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February 11, 1970

MEMORANDUM

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XR POL 2
XR POL 2-4

TO: The Director
FROM: ACDA/GC - Charles Van Doren
SUBJECT: NSC Under Secretaries Committee Meeting on Geneva Protocol, February 12, 1970, 4 P.M.

There is general agreement at the staff level in State, ACDA and DOD that the attached paper fairly states the issues, the relevant pros and cons, and the differences of view between the departments. Thus the staffs believe that the paper is in satisfactory form to present to the President, and saw no reason for an Under Secretaries meeting. Secretary Laird nevertheless requested that there be such a meeting, probably with a view to persuading Kissinger, Richardson and yourself to adopt their views rather than those indicated in the paper as State/ACDA views.

There are only three issues on which the paper indicates differences of view between State/ACDA, on the one hand, and DOD on the other. These are listed below, with a few supplementary comments:

Recommendation 2 - No First-Use Reservation

(discussed at pp. 4-7)

The alternatives are:

First, reservation of right to retaliate with CW but not BW;

Second, reservation which, like those of other major powers, has effect of reserving right to retaliate with CW or BW; and

Third, no reservation, but rely on reciprocal rights against other reserving parties and rights arising from material breach.

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GROUP 3
Downgraded at 10 year intervals; not automatically declassified

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I understand that Mr. Farley thinks we should hold the State Department's coat on this one, since he does not consider the difference between the first and second alternatives worth a major fight with Packard. You should, however, understand that, unlike the other alternatives, the second one is likely to lead to charges that the President is hedging on his renunciation of biological warfare.

Your views may be asked on the point made in the DOD argument (p. 7) that converting our announced BW policy into a legal obligation not to use BW "would deprive the U.S. of a bargaining point in upcoming arms control negotiations on biological warfare." If so, I recommend that you indicate that such a bargaining point is certainly not necessary (since the U.K. Convention involves giving up more than the use of BW) and would not be particularly helpful (since it would not be considered by others as a significant step beyond our highly publicized policy against the use of BW.) Moreover, it might cast doubt upon the firmness of such policy.

The third alternative, while slightly messier from a legal point of view, would have the merit of enabling us to ratify the Protocol without reservations, which is the way that was recommended by the Administration and the Foreign Relations Committee in 1926, and normally the preferable way to ratify treaties.

Recommendation 3 - Follow-on NSDM on RCAs and Chemical Herbicides

(discussed at pp. 12-13)

Since NSDM 35 indicated that there would be such a follow-on, we think it should be issued before we face the Senate. It might well prove to be helpful to the Administration in the debate over RCAs and herbicides (which will be the most controversial issues). At the very least it will give us a base from which to formulate the Administration's case on these issues.

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I fail to see how any harmful revelation of our "battlefield rules of engagement" would result.

Recommendation 4(b) Understandings on RCAs and Chemical Herbicides

(discussed at pp. 7-12)

Option 1: Senate vote on understanding, communicated to parties

Option 2: No Senate vote on understanding, but communication to parties

Option 3: Neither Senate vote on understanding nor communication to parties

It is noteworthy that, with the single exception of Tully Torbert (who seems to favor Option 2), all the State and ACDA officers involved--Stevenson, his two deputies, DePalma, Spiers, Pickering, Farley, Leonard, Hancock, Furnas, Day, Cutter and myself--would really prefer to see Option 3 chosen provided the President is willing to accept the consequences. Moreover, NSDM 35 can be read as choosing Option 3. But we all recognized that this choice was made without realizing that it would result in loss of the legal right to make first use of RCAs in war if an adverse opinion of the ICJ should be obtained. Thus it might fail to give lasting effect to that portion of NSDM 35 that excepted RCAs from our renunciation of the first use of chemical weapons. Accordingly, in this memorandum State and ACDA merely recommend that the President be prepared to consider Option 3 "at least as a fallback position."

DOD is strongly opposed to Option 3 for the reasons given in the Cons at pages 11-12. As for Con 4, I doubt that any choice we make among these options would be likely to affect the result of a Communist conducted "war crimes" trial if it ever occurred. The only country that

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has conducted a war-crimes trial on charges of preparing and using bacteriological weapons in the Soviet Union, which convicted 12 former members of the Japanese Army on these charges even though Japan had not ratified the Geneva Protocol.

RECOMMENDED ACDA POSITION:

That the paper fairly states the issues and the differing views on them and should be forwarded to the President as is.

Attachment:

As stated.

ACDA/GC: ^{CVF}CVanDoren:ryw:2/11/70

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