

MEMORANDUM

C. Row 11-78
INFORMATION *W.L.*

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~

Action
June 25, 1970

MEMORANDUM FOR DR. KISSINGER

FROM: Michael A. Guhin *MA Guhin*
THRU: Robert M. Behr *RM Behr* (Richard T. Kennedy)
SUBJECT: Updating on Geneva Protocol and the Senate, *Plus Some*
Considerations for Timing of Submission *Pres. has announced*
memo - New
low about timing

I. Updating

On June 12, Senator Fulbright wrote Secretary Rogers (Tab A) requesting word on the Administration's intentions with regard to submission of the 1925 Geneva Protocol because of the Committee's desire to arrange its schedule for the remainder of the session.

He mentions reports of differences within the Executive over tear gas and herbicides, and states that his views on the subject were set forth in a letter to the President on February 19 (Tab B).

On June 16, Senator Kennedy charged the Administration for failure to submit the Protocol in spite of its support for a UN resolution, approved unanimously at the last session, which "invites all States which have not done so to accede to or ratify the Protocol in the course of 1970".

He views the Protocol as an opportunity to review the whole range of CBW issues including (a) whether our CW policy has gone far enough in light of our nuclear capability, and (b) the conflicting interpretations over tear gas and herbicides and our use of these weapons in Vietnam.

On June 17, Senator Young (D-Ohio) charged the Administration for failure to submit the Protocol and censured the use of defoliants in Vietnam.

Congressmen Zablocki and Fraser (House Foreign Affairs Committee) urged that the Protocol be submitted to the Senate in time for hearings this session. Both expressed opposition to a reservation on tear gas and herbicides.

II. Considerations for Timing of Submission

We recognize that Senate hearings on the Protocol (1) could be troublesome on the tear gas and, particularly, the herbicides and anti-crop issues, and (2) could highlight the issue during the UN General Assembly this fall which, in turn, might lead some state(s) to push for an advisory opinion by the

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Authority: E.O. 12958
By: NARA Date: 11-26-89

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International Court of Justice or for some resolution against the US position. On the other hand, in light of the UN resolution (80-3-36) against our position last fall, those states against our understanding might either consider another resolution redundant or prefer to wait until the US has ratified the Protocol in one form or another.

We believe that the Protocol should be forwarded to the Senate this summer before the UN General Assembly convenes in mid-September. Ambassador Yost has cabled Secretary Rogers (Tab C): "If we have failed to move by the time GA convenes...this matter could become quite embarrassing particularly since main focus of disarmament debate this year is likely to be CBW and seabeds."

Ambassador Yost hopes it will be submitted in the "very near future" and will "feel no embarrassment in defending" our understanding on tear gas.

Assuming that the Protocol will be forwarded before the UN convenes, there remain two options.

- Option 1. Forward the Protocol to the Senate as soon as possible (e.g., mid- or late-July) which would very likely mean some hearings this session.
- Option 2. Forward the Protocol to the Senate too late for hearings this session (e.g., very late August).

Option 2 has an advantage in avoiding possibly embarrassing hearings now. However, it would be difficult to delay this long since our position, whenever submitted, will not differ materially from that which the Senate expects.

You have our proposed memorandum for the President outlining the issues yet to be resolved preparatory to submission of the Protocol. As soon as these decisions are reached, a memorandum on timing will be forwarded with a scenario of consultations and approach to the Senate.

(Behr/Gerkin now working on this)

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| FBI - NEW YORK | |

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Authority
E 018958
By NARA Date 01-26-07

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PA/HO Department of State
E.O. 12958, as amended
August 6, 2007

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United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

June 12, 1970

ACTION
is assigned to



The Honorable
William P. Rogers
Secretary of State
Washington, D. C.

Dear Mr. Secretary:

I would like to know the nature of the Administration's present intentions with regard to the Geneva Protocol of 1925.

On November 25, 1969 the President announced his intention to resubmit the Protocol to the Senate for its advice and consent. He has not yet done so, of course, nor has there been any further indication, either from the State Department or the White House, regarding the Administration's plans.

Since November 25, 1969 there have been continuing reports of differences within the Executive branch over the interpretation of the Protocol as regards tear gas and herbicides. It would be useful to know whether these points have now been resolved so that the Protocol might be submitted to the Senate.

My own interest in the Protocol and my views on its interpretation were expressed in a letter which I sent the President on February 19, 1970. Apart from a pro forma acknowledgement signed by Mr. William E. Timmons of the White House staff, I have had no response to my letter.

In view of the foregoing, because of the Committee's desire to arrange its schedule for the remainder of the session, I would appreciate an early reply from you concerning the Protocol.

Sincerely yours,

J. W. Fulbright
J. W. Fulbright
Chairman

(2)
6/15/70

ANALYSIS BRANCH

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Authority E.O. 12958
By NARA Date 01-26-27

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PA/HO Department of State

E.O. 12958, as amended

August 6, 2007

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United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

February 19, 1970

V. 2-71
CBW/Protocol

The President
The White House
Washington, D. C.

