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Mr. William D. Eberle  
President  
American Standard  
40 West 40th Street  
New York, New York 10018

Dear Bill,

Here, several days late, is the promised memo on the current status of the Geneva Protocol. As you know, the President submitted it to the Senate for advice and consent to ratification last August. The Foreign Relations Committee held hearings in March and April but now the ball seems to be back in the Administration court. The reason is that a substantial number of influential senators on the Foreign Relations Committee and elsewhere do not wish to see the Protocol ratified with the current Administration understandings regarding its scope. The point at issue is the applicability of the Protocol to the use in war of riot gas and chemical herbicides. The actual terms of the Protocol prohibit "...the use in war of asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices...and of bacteriological methods of warfare." Since the time that we began using herbicides and riot gas in Vietnam, we have enunciated the view that the Protocol does not apply to these chemicals. However, we were pretty badly isolated when the question came up at the U.N. General Assembly in December, 1969. Only Portugal and Australia voted with us, most of our closest allies abstained and 80 nations, including almost all the Soviets and non-aligned, voted against our position. The best international legal people I have talked to, both in the government and outside and without axes to grind, will admit that a case can be made by our side but that the legal case for the opposing view is stronger. Legal people tell me that our position would almost certainly lose if the question came up before the International Court of Justice.

Aside from the legal back and forth, if I had to isolate the two most important arguments pro and con, they would be as follows:

In favor of keeping the present interpretation:

1. The Administrations of President Johnson and President Nixon have taken the view that the Protocol does not prohibit riot gas and herbicides. Giving up this position would undermine U.S. authority and leave the nasty implication that our military have been doing something illegal, even though we are not formal parties to the Protocol as yet.

2. Riot gas and herbicides are useful weapons to have in certain situations that we might get into in future.

In favor of changing the present position:

1. The Senate will not approve the Protocol with the present position on riot gas and herbicides. If the President were to give his solid support for a broadened U.S. interpretation of the Protocol, it should breeze through the Senate even though a few extreme conservatives might be thrown into opposition.

2. In these matters the overriding interest of the United States is to prevent the proliferation of chemical and biological weapons capability to other nations, and maintain the strongest possible "gas and bug break." Perpetuating international disagreement about the meaning of the Protocol and indulging in any kind of chemical warfare have the opposite effect. A first use option for riot gas and herbicides is of only slight military utility for us. President Nixon's initiatives of the last two years have gone a long way toward placing us in the leading international role in the control of chemical and biological weapons. However, the President's policies cannot be culminated or made lastingly effective unless the tear gas and herbicide problem is removed.

The second part of this letter is a summary of where the matter seems to stand in Washington.

The NSC along with the appropriate departments and agencies is working on two National Security Information Memoranda, one on herbicides, the other on riot gas. All aspects ranging from military utility to arms control considerations are up for discussion. I don't expect any radically new information to come from these NISM's. Their real significance is probably to make possible a fresh discussion of a subject that, a year ago, seemed essentially closed. A senior U.S. official said last year, "We have already baked that cake, how can we bake it again?" The answer is, initiate some new studies, they could widen the President's range of choices. Both studies are fairly far along but neither is completed. I do not know the current scheduling.

The letter from Senator Fulbright to the President stating the desire of the Foreign Relations Committee for a change in current policy has been assigned to the Department of State for recommendations. However, I doubt that there will ever be an answer specifically directed to Fulbright's letter but the substantive issues are dealt with in a paper that has rested on the desk of Secretary Rogers for some weeks after working its way up through the Department. The paper discusses four options. The first is to stick with the present position and try to push the Protocol through the Senate anyway. The second is to wait until the War is over and then think about the whole problem with a fresh head. The third is to ask the International Court of Justice to decide. The fourth is to reaffirm our position that riot gas and herbicides are not prohibited by the Protocol, but to agree, on the basis of reciprocity, not to use any chemicals anyway. The obvious fifth option, to broaden our interpretation of the Protocol, is not represented. I think the first two options can be regarded as throw-

aways. Numbers three and four could end up being pivots, eventually swinging us into the position that riot gas and herbicides are prohibited.

Senator Brooke and Senator Humphrey are about to file separate resolutions dealing with the Protocol. Brooke's resolution asks the President to send the dispute to the International Court of Justice for an advisory opinion. It goes on to request the President to seek an additional treaty for prohibiting these chemicals in case the World Court should find that they are not already prohibited. The Humphrey resolution is simpler and avoids sending dirty laundry to the Hague. It would put the Senate on record as believing that riot gas and herbicides are prohibited by the Protocol. Senator Cooper has introduced a preliminary description of the Brooke resolution into the Congressional Record with some friendly words. The staffs in the offices of both Brooke and Humphrey claim that they have several impressive co-sponsors but to name them before they put their names down might give offense. Senator Brooke's office has been in touch with Clarke McGregor, the Congressional liaison man at the White House. Brooke's staff believes McGregor to be genuinely interested and not at all discouraging.

It could be very helpful if you would communicate your strong concern in seeing a culmination of the President's step to strengthen the barriers against chemical warfare and to get the Geneva Protocol ratified. Henry is fairly well informed in a general way but Ehrlichman may not be. Certainly his support would be extremely helpful.

I think the only way to solve this problem is for the Administration to take the initiative, rather than waiting for the Senate to quarrel. The Brooke and Humphrey resolutions can be helpful as indicators of which way the wind is blowing but might just be harmful if they come to an actual vote.

One approach would be for the President to say that we honestly have believed that the Protocol does not apply to riot gas and herbicides but that we do agree that the wording and the history of the treaty could allow honest disagreement on this point. He could go on to say that he would not want to let a lawyers' disagreement stand in the way of world-wide agreement on the meaning of a treaty aimed at the overridingly important objective of preventing chemical and biological warfare. He could say that, if that is the issue, the security interests of the United States dictate that we broaden our interpretation of the Protocol. This we would do, of course, only on a reciprocal basis, other countries would be expected to observe the same rule and refrain from any use in war of herassing (riot) gas or herbicides. For general background I include a paper from the current issue of Foreign Affairs. Its author is a Foreign Service officer with five years experience in Vietnam evaluating the War.

With warm regards,

as ever,

*Matt*

Matthew Meselson