not considered a great power at the time, did not participate in either of these conferences and, as such, was never bound by the agreements. These early steps, however, were important in the codification of what would become an international chemical weapons nonproliferation regime. The United States would eventually participate in the Hague Conferences of 1899 and 1907.

In the 1899 Hague Conference, the participants agreed to ban the use of munitions which carried poisonous gasses. The ban, however, applied only to wars between contracting parties and, consequently, fell far short of universality.⁷ All participants of the 1907 Hague Conference reaffirmed this principle, which stated that it was illegal to utilize poisonous weapons. Unfortunately, these prohibitions did not prevent states from developing chemical weapons and, as seen in World War I, did not prevent states from using them on the battlefield. During World War I, chemical weapons were seen as a "versatile weapon" and "adaptable to almost any tactical situation."⁸ However, it is important to note that the prohibitions in these agreements, coupled with the lessons of World War I, laid the groundwork for future and more binding agreements.

In the aftermath of World War I, several steps were taken to ameliorate the threat posed by chemical weapons. These steps included the Treaty of Versailles to end the war, the Washington Naval Treaties and, most importantly, the adoption of the Geneva Protocol of 1925. The Treaty of Versailles forbade Germany from developing, possessing, or using chemical weapons of any kind.⁹ These international agreements, however, did not prevent the victorious allies and subsequent German regimes from building up their chemical arsenals during the interwar years. The Washington Naval Conference in 1921 and the resulting treaties primarily focused upon the limitation of naval forces around the world and, especially, in the Pacific. One of the treaties produced by the conference regulated submarine warfare and the use of gas as a weapon. The treaty called for the banning of gas as a weapon of war under international law.¹⁰ The parties involved agreed that the gas provision had to be accepted unanimously by all parties in order to enter into force. The United States Senate provided advice and consent to ratification in a lopsided vote with no sen-

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ator formally voting against it.¹¹ French opposition to the anti-submarine provisions of the treaty killed the agreement, but the idea of outlawing the use of chemical weapons remained a matter of discussion at the international level. This conference served as a precursor for discussion several years later that led to the Geneva Protocol of 1925.

The Geneva Protocol of 1925 continued the process of limiting and delegitimizing the use of chemical weapons in war. After the widespread use of chemical weapons in World War I and the horror such use engendered, public support around the world ran strongly in favor of outlawing their use. The protocol essentially banned "the use in war" of all types of chemical weapons, but did not prohibit possession of such weapons. Furthermore, the ban reiterated the opposition to such weapons contained in prior agreements and also extended the prohibition to include bacteriological or biological weapons. Interestingly, the Geneva Protocol of 1925 remains the world's oldest multilateral arms control agreement still in effect today.¹² The utility of the Geneva Protocol of 1925 was undermined when two key states, the United States and Japan, refused to ratify the treaty in the decade following signature. Further, other states interpreted the treaty as being limited to only conflicts involving state parties to the treaty and as a no-first use pledge rather than overall renunciation of chemical weapons in warfare. Ultimately, many states continued to invest in chemical weapons and retained the capability to deploy chemical weapons in times of war.

During the 1930s, the Geneva Protocol of 1925 failed to prevent the use of chemical weapons in warfare. The Italians, in their conflict with the Ethiopians, and the Japanese in their conflict with the Chinese, both used chemical weapons on the battlefield in violation of the protocol. In both cases, the respective opponents lacked the ability to respond in kind to a chemical weapon attack or to deter one from taking place. It is generally recognized that the decision of other great powers to not deploy their chemical weapons in World War II owed more to deterrence than any specific respect for the Geneva Protocol or international law. Still, the existence of the protocol served as an important bulwark against the use of chemical weapons during wartime from the period of its signature until the entry into force of the CWC.

Throughout the Cold War, the United States and the Soviet Union maintained enormous stockpiles of chemical weapons as part of their strategic arsenals. Additionally, many other states around the world maintained chemical weapons arsenals, including Israel, India, Sudan, Egypt, North Korea, and Syria.¹³ Chemical weapons acquired a reputation as being a type of weapon of mass destruction accessible to more than

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great powers as they did not require the massive infrastructure and technology investments that were considered prerequisites for developing nuclear weapons.

