

Kissinger

THE WHITE HOUSE
WASHINGTON

July 27, 1972

Dear Matt:

Many thanks for your and Paul's thought-provoking letter of May 16 on the Geneva Protocol and for the follow-on paper outlining the procedural aspects of the option you highlighted.

The various alternatives suggest different nuances and arguments, and I hope we can soon discuss them further.

Warm regards,



Henry A. Kissinger

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Sorry for the delay in replying.

HW

AUG 01 1972

IMPLEMENTATION OF OPTION B--

SEEKING AN EXPRESSION AS TO THE SCOPE OF THE PROTOCOL FROM ITS PARTIES

There are several different procedures by which the parties to the Protocol could be canvassed for their opinions regarding its applicability to the use in war of riot control agents and herbicides. These include:

1. Convening a conference of the parties to resolve the question.
2. Inquiry by a U.S. diplomatic note sent directly to each party.
3. A declaration by the U.S. by a memorandum accompanying our instrument of ratification which states our willingness to accept the same obligations as accepted by a substantial majority (two-thirds/three-fourths) of the parties.

The disadvantages of a conference are that it would be difficult or perhaps impossible to organize-- and if it were held, it could become seized with issues beyond those we wish to address.

A direct inquiry to the parties or a memorandum accompanying our instrument of ratification do not suffer from these disadvantages and have the desirable feature of being self-executing. If and when the specified majority responds, the understanding of the U.S. would automatically include the obligations in respect to riot control agents and herbicides accepted by the majority.

The following draft memorandum shows how this approach could be formulated. Such a memorandum would be submitted to the Senate for its advice and consent along with the Protocol itself. If approved, the memorandum would be sent to the depository government (France) as part of the ratification, to be circulated to all parties by the French government.

MEMORANDUM TO ACCOMPANY INSTRUMENT OF RATIFICATION

It is the understanding of the United States that the Protocol carries no obligation to refrain from the use in war of chemical riot control agents and herbicides. However, the United States recognizes that many parties have expressed a differing view while still others have not addressed the question of obligations imposed by the Protocol in this regard.

It is the view of the United States that it would be in the interest of all the parties to have a common understanding of the obligations entailed by this important treaty. Therefore, in the interest of obtaining such an understanding, the United States would be willing to accept an obligation under the Protocol to refrain from the first use in war of chemical riot control agents and herbicides if two-thirds/three-fourths of the parties declare that they presently consider or would be similarly willing to accept that such obligations are entailed by the 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

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.

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.

APPENDIX

United Nations resolution 2693 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.

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.

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."

GAS WARFARE AND THE GENEVA PROTOCOL

In November, 1969 President Nixon announced that the U.S. would not use lethal and incapacitating chemicals in war except in retaliation for their use by an enemy, nor use biological agents under any circumstances. Nine months after this widely acclaimed step he sent to the Senate the 1925 Geneva Protocol, which we had signed but never ratified. The Protocol prohibits "the use in war of asphyziating, poisonous or other gases, and of all analogous liquids, materials, or devices." Nearly a hundred nations are parties to the Protocol but the United States, alone among major powers, is not. In presenting the treaty, Secretary of State William Rogers said: "It is the United States' understanding of the Protocol that it does not prohibit the use in war of riot-control agents and chemical herbicides." But the majority of nations that have stated their interpretation of the Protocol assert that it prohibits the use in war of all toxic chemical weapons, including tear gas and herbicides. Both of these substances had been heavily used by U.S. forces in Vietnam. Today, herbicide use has virtually ended, and the use of tear gas is only a small fraction of its 1969 peak of more than six million pounds. Nevertheless, the Administration has not changed the position it presented at the Senate Foreign Relations Committee hearings in March, 1971. Senators suggested that an interpretation that allowed the use of tear gas and herbicides might imperil the Protocol. After the hearings, the Committee sent a letter to President Nixon asking a re-examination of this question. This was hardly an unreasonable request, for Secretary Rogers had at the hearings revealed plans "to initiate a new review of riot control agents and chemical herbicides in the Vietnam conflict." Yet nearly a year later, the Committee has not received a reply, and is unlikely to commend the Protocol to the Senate with this question unresolved.

There is a strong case for a change in the Administration's position. A permissive reading of the Protocol is not justified by the document's historic observance, nor is it consistent with the traditional U.S. stand against any kind of CBW. Moreover, it is likely to weaken the treaty's restraints on more lethal weapons.

