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## Book Review: Thomas & Thomas: Legal Times of the Use of Chemical and Biological Weapons

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## BOOK REVIEW

LEGAL LIMITS ON THE USE OF CHEMICAL AND BIOLOGICAL WEAPONS. BY ANN VAN WYNEN THOMAS & A. J. THOMAS, JR. Dallas, Texas: Southern Methodist University Press. 1970. Pp. 332. Index. \$10.00.

A profusion of recent headlines on the use or potential use of chemical and biological (CB) weapons makes the appearance of this book at this time particularly appropriate. In December 1970, the American Association for the Advancement of Science reported that defoliants had killed one fifth of Vietnam's mangrove forest, deprived 600,000 people in one area of their normal food supplies, and possibly resulted in an increase in birth defects among Vietnamese children. These scientists further asserted that some unknown factor has prevented vegetation from returning to the defoliated areas.<sup>1</sup> Earlier that same month the United States Department of State said it had indications that Portugal was using herbicides to destroy food crops raised by the rebels in Angola.<sup>2</sup> Also in December, the United States Army announced plans to destroy its stocks of biological and toxic weapons, in accordance with the pledges made by President Nixon almost a year previously.<sup>3</sup> Meanwhile, international pressures have forced the United States Army to start removing its stockpile of lethal gases from Okinawa. Original plans to move them to Oregon had to be cancelled when the residents of that state made it clear they too objected to their territory being the repository of this material.<sup>4</sup>

Concurrently with these events have come various claims and counter-claims as to the legality under international law of the use or potential use of such weapons. In August 1970, the White House sent the 1925 Geneva Protocol, banning the use of CB weapons, to the Senate for ratification. The executive branch would like to be able to tell the Senate that this Protocol does not cover the use of herbicides and tear gas—employed by the United States in great quantities in Vietnam.<sup>5</sup> But the previous December, the United Nations General Assembly had overwhelmingly approved a report of the Secretary General which included tear gas and herbicides within the chemicals proscribed by that Protocol.<sup>6</sup>

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<sup>1</sup> N.Y. Times, Dec. 30, 1970, at 1, col. 1.

<sup>2</sup> *Id.*, Dec. 9, 1970, at 24, col. 3.

<sup>3</sup> *Id.*, Nov. 10, 1970, at 5, col. 3; *id.*, Dec. 19, 1970, at 1, col. 1.

<sup>4</sup> *Id.*, Dec. 5, 1970, at 12, col. 3.

<sup>5</sup> *Id.*, Nov. 10, 1970, at 5, col. 3; *id.*, Dec. 19, 1970, at 1, col. 1. The view of the United States on this subject may well have been different at an earlier time. On pages 100 and 102 of their book, the Thomases point out that the official representative of the United States at the 1933 Draft Disarmament Convention appeared to accept the fact that all harmful chemical methods in wars, including tear gas, were prohibited as long as it was accepted that tear gas could be lawfully used for internal police purposes.

<sup>6</sup> The Secretary General on July 1, 1969, submitted to the General Assembly his report on CB weapons affirming that the prohibition contained in the Geneva Protocol applies to the use in war of "all chemical, bacteriological and biological agents (*including tear gas and other harassing agents*) . . ." 6 U.N. CHRON., July 1969, No. 7, at 65 (emphasis added).

On December 16, 1969, the General Assembly unanimously approved a resolution welcoming "the report of the Secretary General as an *authoritative statement* on chemical and . . . bacteriological weapons." G.A. Res. 2603(B), 24 U.N. GAOR Supp. 30, at 17, U.N. Doc. A/7630

The United States subscribed to the Hague Convention of 1907 which prohibits the use of "poison or poisoned weapons."<sup>7</sup> Rule 37 of the United States Army Field Manual declares that the antipoison proviso does not apply to the use of chemical agents "to destroy crops intended solely for consumption by the armed forces (if that fact can be determined)."<sup>8</sup> Now the charge has been made that no such determination was or could have been made in Vietnam and that the Americans responsible for the defoliation knew they could not limit their plant destruction so that no civilians would be denied crops. In short, the United States stands accused of violating the Hague Convention of 1907.<sup>9</sup>

The confusion demonstrated by the foregoing examples calls for a concrete answer to the question: What exactly are the international legal limits on the use of CB weapons? Under a grant from the United States Arms Control and Disarmament Agency, the Thomases, in this critical analysis of the existing prescriptions, have created an indispensable guide for the statesman, journalist, or scholar endeavoring to find his way through the maze of treaties and treatises, claims and counterclaims, and practices and precedents on CB weapons. Anyone interested in formulating new rules or conventions in this field should look upon this work as his basic handbook on the law and the facts.

The non-lawyer need not shy away for fear of encountering gobbledygook, comprehensible only to the initiated of the legal profession. This husband-and-wife team has mastered the art of writing English—that kind of direct, clear prose easily grasped by the intelligent layman. Whether describing the mysterious creation of something called "customary international law" or detailing the technical complexities of "blood agents," psychotomimetic drugs, and psittacosis viruses, these writers never lose their sensitivity to the reader's need to understand.

