



On September 4, 2001, the New York Times revealed that the United States had developed classified biodefense programs indistinguishable from offensive germ warfare research. Begun during the Clinton administration, the projects were expanded under Bush. The United States kept the projects secret and did not divulge them in annual reports to the Bioweapons Convention.

In one project, the CIA built and tested a cluster bomb that could spread biological agents over a wide area. The Pentagon's Threat Reduction Agency built a bioweapons plant from commercially available materials in the Nevada desert to demonstrate the alleged ease with which such a project could be undertaken by terrorists or rogue states without raising suspicions. The Defense Intelligence Agency tried to genetically engineer more powerful anthrax to replicate a Russian strain thought to be resistant to U.S. military vaccinations.

The United States maintains that these programs are defensive, claiming that in order to manufacture vaccines and develop defenses against biological attacks, researchers must first be able to produce the weapons.

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Impossible Treaties

When scanning histories of failed progressive and radical causes, one cannot help but notice how nice it would be if more were actually successful—alternative fuels, an end to racism (or even just Jim Crow), free electricity, universal health care, a living minimum wage, and on and on. Right in line with this particular tradition of failure are treaties banning weapons of mass destruction and the use and production of weapons that cause undue suffering. The focus in this area has primarily been on chemical weapons. It is a history that began with a glimmer of hope.

The first international agreement limiting the use of chemical weapons dates back to 1675, when France and Germany came to an agreement signed in Strasbourg prohibiting the use of poison bullets. The treaty was limited, specific, and only between two

countries. Simplicity tends to help, but this was the first and last of the successful treaties in the line leading to the Biological Weapons Convention (BWC, 1972/75).

The next attempt at curbing chemical warfare was 200 years later in 1874 at the Brussels Convention on the Laws and Customs of War. This convention was called by Tsar Alexander II and had a broad European attendance. A document was drafted that prohibited the use of poison or poisoned weapons (*On Hostilities*, Chapter 1, Article 23A) and the use of arms, projectiles or material to cause unnecessary suffering (23E). The document was not enthusiastically received, and a number of countries refused to sign. The timing of the convention is often deemed to have played a large part of its downfall. In the immediate aftermath of the Crimean War, the American Civil War, and the Franco-Prussian War, military and political delegates were quite reticent about agreeing to anything regarding arms limitations. The need for this treaty became all the more urgent as war technology “advanced” with the production of modern day chemical weapons. Before the turn of the century, a third attempt was made to obtain a consensus on the rules of war, and part of that discussion involved chemical weapons. An international peace conference was held in The Hague in 1899, at which delegates from twenty-six countries were present. These were Germany, The United States of America, Austria-Hungary, Belgium, China, Denmark, Spain, France, Great Britain and Ireland, Greece, Italy, Japan, Luxembourg, Mexico, Montenegro, The Netherlands, Persia, Portugal, Romania, Russia, Serbia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria. Among the documents produced, one prohibiting

the use of projectiles filled with poison gas was advanced for signature. Only 15 countries signed the document.

The document was flawed from the beginning. Since it only prohibited the “use” of chemical weapons, the development of chemical warfare programs went unabated, and since not all delegates signed, countries reserved the right to chemically attack those countries that did not sign and to respond in kind to anyone that attacked them. The news only got worse. After the start of World War I, any signature on any treaty was quickly forgotten. All weapons were usable weapons. The carnage for both military and civilian personnel was horrific. Germany is generally credited with the first use of asphyxiating gases when it released chlorine gas in Ypres, Belgium in 1915, but there is plenty of blame to go around. As the war came to a close, provisions were introduced into the Treaty of Versailles that prohibited Germany, Bulgaria, Austria, and Hungary from using, manufacturing, or importing chemical weapons. These modest prohibitions were clearly not enough to stop a military performance such as World War I from being repeated. With the memories of chemical attacks still fresh, another convention was called in Geneva to try yet again to ban these weapons.

