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## Stein: Impact of New Weapons Technology on International Law: Selected Aspects

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## RECENT BOOKS

### BOOK REVIEWS

IMPACT OF NEW WEAPONS TECHNOLOGY ON INTERNATIONAL LAW: SELECTED ASPECTS. By *Eric Stein*. In 1971-II ACADEMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS. Leyden: A. W. Sijthoff. 1972. Pp. 223-388. \$18.22.

In article 8 of the Covenant of the League of Nations, the Members of the League recognized that the maintenance of peace required the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations. In the more than one-half century since the entry into force of the Covenant of the League, thousands of intergovernmental meetings have been held within and outside the League of Nations and, after World War II, under the auspices of the United Nations and independently from it. Tens of thousands of pages of official records and other intergovernmental documentation have been devoted to debates, draft instruments, and studies of the problems related to promoting "the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources";<sup>1</sup> to "the principles governing disarmament and the regulation of armaments";<sup>2</sup> and to "the regulation of armaments, and possible disarmament."<sup>3</sup>

One of the consequences of these developments has been that even experts in the fields of international law and international relations have had great difficulty in finding their way through the unwieldy mass of documentary materials and in evaluating the results of these decades of endeavor.

Professor Stein's Hague Lectures, *Impact of New Weapons Technology on International Law*, are an invaluable introduction to, and a reliable guide through, the actions and developments in the post-World War II era or, as the title modestly adds, *Selected Aspects* thereof. Professor Stein recalls that less than a month after the signing of the Charter of the United Nations on June 26, 1945, the first nuclear device was exploded at Alamogordo, New Mexico. "The combined effects of East-West confrontation beginning in 1946 and the emergence of new weapons in the final phase of the Second World War undercut the basic assumptions of the Charter system and raised the question of its viability in such a profoundly trans-

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1. U.N. CHARTER art. 26.

2. U.N. CHARTER art. 11, para. 2.

3. U.N. CHARTER art. 47, para. 1.

formed environment" (p. 240). Attempts to remedy this situation were initiated immediately. The very first resolution that the General Assembly of the United Nations adopted established a "Commission to deal with the problems raised by the discovery of atomic energy" and charged it to make specific proposals, *inter alia*, "for control of atomic energy to the extent necessary to ensure its use only for peaceful purposes" and "for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction."<sup>4</sup> The United Nations was, of course, also concerned with the "general regulation and reduction of armaments,"<sup>5</sup> and, in February 1947, the Security Council established a "Commission for Conventional Armaments" that for some time worked parallel with the Atomic Energy Commission.

### I. COROLLARY OR COLLATERAL MEASURES

Through the heightened bipolarity arising from developments both within and outside the United Nations after 1946, the two superpowers played an increasingly dominant role in all disarmament negotiations. They "gradually came to recognise a co-operative aspect to their adversary relations" (p. 248). The objective became to isolate those areas in which common interests were apparent and the "need for trust was minimal" (p. 248). This made it necessary to turn "from exclusive consideration of comprehensive disarmament schemes toward increased emphasis upon 'partial', 'corollary' or 'collateral' measures" (p. 249). These measures are the tangible result of the work of recent decades, and their examination and explanation constitute the principal contents of the lectures under review. Professor Stein presents and comments upon the following "collateral" measures.

#### A. *The Establishment of the International Atomic Energy Agency*

The first measure to reach fruition was the 1956 agreement to establish the International Atomic Energy Agency.<sup>6</sup> Its founding had been proposed personally by President Eisenhower in an address before the General Assembly in December 1953. The Agency's

twin goal was to reduce gradually stockpiles of fissionable materials by transferring limited quantities from national to international control, and to employ the materials so transferred for the worldwide development of peaceful uses of the atom. . . . The Agency has

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4. G.A. Res. 1[II], U.N. Doc. A/64 (1946).

5. G.A. Res. 41[II], U.N. Doc. A/64/Add.1 (1946).

6. Statute of the International Atomic Energy Agency, [1956] 2 U.S.T. 1093, T.I.A.S. No. 3873 (effective July 24, 1957).

not been able to pursue its intended arms control objective. In fact, until recently it was confined essentially to technical assistance functions. [Pp. 250-51.]

The recent addition to the functions of the Agency to which Stein refers is the acceptance of the Agency's safeguards system by non-nuclear-weapon States, parties to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968, which is dealt with below.<sup>7</sup>

### B. *The "Hot Line"*

By a memorandum of understanding signed at Geneva in 1963, the United States and the Union of Soviet Socialist Republics agreed to establish, for use in time of emergency, a direct communications link between the two governments.<sup>8</sup> It is known that the "hot line" was used during the outbreak of hostilities in the Middle East in 1967 (pp. 251 & 259).

