

December 15, 1969

Mr. Irwin Gubman
Office of the General Counsel
U.S. Arms Control and Disarmament
Agency
320 21st Street, N.W.
Washington, D.C. 20451

Dear Irwin,

In his recent letter to the New York Times, Mr. Philip Noel-Baker stated that "Hugh R. Wilson declared that the U.S. Government agreed that the use of all tear gases was banned by international law." When I first saw Noel-Baker's statement, I wondered whether Wilson agreed that the use of all gases was already banned or whether, instead, he was saying that the use of all gases should be banned. During the discussions of the First Committee on December 10, James Leonard took the latter view, saying that "under this new treaty which was discussed, but never finally agreed upon, the use of tear gas in war should be prohibited. This discussion was not directed at the Geneva Protocol which has been the subject of our debate this morning." However, on reading the draft convention as voted for by Mr. Wilson in 1933 I find some support in favor of Noel-Baker's implication. In particular, Article 47 states that "The following provision is accepted as an established rule of international law:

The use of chemical, incendiary or bacterial weapons as against any state, whether or not a party to the present convention and in any war whatever its character is prohibited."

Article 48 goes on to define the prohibition to which Article 47 refers.

"The prohibition of the use of chemical weapons shall apply to the use by any method whatsoever for the purpose of injuring an adversary of any natural or synthetic substance harmful to the human or animal organism, whether solid, liquid or gaseous, such as toxic, asphyxiating, lachrymatory, irritant or vesicant substances."

December 15, 1969

2

The language of Article 47, referring to an already established rule of international law, stands in sharp contrast to other articles of the draft treaty which do not presuppose an already established rule of law. For example, Article 51, dealing with preparations for the prohibited types of warfare states that "All preparations for chemical, incendiary or bacterial warfare shall be prohibited in time of peace as in time of war."

It seems to me that the above gives support to Noel-Baker's interpretation. Do you know if there is anything in the detailed minutes of the discussions in Geneva or in the cable traffic between Washington and Geneva during the League of Nations discussions that would shed light on these matters?

With best wishes,

As ever,

Matthew Meselson

MM:ls

cc: Rt.Hon. Philip Noel-Baker
Professor George Bunn