Anti-Crop BW and the BTWC

Development of the legal prohibition against BW

According to Moon,\(^1\) the use of biological weapons in war has been the subject of restrictions since the principle prohibiting their use was established in customary law\(^2\) dating back to the classical Greek and Roman period. The restrictions on the use of BW in customary law was subsequently defined in the eighteenth century, and codified in the century that followed. According to Dando:\(^3\)

The International Declaration concerning the Laws and Customs of War signed in Brussels in 1874, the First International Peace Conference in The Hague in 1899, and the Second International Peace Conference in The Hague in 1907 all reached conclusions on specific prohibitions of poison weapons.

However, the limited use of biological warfare weapons during the First World War and the widespread use of chemical agents, paved the way for the subsequent negotiation of a more explicit prohibition that became the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare. The Protocol as it applies to both chemical and biological warfare is worded as follows:\(^4\)

*The Undersigned Plenipotentiaries, in the name of their respective Governments,\nWhereas* the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world; and
Whereas the prohibition of such use has been declared in the Treaties to which the majority of the Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

Declare:

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration ...

As it applies to BW against humans, animals and plants, the Protocol represents an extremely general ban on these types of warfare. The Protocol also has a number of weaknesses. As Dando⁵ has pointed out, the prohibition essentially represented a no-first-use agreement between states. A strict interpretation of the Protocol finds that the Protocol applies only to war and then only to war between states. Additionally, it applied only to States Parties to the Protocol. The threat of use of biological weapons is not banned by the Protocol and the Protocol contained no provisions for monitoring of states compliance. Again according to Dando:⁶

in particular, it did not prevent biological warfare being researched or preparations being made for its use – at least in retaliation. Thus the offensive biological research and development carried out by states in the middle years of this century was not banned by the 1925 Protocol.

A further problem with the Protocol in relation to certain types of chemical weapons did not emerge until the 1970s. According to Boserup:⁷

The wording of the Geneva Protocol does not make it readily apparent whether that instrument was meant to prohibit the use in war of irritant agent weapons and herbicides, but, until the use of these means of warfare began in Viet-Nam, this possible ambiguity had not given rise to serious dispute over the interpretation of the Protocol.

The inclusion of reservations to the Protocol and the failure of some states to ratify weakened the prohibition further. According to Geissler et al.,⁸ for example: