

PRESENT STATUS OF THE GENEVA PROTOCOL

The President submitted the Geneva Protocol of 1925 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."

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 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 supporting a broad interpretation of the Protocol, one that would cover both riot gas and herbicides. Senator Humphrey has become a co-sponsor of the Brooke resolution, apparently as a gesture of non-partisanship.

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. These NSIM's are unlikely to contain anything fundamentally new. Their real significance will probably be to make possible a fresh discussion of 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 it is decided to ratify the Protocol as not excluding riot gas and herbicides, the problem arises of how to modify our previous policy in such a way as to maximize the benefits of our doing so.

On the purely legal side, the experts, both in the government and out, 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 mankind in the future. His considerations have led him to the view that the defense of our nation does not require our initiating the use of 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 all 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 peoples 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 part 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 since the wording and negotiating history of the treaty are unclear with regard to these particular chemical agents. For this reason, there is currently no authoritative or generally accepted international understanding of the precise meaning of the Protocol. Many nations have expressed views different from our own. Many others have not publicly stated their views at all. Now the purpose of the Geneva Protocol is to draw a clear line against chemical and biological warfare. Unless this line is clearly understood by all it cannot be expected to hold. He could then say that he would not want to allow legal and historical uncertainties to 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. The security interests of the United States dictate that we seek to end the disagreement and uncertainty.

At this point there would be several courses open. One is to utilize the International Court of Justice to obtain an authoritative interpretation of the Protocol. Another would be for the United States to canvass the parties to the treaty.

Although there is nothing presently on the docket of the Court, it is unlikely that an advisory opinion could be obtained in less than about a year. A canvass could be done in considerably less time. It would show that a majority of the parties to the Protocol consider herbicides and riot gas to be prohibited. However, it would not be a mere repetition of the 1969 General Assembly vote, since there were thirty-six abstentions in that case. If a canvass is conducted in preference to going the route of the Court, the Presidential statement outlined above should not be made until the results are in. The President would then be in a position to say that, after extensive consultation with the parties, it appears that the majority clearly favor including riot gas and herbicides within the scope of the Protocol. He could say that, in the interests of securing general agreement, we would broaden our understanding of the Protocol accordingly. Of course, we would regard our agreement to refrain from using these chemicals in war as a mutual understanding. Other nations would be expected to observe the same rule.

4 August 1971