

DEPARTMENT OF STATE
Washington, D.C. 20520

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January 22, 1971

MEMORANDUM

TO: The Secretary ✓
THROUGH: S/S *[Signature]*
FROM: PM - Ronald I. Spiers *[Signature]*
SUBJECT: Policy Decisions in Connection with your
Geneva Protocol Testimony - ACTION MEMORANDUM

You have agreed to appear before the Senate Foreign Relations Committee in early or mid-February to testify in support of the Executive's request for the advice and consent of the Senate to the ratification of the Geneva Protocol of 1925. We have reviewed outstanding policy questions in connection with the preparation for your appearance and testimony, and believe that the issue of the continued use of chemical herbicides as a defoliant in Vietnam should be decided by the President before your appearance.

On December 26, the White House issued a press statement indicating that we would phase-out our chemical herbicide program in Vietnam. This was in response to a memorandum from Secretary Laird to the President recommending the phase-out (memorandum and press statement at Tab C and D respectively). Subsequently, during the Annual Review of our chemical and biological programs by the Under Secretaries Committee, Deputy Secretary of Defense Packard agreed the crop destruction program should be terminated immediately. This recommendation is being forwarded to the President by the Under Secretaries Committee.

This leaves only the defoliation operations of our chemical herbicide program to be phased out. The phase-out is

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Authority NND 969058
By CAP NARA Date 12/31/99

scheduled for about May of 1971, because that is the approximate date when existing stocks (agents "blue" and "white") of chemical herbicides presently authorized for use in Vietnam will be exhausted. Further shipment of these agents to Vietnam has been suspended by DOD.

In August of 1970, two legislative amendments to DOD bills indicated significant concern in the Senate about the questions of crop destruction and defoliation by chemical herbicides in Vietnam. Among the members of the Foreign Relations Committee, Senators Case, Cooper, Javits, Church, Mansfield, and Symington supported termination of crop destruction. A separate measure aimed at the termination of all use of chemical herbicides in Vietnam was supported by Senators Mansfield and Case. Their opposition has been based on the ecological effects and possible damage to human beings of such use, as well as a belief that herbicides are of limited military value to our own and Vietnamese forces. Given the fact that phase-out will take place in several months, and that the commander in the field is willing to accept whatever risks accrue after this date -- the date having been set in order to use up existing stocks -- I recommend that you forward a memorandum to the President containing a recommendation that the President decide to terminate immediately the use of all chemical herbicides in Vietnam and that he announce this decision or authorize you to announce it in your statement on the Geneva Protocol before the Senate Foreign Relations Committee.

We expect that the Department of Defense and particularly the Joint Chiefs of Staff will continue to oppose an earlier phase-out. They will argue that the question of military utility is significant since use is still permitted in defoliation operations around firebases and other defense perimeters. We believe the issue is primarily one now of timing since General Abrams and Ambassador Bunker recommended a phase-out of chemical herbicide operations in Vietnam which they anticipated would be completed by about May 1971, and Secretary Laird and the President supported the phase-out operations. Defense may also argue that our own phase-out

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Authority NND 969050
By CUP NARA Date 8/31/99

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would make it impossible for us to continue to support Vietnamese (ARVN) chemical herbicide operations. We believe this is true and do not see how we can support the Vietnamese in such operations where we no longer see them as of sufficient military value to continue to use them ourselves and at a time when we will still have over 250,000 of our own troops in Vietnam (May-June 1971).

We are not convinced Secretary Laird personally would not concur in your memorandum to the President. We therefore suggest that you forward the memorandum to him for his concurrence, or should he not concur, then explain you will be sending the memorandum in any event, and invite him to append or separately to send his views to the President. A letter to Secretary Laird in this sense is attached at Tab A.