This convention produced a document that banned the use of asphyxiating, poisonous, or other gases as a method of warfare. The Polish delegation suggested that bacteriological methods of warfare also be banned. This was the beginning of an attempted ban on biological weapons. Again, the treaty was flawed since it did not prohibit the development, production, or possession of chemical weapons. It only banned the use of chemical and bacteriological (biological) weapons in war. Moreover, many countries signed the Protocol with reservations permitting

them to use chemical weapons against countries that had not joined the treaty or to respond in kind if attacked with chemical weapons. But most damning is that a majority of countries neither signed when the treaty opened for signature in 1925, nor after it entered into force in 1928. Only France, Italy, Austria, Belgium, Liberia, and Russia signed the treaty before it went into effect in 1928. Germany held out until 1929, and Poland (the originator of the first anti-germ-warfare legislation) also signed in 1929. Most nations were serious latecomers, including the United States, which signed the protocol in 1975.

A final attempt to get the necessary treaty counterpart to the Geneva Convention protocols of 1925 occurred in 1971. The hope was to get the development, production, stockpiling, and acquisition of biological weapons linked to the use prohibitions of the Geneva agreement. (Chemical weapons had already been covered in other treaty initiatives.) This diplomatic push originated in the United States during the Nixon administration. Two important trends dovetailed (no pun intended) to allow what could only be viewed at the time as a surprise diplomatic move by the United States. Nixon had been told since the late 1960s that the germ warfare program was a bust and that little could be done with this form of weaponry. Nixon also knew that the Kennedy administration had received similar advice. Unfortunately for Kennedy, history was against him. After so much hype had gone into the importance of the germ warfare program, he felt he could not back away from it. To do so, he believed, would have infuriated the American public, as earlier research would have been seen as a tremendous waste of taxpayer dollars. Rather than saying a mistake had been made, Kennedy elected to continue with the program. By 1971, during the Nixon administration, the

American public was completely infuriated by military waste, so they responded positively to the treaty and the end of such a program once and for all. Moreover, Nixon got a double return. On one hand, he could begin to appease the popular peace movement, and he could begin reshaping his image as a war criminal into that of one who wants to stop war crime—a smart move given the presidential election on the horizon.

The document that emerged from the 1971 meetings was the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (also referred to as the Biological Weapons Convention, BWC). The treaty opened for signatures in April 1972 (before the elections in the United States) and entered into force in 1975. This treaty does not prohibit use, but defers to the Geneva Convention and International Law on this matter. Its key prohibitions read as follows:

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile, or otherwise acquire or retain:

- 1. Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purpose;*
- 2. Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.*

Over 100 countries have signed the treaty. Twenty-six nations have not. The only military power still refusing to sign is Israel.

This document sounds principled and practical, but in actuality it is not. The treaty itself has been an abysmal failure. Since 1972, the number of germ warfare programs has consistently grown. More programs exist now than ever before. The United States is substantially expanding its germ warfare program. What was a minor military program in the 1970s has now returned to its glory days of the 1950s and 1960s.

Offense Is Defense

While there are many factors that land the BWC in the realm of hopelessness, no greater reason exists than the clause in the treaty that allows for defensive germ warfare programs. This escape hatch of a clause essentially makes any program legal and legitimate, since separating the defensive from the offensive is nearly impossible. Only two sectors of a given program are affected. The first is stockpiling. A justification for collecting massive amounts of bioweaponry has yet to be devised. The second sector is mass production. A nation does not need to have the facilities to mass-produce germs. So a small nod to the elimination of biological weapons could potentially be given by signatory countries. In the United States, where the germ warfare program is expanding at an alarming rate, at least the germ manufacturing facility at Fort Detrick was dismantled. If this was the only facility, it would indicate that mass manufacture and stockpiling have probably also stopped. Unfortunately,

due to the absence of verification protocols, no one will ever know for sure.

But here is the really bad news: Every other element of the germ warfare program is still on the table. That means new transgenic germs that could be weaponized are being produced, along with new delivery systems, new detection systems, and vaccine development. Moreover, germs that should no longer exist anywhere on earth are being preserved. All of these program elements are defensive, but they are at one and the same time necessary components for offensive weapons programs. The way this scam works is very simple. All that is required for an element of a germ warfare program to be deemed defensive is a plausible reason that it is. The fact that the element can also serve in an offensive situation is then ignored. One might ask, how can a delivery system be a defensive weapon? As the logic goes, if the system is not linked to stockpiling, then the nation is simply looking into delivery possibilities in order to be able to protect its citizens should that delivery system ever be used. This is precisely why germ warfare programs are expanding under this well-intentioned but useless treaty. The logic is so twisted that it could make heads explode. A technology exists only as a paranoid fantasy, but then it is designed and manufactured so that the public can be protected from it. The bizarre notion that the need to neutralize a threat predates the threat itself is simply insane. And, expanding the range of possibility of threat in order to manufacture a better form of security makes even less sense. The “defense” industry has found a way to expand itself in perpetuity. As long as the military can continuously imagine additional threatening possibilities, it can keep making nightmares into realities for its own benefit.

