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Dr. Michael A. Guhin
National Security Council Staff
Executive Offices of the President
Washington, D.C. 20506

Dear Michael,

Here is a draft memorandum that may be of some use.

Let me draw your attention to two points that are particularly important. First, the memorandum should minimize any implication of attempting to interpret or revise the Protocol. It is perfectly alright for the United States to assert its own current understanding so long as other countries can maintain that this is simply the opinion of one state. However, it could well be that the other parties will not cooperate with the memorandum approach unless in so doing they can comfortably take the position that the obligation to refrain from the use of tear gas and herbicides was always prohibited by the Protocol. To some extent, then, the memorandum needs to be written so that it can be read in two different ways-- one by us and the other by nations that voted for the UNGA resolution of December 1969. There should be no implication in the memorandum that riot gas and herbicides become prohibited only when and if a certain proportion of the parties respond appropriately to the United States memorandum. I am certain that this point will not escape the notice of the Senate Foreign Relations Committee, let alone many of the parties.

The second point is reflected in the wording of the last sentence of the memorandum. The required majority of the parties should be defined so as to allow two categories to be included: those who already take the position that riot gas and herbicides are prohibited and those who would be willing to go along with this position if a suitable majority can thereby be achieved.

I continue to think that three-quarters is an excessively high proportion. The two-thirds majority is a natural concept for Senators when dealing with treaty matters. The higher figure is more likely to provoke a squabble over numbers within the Senate and is certainly less likely to achieve a resolution of the fundamental problem.

Following the circulation of the memorandum, it would be highly desirable for the depository power to circulate a diplomatic note of its own to each of the parties requesting an opinion on the substance of the memorandum. Unless some such explicit request for a response is sent to each party in a format they are accustomed to answering, the question may not be resolved. A much less desirable

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alternative would be for the United States to issue such a note itself. Without assurances of an effective follow-up procedure, the memorandum approach risks sweeping the entire question into limbo. This aspect is one to which a number of Senators are likely to be particularly sensitive. Along with assurances that the Administration will follow up this attempt to find a basis for agreement, there should also be assurances to the Senate that we will not put pressure on our allies and friends to conform their legal views to our own.

Warm regards,

as ever,