The book opens with a careful delineation of the scientific facts behind CB weapons—the variety of substances available; the precise way in which each one operates in the target human, animal, or plant; the methods as well as the problems of distribution; and both the short-term and long-range effects. The physical and political factors governing the use of such substances are also set forth. The impact on the reader of this step-by-step build up of the technological facts is one of pure horror as he becomes fully aware of the multitude of ways in which mankind can render this planet uninhabitable.

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(1969); U.N. Office of Public Information, *Resolutions of Legal Interest Adopted by the General Assembly at Its 24th Session*, U.N. Doc. 70-01700, at 28 (1969) (emphasis added).

That same day, the General Assembly declared as contrary to the Geneva Protocol "any chemical agents of warfare . . . which might be employed because of their direct toxic effects on man, animals or plants . . ." G.A. Res. 2603(A), 24 U.N. GAOR Supp. 30, at 16, U.N. Doc. A/7630 (1969) (emphasis added). The vote on this "A" part of the resolution was 80-3. The United States was one of the three nations voting against this portion of the resolution. U.N. Office of Public Information, *supra*, at 24.

<sup>7</sup>A. VAN WYNEN THOMAS & A.J. THOMAS, JR., *LEGAL LIMITS ON THE USE OF CHEMICAL AND BIOLOGICAL WEAPONS* 49 (1970).

<sup>8</sup>*Id.* at 53-54, citing U.S. DEPT. OF THE ARMY FIELD MANUAL, 27-10, *THE LAW OF LAND WARFARE* 18 (1956).

<sup>9</sup>Lewis, *Poison Is Good for You*, N.Y. Times, Jan. 16, 1971, at 29, col. 1.

In searching for the international prescriptions on CB weapons, the book basically follows the scheme set forth in article 38 of the Statute of the International Court of Justice for the sources of international law: (1) international conventions, (2) international custom, (3) the general principles of law recognized by civilized nations, and (4) judicial decisions and scholarly publications.

The exploration of the first source, conventions, offers little in the way of reassurance. The wording of the Hague Gas Declaration of 1899 is "so restrictive . . . that it has been of little usefulness as a ban on gas weapons."<sup>10</sup> Likewise, the Hague Convention of 1907 has been "subject to so many differences of opinion among legal authorities . . . that it becomes impossible to point with any certainty to its relevance as to any prohibitory effect in the chemical-biological field."<sup>11</sup>

Although the major treaty in the field, the Geneva Protocol, was ratified by a number of states, a great many of them ratified it with reservations.<sup>12</sup> The legal status of the Protocol as between such states and the nations which ratified without reservations is quite hazy. Moreover, two major powers—the United States and Japan—have not ratified it.

In examining the second source, customary international law, the Thomases undertake a complete review of past experience—from the first widespread use of chemical weapons by the Germans in World War I to the use of "temporarily disabling" agents by the United States in Vietnam. This study of what states have actually done in practice and what they have said about the obligations imposed on them by international law leads to a conclusion little more sanguine than that in the treaty analysis. There may be a "binding customary norm prohibiting at least the first use of the lethal or seriously injurious types of chemical agents,"<sup>13</sup> but the authors are not even sure this rule would stand up in a case where such weapons might be considered decisive. The situation on biological weapons is equally unclear. This dearth of universally accepted rules is essentially confirmed by the authors' analysis of the remaining sources of international law.

Fortunately, these writers have not been taken in by the commonly held view that somehow all CB weapons are per se more inhumane than all other kinds of weapons. They nicely balance the principles of "military necessity" and minimum destruction of human values. They ask the right questions; for example: does the use of a particular CB weapon cause greater or lesser suffering than, say, saturation bombing of cities? Correctly, they point out the inapplicability of many of the traditional laws of warfare to both of those modern developments—the total war and the guerrilla war.

As realistic as they are humanitarian, the Thomases fully appreciate the role of CB weapons within the larger context of international power politics. Nonetheless, with that hope which springs eternal in the human

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<sup>10</sup> THOMAS & THOMAS, *supra* note 7, at 57.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 80-84.

<sup>13</sup> *Id.* at 185.

breast, they end by calling for an international agreement to "prohibit the possession, manufacture, and use of lethal or seriously injurious chemical and biological weapons"<sup>14</sup> as at least one step toward preventing world-wide destruction.<sup>15</sup>

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<sup>14</sup> *Id.* at 250.

<sup>15</sup> This book does have one annoying defect, probably chargeable more to the publisher than to the authors. As is unfortunately the case with so many scholarly works, the footnotes are placed in the back of the book instead of on the same page as the accompanying text, and the enumeration starts anew with each chapter. This forces the researcher who wishes to read a note first to check the number of the chapter in which the textual reference appears, and then to flip through the notes in the back until he finds the corresponding chapter heading—and at the same time remember the number of the footnote for which he is hunting. This constant page turning is a minor, but persistent, nuisance. Printing footnotes on the same page as the text is doubtlessly the best alternative. If cost factors make this impossible, numbering the footnotes consecutively throughout the book, instead of starting over with each new chapter, would measurably simplify the job of the researcher. This comment, of course, partakes of nit-picking and, as such, is irrelevant to the book's over-all value.

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