### C. *Collateral Measures Relating Specifically and Exclusively to Nuclear Weapons*

#### 1. *The Test Ban Treaty of 1963*

In the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water<sup>9</sup> signed at Moscow by the Soviet Union, the United Kingdom, and the United States on August 5, 1963:

Each of the Parties . . . undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:

- (a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas; or
- (b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted . . . .<sup>10</sup>

Each party further undertakes not to encourage or assist in the carrying out of a nuclear explosion that would take place in any of the prohibited environments.<sup>11</sup> With one exception,<sup>12</sup> the Test Ban

7. [1970] 1 U.S.T. 483, T.I.A.S. No. 6839 (effective March 5, 1970). See text accompanying notes 14-20 *infra*.

8. U.S.S.R. and United States Memorandum of Understanding (with Annex) Regarding the Establishment of a Direct Communications Link, [1963] 1 U.S.T. 825, T.I.A.S. No. 5326, 473 U.N.T.S. 163 (effective June 23, 1963).

9. [1963] 2 U.S.T. 1313, T.I.A.S. No. 5433, 480 U.N.T.S. 43 (effective Oct. 10, 1963).

10. Art. I, [1963] 2 U.S.T. at 1316-17, T.I.A.S. No. 5433, 480 U.N.T.S. at 45.

11. Art. I, [1963] 2 U.S.T. at 1316-17, T.I.A.S. No. 5433, 480 U.N.T.S. at 45.

12. The other instrument that will require states to abandon a specified weapon activity in which they had been engaged is the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons of 1971. See notes 43-57 *infra* and accompanying text.

Treaty remains the only collateral measure "that has compelled three of the five nuclear powers (including the superpowers), to desist, albeit not entirely, from a significant weapon activity in which they had been previously engaged" (p. 327).<sup>13</sup> France and China did not become parties to the Test Ban Treaty. Although the Treaty has neither slowed down the nuclear armament race or halted weapons testing, the Treaty commitment remains significant for a number of reasons: by allowing only underground testing, which limits the testing of large yield weapons, the Treaty, in effect, places a ceiling on the continually increasing nuclear explosive yields in the multi-megaton range; by precluding operational tests, the Treaty serves to heighten the uncertainty regarding the effectiveness of new nuclear weapons systems; by confining the testing to the more difficult and expensive underground environment, the Treaty imposes a technological barrier which will necessarily "retard the pace of nuclear weapons proliferation" (p. 328); by forbidding atmospheric testing, the Treaty has significantly reduced radioactive contamination; by committing the parties "to seek to achieve" agreement on extending the ban to underground tests, the Treaty encourages a more comprehensive agreement (pp. 327-29).

## 2. *The Non-Proliferation Treaty of 1968*

In contrast to the Test Ban Treaty, which restrains *all* States from enumerated activities with respect to nuclear weapons tests and other nuclear explosions, the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968, restrains non-nuclear-weapon States "from *any* activity with respect to *specified* weapons and devices (nuclear weapons and other nuclear explosive devices), including their acquisition and possession" (p. 329). Referring by implication to "the principle of sovereign *equality*" of all United Nations Members,<sup>14</sup> Stein gives to one of his sections dealing with the Non-Proliferation Treaty the title "Sovereign Inequality" (p. 334).

The United Nations Charter institutionalised political-military inequality by giving privileged treatment to the "great powers," as permanent members of the Security Council. The International Atomic Energy Agency and other international organisations reflect this inequality in the composition of their governing bodies. . . . [T]he institutionalisation of inequality in favour of the nuclear powers carries over to the "final clauses" and amendment provisions of the collateral measures. *It is in the Non-Proliferation Treaty, however, that the legal distinction between nuclear-weapon States and non-nuclear weapon States acquires dramatic dimensions.* [P. 285, emphasis added.]

