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NATIONAL SECURITY COUNCIL
June 21, 1971

NOTE FOR: DR. KISSINGER
FROM: MICHAEL A. GUHIN *MG*
SUBJECT: Attached

After reading the attached memorandum on tear gas-herbicides and the Geneva Protocol deadlock in the Senate, you may ask what meaningful analysis can we get this summer if the NSSM 112 study is not due until October or later.

The reason State requested an extension of the NSSM 112 due date was for further Vietnam data analysis which, by definition, involves one type of situation. There is already a substantial amount of material on agreed areas of military utility in Vietnam (NSSM 59 study on CBW, the Under Secretaries Committee's 1970 annual review of CBW programs, and the 1969 PSAC report, not to mention outside materials). The applicability of Vietnam conclusions to other types of situations will remain questionable now as later and will require "knocking heads" interagencywise.

Further data analysis will add more detail, but no one suspects that the process will alter the basic conclusions of the study or the options, arguments (military utility versus political costs) and agency positions. Also, I understand from Admiral Welander that Joint Staff believes it will have enough to support its case by August were decisions desired.

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E.O. 12958, as amended
August 6, 2007

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June 17, 1971

MEMORANDUM FOR: DR. KISSINGER

FROM: MICHAEL A. GUHIN *MAG*

SUBJECT: Tear Gas and Herbicides Use in War and
the 1925 Geneva Protocol

After the Geneva Protocol hearings, the Foreign Relations Committee decided to take no action except to communicate its views to the President. On May 5 we received Senator Fulbright's April 5 (which was erroneously dated March 5) letter to the President (Tab B) requesting that the Administration reconsider its understanding that the Protocol does not prohibit the first use of tear gas and herbicides in war. Senator Fulbright's other main points are:

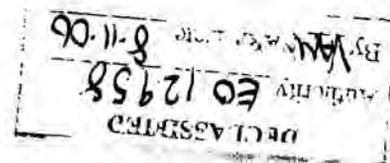
- Many members believe we should ratify the Protocol without restrictive understandings on tear gas and herbicides or postpone action until that is possible. They seriously question the military utility of these agents.
- The President's study (NSSM 112, Tab G) on these agents should be available before final Senate action.
- It is doubtful that the Protocol could pass on Secretary Rogers' terms (Mr. Rogers said the President might not ratify if the Senate modified the understanding); but he (Fulbright) sees no serious opposition if the President proposed ratification without the interpretation.

Ken BeLieu acknowledged (Tab C) the letter and sent it to you for appropriate action. In mid-May, we asked Ken for his judgment on this issue. He does not yet know when he can sound out Senator Mansfield. (Mansfield has reportedly said the Protocol is in trouble since a Senate majority is against herbicides and probably against tear gas.)

Other related developments are:

- Senator Humphrey wrote Secretary Rogers (Tab D/State Reply Tab E) that we should not reserve a first use option for warfare uses of tear gas and herbicides.

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Senator Brooke recently said (Tab F) that he will propose the Protocol be referred to the International Court (ICJ) for interpretation.

- We are negotiating a BW ban at Geneva (CCD) perforce on the basis that it should rely on and not duplicate the Protocol's ban on use. Our remaining outside the Protocol might complicate this matter. Also, the Protocol's scope will be discussed as the Soviets and many others disagree with us and may push their view at least for tactical purposes.
- Secretary Laird has requested that the President approve extending herbicide operations for base perimeter purposes until December, when he will recommend "Vietnamizing" some herbicide capability. We are awaiting Secretary Rogers' comments. [You will recall that we announced Mr. Laird's earlier report that herbicide operations would be phased out by May. They have, we understand, stopped.]
- We understand State PM and Legal will soon ask Secretary Rogers to review Protocol options including (1) reaffirming our position with no change; or (2) reaffirming it while saying we will seek an agreed interpretation either by offering to extend our undertaking vis-à-vis states which officially agree or by seeking an ICJ opinion.

Before we can handle the tactics, we need to know the substantive options and arguments on tear gas and herbicides. NSSM 112, issued on January 7, deals with our policy on these agents. On April 23, you extended (Tab H) the due date at the request of State from May 15 to October 15 and said DOD's inputs should be expedited. (These inputs are still not expected until September, and DDR&E will have only a progress report on its herbicide study by then.)

The study as scheduled would likely be considered in late fall or early 1972 and have the same basic options, arguments and agency positions later as now. At most more time may tell us whether current military utility estimates are understated, accurate or overstated. The main question will remain constant in spite of Vietnam complications: Does the military utility of a "first use" policy outweigh our agreeing to a "no first use" policy vis-à-vis states that agree? Also, we owe a response to the Foreign Relations Committee.

We see three options: (1) sit tight and continue on course till late fall or next year and take whatever flak occurs on the subject; (2) speed up the NSSM 112 response; or (3) send Fulbright's letter to State requesting an interagency review of options, arguments and agency positions.

We question simply sitting tight because there is today no surety that this issue is worth placing the President's prestige on the line and, like it or not, the Protocol is basic to his CBW policy decisions internationally speaking.

Admiral Welander does not believe that the DOD study effort for NSSM 112 could be accelerated to the August time frame. At best an interim report

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could be requested but it would probably be heavily caveated and inadequate to serve as the basis for any decisions were such desired.

On balance, to give the President the best analysis of the situation, options and arguments before late fall, we favor sending the Senator's letter to State for an interagency review of the situation, alternative responses, arguments and agency positions. At Tab A is a proposed memorandum for Secretaries Rogers and Laird requesting a review by August 1.

At Tab 1 is an information memorandum for the President outlining the Senator's letter and your action.

Admiral Welander and John Lehman have concurred.

RECOMMENDATION:

That you sign the memorandum at Tab A requesting a review of our Protocol options, and initial the memorandum for the President at Tab 1.

Ken BeLieu has informed Senator Fulbright that his letter will be brought to the President's attention. We see no need for further reply at this time and, unless you believe we should tell him more, we will merely inform Ken BeLieu of the action being taken.

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