Tear gas was the first chemical agent used in World War I, our first and only experience with all-out chemical warfare. Starting in 1914, France and Germany made

massive use of a variety of tear gases in artillery shells and other weapons. In 1915 the gas war escalated following the German use of chlorine against French colonial forces at Ypres. Both sides raced to discover and use toxic agents more effective in defeating the newly introduced gas mask. Of the 275,000 U.S. casualties, more than one-fourth were caused by gas. It is not surprising that a prominent section of the 1919 Versailles Treaty prohibits German possession of "asphyxiating, poisonous, or other gases"-- wording which was later incorporated into the 1925 Protocol.

Americans strongly favored further treaties. Almost without exception, the public and its leaders sought the prohibition of all chemical weapons, as well as the biological agents that were becoming thinkable. In 1922 a committee of distinguished citizens, chaired by General of the Armies John J. Pershing and including Secretary of Commerce Herbert Hoover, recommended the complete prohibition of "chemical warfare, including the use of gases, whether toxic or non-toxic." The top brass of the Navy advised the Administration that "there will be a great difficulty in a clear and definite demarcation between the lethal gases... as distinguished from those gases which simply disable temporarily." This view was the consistent U.S. policy until only a few years ago.

The U.S. took the lead in fashioning an international agreement. Indeed, we drafted and sponsored the Protocol. It is ironic that, 47 years later, our country could represent a major threat to its success. It is the oldest and most successful arms control treaty now in force. The United States would be a party but for an unfortunate episode that foreshadowed later difficulties in limiting arms. For although the U.S. military leadership generally supported the Protocol, a few saw gas as the "ideal weapon." Officers of the Army's Chemical Warfare Service joined with the American Legion and the industry-oriented American Chemical Society to block the treaty. Few Senators wished to oppose this powerful coalition. The Protocol was tabled, and, though it remained on the Senate calendar in later years, was not considered again. In 1947 President Harry Truman withdrew it as "outmoded."

The U.S. had not suspended its support of the Protocol's principles, however. As President Nixon noted in his 1969 announcement, "Since 1925, this proposal has

been affirmed by the United States as a matter of policy." Until 1965 this observance included a self-imposed prohibition of tear gas in war. This fact was obscured at the 1971 Senate hearings when Secretary Rogers quoted a 1930 statement by a U.S. diplomat that seemed to show our opposition to restraints on tear gas. The event in question occurred at a preparatory session of the 1932 Geneva Conference on the Limitation of Armament. But it appears that the official- U.S. Ambassador Hugh Gibson- was speaking without guidance from Washington. There is no published record of any State Department cable to the delegation advising Gibson what position to take. Thus, he began his remarks by saying: "I had hoped that it would not be necessary to make a statement on this subject, as I confess that I am not in a position to offer a sound and valuable opinion on the problem." Two years later, when the Conference itself got underway, the U.S. left no doubt as to its stand. On four separate occasions, we approved of wording that explicitly prohibited "lachrymatory" or "irritant" substances. Indeed, our only reservation was that a ban on tear gas in war not prevent its domestic use-- a position with which all other nations concurred. The Protocol explicitly refers to "use in war" and "methods of warfare." No party to the Protocol and no legal authority has ever argued that the use of riot gas to control civil disorders is prohibited by the Protocol. The U.S. has, thus, always asserted its right to use gas for riot control at home, but distinguished this from its battlefield uses, which we opposed in principle. Our official position, as cabled to Geneva by Secretary of State Cordell Hull in 1933, approved of a complete ban, provided that "it did not prohibit the use of lachrymatory gases for domestic police purposes." This position was to be reflected in national policy and practice until well into the Vietnam war.

The withdrawal of Germany and Japan in 1933 doomed the Conference, but the U.S. continued to press for restraints. In 1937 President Franklin Roosevelt declared: "It has been and is the policy of this government to do everything in its power to outlaw the use of chemicals in warfare." Throughout the Second World War, each side stockpiled huge amounts of chemical agents. But the U.S. never ordered the use of gas, and none was used against us. It is especially significant that not an ounce of the more than one million pounds of U.S. tear gas was ever used against the enemy, though much of it was combat-ready in the form of grenades, mortar shells, and tear gas pots. According to the official history of the Army's Chemical Warfare

Service, in cases such as "attacks upon Japanese caves and bunkers, or upon isolated positions, in the Pacific islands, the gases might have brought about surrender, or have driven the enemy into the open." Similarly, there were many opportunities for tear gas warfare in the Korean War but gas was quite deliberately never used in combat. This strict policy in no way interfered, however, with the use of tear gas off the battlefield.