Much of the focus on arms control centered upon superpower arsenals and arms racing during the Cold War, given the dynamics and stakes of bipolar security competition. Nuclear weapons dominated discussions of arms control during the majority of the Cold War given the number, power, and importance of these weapons. However, chemical and biological weapons were also much discussed and remained important in arms control negotiations. In 1969, facing criticism regarding the use of herbicides (Agent Orange) in the jungles of Vietnam, President Nixon resubmitted the Geneva Protocol of 1925 to the Senate for advice and consent to ratification.¹⁴ Further, Nixon pledged that the United States would unilaterally dismantle its biological weapons program and renounce the use of biological weapons forever.¹⁵ This decision made it easier to delink biological weapons from chemical weapons and conclude a biological weapons convention in relatively short order. While this presidential action represented substantial progress on biological weapons, it still left the challenge of concluding a stronger chemical weapons ban at the international level.

Throughout the remainder of the Cold War, multilateral efforts centered upon drafting a chemical weapons ban that would be acceptable to both superpowers and the rest of the international community. Negotiations took place in both the Conference on Disarmament, as well as directly between the United States and the Soviet Union. The decline and eventual collapse of the Soviet Union allowed for a relaxing of superpower competition that stimulated progress on the treaty negotiations. During the 1980s, the Soviets relaxed their opposition to stringent verification and compliance measures as part of a chemical weapons convention. This unexpected reversal removed one of the key roadblocks to concluding a chemical ban that improved upon the Geneva Protocol, which had lacked a verification mechanism. The accession to this demand by the Soviets paved the way for the insertion of language that made the CWC the most stringent, intrusive, and demanding arms control verification measure adopted in a multilateral arms control treaty. The thawing of relations between the United States and the Soviet Union allowed for important bilateral progress in chemical arms control. It also led to the 1989 Memorandum of Understanding pertaining to chemical weapons and a Bilateral Destruction Agreement between the United States and the Soviet Union. Ultimately, the two sides agreed to share data on their chemical arsenals

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and allowed for inspections of each other's chemical weapon facilities. The agreement also concluded with a bilateral agreement calling for the cessation of their existing chemical weapons programs.

Multilateral negotiations for a chemical weapons convention intensified in the 1980s during the Iran–Iraq war, after reports of the widespread use of chemical weapon by both sides. This war also marked the first time that chemical weapons were widely used since World War II and raised international concerns about possible proliferation throughout the developing world. As a direct result of these concerns, the Australia Group was formed in 1985 with the goal of preventing the export of chemicals, biological agents, and equipment that would be used in the development of or enhancement of chemical and biological weapons stocks.¹⁶ The cumulative effect of the Iran–Iraq war and the thawing of relations between the United States and Soviet Union allowed for the completion of the CWC.

The final draft of the CWC represented a major step in international arms control efforts, as it offered a framework for the actual destruction and disarmament of an entire class of weapons of mass destruction. The CWC, for instance, consists of twenty four articles that created a framework for verifiable disarmament. Furthermore, each of the parties to the CWC are committed to never: (1) develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; (2) use chemical weapons; (3) engage in any military preparation to use chemical weapons; (4) assist, encourage or induce, in any way, anyone to engage in any activity prohibited under this Convention.¹⁷ More importantly, convention participants also agreed to destroy any and all chemical weapons that they possessed and to refrain from using non-lethal RCA in war.¹⁸

The CWC opened for signature in Paris in January of 1993. Secretary of State Lawrence Eagleburger signed the CWC on behalf of President George H.W. Bush. However, given the imminent inauguration of President Clinton, the task of the ratifying the treaty fell upon the new administration. Ratification was expected to be a "no-brainer," given the strong bipartisan credentials behind the treaty, the long-standing perception that the treaty was in the national interest of the United States, and a belief that no senator would want to cast a vote that could be seen as pro-chemical weapons.¹⁹ The task of ratifying the CWC in the United States proved far more time-consuming and difficult than anyone had previously expected.

The ratification effort launched by the Clinton Administration, Senate supporters, and outside interest groups faced challenges that likely would not have existed several years earlier. Republican support for the treaty declined in a post-Cold War world in which the Soviet Union was no longer an overarching threat or had ceased to exist as a state. Many Republican Senators questioned the utility of the CWC to disarm rogue states, stem proliferation to additional states, and have any impact on the acquisition of chemical weapons by terrorists. Delays occurred as the Clinton Administration and members of the Senate debated the prohibition against RCA in the CWC. This debate was further complicated by the fact that the text of the CWC prohibited the Senate from attaching reservations to the treaty, which would have been the easiest way to resolve the debate over RCAs. This delay had real costs as the Clinton Administration lost the political advantage of a Democratic Congress in 1994. The 1994 midterm elections catapulted the Republicans into control of Congress, which placed Senators Jesse Helms and Strom Thurmond as chairmen of the Foreign Relations and Armed Services Committee respectively. Senator Helms utilized his powers as Foreign Relations chairman to link progress of the CWC through the Foreign Relations Committee and the Senate to a myriad of foreign policy objectives, an act that President Clinton resisted. Furthermore, the CWC became tied up in the 1996 presidential elections as former Senate Majority Leader Robert Dole came out against the treaty's ratification during the campaign. As a result, President Clinton was forced to ask Senate Majority Leader Trent Lott to withdraw the treaty from consideration in September of 1996. President Clinton would later resubmit the CWC to the Senate and subsequently launch an effective ratification campaign after the embarrassing failure of fall 1996. The CWC finally received Senate advice and consent in April of 1997 and was ratified shortly thereafter by President Clinton.

While the issues surrounding the use of riot control agents were not the primary reasons for opposition to the Geneva Protocol and the CWC, they remain a controversial subject in terms of participation by the United States in these regimes and compliance with international law. This controversy surfaced again in 2003 when President George W. Bush authorized the use of tear gas in certain situations in Iraq. Bush argued that his decision was in line with longstanding policy in the United States and not a violation of international law.²⁰ In order to understand why this has proven to be a persistent issue in the United States, it is necessary to review how the United States has interpreted the Geneva Protocol of 1925 and the CWC.

The Geneva Protocol

Despite the reluctance of the United States to ratify the Geneva Protocol for over fifty years, president after president stipulated that the United States would honor the commitment made when the protocol was signed in 1925. While the United States debate over the Geneva Protocol in the 1920s was driven by concerns about the utility of chemical weapons, the ability of the treaty to restrict their use, and debates over the national interest, the issue of RCA was part of this discussion. In the Senate's consideration of the Geneva Protocol in the 1920s, Senator David Reed argued that:

"The whole purpose of a weapon is not to kill your adversary; it is to make him militarily ineffective so that the battle may be won...If in our next war we can anesthetize or temporarily blind our adversary, he may be as good as new the next day, but we have accomplished the same military advantage if we put him underground with a little wooden cross over him."²¹

This statement mirrors those made in the modern era by proponents of nonlethal weapons, a category that RCA fall under. More specifically related to riot control agents, General Amos Fries argued the merits and wide range of uses of chemical agents in times of war, including "the use of tear gas for riot control."²² This did not prove the case nearly a half century later when the protocol was resubmitted to the Senate as part of a new ratification effort.

The United States used chemical agents in Vietnam—both riot control agents (tear gas) and herbicides as defoliants—and faced widespread criticism internationally. Critics of the use of these agents argued their use in Vietnam represented a violation of the Geneva Protocol and international law.²³ Technically, the United States was not bound by the protocol as the nation never ratified the treaty. However, the United States had signed the protocol, not formally withdrawn its signature, and had stated as a matter of policy that the United States would abide by the protocol's terms. Due to this criticism, President Nixon announced that he would submit the Geneva Protocol to the Senate for consideration. However, Nixon made clear that the United States would not change its interpretation that riot control agents and herbicides were not subject to the terms of the Geneva Convention and could be used in wartime.²⁴ Disagreements over this interpretation of the Geneva Protocol between the Nixon administration and members of the Senate resulted in consideration of the treaty being deferred until after Nixon left office. The task of ratifying the Geneva Protocol was thus left to the Ford administration.