What is additionally sinister is that the only people that tend to die from germ warfare programs are the citizens of the nation that program is supposedly protecting. History has shown this over and over. The Russians never killed anyone with their advanced and immense germ warfare program with the exception of those Russian citizens killed at Sverdlovsk during a tragic anthrax accident. The only people killed by the United States program were Americans. Two workers associated with the program died of anthrax exposure—one in 1951 and another in 1958. Another one died in 1964 of Bolivian hemorrhagic fever. In 1968, in the final year of the program, a janitor died when he was exposed to anthrax while changing a light bulb. These are only the deaths that the military will admit happened. The deaths of five people in 2001 of anthrax exposure are a little more mysterious. In all probability the anthrax was created by and belonged to the U.S. germ warfare program. At the very least, the U.S. military's recipe for creating weapons grade germs was used by those who produced the anthrax. Since army personnel were the only ones with access to it, let speculation fall where it may. Moreover, during the period between 1942 and 1969 (the good ol' days of germ warfare), 419 personnel became ill with various diseases. When the program was reduced in the 1970s and 1980s, only five people associated with the program became ill. Expansion of a program does not lead to security, but precisely to the very opposite: to an enhanced probability that an accident will happen or that someone will find a little on-the-side testing to be an irresistible attractor.

New germs or delivery systems are clearly dual-natured in terms of military capability, but what about the more innocuous elements? How could a detection system be a part of an offensive program? To be sure, a detection system is an integral part of a

defensive safety shield. The ability to identify the appearance of contamination, its type, projected rate, and/or area of coverage is a necessity for a quick and effective response. (The questions here are who should create detection equipment, who will prioritize the need for different detectors that are sensitive to different germs, and who should respond if contamination has occurred. These will be discussed in later chapters.) Be that as it may, this technology has offensive capabilities, since a military would want to verify that it has effectively contaminated enemy territory and then track the contamination so as to avoid blowback. Any element of a defensive program is reversible, which is the primary reason the BWC is so ineffective.

Another example is vaccines. How could vaccines be anything but benign? Vaccines may be benign, but what are they protecting us from? The emergence of transgenics has all but made vaccines an anachronism. Once a vaccine is developed, a germ can be genetically restructured to be resistant to the vaccine. As with delivery systems, this formula can be reversed. First, the germs are manufactured, then the vaccine is manufactured to neutralize them. This cycle can go on into infinitude. Through this method, a germ warfare program can expand in quality if not in quantity. While there may not be stockpiles, there will be a massive, ever growing library of new organisms capable of killing humans and the organic matter that supports human life (crops, for example).

As CAE has stated in previous chapters, but which always bears repeating: The only terrorists that are going to use biological weapons against the United States are its own military branches. Even the military's Office of Technological Assessment has said that it is extremely improbable that terrorists would use such

weaponry (even if they could get it, transport it, and deploy it to begin with). The reasons they give are lack of familiarity, fear of alienating supporters by causing large numbers of casualties, fear of an extreme response by another country, fear of working with biological weapons, prohibition by terrorist groups' financial sponsors, and the need to await someone else's successful use. Some of these reasons are contradictory, but all are possible and plausible. Terrorists are not deranged humans looking to spread chaos as if they were the Legion of Doom or some other comic book fabrication. They have a political agenda; they are strategically as well as tactically goal-oriented; and thereby have limits placed upon them by what they desire to achieve.