We believe that a positive decision by the President will be significant in helping to obtain the favorable votes of an important number of the members of the Senate Foreign Relations Committee and of the Senate as a whole in favor of positive action on the Protocol. This is true because, with the cessation of all use of chemical herbicides in Vietnam, those Senators opposed to such use will no longer see the Protocol vote as a lever to try to change the herbicide policy, or as a basis for pressing the view that the treaty should somehow cover herbicides. Some may well argue that if we cease using herbicides in Vietnam, we should agree to interpret that treaty as covering them. But in the attached memorandum to the President, we have made clear that we should not change our position that the Protocol does not prohibit the use in war of chemical herbicides. To change this view now would raise a number of serious questions of treaty interpretation, since chemical herbicides were not yet invented or in use when the treaty was drafted and signed.

We will forward separately a draft of your statement before the Senate Foreign Relations Committee. It states that all herbicide operations have been terminated and reaffirms our interpretation that the Protocol does not prohibit the use of chemical herbicides or riot control agents (tear gas) in war.

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Authority NND 969057
By CAF NARA Date 9/3/99

RECOMMENDATION:

That you sign the attached letter (Tab A) to Secretary Laird seeking his concurrence on your memorandum.

Attachments:

- Tab A - Letter to Secretary Laird
- Tab B - Memorandum to the President
- Tab C - Memorandum from Secretary Laird
- Tab D - Press Statement and Memorandum
from Dr. Kissinger

Clearances:

C - Mr. Pedersen	IO - Mr. Rothenberg
L - Mr. Rhinelander	PM/ISP - Col. Hanket
H - Amb. Symmes	ACDA - Mr. Day
EA - Amb. Sullivan	S/PC - Mr. Hartman

PM:TRPickering

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CLW-303

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

22 DEC 1970

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Policy Regarding Use of Herbicides in South Vietnam

I want to report to you on the continuing actions we are taking, at your direction, to reduce the use of herbicides in Vietnam and to advise you that new steps will be taken so that there will be strict conformance in Vietnam with policies governing the use of herbicides in the United States.

The present ban on the use of the herbicide known as "ORANGE" remains in effect.

Additionally, Ambassador Bunker and General Abrams have advised that they are initiating a program which will permit an orderly, yet rapid phase-out of the use of other herbicides while preserving the option to reinstitute this program, if necessary, to assure the protection of American lives. During the phase-out, the use of herbicides in Vietnam will be restricted to remote, unpopulated areas or around firebases and US installations in a manner currently authorized in CONUS.

In short, any herbicides used in Vietnam henceforth will be used only under conditions which would apply in the United States.

As a result of new orders to the field, herbicide use in Vietnam will be such that the stresses and risks involved are no greater than those sustained by the United States population and the United States environment in normal peacetime activities.

I recognize, of course, that there could be some temporary risks to our forces as a result of these decisions. Should the military situation change as a result of an increase in the enemy level of activity, we would need, of course, to reassess this policy in order to assure the protection of American lives, particularly as we withdraw thousands of additional US military personnel from South Vietnam in accordance with your program.



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Authority: E.O. 12958
By: [Signature] Date: 01/14/07

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THE WHITE HOUSE
WASHINGTON

24597


December 28, 1970

MEMORANDUM FOR

THE SECRETARY OF DEFENSE

SUBJECT: Policy Regarding the Use of Herbicides
in Vietnam

The President has asked me to thank you for your report on the continuing actions you are taking to reduce the use of herbicides in Vietnam and particularly the steps taken to ensure that there will be strict conformance in Vietnam with policies governing the use of herbicides in the United States.

The President has noted the initiation of a program which will permit an orderly, yet rapid phase-out of herbicide operations in Vietnam, while preserving an option to reinstitute the program.

The President has directed that an extension or any expansion of the current program and plans, if any, regarding Vietnamization of chemical herbicide capabilities be submitted for his approval.


Henry A. Kissinger

cc: The Secretary of State
The Chairman, Joint Chiefs of Staff


Dispatched 12/28/70 - Outside Rcpts. (rb)