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President Ford took up the challenge of ratifying the Geneva Protocol in 1974. The administration took the lead, through the Arms Control and Disarmament Agency (ACDA), in working out a compromise between the Senate Foreign Relations Committee and the Department of Defense. The compromise that was eventually reached dealt with the issue of riot control agents. The particulars were spelled out in Executive Order 11850, issued by President Ford.²⁵ As part of the deal:

"The first use in war of riot control agents was barred, except in defensive military modes to save civilian lives: examples included control of rioting prisons of war; situations in which civilians are used by the enemy as a screen; rescue missions, such as retrieving a pilot downed behind enemy lines; and protection of rear-echelon areas in order to, for example, protect convoys from civil disturbances, terrorists, or paramilitary organizations."²⁶

The compromise and resulting executive order would greatly shape United States policy regarding the use or potential use of RCA in the years leading up to the signature and ratification effort for the CWC.

The Chemical Weapons Convention

The CWC was designed to be a dramatically stronger treaty than the Geneva Protocol. The treaty was designed to ban the use of chemical weapons entirely in times of war. The version that opened for signature in 1993 included the strongest monitoring and verification regime ever included in an arms control treaty. The treaty also specifically addressed the issue of riot control agents, which had become the subject of disagreement over the decades since the Geneva Protocol of 1925 was initially signed.

The CWC addressed the issue of riot control agents in several specific ways. First, in Article 1, the text stipulates that riot control agents cannot be used as a weapon of war.²⁷ The CWC next defined toxic chemicals as being "Any chemical which through its chemical action on life processes can cause death, temporary incapacitation, or permanent harm to humans or animals."²⁸ Riot control agents were defined in the text as being any "chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure."²⁹ The text also specified that riot control agents may be used in domestic law enforcement.³⁰ Furthermore, any state attacked with riot control agents in a time of war could both report the violation of the CWC and seek assistance from the international community. The convention clearly stated that riot

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control agents would be treated as chemical weapons under the terms of the treaty and leaves no doubt that their use in wartime is a violation of international law. However, the recognition that riot control agents may be used in domestic law enforcement raised questions as to whether a substance should be banned as a weapon of war yet allowed as a tool in law enforcement.

The issue of riot control agents proved to be a persistent challenge for President Clinton as he sought to secure ratification for the CWC. The RCA problem proved difficult to resolve and it was not until shortly before the final Senate vote that the issue was finally settled. The Clinton administration tried to settle the RCA issue before submitting the treaty to the Senate, but had to finally step back considerably from its earlier hard line on riot control agents in order to secure Senate advice and consent to ratification. The administration faced substantial opposition from within the Department of Defense, as well as from Republican Senators over further limits on the use of riot control beyond what was contained in Executive Order 11850.

The Clinton administration was forced to confront the issue of riot control agents even before transmitting the CWC to the Senate for its advice and consent. Hoping to conclude a treaty he had pushed hard for before leaving office, President George H.W. Bush had deferred "some controversial interagency issues," that would need to be addressed if the CWC were to ever receive Senate advice and consent to ratification.³¹ The controversy revolved around the interpretation of the CWC by the United States regarding riot control agents. This debate involved officials from the National Security Council, the Department of Defense, and the State Department.³² At the center of this argument was whether the qualifications to the Geneva Protocol of 1925 set in place by the Ford administration would be reaffirmed by the Clinton administration. President Clinton hoped to resolve this disagreement before submitting the treaty to the Senate. If the administration could have accomplished this, it would have meant support from the Joint Chiefs of Staff (JCS). The support of the JCS has historically been considered of great importance in arms control treaty ratification efforts.³³ Unable to resolve the dispute; the President Clinton submitted the treaty to the Senate in November of 1993. This meant that the disagreement over RCA would move from the Executive Branch into the Senate, where it shaped the Senate's consideration of the treaty and complicated efforts by the Clinton administration to secure Senate advice and consent.