The Big Flip Flop

Back in the glory days of the American germ warfare program, the idea that offensive and defensive weapons and support systems were inseparable was common wisdom. Since no threat to research budgets existed, the military was willing to call it like it saw it. As the Office of the Secretary of Defense said in 1949 (when it was just beginning to push the idea of germ warfare and needed to show what good value it was): "Information obtained from research on the defensive aspect of BW [biological warfare] is, in the greater part, applicable to offensive weapons as well." The government was all set for a military twofer. The commitment to this way of thinking about BW never wavered throughout the glory days. In 1968, the final year of *carte blanche*, the army still maintained that what was good for offense was good for the defense. As this quote from Richard Clendenin, a historian from the Technical Information Division at Fort Detrick indicates: "...research and development in the offensive aspect

of BW proceeded hand in hand with defensive developments for, in truth, the two are almost inseparable.” Here we have a military historian chronicling how the program had proceeded over the past twenty plus years. During that time, it was a given that offense and defense were inseparable.

In 1969 it became clear that the germ warfare program was about to be seriously cut. By 1971, offensive weapons were being taken off the table, not just by the Nixon administration, but also by international law. It was then that the U.S. military reversed its position. All of a sudden, offense and defense had nothing to do with each other. This position has been maintained to this day and is now the newspeak of common BW wisdom. While the original position of “two for one” value may have been exaggerated in order to make the initial sale, it was at least in the realm of the real. The new position by the military and White House administrations since Reagan is so disingenuous that it sounds worse than fingernails scraping across a blackboard. While it is true that offensive and defensive research are not exactly the same, the similarities far outweigh the differences.

Verification

The second major problem with the BWC treaty is that it has no verification protocols. None. If a signature nation is cheating, there is no way to verify this as long as the cheats are competent. While there was discussion of verification protocols from the beginning, it never went far. The discussions never even seriously began until the early 1990s. Throughout this period and into the present, the United States, it seems, has preferred that verification does not occur. In fact, Bush went so far as

to sabotage the 2001 meetings during which a consensus on verification seemed to be on the verge of actuation. Bush pulled out of the verification agreement with the explanation that the protocols would have a negative impact on U.S. commercial interests. This is not unusual: the United States has met very few treaties on arms limitations of which it has approved—even those it has sponsored, as in this case. The United States still has not ratified the treaty to eliminate incendiary bombs. Other nations should not get between the U.S. military and its napalm.

While Bush's explanation was primarily disingenuous, a grain of truth can be found. What creates this sticking point is the method by which verification is done. The example of the Iraq weapons inspection is quite telling as to why the United States would prefer not to have these inspections. The Iraq inspections, as all others would, took a very long time. When the inspection team was recalled months after they had started, the inspections were still not complete. Inspections are not simply a matter of entering a suspicious factory and having Mr. Spock take a tricorder reading. Tests have to occur repeatedly at numerous sites in conjunction with constant cross-referencing of all evidence gathered. The method is one of slow investigation in which the same piece of evidence that indicates a violation may just as easily indicate innocence. During the Iraq inspection, media audiences were constantly being told that traces of chemical weapons were being found. The Iraqis said it was insecticide. Either explanation could have been true. What was eventually discovered by military experience in Iraq (and by U.N. weapons inspectors who were summarily ignored by the Bush Administration) was that it probably *was* only insecticide. In inspections, clues have to be

linked to an extent that an emergent, holistic picture of the situation comes to light. Until that tipping point is reached, the evidence represents little more than a minor possibility.

From the perspective of the Bush administration, international inspectors wandering through corporate and military installations' most sensitive areas serve only to invite enemy corporate and military espionage. This scenario is plausible, but unlikely. However, since it is plausible, both military and corporate entities would rather not take any chances. Pharmaceutical companies involved in transgenic and vaccine research have complained quite bitterly that their trade secrets could be compromised. Certainly, the vast sums of money given to the Republican Party and the strength of the pharmaceutical lobby have had some effect on Bush's decision to withdraw from verification procedures. The lesson here is that authoritarian power vectors would rather not increase global security with regard to WMDs if accomplishing this goal comes at the expense of corporate profits.

