MEMORANDUM FOR THE PRESIDENT

Subject: 1925 Geneva Protocol

As you know, the Geneva Protocol has not been reported out of the Senate Foreign Relations Committee due to disagreement over this Administration's interpretation that the Protocol does not cover riot control agents (RCAs) and chemical herbicides. I believe we can select a course of action that would achieve our major objective of obtaining advice and consent to ratification of the Geneva Protocol while maintaining key elements of the Administration's position. To secure favorable action on the Protocol, I therefore recommend that you decide now publicly to reaffirm the U.S. understanding that the Protocol does not cover riot control agents and herbicides, but agree not to initiate first use of these agents against states which officially confirm their adherence to the same (no-first-use) principle.

I recommend this approach for the following reasons:

a. We would retain our current interpretation and thus avoid any possible implication that we have even tacitly acknowledged previous error in employing these agents in Vietnam contrary to the presently widely accepted international interpretation of the Protocol.
b. We would significantly improve the prospects of overcoming the present impasse with the Senate Foreign Relations Committee by demonstrating the Administration's willingness to modify its position in order to accommodate the views of the Committee and thereby to obtain the Senate's consent to ratification.

c. We would eliminate the likelihood of independent Congressional action which might be in conflict with our current interpretation. At present three such resolutions have been introduced in the Senate. The Administration should continue to take the lead in this question, following your previous significant decisions in the area of chemical and biological weapons arms control.

d. We would not be disavowing our past positions on the military utility of RCAs and chemical herbicides nor would we be discarding our right to employ these weapons without a clear reciprocal commitment from others to do the same.

e. We would not prohibit their continued employment in Vietnam, within the restrictive guidelines which you have prescribed, since it is most unlikely that North Vietnam would become a party to the Protocol, confirm reciprocal application of the U.S. no-first-use offer, and admit officially that its forces are fighting in South Vietnam.

f. We would minimize any possible political embarrassment in our relations with those allies who have shared our interpretation of the Protocol since we are not changing our interpretation of the Protocol. We can further reduce any adverse reactions if we can consult in advance of any public announcement.
g. We would be taking another visible step toward your announced goal of the control of armaments through negotiation by providing the basis for a clear "no gas in armed conflict" policy for those nations which are parties to the Protocol and reciprocally acknowledge non-first-use of these agents.

h. It would be consistent with our efforts in the current U.S./U.S.S.R. Biological Weapons Convention negotiations.

If you should decide to accept this recommendation, I believe it would be desirable to make a simple, forthright statement to the effect: "It is the view of the United States and certain other states that the Geneva Protocol does not prohibit the first use of riot control agents and chemical herbicides, but the United States will apply the Protocol with the understanding that it will be obligated not to initiate the use of riot control agents and chemical herbicides against any party that officially confirms that it is bound on the same basis." We would anticipate that these confirmations can be secured on an informal basis from other signatory nations, e.g., through exchange of notes, through acceptance of prior or subsequent pronouncements on their interpretation of the Protocol including their vote on relevant UN General Assembly resolutions, or by other forms of commitment.

I believe you should not further delay action on the Protocol which is an important aspect of your November 25, 1969 decisions on chemical and biological warfare. I do so in the full knowledge that there are numerous studies now under way to examine the military utility and environmental effects of RCAs and herbicides.
No doubt these studies, to include one which is not due for completion until 1973, will some day be helpful in determining more precisely the utility of these weapons and their environmental effects. I am convinced, however, that there will always remain a wide range of disagreement, both within Government and the public at large, as to the relative importance of RCAs and herbicides in comparison to other military tools. Differences will also continue to exist over the political costs in employing these weapons in direct conflict with majority international opinion. Therefore, I believe, with the winding down of U.S. participation in the Vietnam war, we can and should move now to ratify the Protocol on a basis acceptable to the Administration.