The issue of riot control agents resurfaced again in June of 1994. President Clinton submitted a message to the Senate clarifying his interpretation of the riot control provisions in the CWC.³⁴ The message, sent on June 23, rather than resolving the dispute in its entirety, essentially exacerbated it. The Clinton administration interpreted the CWC's provision that riot control agents could not be used as a method of warfare to mean:

- The CWC applies only to the use of RCAs in international or internal armed conflict. Other peacetime uses of RCAs, such as normal peacekeeping operations, law enforcement operations, humanitarian and disaster relief operations, counter-terrorist and hostage rescue operations, and noncombatant rescue operations conducted outside such conflicts are unaffected by the Convention.
- The CWC does not apply to all uses of RCAs in time of armed conflict. Use of RCAs solely against noncombatants for law enforcement, riot control, or other noncombat purposes would not be considered as a 'method of warfare' and therefore would not be prohibited. Accordingly, the CWC does not prohibit the use of RCAs in riot control situations in areas under direct U.S. military control, including against rioting prisoners of war, and to protect convoys from civil disturbances, terrorists, and paramilitary organizations in rear areas outside the zone of immediate combat.
- The CWC does prohibit the use of RCAs solely against combatants. In addition, according to the current international understanding, the CWC's prohibition on the use of RCAs as a 'method of warfare' also precludes the use of RCAs even for humanitarian purposes in situations where combatants and noncombatants are intermingled, such as the rescue of downed air crews, passengers, and escaping prisoners and situations where civilians are being used to mask or screen attacks. However, were the international understanding of this issue to change, the United States would not consider itself bound by this position.³⁵

This interpretation would restrict the future use of RCA in times of war. The controversial aspect of the decision is contained in the third bullet point. Essentially, the administration argued that under the CWC the United States could not use RCA to rescue downed air crews or in situations where civilians were being used as human shields. This represented a major shift in policy for the United States.

In making such a change, the Clinton administration faced significant opposition from members of the military establishment in the United States. This departure from the Ford administration's policy on the issue

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of riot control agents set off what has been described as a "near mutiny among the Joint Chiefs."³⁶ The administration, however, was eventually able to secure the support of Chairman of the Joint Chiefs, General John Shalikashvili, and CIA Director James Woolsey. Both testified before the Senate Foreign Relations Committee as to the merits of the CWC even with the newly restricted interpretation of the treaty regarding riot control agents. This, however, did not take the issue of riot control agents off the table. The decision on riot control agents by the administration paved the way for increased opposition to the CWC and meant that "significant military and veteran support for the treaty would not be forthcoming," for the foreseeable future.³⁷ Indeed, the Clinton administration was forced to reverse itself on its interpretation of the CWC regarding riot control agents in 1997. President Clinton chose to return to policy adopted by the Ford Administration, which would allow for the use of riot control agents against combatants to rescue downed pilots or in situations in which the enemy was using noncombatants as human shields.

The riot control agent controversy was not the largest challenge the Clinton Administration and CWC supporters faced in their efforts to ratify the treaty. The end of the Cold War meant that many Republican senators questioned the utility of the treaty in a world without the Soviet Union. For these senators, it appeared that the major threat the treaty had been designed against had disappeared. Further, it was not clear as to how effective the CWC would prove in dealing with the chemical threat posed by rogue states and terrorist groups. These concerns undercut the bipartisan credentials of the treaty during its time in the Senate. Furthermore, the delays caused by the RCA issue meant that the Senate concluded its session in 1994 without having provided advice and consent to ratification. The result was a dramatically new dynamic when the Senate resumed session in 1995 under Republican control. This meant that securing Senate advice and consent would be far more difficult than previously expected. It granted Republicans control over the leadership and key committees, which has historically been tremendously important in the treaty ratification process. This meant treaty opponents would be chairing the Senate Foreign Relations Committee and Armed Services Committee. These two committees were tasked with holding hearings on the CWC. As one observer noted, "the administration's mishandling of the RCA issue is the primary reason that the CWC did not get ratified while the Democrats controlled the Senate."³⁸

