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THE SECRETARY OF STATE

WASHINGTON

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February 11, 1971

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MEMORANDUM FOR THE PRESIDENT

Subject: The Geneva Protocol

Shortly Secretary Laird and I will be leading off the Administration's testimony before the Foreign Relations Committee on the Geneva Protocol of 1925. I want to report to you now that I think we are in a good position to obtain the Senate's advice and consent to ratification, if we can resolve one outstanding policy question.

I believe that we should decide immediately to discontinue all use of chemical herbicides in defoliation and other operations in Vietnam.

Our position that riot control agents (tear gas) and chemical herbicides are not covered by the prohibitions of the Protocol will be a central issue in the hearings and floor debate. Your decisions of November 25, 1969, on these questions, including that which permits the continued use of riot control agents in Vietnam, have recently been reaffirmed as part of an Annual Review, which concluded that no change was now required or justified in our policy on riot control agents.

There will be some Senators who will oppose our use of riot control agents in Vietnam and our position that the Protocol does not prohibit their use in war, but a number of others will strongly support us. A third group will find it difficult to vote against the use of riot control agents in

war when they are available to, and are used by, local police departments in their home states in crowd control.

On chemical herbicides we face a similarly difficult and serious issue; one that has developed largely since your initial decisions of November 25, 1969. As you know, recent reports have called into question the domestic use of all herbicides in proximity to any food supply or water sources. The Department of Defense has concurred in the immediate cessation of all crop destruction by chemical herbicides in Vietnam. Secretary Laird has also recommended, and you have approved, a phase-out of the chemical herbicide programs in Vietnam for defoliation operations. This phase-out, I understand, will be completed by about May 1971 when we use up existing stocks of herbicide agents "Blue" and "White".

In my statement before the Senate Foreign Relations Committee, I plan to make clear that we have stopped crop destruction by chemical herbicides in Vietnam; and also to state that we regularly review all chemical warfare and biological research programs, policies and activities; and finally that we will be carrying out a full-scale study of the use of riot control agents and chemical herbicides in Vietnam together with the implications this use may carry for the use of these weapons in any future conflict.

The herbicide issue has raised serious problems on the Hill and among influential members of the Senate Foreign Relations Committee. In a vote last August on the question of denying Defense appropriations for the use of chemical herbicides to destroy food crops in Vietnam, three important Republicans on the Foreign Relations Committee -- Senators Case, Cooper and Javits -- and a number of Democrats, voted in favor. Senator Case also supported the "Goodell/Nelson Amendment" to ban the use of herbicide chemicals for any purpose in Vietnam. While an exact analysis of the implications of all voting is subject to some interpretative problems, the crop destruction amendment received 33 votes which

is just one short of the number required absolutely to block advice and consent to a treaty. Similarly, the attempt to ban the use of herbicides absolutely in Vietnam received 22 votes.

A positive decision to phase-out immediately the use of chemical herbicides for defoliation in Vietnam would do much to help reduce opposition in the Senate to advice and consent to the Protocol. We could expect that a number of Senators concerned by the use of herbicides in Vietnam and about the environment would find it easier to support the Administration's interpretation of the Protocol if they saw the chemical herbicide question was no longer a live issue.

I am recommending that we not change our position that the Protocol does not cover the use of chemical herbicides within its prohibitions. My draft statement on the Protocol makes clear that we reaffirm our position, but indicates we are not inflexible in seeking to reach an agreement acceptable to all parties to the Protocol. To give up now all use of herbicides for all time by changing our view on the Protocol without adequate study would not in my view be wise or prudent, would raise serious questions of treaty interpretation, and might well alienate a number of Senators who favor keeping a "free hand" for the future on this question.

I therefore recommend that you order an immediate cessation of the use of chemical herbicides, in any form for any military purpose in Vietnam, the decision to be announced prior to, or if you should desire, in the course of my statement to the Senate Foreign Relations Committee in support of advice and consent to ratification of the Geneva Protocol.

Mel Laird has seen this memorandum and has differing views which he may express to you separately.

William P. Rogers

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