Dear Mr. President:

I feel that I should communicate to you at this time my personal concerns regarding the interpretation of the Geneva Protocol of 1925 which you decided last November to submit to the Senate. I certainly welcomed that decision just as I did your more recent one regarding toxins. At the same time I am increasingly troubled by a question which I suspect has also occasioned considerable debate within the Executive Branch. Although you yourself have not spoken on the question, I take it there are those who believe we must reserve the right to initiate the use in war of certain chemical weapons, namely harassing gases and herbicides. It troubles me that the United States should take the view, and should be attempting to persuade other nations, that these chemicals are not within the scope of the Geneva Protocol. I believe if our position were different, there would be every reason to believe that we could achieve total, or near total, unanimity among all nations as to just what the Protocol prohibits.

Surely it is strongly in our long-term interest to reinforce the existing understandings and restraints which now discourage nations from devoting their efforts to the acquisition of chemical and biological weapons and which act as a restraint against the use of such weapons. If the rest of the world can be brought to accept a broad and uniform interpretation of the Protocol, why should we seek to make it otherwise?

It can be said, of course, that because we are using harassing gas and herbicides in Vietnam, we can not give them up. I believe that this issue must be decided in the broader context of a conflict between a highly questionable short-term interest and an important long-term one. Our overriding interest is to discourage the acquisition and

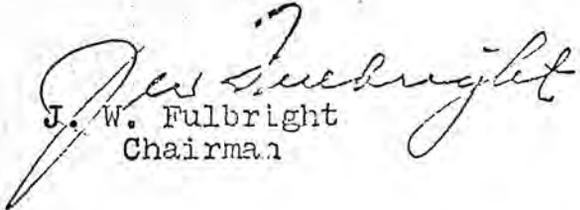
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By NARA Date 01-26-21
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use of chemical and biological weapons so as to keep this relatively unexploited dimension of military technology from developing further. In this regard, I noted with interest a recent statement of the United States representative on the UN Secretary General's study of chemical and biological weapons, Dr. Ivan Bennett, Jr., who is also the Chairman of your Science Advisory Committee's panel on chemical and biological weapons. Dr. Bennett recently told a House subcommittee that "... most individuals with whom I have had any opportunity to discuss this who are in any way connected with it, deeply regret the fact that we ever initiated the use of tear gas in Vietnam. I think that we did it with good intentions; but I think that what is going on now is deeply regretted by all decent people."

I have not completed my study of the issues presented by the Geneva Protocol and will not do so until the treaty is submitted to the Senate and the Foreign Relations Committee has held hearings on it. However, I believe that even before the Protocol is submitted we should seek an approach that will allow us to achieve a uniform interpretation of the Protocol and, in years ahead, to discourage the employment of all forms of chemical warfare. One way in which we might do this would be to note the existence of certain ambiguities in the Protocol and to reaffirm that we have not previously regarded tear gas and herbicides as coming under its scope. However, at the same time we would announce that upon becoming a party to the Protocol we would agree to extend our interpretation of the scope of the Protocol to include these substances. We could explain that this action was being taken in good faith in an effort to achieve the broadest possible agreement on the meaning of this important international agreement.

Sincerely yours,


J. W. Fulbright
Chairman



Department of State

TELEGRAM

CBW Protocol

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ACTION IO-15

INFO OCT-01 ACDA-19 AEC-11 AF-12 ARA-12 CIAE-00 DODE-00
EA-10 EUR-20 PM-05 H-02 INR-07 L-04 NASA-04 NEA-13
NSAE-00 NSC-10 OIC-05 OST-01 P-03 PRS-01 RSC-01
SCI-06 SS-20 USIA-12 RSR-01 /195 W

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SUBJECT: GENEVA PROTOCOL ON CBW

I HAVE NOTED RECENT TELEGRAMS FROM OUR CCD DEL
IN GENEVA REPORTING STATEMENTS BY SOVS AND JAPANESE
REPS CONCERNING RATIFICATION OF GENEVA PROTOCOL ON CBW.

HAVING IN MIND THE PRESIDENT'S STATEMENT ON THIS
SUBJECT LAST NOVEMBER WHICH WE ANNOUNCED WITH SOME
FANFARE TO THE GA POLITICAL COMMITTEE DURING DISARMA-
MENT DEBATE, WE MAY BE SURE THAT OTHER DELS WILL
PRIVATELY AND PUBLICLY BEFORE AND DURING NEXT GA
REMINDE US OF OUR ANNOUNCED INTENTION TO SEEK SENATE
CONSENT TO RATIFICATION AT AN EARLY DATE. IF WE HAVE
FAILED TO MOVE BY THE TIME GA CONVENES IN MID-
SEPTEMBER, THIS MATTER COULD BECOME QUITE EMBARRASSING
PARTICULARLY SINCE MAIN FOCUS OF DISARMAMENT DEBATE
THIS YEAR IS LIKELY TO BE CBW AND SEABEDS.
I SHOULD THEREFORE VERY MUCH HOPE THAT WE MIGHT
IN THE VERY NEAR FUTURE AGAIN REQUEST SENATE CONSENT
TO RATIFICATION. I SHOULD MOREOVER FEEL NO EMBARRASS-
MENT IN DEFENDING AN INTERPRETATION OF THE PROTOCOL
WHICH WOULD MAINTAIN THAT IT DOES NOT APPLY TO TEAR GAS.

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By NARA Date 01-26-07