13. Underground testing is still permissible as long as radioactive material does not cross national boundaries.

14. U.N. CHARTER art. 2(1), para. 1 (emphasis added).

The nuclear-weapon States undertake not to "transfer" nuclear weapons "to any recipient whatsoever," and not to "assist, encourage, or induce" non-nuclear-weapon States to "manufacture or otherwise acquire nuclear weapons."<sup>15</sup> The prohibitions apply not only to nuclear weapons, but also to "other nuclear explosive devices."<sup>16</sup> The obligations of the non-nuclear-weapon States are almost symmetrical to the restrictions undertaken by the nuclear-weapon States except that the non-nuclear-weapon States are also barred from acquiring nuclear weapons even through their own efforts.<sup>17</sup> As already indicated, non-nuclear-weapon States undertake to accept safeguards, as set forth in the agreements to be negotiated and concluded with the International Atomic Energy Agency (pp. 329-37). Nothing in the Treaty "shall be interpreted as affecting the inalienable right of all the Parties . . . to develop research, production and use of nuclear energy for peaceful purposes . . ."<sup>18</sup> "Each Party . . . undertakes to take appropriate measures to ensure that . . . potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a nondiscriminatory basis . . ."<sup>19</sup> All parties to the Treaty undertake "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."<sup>20</sup>

### 3. *The Treaty of Tlatelolco of 1967*

The Treaty for the Prohibition of Nuclear Weapons in Latin America,<sup>21</sup> signed in Tlatelolco, a section of Mexico City, on February 14, 1967, is not exhaustively treated in Stein's lectures because "the father of the Treaty," Dr. Alfonso García Robles (of Mexico) discussed it comprehensively in the same cycle of the Hague Lectures.<sup>22</sup> However, there is in existence an Additional Protocol II to the Treaty of Tlatelolco<sup>23</sup> by which the parties to the Protocol undertake not to contribute in any way to the performance of acts involving a violation of the obligations imposed by the Treaty in the zone of its

15. Art. I, [1970] 1 U.S.T. at 487, T.I.A.S. No. 6839.

16. Art. I, [1970] 1 U.S.T. at 487, T.I.A.S. No. 6839.

17. Art. II, [1970] 1 U.S.T. at 487, T.I.A.S. No. 6839.

18. Art. IV, [1970] 1 U.S.T. at 489, T.I.A.S. No. 6839.

19. Art. V, [1970] 1 U.S.T. at 490, T.I.A.S. No. 6839.

20. Art. VI, [1970] 1 U.S.T. at 490, T.I.A.S. No. 6839.

21. U.N. Doc. A/C.1/1946 (1967), [1971] 1 U.S.T. 762 (effective Feb. 14, 1967).

22. A. GARCÍA ROBLES, MESURES DE DÉARMEMENT DANS DES ZONES PARTICULIÈRES: LE TRAITÉ VISANT L'INTERDICTION DES ARMES NUCLÉAIRES EN AMÉRIQUE LATINE, IN 1971-II ACADÉMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS 43-134 (1972).

23. [1971] 1 U.S.T. 754, T.I.A.S. No. 7137 (effective May 12, 1971).

application and by which they also undertake not to use or threaten to use nuclear weapons against the contracting parties of the Treaty. The conclusion of this regional arrangement was encouraged by the General Assembly as early as 1963.<sup>24</sup> The General Assembly has repeatedly expressed its interest in the ratification of Additional Protocol II by all nuclear-weapon States;<sup>25</sup> thus in 1970 it noted with satisfaction that the United Kingdom had ratified the Protocol<sup>26</sup> and similarly noted in 1971 that the United States had done the same.<sup>27</sup> At the same time, the General Assembly deplored the fact that the other nuclear-weapon States have not yet heeded the urgent appeals it had made in three different resolutions and urged them once again to sign and ratify Additional Protocol II without further delay.<sup>28</sup> At its 1972 session, the General Assembly recalled that the United Kingdom and the United States had become parties to Additional Protocol II and also welcomed the solemn declaration of the Government of the People's Republic of China on November 14, 1972, that at no time and in no circumstances will China be the first to use nuclear weapons, and that, as a specific undertaking regarding the nuclear-weapon free zone in Latin America, China will never use or threaten to use nuclear weapons against non-nuclear Latin American countries and the nuclear-weapon free zone, nor will China test, manufacture, produce, stockpile, install, or deploy nuclear weapons in these countries or in this zone.<sup>29</sup>

Stein points out that the ratification of Additional Protocol II is the first treaty obligation undertaken by the United States—and the same would seem to apply to the United Kingdom—not to use or threaten to use nuclear weapons. By its terms, this obligation is applicable only to Latin American States that are parties to the Treaty. The “United States qualified its adherence in an ‘understanding’ to the effect that the obligation would not apply in the event of an armed attack by a party with the assistance of a nuclear-weapon State” (pp. 321-22).

