

Kissinger, H.

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 Authority EO 12958
 By CM NARA Date 12/10/03

HARVARD UNIVERSITY
 DEPARTMENT OF CHEMISTRY

12 Oxford Street
 Cambridge, Massachusetts 02138
 U.S.A.

May 16, 1972

Dr. Henry A. Kissinger
 The White House
 Washington, D.C.

Dear Henry:

Since it wasn't possible for us to see you we are sending you the product of our labors on finding a way to get the Geneva Protocol settled in this term. Hopefully you will have a chance to look at this on the plane and be ready to recommend some action upon your return.

Having seen the much greater evidence that has now accumulated on the marginal value of CS and herbicides we are convinced that a non first use policy is in our interests. On this basis we have examined three ways the log jam on the Protocol could be broken and the President's initiatives in this area brought to a successful culmination. This examination included an estimate of the political acceptability of these measures in the Senate as of a month ago: this showed Options B and C to be particularly favorable. Matt has some further ideas about implementing Option B.

While this problem cannot compete with your most urgent pre-occupations it may represent a last chance to insure that the World will not over time slide into this particularly dangerous and unpredictable dimension of warfare.

With warm regards.

Sincerely,

Matt
 Matthew Meselson

Paul
 Paul Doty

encl:

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DRAFT STATEMENT BY THE PRESIDENT ON OBTAINING
A UNIFORM UNDERSTANDING OF THE GENEVA PROTOCOL

(On April 10 the United States signed the Biological Weapons Convention. Along with his message transmitting the Convention to the Senate for its advice and consent to ratification, the President may wish to send a separate statement dealing with the Geneva Protocol of 1925, which was submitted to the Senate on August 19, 1970.)

This Administration has made substantial efforts, on its own initiative and in concert with other governments, to reinforce the constraints against chemical and biological warfare. The Convention on the Prohibition of the Development, Production, and Stockpiling of Biological Weapons and Toxins that I have submitted to the Senate today is a major component of our effort in this important area of arms control.

On August 19, 1970, I transmitted to the Senate for its advice and consent to ratification the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare. It is essential that the United States become a party to this basic international agreement. The United States has always supported the principles and objectives of the Protocol, which has been influential throughout its nearly fifty years of existence in deterring the use of chemical and biological weapons.

There is, however, some uncertainty and difference of opinion among nations as to what chemical substances are prohibited by the Protocol. The United States has maintained that chemical riot control agents and herbicides do not come under the scope of the Protocol. A considerable number of states parties to the treaty have indicated a differing view, and nearly half of the parties have stated no position on the question.

We cannot welcome a situation in which the obligations prescribed by an important treaty are subject to uncertain or conflicting interpretations by the various parties. Moreover, legal and historical ambiguity regarding the applicability of the Protocol to riot control agents and herbicides should not be allowed to stand in the way of United States ratification of the treaty or of progress toward further constraints on chemical and biological warfare.

OPTION A

Therefore, in the interest of obtaining a common understanding of the obligations entailed by this important treaty, we propose to seek an advisory opinion from the International Court of Justice at the Hague. At the next session of the United Nations General Assembly the United States will offer a resolution asking for such an opinion in accord with procedures established by the Charter. Although we have made our view clear, we would be willing for our part to accept an obligation under the Protocol to refrain from the first use in war of chemical riot control agents and herbicides if such an interpretation is advised by the Court

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and accepted by the General Assembly. It is with this provision that I ask the Senate to take early action in giving its advice and consent to ratification.

OPTION B

Therefore, in the interest of obtaining a common understanding of the obligations entailed by this important treaty, we propose to seek an expression as to the scope of the Protocol from its parties by informing them that the United States will accept an obligation under the Protocol to refrain from the first use in war of chemical riot control agents and herbicides if a substantial majority (e.g., two-thirds/three-quarters) of the parties agrees to be governed by the same obligation. It is with this provision that I ask the Senate to take early action in giving its advice and consent to ratification.

OPTION C

Therefore, after a thorough review of the security and other issues involved, I have decided that it is in the interest of the United States to promote general agreement regarding the scope of the Geneva Protocol by extending our obligations under the Protocol to include a restraint on the first use in war of chemical riot control agents and herbicides. It is with this provision that I ask the Senate to take early action in giving its advice and consent to ratification.

NOTES:

1. It is quite clear that the Protocol by its use of the terms "war" and "warfare" in no way applies to or regulates the use of riot control agents in the control of civil disturbances. Such agents have been in widespread use for such purposes for more than fifty years and no party to the Protocol or recognized legal authority has ever expressed the view that this is contrary to the Protocol.

2. Regarding Option B, an invitation to the parties for expressions of opinion regarding the scope of the Protocol would in no way represent an attempt to change or revise the treaty. Rather, it would constitute an effort to find a basis for a uniform interpretation. A similar canvass regarding the status of tear gas under the Protocol was initiated but never completed by Great Britain at the Preparatory Commission of the Disarmament Conference in 1930. Many of the most important parties of the time responded, including Canada, China, France, Italy and the Soviet Union. On December 16, 1969 an attempt was made to define the scope of the Protocol by means of a resolution of the UN General Assembly. The view that all chemical agents including riot control agents and herbicides are prohibited was supported by fifty-two parties to the Protocol and opposed by two. Thirty parties abstained from voting, mainly on the ground that the General Assembly is not an appropriate body to interpret the treaty. In addition, twelve parties to the Protocol were absent at the time of the vote or were not members of the UN. See Appendix.

