

NIXON TO SEND BAN ON CHEMICAL WAR TO SENATE TODAY

Requests Approval of 1925
Protocol, but He Exempts
Tear Gas and Herbicides

AUG 19 1970

By ROBERT M. SMITH

Special to The New York Times

WASHINGTON, Aug. 18 —

After 15 months of debate within the Administration, the White House will send the Geneva Protocol of 1925 to the Senate tomorrow for approval.

The protocol, already subscribed to by more than 80 countries, bars subscribing nations from being the first to use biological and chemical weapons in a war.

Reliable sources report that President Nixon's message to the Senate will make clear, however, that the United States does not regard tear gas and herbicides as included in the treaty. American forces have used large quantities of both in Vietnam.

At the same time, according to the sources, the White House has told the Pentagon that after the war in Vietnam ends, only the President will be allowed to authorize the use of either tear gas or herbicides in a war. The Secretary of Defense will be required to ask the President for permission to use them and will have to justify their use.

U.N. Stand Recalled

When the President announced last November that he would send the treaty to the Senate, a White House official said that the Administration did not regard tear gas and herbicides as banned. In December, however, the United Nations General Assembly asserted, by a vote of 80 to 3, that the protocol did ban the two chemicals.

While the United States took the position that a General Assembly vote did not have any force in interpreting international agreements, the United Nations action pointed up the international sensitivity of the tear gas-herbicide issue. Statements by various Congressmen and scientists had already made clear the domestic sensitivity.

One of the Administration's problems since last November has been how to present the protocol to the Senate — and to the dovish chairman of the Foreign Relations Committee, J. W. Fulbright — to avoid a confrontation on the use of tear gas and herbicides in Vietnam.

Reliable sources report that the Administration considered three methods of presenting the protocol:

1. Writing out a specific reservation to the protocol relating to tear gas and herbicides, submitting it with the treaty and asking the Senate to vote on it. This would involve formal notice to the countries that have already ratified the protocol.
2. Drafting an informal understanding that the United States regards the two chemicals as excluded, but not asking the Senate to vote on it. This would also involve notifying the other countries.
3. Doing nothing except to say, almost incidentally, that the Administration does not regard tear gas and herbicide

Continued on Page 7, Column 1

NIXON WILL SEND TREATY TO SENATE

Continued From Page 1, Col. 4

as banned. This would involve no Senate and no notification of the other countries that have signed the treaty.

On Aug. 5, the President reportedly chose the third option.

Government sources report that there will be only one sentence near the end of the President's message to the Senate dealing with tear gas and herbicides. It will simply say that the Administration does not regard them as covered by the treaty.

This internal and informal interpretation has a strong disadvantage from the point of view of the Joint Chiefs of Staff. They reportedly opposed this option because it did not formally and permanently keep open the military's right to use tear gas and herbicides. A new Administration, for example, could take the position that the protocol did ban the two chemicals.

On the other hand, from the Administration's viewpoint, the informal interpretation may avoid a row in the Senate and does not provide a clear target for attack by other countries—at the United Nations or the Geneva disarmament conference, for example.

The President has, according to Government sources, decided to place only one condition on American agreement to the treaty. He will urge that, in a reservation similar to one adopted by the Netherlands, the United States reserve the right to retaliate with chemical weapons if it is attacked with them.

The President will not submit to the Senate any reservation giving the United States the right to retaliate with biological weapons if it is attacked with them. Nor will he urge that the United States stipulate that its pledges apply only to countries that have ratified the protocol.