#### D. *Prevention of the Extension of the Arms Race to Newly Accessible Environments*

##### 1. *The Antarctic Treaty of 1959*

By prescribing that the Antarctic shall be used only for peaceful purposes, it is the objective of the Antarctic Treaty<sup>30</sup> to preserve the

24. G.A. Res. 1911 (XVIII), 18 U.N. GAOR Supp. 15 at 14, U.N. Doc. A/5597 (1963).

25. See G.A. Res. 2286 (XXIII), 22 U.N. GAOR Supp. 16 at 13, U.N. Doc. A/6921 (1967); G.A. Res. 2456B (XXIII), 23 U.N. GAOR Supp. 18 at 13, U.N. Doc. A/7445 (1968).

26. G.A. Res. 2666 (XXV), 25 U.N. GAOR Supp. 25 at 17, U.N. Doc. A/8184 (1970).

27. G.A. Res. 2830 (XXVI), 26 U.N. GAOR Supp. 29 at 34, U.N. Doc. A/8429 (1971).

28. *Id.*

29. G.A. Res. 2935 (XXVII), 27 U.N. GAOR Supp. — at —, U.N. Doc. — (1972).

30. Art. IX para. 1(a), [1961] 1 U.S.T. 794, 798, T.I.A.S. No. 4780, 402 U.N.T.S. 71, 78 (effective June 23, 1961).

continent's nonmilitarized status. It prohibits, *inter alia*, "any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons."<sup>31</sup> "Agreement on this provision was in large measure due to the fact that, unlike the Arctic areas, the Antarctic has been considered of a limited strategic value . . ." (p. 309).

## 2. *The Outer Space Treaty of 1967*

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies,<sup>32</sup> provides that "[t]he exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development and shall be the province of all mankind."<sup>33</sup>

The moon and other celestial bodies shall be used by all States Parties . . . exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. . . .<sup>34</sup>

Professor Stein quotes Fawcett, who points out that the "'stock phrase 'outer space, including the Moon and other celestial bodies' is used twenty-two times in thirteen Articles, and its components are sometimes used separately.'" (pp. 312-13 n.12).<sup>35</sup> The omission of the moon from the critical provision in article IV(a) prohibiting the establishment of military bases is an "oddity."<sup>36</sup>

The Treaty prohibits only certain uses of a specified type of weapon in outer space: "States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner."<sup>37</sup> In Stein's opinion, the Treaty does not impose complete demilitarization of outer space. The use of outer

31. Art. I, [1961] 1 U.S.T. at 795, T.I.A.S. No. 4780, 402 U.N.T.S. at 72.

32. [1967] 3 U.S.T. 2410, T.I.A.S. No. 6347 (effective Oct. 10, 1967).

33. Art. I, [1967] 3 U.S.T. at 2412, T.I.A.S. No. 6347.

34. Art. IV, [1967] 3 U.S.T. at 2414, T.I.A.S. No. 6347.

35. J. FAWCETT, INTERNATIONAL LAW AND THE USES OF OUTER SPACE 35 (1968).

36. The "omission of the Moon must either be intentional, or an egregious mistake, only to be saved by saying that the whole tenor requires that the expression 'celestial bodies' in that sentence must include the Moon" (pp. 312-13 n.12, quoting J. FAWCETT at 35).

37. Art. IV, [1967] 3 U.S.T. at 2413, T.I.A.S. No. 6347.



space for reconnaissance purposes is accepted as legitimate activity (pp. 314-15).

### 3. *The Sea-Bed Arms Control Treaty of 1971*

The Treaty on the Prohibition of the Emplacement of Nuclear and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof,<sup>38</sup> referred to by Stein as the "Sea-Bed Treaty," was "commended" by the General Assembly on December 7, 1970,<sup>39</sup> and opened for signature on February 11, 1971. Parties to the Treaty are bound "not to emplant or emplace" nuclear weapons or other weapons of mass destruction—nor facilities designed for launching or testing of such weapons—on "the sea bed and the ocean floor and in the subsoil thereof" beyond the outer limit of a "sea-bed zone."<sup>40</sup>

The prohibitions do not apply "either to the coastal State or to the sea bed beneath its territorial waters."<sup>41</sup>

This obscure clause means that a coastal State remains free . . . to emplace weapons of mass destruction within the *entire twelve-mile zone* adjacent to its coast . . . in addition, any other State, party to the Treaty, would be free, with the consent of such coastal State, to emplace such weapons within the latter's *territorial waters zone* (the so-called "allied option"). [P. 319.]

The United States Arms Control and Disarmament Agency has represented the Sea-Bed Treaty as prohibiting "mass destruction weapons on nearly 70 per cent of the earth's surface."<sup>42</sup> "It must be kept in mind, however, that neither superpower has considered the stationing of such weapons on the sea-bed as strategically useful, mainly because they would be more vulnerable there than on submarine vehicles" (p. 321).

### E. *The Convention on Bacteriological (Biological) Warfare of 1971*

When Professor Stein presented his Hague Lectures in the summer of 1971, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin

38. Text in 10 U.S. ARMS CONTROL AND DISARMAMENT AGENCY, ANN. REP. 37-40 (1971) [hereinafter 10 ANN. REP.]; U.S. ARMS AND DISARMAMENT AGENCY, 1970 DOCUMENTS ON DISARMAMENT 475 (1971).

39. G.A. Res. 2660, 25 U.N. GAOR Supp. 28 at 11, U.N. Doc. A/8028 (1970).

40. Art. I(1) in 10 ANN. REP., *supra* note 38, at 37. The "sea-bed zone" is defined as being coterminous with the outer limit of the zone referred to in the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958, arts. III-XIII, [1964] 2 U.S.T. 1606, 1610-12, T.I.A.S. No. 5639, 516 U.N.T.S. 205, 208-14 (effective Sept. 10, 1964).

41. Art. I(2), in 10 ANN. REP., *supra* note 38, at 37.

42. 10 ANN. REP., *supra* note 38, at 9.

Weapons and on Their Destruction existed only as a draft.<sup>43</sup> It was subsequently completed and commended by the General Assembly on December 16, 1971.<sup>44</sup>

In 1925, the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare<sup>45</sup> was signed. The Protocol declared that the prohibition of "the use in war of asphyxiating, poisonous, or other gases and of all analogous liquids, materials, or devices . . . shall be universally accepted as a part of international law, binding alike the conscience and the practice of nations."<sup>46</sup> The parties to the Protocol of 1925 agreed to extend this prohibition to the use of bacteriological methods of warfare. The Protocol "is now binding upon ninety-six nations, including all the major military and industrial powers with the sole exception of the United States" (p. 298). In August 1970 the President of the United States resubmitted the Protocol to the Senate for its advice and consent to ratification, subject to a certain reservation.<sup>47</sup> Moreover, it is held by very many, including the General Assembly by a great majority,<sup>48</sup> that the provisions of the Protocol constitute rules of customary international law (p. 299). Stein therefore deals with the question "Why new Convention after Geneva Protocol?" (pp. 337-38). Fresh consideration of the problem is necessary because many parties qualified their acceptance of the Geneva Protocol with important reservations. Furthermore, the scope of the Protocol is controversial—particularly in regard to whether it prohibits tear gas and defoliants. In addition, since it prohibits the use of chemical and bacteriological weapons "in war," uncertainty exists regarding its application to hostilities that do not technically amount to "war." Perhaps the most important shortcoming is that it only proscribes the *use* but not the possession or production of the specified agents (p. 338). The United Kingdom responded to these inadequacies by offering a draft Convention limited to biological agents<sup>49</sup> "because the problem of reaching agreement 'might be made less intractable by considering chemical and microbiological methods of warfare separately'" (p. 338). This limited approach eventually prevailed over the initially strong opposition of the Socialist States, and a separate instrument on bacteriological warfare was adopted.<sup>50</sup>

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43. U.N. Doc. A/8457, Oct. 6, 1971, Annex A. The text of the draft is reprinted at 66 AM. J. INTL. L. 451-55 (1972).

44. G.A. Res. 2826, 26 U.N. GAOR Supp. 29 at 30, U.N. Doc. A/8429 (1971).

45. 94 L.N.T.S. 65 (1929). For a recent analysis of the Protocol, see Baxter & Buergenthal, *Legal Aspects of the Geneva Protocol of 1925*, 64 AM. J. INTL. L. 853 (1970).

46. 94 L.N.T.S. at 67.

47. 116 CONG. REC. 29444 (1970).

48. G.A. Res. 2603 A (XXIV), 24 U.N. GAOR Supp. 24 at 16, U.N. Doc. A/7890 (1969).

49. ENDC/231 at 2 (1968).

50. See note 43 *supra* and accompanying text. See also Stein, *Legal Restraints in Modern Arms Control Agreements*, 66 AM. J. INTL. L. 255, 280-86 (1972).

Each 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 origins or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes in armed conflict.<sup>51</sup>

Under article II, each party undertakes "to destroy or to divert to peaceful purposes, as soon as possible, but not later than nine months after the entry into force of the Convention," all the prohibited materials.<sup>52</sup>

The phrase "never in any circumstances" was included, *inter alia*, "to deal with the thorny problem of the reservations to the Geneva Protocol by which many parties have retained the right to use the weapons covered by the Protocol under specified circumstances."<sup>53</sup> This language is intended to emphasize that the former reservations to the Protocol should not detract from the absolute prohibition of the Convention even if they remain legally in force.<sup>54</sup> In this reviewer's opinion, therefore, even though a party to the Protocol—basing itself on its reservation to the Protocol—might be able to claim that it does not violate the obligations under the *Protocol* by the use of certain materials, it would, in so doing, violate its obligations *under the new Convention*.

Under article IX of the Convention each State Party undertakes "to continue negotiations in good faith with a view to reaching early agreement"<sup>55</sup> on the elimination of chemical weapons in response to the concern that a prohibition of biological weapons will reduce the pressure for a ban on chemical weapons.<sup>56</sup> The Convention will provide a more stringent legal restraint on the use and stockpiling of biological weapons.<sup>57</sup>

## II. GENERAL QUESTIONS OF INTERNATIONAL LAW

This review has concentrated on the new international instruments in the field of armaments that have come into existence in

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51. Art. I, U.N. Doc. A/8457, Oct. 6, 1971, Annex A. Article III contains a "non-proliferation" provision similar to the Non-Proliferation Treaty, which prohibits any party from transferring, assisting, encouraging, or inducing any State, group of States, or international organizations to manufacture or otherwise acquire "any of the proscribed material."

52. Art. II, U.N. Doc. A/8457, Oct. 6, 1971, Annex A. See Stein, *supra* note 50, at 283.

53. Stein, *supra* note 50, at 283.

54. *Id.*

55. Art. IX, U.N. Doc. A/8457, Oct. 6, 1971, Annex A.

56. See Stein, *supra* note 50, at 285.

57. *Id.*

the post-World War II period illustrating the wide scope of the sector of the law examined in Professor Stein's Hague Lectures. The Lectures are, however, by no means restricted to comments on the new instruments. They also contain highly interesting observations of a more general nature. An example is provided by Professor Stein's arguments for agreements through the conclusion of treaties as contrasted with less formal commitments, emphasizing the necessity of avoiding "potentially disruptive misunderstandings" (p. 257). Agreements establishing a clearly articulated legal commitment would better serve to promote international stability than mere "'understandings,' particularly if they are inadequately articulated" (p. 257). Clauses providing for modification, withdrawal, and mandatory review at a specified future time could reconcile the desire for stability with the need for flexibility in a rapidly changing world. "Treaty law and practice offer a variety of options and this, in fact, was the path chosen with respect to all the collateral measures under discussion" (pp. 257-58). Even the United States-U.S.S.R. understanding on a direct communications link, though cast in the simplified form of a "Memorandum of Understanding," is a treaty in the international law sense.<sup>58</sup>

The Treaty between the United States and the Soviet Union on the Limitation of Anti-Ballistic Missile Systems and the Interim Agreement on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, as well as the protocol to the latter, signed in Moscow on May 26, 1972,<sup>59</sup> are recent examples conforming with Professor Stein's recommendations. The first is also a treaty under United States constitutional law. These instruments were signed on behalf of the United States by President Nixon and on behalf of the Soviet Union not by the Head of State, the Head of Government, or the Minister of Foreign Affairs, but by Leonid I. Brezhnev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.

### III. CONCLUDING OBSERVATIONS

Professor Stein's Lectures present a comprehensive picture of the development of international law in the armaments field in the post-World War II period within and outside the United Nations. Both his general observations on the various problems and his comments on the individual instruments are highly pertinent and instructive. They are an outstanding contribution to the literature of international law and are an indispensable source of enlightenment for any scholar, teacher, or practitioner who wishes to familiarize himself

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58. In United States constitutional law, the memorandum is considered an executive agreement, which does not require consent to ratification by the Senate (p. 258).

59. Texts are reprinted in 66 DEPT. STATE BULL., No. 1722, June 26, 1972.

with the present state of the law in the area. This reviewer hopes that it will be possible for Professor Stein to publish a comprehensive treatise in this field, based on his Hague Lectures, in the not too distant future.

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