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Poison Gas, Poisoned Treaties

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In calling the use of poison gas in the Iran-Iraq war an "ominous terror" that has jeopardized the "moral and legal strictures that have held these weapons in check since World War I," President Reagan understated the point.

The Iraqi gas attacks not only violated the 1925 Geneva protocol banning chemical warfare, they mocked the very idea of controlling armaments and warfare through treaties. More broadly, they challenged the concept of international law itself, the first principle of which is that treaties must be obeyed.

Policymakers argue that the Iraqi gas attacks have made it imperative to finish negotiations at the Geneva conference on disarmament on a treaty calling for a comprehensive ban against chemical weapons - that is, banning their possession as well as their use. But why should we produce new treaties if we can't solve the problem of upholding the integrity of existing treaties?

The gruesome evidence of death and disfigurement wrought by the Iraqi attacks has been confirmed by investigators of unquestioned credibility. But the international community has taken no action to penalize the Iraqis for violating their treaty obligations. Neither the United Nations, the Geneva disarmament conference, nor any other multilateral forum in which new arms control treaties are championed has figured out a way to impose costs on states that openly violate such treaties. Indeed, no forum is even working on the problem.

Moreover, given its impotence in dealing with the illegal use of chemical weapons, it is difficult to believe that the international community can deal more effectively with the illegal possession of these weapons. Simply put, such a treaty cannot reasonably be expected to bring about the elimination of all chemical weapon stocks.

In a closed society, chemical weapons would be ridiculously easy to manufacture and store secretly. Chemicals can be militarily significant even in quantities small enough to be stored in one medium size industrial warehouse. And even if a country did not actually maintain stocks, it could, in preparation for a war, produce an offensive capability in a matter of weeks.

Not even a highly intrusive verification regime would afford our Government reasonable confidence that it could detect illegal production or storage in the states that are of greatest concern to us.

Some have argued that a comprehensive ban would be a salutary symbol of the civilized world's rejection of chemical weapons. But the value of this symbolism would be far outweighed by two factors: first, the increased risk that our forces would be attacked with poison gas if an ineffective ban deprived the United States of a chemical retaliatory capability; second, the debasing of international law if such a ban were not truly verifiable and not diligently enforced.

The Bush administration could do good by focusing the world's arms control forums on the problem of treaty violators. If effective political penalties cannot be organized, consideration could be given to financial ones - for example, substantial indemnities enforceable by a victimized party in the law courts of third

countries - although it is possible that this will not be fruitful.

There is a price to be paid when bad treaties are promulgated and when any treaty is violated. It cheapens the currency. It promotes disrespect for all treaties, whether dealing with arms control, human rights or protection of prisoners of war. And the price that is paid is not distributed evenly. Democratic nations, whose internal checks on governmental action enforce compliance with their international obligations, suffer disproportionately.

International law is widely disparaged as mere grist for the mills of diplomats and academics. Yet arms control treaties are roundly favored in principle, indeed venerated, as a practical way to enhance international security. But arms control treaties are international law - no more, no less. They are as potent or as ineffective as international law in general. If international law is a bad joke - if treaties can be violated profitably and with impunity - then arms control too becomes a joke, with the laugh being on the states that comply with their treaty obligations.

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