The first U.S. involvement with gas warfare since 1918 was in late 1964 in Vietnam. Public outcry caused Washington to order a total ban. In March, 1965 Secretary of State Dean Rusk declared that the gas would be used only for "situations analogous to riot control." The original rationale was that tear gas would save the lives of civilians held hostage. But the enemy rarely used "human shield" tactics. Peasants learned to flee from firefights or to take cover. It was soon realized that tear gas could drive them from their shelters into the line of fire. Meanwhile, despite Rusk's assurance that "we do not expect that gas will be used in ordinary military operations," it became a deadly and ubiquitous military tool. It was an open secret that U.S. troops made massive use of gas to expose enemy soldiers to the line of fire. Indeed, before the present official silence, Brigadier General William Stone, then a top Army chemical warfare officer, told the House Appropriations Committee how the troops used gas: "It flushes out Charlie, gets him out of the bushes, and they are able to see who they are fighting." Only a month later, in July, 1969, he was more guarded, telling the House Armed Services Committee: "I would like to think that with all American soldiers, if a Viet Cong comes out of a hole or building and appears to want to surrender, we won't shoot him, but if he comes out firing, we will fire back." In reality such chivalrous use of tear gas has been exceedingly rare. Far more often, it has been used simultaneously with firepower to obtain maximum casualties. Since tear gas munitions were now in the field, their combat use expanded rapidly and the ban was quietly relaxed. A 1968 article in Army Digest asserted that tear gas was "helping to win battles and to achieve military objectives."

Dr. Herbert York, the Pentagon's research chief under President Eisenhower, in May 1970 indicated regret at his former belief "that some chemical and biological

weapons, especially of the non-lethal variety, . . . might, in some degree make war more humane. I have come to realize that the situation is very much more complicated than I had then thought." If tear gas is less humane than originally thought, it is also disappointing as a weapon. High ranking U.S. officers in Vietnam have privately reported that tear gas has been of little military value. Just as in World War I, gas masks are now standard equipment for enemy soldiers, and the North Vietnamese have begun using tear gas themselves.

President Nixon inherited this problem from the previous administration, which bears major responsibility for this extraordinary escalation in chemical warfare. And it is harder to reverse a policy than to avoid it in the first place. Clearly, the simplest and most workable ban on gas warfare is one that covers all chemical weapons. The presence of tear gas and its stronger cousins on the battlefield clouds the important barrier between today's conventional warfare and the terrible possibilities that were only hinted at in World War I. No war is humane, but by international consensus the use of lethal gas is so undesirable as to merit special precautions. Former national security adviser under Presidents Kennedy and Johnson McGeorge Bundy testified at the 1971 Senate hearings on the Protocol that "a clear and agreed international understanding is much more important than the debatable combat value of herbicides and tear gas."

In December 1969 the United Nations General Assembly disagreed with the U.S. view of the Geneva Protocol. Eighty nations voted for an interpretation encompassing "any chemical agents." The U.S., Australia and Portugal (which uses herbicides against rebel forces in its African colonies) were opposed to the resolution, while 36 nations abstained. This decision might have been even more lopsided but for the decision of some of our allies to politely abstain rather than publicly differ with our stand. The Administration has argued that such a vote cannot determine a question of international law. Indeed, nearly half the parties to the Protocol have not yet indicated their view of the scope of the ban on gas. However, agreement would certainly be almost unanimous if the U.S. were to return to its traditional stand against the use of chemicals in war. If the Administration finds itself unable to adopt a complete ban outright, then an honorable and constructive course might be for the President to determine the opinion of countries that have ratified the Protocol, agreeing to accept their view if it is sufficiently unanimous. Another possible action is to ask

the U.N. to seek an opinion on the Protocol from the International Court of Justice at the Hague.

The present impasse over U.S. ratification may well be preferable to a unilateral decision that might erode the Protocol. And a major fight on the Senate floor might be just as damaging, whatever the ultimate outcome. But we tempt fate by leaving the question open. Our hesitation is hardly worthy of the traditional U.S. leadership and of the Administrations far-sighted initiatives to prevent gas and germ warfare. The responsibility has fallen to us to foster a worldwide consensus on the meaning of the 1925 Geneva Protocol. We must strengthen the world's oldest continuously effective treaty on war.

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