

3 August 1971

MEMORANDUM

To: Paul Doty

From: Matthew Meselson

Subject: Present status of the Geneva Protocol

As you know, the President submitted the Protocol to the Senate last August and the Foreign Relations Committee held hearings in March and April. However, the ball is now back in the Administration court due to the fact that a substantial number of Senators on the Foreign Relations Committee, as well as others not on the Committee, do not want to see the Protocol ratified with the Administration's current understandings regarding riot control agents and herbicides. On April 15th Senator Fulbright wrote to the President on behalf of the Committee, asking that he "give further consideration to the tear gas and herbicide question." (See enclosure A.)

At the end of last month Senator Brooke and Senator Humphrey filed 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 that the President seek a specific treaty for prohibiting riot gas and herbicides in case the World Court should find that they are not already prohibited. (See enclosure B.) The Humphrey resolution is simpler and avoids sending dirty laundry to the Hague. It would put the Senate on record as supporting a broad interpretation of the Protocol, one that would cover both riot gas and herbicides. (See enclosure C.) Senator Humphrey has become a co-sponsor of the Brooke resolution, apparently as a gesture of non-partisanship.

Turning now to the situation in the executive branch, the NSC 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 under study. I wouldn't expect these NISM's to contain anything fundamentally new. More likely, their real significance will be to make possible a fresh discussion on a subject that seemed closed a year ago. These new studies, together with this year's developments in the Senate, have reopened the riot gas and herbicide question, extending the President's range of choices.

If I had to identify the two most important arguments on each side of the issue, I would choose the following:

In favor of keeping the present interpretation

1. The Administrations of President Johnson and President Nixon have stated 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 forces 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 conflicts.

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 to a broadened U.S. interpretation of the Protocol, the treaty would gain Senate approval, even though a few extreme conservatives might be thrown into opposition.

2. The overriding security interest of the United States is to prevent the proliferation of chemical and biological weapons to other nations and to maintain the strongest possible "gas and bug brake." Perpetuating international disagreement about the meaning of the Geneva Protocol and indulging in any kind of chemical warfare have the opposite effect. A first use option for riot gas and herbicides is of extremely small 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 and the Protocol is ratified.

On the purely legal side, the experts, both in the government and outside, generally believe that a legal case can be made for either side, but that the case against riot gas and herbicides is the stronger. They believe that our current position would very probably lose before the International Court.

The best way to solve the problem is for the Administration to take the initiative, rather than wait for the Senate to quarrel. One approach would be for the President to say that he has given a great deal of his time to considering the control of chemical and biological weapons. He has done this not so much because these weapons pose an immediate threat, but rather because attention to the problem now can avert a terrible threat to all mankind in the future. His considerations have led him to the view that the defense of our nation does not require such weapons. Indeed, their very uncontrollability makes them unsuitable to our defensive purposes and commitments. However, in the hands of others, chemical and biological weapons could do us and mankind great harm. Beyond these important considerations, he could say, he has become increasingly convinced that the great discoveries of biology and medicine must not be diverted to military purposes. All mankind should be able to agree not to use our expanding knowledge of the life processes for hostile purposes. The President could then recount the far-reaching steps he has already taken, ending up with his submission of the Geneva Protocol to the Senate.

After explaining the Protocol and ~~the~~ case for our ratification, he could bring up the matter of riot gas and herbicides. Although this is a subject of considerable current dispute, it should be presented in a low key and should not be allowed to upstage the more fundamental and general concerns with regard to CBW that have been discussed in the earlier parts of his statement. In this spirit, the President might say that we have always supported the aims and objectives of the Geneva Protocol and that we have in good faith held the view that it does not prohibit the use in war of riot gas and herbicides. However, he could say, there is certainly room for honest disagreement on

this point since the wording and the history of the treaty are unclear. He could then say that he would not want to let legal and historical uncertainties 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 to include all toxic chemicals whether directed against man, animals or plant life. 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 harassing (riot) gas, herbicides, as well as lethal chemicals, toxins, and biological weapons.