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United Nations resolution 2603 A (XXIV) on the
question of chemical and bacteriological (biological)
weapons 16 December 1969

The General Assembly,

Considering that chemical and biological methods of warfare have always been viewed with horror and been justly condemned by the international community,

Considering that these methods of warfare are inherently reprehensible, because their effects are often uncontrollable and unpredictable and may be injurious without distinction to combatants and non-combatants and because any use would entail a serious risk of escalation,

Recalling that successive international instruments have prohibited or sought to prevent the use of such methods of warfare,

Noting specifically in this regard:

(a) That the majority of States then in existence adhered to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,

(b) That since then further States have become Parties to that Protocol,

(c) That yet other States have declared that they will abide by its principles and objectives,

(d) That these principles and objectives have commanded broad respect in the practice of States,

(e) That the General Assembly, without any dissenting vote, has called for the strict observance by all States of the principles and objectives of the Geneva Protocol,

Recognizing therefore, in the light of all the above circumstances, that the Geneva Protocol embodies the generally recognized rules of international law prohibiting the use in international armed conflicts of all biological and chemical methods of warfare, regardless of any technical developments,

Mindful of the report of the Group of Experts, appointed by the Secretary-General under General Assembly resolution 2454 A (XXIII) of 20 December 1968, on chemical and bacteriological (biological) weapons and the effects of their possible use,

Considering that this report and the foreword to it by the Secretary-General add further urgency for an affirmation of these rules and for dispelling, for the future, any uncertainty as to their scope and, by such affirmation, assure the effectiveness of the rules and enable all States to demonstrate their determination to comply with them,

Declares as contrary to the generally recognized rules of international law, as embodied in the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, the use in international armed conflicts of:

(a) Any chemical agents of warfare—chemical substances, whether gaseous, liquid or solid—which might be employed because of their direct toxic effects on man, animals or plants;

(b) Any biological agents of warfare—living organisms, whatever their nature, or infective material derived from them—which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked.

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States voting for UNGA resolution of 16 December 1969.

Parties to the Protocol:

Argentina	Iran	Poland
Brazil	Iraq	Romania
Bulgaria	Ireland	Rwanda
Burma	Ivory Coast	Saudi Arabia
Central African Republic	Jamaica	Spain
Ceylon	Kenya	Sweden
Cuba	Lebanon	Syrian Arab Republic
Cyprus	Lesotho	Togo
Czechoslovakia	Maldives Islands	Trinidad & Tobago
Dominican Republic	Mauritius	Uganda
Ecuador	Mexico	U.S.S.R.
Ethiopia	Mongolia	United Arab Republic
Finland	Morocco	United Republic Tanzania
Ghana	Nepal	Upper Volta
Guyana	Niger	Yemen Arab Republic
Hungary	Nigeria	Yugoslavia
India	Pakistan	
Indonesia	Panama	

Non-parties:

Afghanistan	Mali
Algeria	Mauritania
Cameroon	Peru
Chad	Senegal
Columbia	Somalia
Congo (Brazzaville)	South Yemen
Congo (Kinshasa)	Sudan
Costa Rica	
Dahomey	
Equatorial Guinea	
Gabon	
Guatemala	
Guinea	
Haiti	
Honduras	
Jordan	
Kuwait	
Libya	

States voting against UNGA resolution.

Parties to the Protocol:

Australia
Portugal

Non-parties:

United States

States abstaining from voting on UNGA resolution.

Parties to the Protocol:

Austria	Japan	Singapore
Belgium	Liberia	South Africa
Canada	Luxembourg	Swaziland
Chile	Madagascar	Thailand
China	Malaysia	Tunisia
Denmark	Malawi	Turkey
France	Netherlands	United Kingdom
Greece	New Zealand	Venezuela
Iceland	Norway	
Israel	Paraguay	
Italy	Sierra Leone	

Non-parties:

Bolivia
El Salvador
Laos
Nicaragua
Philippines
Uruguay

UN members not present at UNGA vote of 16 December 1969.

Parties to the Protocol:

Barbados	Gambia	Zambia
Botswana	Malta	

Non-parties:

Albania
Cambodia

Existing states parties to the Protocol but not members of UN in December 1969.

China, Democratic Peoples Republic
Fiji
Germany, Federal Republic
Holy See
Monaco
Switzerland
Tonga

Total number of existing states parties to the Protocol = 96

Of these, 52 voted for the UNGA resolution. Although France abstained, the French delegate stated his delegation's agreement with the substance of the UNGA resolution. See next page.

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Statement of the French Delegation explaining its abstention from voting on
UNGA resolution of 16 December 1969.

"Concerning the draft resolution, the French delegation confirms that it is true that through Mr. Paul Boncour in Geneva in 1925, in connexion with the preparation of the Conference on Disarmament in 1932, France made it clear that the Protocol of 1925, in our view, was of very general scope. That is still our position. However, we have constantly maintained that the text of 1925 left no doubts on that point. For that precise reason, we do not think it is up to the General Assembly, as called for in the text of the draft resolution, to give an interpretation of an international convention. Now, while favoring in substance that draft resolution of the twelve countries, my delegation will have to abstain in the vote on it."