While the controversy over riot control agents is not sufficient to understand why the Geneva Protocol and the CWC faced such difficult battles for ratification, it is a necessary area that must be examined in order to understand the important challenge any chemical weapons arms control

agreement will face in the United States. The CWC is a disarmament treaty in that it seeks to prevent the development, possession, transfer, or stockpiling of chemical weapons by any nation. In theory, it represents an end game in chemical weapons arms control. However, given the interpretation by the United States of the provisions related to riot control agents (among other issues related to chemical weapons and a host of states), it is likely that wrangling over riot control agents, chemical warfare, and arms control measures will continue into the foreseeable future. The 2003 decision by the Bush Administration to authorize the use of tear gas in Iraq provides an example of this that is worth examining.

Riot Control Agents and the Iraq War

The subject of riot control agents resurfaced during the Iraq War when the President George W. Bush authorized the use of riot control agents in Iraq in certain limited circumstances. Given that Iraq's suspected arsenal of weapons of mass destruction, specifically chemical weapons, was one of the driving forces behind the invasion; the decision by the Bush Administration raised the possibility of a public relations disaster if banned substances under the CWC were used by the United States in Iraq.³⁹ The war in Iraq, however, provided an interesting test case in a post-CWC world in reference to the usage of riot control agents. For instance, Secretary of Defense Rumsfeld raised the possibility of using riot control agents in Iraq in February of 2003. Rumsfeld complained that "In many instances, our forces are allowed to shoot somebody and kill them, but they're not allowed to use a nonlethal riot-control agent...There are times when the use of nonlethal riot agents is perfectly appropriate."⁴⁰ Rumsfeld suggested he would seek presidential approval for such a measure, in compliance with the terms of Executive Order 11850.

The public disclosure that the United States was considering using riot control agents in Iraq raised a great degree of criticism both in the United States and abroad. Secretary Rumsfeld and the Bush Administration argued that the longstanding and stated policy regarding RCA warranted their use in this theater of operation. Such actions would be consistent with United States foreign policy since the Ford Administration and would be consistent with Senate conditions agreed to by the Clinton Administration when the CWC was ratified. The administration was consequently able to cite past policy stances in the United States and also illustrate grey areas in the language of the CWC in order to defend its stance on the issue. In drafting the treaty, the definition of what constituted warfare was not clearly demarcated and, thus, it was somewhat open to interpretation, as where the line fell between warfare and domes-

tic law enforcement. Opponents feared that the use of these agents would appear hypocritical, would undermine the CWC, and that the costs would outweigh the benefits of use.⁴¹

After President George W. Bush authorized the use of riot control agents in Iraq, the military would use RCA on rioting prisoners at a detention center outside of Mosul.⁴² On August 3, 2007, the Multi-National Forces in Iraq used tear gas against rioting inmates at the Badoush detention center outside of Mosul.⁴³ This usage of RCA on this occasion was consistent with Executive Order 11850 and the Senate conditions to the CWC. The limited use of these weapons in Iraq suggests that, while the United States reserves the right to utilize these weapons, the widespread use of RCA by the American military remains limited in the future.

Conclusion

Controversy surrounding the use or potential use of riot control agents has been a recurring theme in chemical weapons arms control efforts in the United States. This controversy existed during the Vietnam era, the efforts to ratify the Geneva Protocol of 1925, and efforts to ratify the Chemical Weapons Convention. Even after the ratification of the CWC, the issue of riot control agents has remained a source of controversy as evidenced by the debate regarding the limited use of riot control agents in Iraq. Given the relatively limited scenarios in which the United States might use riot control agents in both the present and the future, it is interesting to see the degree to which they are protected by the military and many influential individuals and constituencies in and out of government.

Despite the ratification of the Chemical Weapons Convention, the issue of riot control agents by the United States military is far from resolved. Even as international law in this area appears increasingly settled, the interpretation by the United States of the CWC leaves the nation as an outlier in a chemical weapons arms nonproliferation regime it helped create. As events over the last several years demonstrate, riot control agents and other nonlethal weapons remain an area of interest for the United States military. It will be of interest to observe how this debate continues to play out in the years to come and whether or not it is possible to resolve this issue once and for all.

About the Author

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