What if a presidential administration actually cared for people more than profits, and accepted the verification protocols? Hell would be freezing over, but in addition to that, a problem with the BWC would still continue. What could be done if someone was caught cheating? In fact, this has happened. Returning to the disaster at Sverdlovsk, one can, with reasonable assurance, say that the Russians had overstepped the limits of the treaty. If a factory manufacturing anthrax has a malfunction that causes military grade anthrax to be sprayed over four square kilometers, it seems fair to say that an offensive BW program exists. The United States said just this, but what could be done? A "justified" war with Russia was a possibility, but happily, that

was rejected. Those were the only options on the table beyond making a diplomatic fuss.

There Is Never a Cop around When You Need One

If atrocity-for-atrocity politics are to be avoided, or at least undermined, can a peaceful alternative be found? Noam Chomsky's vision of restraint in conjunction with following procedures and processes of international law as a means to avoid illegal military program expansion is seductive. The process of investigation and presentation of evidence, along with the pursuit of a global consensus concerning guilt, certainly sounds much better than the current "for us or against us" model employed by the United States and Britain. Theoretically, Islamic nations would be included in this process in a manner that would not appear to their respective citizens as an obsequious charade forced by Western economic and/or military pressure. Such a process would, of course, start with a treaty like the BWC.

While the goals of this alternative appear healthy and desirable, the problems of implementation are such that it borders on being naive. CAE will refrain from discussing all of the problems in this section and will instead focus on a singular key issue—the structure of international law and treaty enforcement by the World Court. Lessons have been learned about the function of these institutions from the experience of less powerful nations trying to be good global citizens. One clear example is Nicaragua. During the United States' "illegal" (under international law) military, economic, and ideological assault on this nation in the 1980s, Nicaragua at-

tempted to defend itself against this superpower by appealing to the World Court. This august body actually ruled in favor of Nicaragua, ordering the United States to cease hostilities and pay reparations. The United States ignored the judgment. Nicaragua then went to the United Nations Security Council, only to have the United States veto a resolution that called for nations to observe international law.

What does this tell us about the current crisis regarding BW, given that the situation is inverted? After all, we are not witnessing a powerless nation demanding justice from a powerful one; rather, a superpower is being asked to follow international law in the face of what it perceives as an act of war against which it must defend itself. The answer is the same as with the Nicaraguan example: A superpower is not compelled to follow law; it creates, modifies, or ignores the law to suit its interests. International law and the World Court are, in the grand majority of cases, tools of capital (and of U.S. capital in particular) designed to paint a just face upon its activities. More to the point, laws and courts are only as powerful as their ability to enforce their decisions. To accomplish the task of dispensing justice, they must be intimately linked to a complex repressive apparatus primarily consisting of the Virilio twins: vision (surveillance systems) and violence (a policing body in charge of enforcement and containment).

The relationship of the World Court to a policing body is simple to describe: The U.S. military is its police force. Hence, when the court acts in the interest of capital, it is a powerful judicial institution because its verdicts and penalties are enforced; when the court acts contrary to capital, it is a woefully impotent institution. As for the Iraq crisis, the Bush administration ap-

pears to believe that the U.S. military is doing its work quite capably, so why chance potential legal restrictions that could disrupt its “just” enforcement procedures? Even if the United States were to go through the legal process before acting, how would the outcome be any different, other than that military action would be slightly delayed, and a greater spectacle of justice would potentially polish the surface of the corrupt initiative? Going to the World Court is either only a symbolic gesture void of material results (Nicaragua) or an indirect appeal for U.S. military (police) action, as opposed to an alternative to it. The United States does need not to ask itself for permission to deploy its military might. (CAE should note that the World Court also functions as an arbiter of punishment for enemies of capital that have already been militarily dispatched, such as Slobodan Milosevic). As long as international law is dependent on superpower enforcement, there will never be a cop around when you need one.

In spite of the fact that the BWC has caused the expansion of germ warfare programs, has no verification protocols, has no possibility of enforcement, and still allows for defensive weapons that are indistinguishable from offensive ones, one good thing can be said about it. It reinforces the idea that the use and manufacture of these weapons is unacceptable in the eyes of the global community. Regardless of the material disaster that this treaty has failed to stop, it does offer an exchangeable sign in the marketplace of ideas that helps to maintain the feelings of personal repulsion and the thoughts of global suicide that are associated with this type of weaponry. While even this potentially positive element is exploited by militaries and governments to manufacture fear, it may also be the best defense thus far for maintaining a germ-free peace.