

MEMORANDUM

760
Follow-on 3369

NATIONAL SECURITY COUNCIL

CONFIDENTIAL

June 16, 1976

MEMORANDUM FOR:

WILLIAM HYLAND

FROM:

DAVID ELLIOTT

SUBJECT:

ENMOD Negotiations

Per your instructions, the guidance for the CCD delegation regarding the ENMOD negotiations is being provided to the delegation. In the meantime, a small interagency group, made up of lawyers from DOD, State and ACDA, is meeting to address the issues that DOD had raised in their memorandum to you. They are meeting on an urgent basis so that if some supplement to the guidance is needed, it can be done within the next week.

After conferring with Jim Wade, Leon Sloss, and the people on George Aldridge's and Ben Forman's staff, it was suggested that a formal study directive from Brent or you would not be required, and that the three agencies would attempt to resolve their differences without such a directive. We will be able to tell by Friday whether this procedure looks like it will be successful. If it appears that DOD is not cooperating -- which would delay a resolution and thereby put us into a difficult situation in Geneva -- I will let you know. At such time, a formal directive can be issued giving a firm date for the completion of the study.

CONFIDENTIAL/GDS

3/10/05



NATIONAL SECURITY COUNCIL

June 10, 1976

~~CONFIDENTIAL~~

MEMORANDUM FOR: BRENT SCOWCROFT
FROM: DAVID ELLIOTT *D.E.*
SUBJECT: Negotiation of the ENMOD Treaty

Return

The summer session of the CCD is scheduled to open June 22, and we will hold bilateral discussions with the Soviets prior to that. The main subject of the summer session will be the negotiation of the ENMOD treaty. Our discussions with the Soviets will focus on what modifications to the joint draft -- which we tabled last year -- might be acceptable in order to obtain the support of the other CCD members.

During our preparation for these discussions, DOD expressed a serious reservation about the legal character of the draft treaty, even in its present form. According to the DOD communication to you (Tab B), there is a dilemma represented by the ENMOD treaty because it encompasses both arms control and law of wars issues and attempts to treat them together in regard to the regulation of obligations undertaken by parties to the treaty. In DOD's view this situation could lead to confusion and could impact on the negotiation of future treaties, as well as on the present ENMOD deliberations.

DOD recommends that a special interagency legal review be made of the issues they perceive, before proceeding further with substantive ENMOD negotiations. The lawyers at State and ACDA have reviewed the concerns expressed by DOD and find them to be almost incomprehensible. They are also uncertain as to what DOD intends in the way of an alteration to our already-tabled draft ENMOD treaty. Also, (It should be noted that none of these DOD concerns were expressed in the original study that lead to the President approving our ENMOD treaty proposal.) However, inasmuch as Jim Wade indicates that these concerns are strongly held at the highest level in DOD, it would seem best to accede to their request for a rapid interagency assessment of the issues that they have raised. A study directive is at Tab A.

RECOMMENDATION:

That you sign the memorandum at Tab A.

~~CONFIDENTIAL/GDS~~

TERMS OF REFERENCE

Legal Review and Analysis of

Arms Control and Laws of War Issues

1. The Purpose of Arms Control Negotiations and of Law of War Negotiations. The purpose of arms control negotiations is to reach with other states an international agreement in an acceptable and ratifiable form, pursuing all the necessary steps to be taken under such an agreement to establish an effective system of international control, or to create and strengthen international organizations for the maintenance of peace. Such agreements shall be consistent with national security policy as a whole and promote the national security. They are expected to operate on a reciprocal and verifiable basis, adequate to ensure policy. They are expected to prescribe measures enforceable under international agreement with respect to the identification, verification, inspection, limitation, control, reduction or elimination of armed forces and armaments of all kinds.

The purpose and policies with respect to the law of war are to declare, or ensure the respect for, customary international law and treaties embracing the use of weapons, or the total ban on weapons in armed conflict; regulating the methods of armed conflict and the conduct of armed hostilities; limiting the methods of attack, or the targets and objects to be the subject of an attack; and providing for the application of humanitarian rules intended to protect war victims. The declaration of customary international law in treaties or as U.S. policy shall reflect the practice of the United States, and what the United States government believes to be widely accepted practice amongst states with respect to the applicable rules in the law of war. The codification of the law of war under treaties or international agreement into rules of law, supplementing or modifying the rules to be found in customary international law, shall take full account of the current practice of states relating to what they recognize as law, applicable during times of armed conflict. Such codification if looking to the future shall extend that law compatible with the expected practice of future conflicts.

2. Situation Assessment. Arms control policy is implemented by establishing a setting of mutual trust and confidence amongst states for limiting or reducing armed forces or armaments, accounting for the risks perceived in national security policy. Operating within such a setting, it is the policy of the United States to entertain proposals and seek to negotiate an acceptable and ratifiable agreement, reflecting with appropriate precision the limitations and reductions agreed upon. The adequacy of such agreements shall be established by taking into full account the risks to the national security with a view to balancing or reducing them, in part, against appropriate measures of verification and inspection, or by other measures of control with respect to compliance,

equivalent to verification and inspection. To be consistent with national security policy as a whole, the reach of arms control policy shall be assessed against the risks of noncompliance by other states, the risks entailed by states non-party to the intended agreement, and the expectations that such policies and agreements will not be maintained in the event of armed conflict among the parties, or involving their security interests.

The policies with respect to the law of war are to take full and realistic account of the practice of states during armed conflict, and the clear showing evidenced in such practice of their recognition and respect for the application of the law of war. Because the law of war must largely be determined by the practice of states, it is implemented through the international legal order shared by all states, and imposed upon all of them by that legal order.

The policies and implementation of the law of war are therefore sharply distinguished from arms control policy, whose legal obligations are derived entirely from and subject to the agreements entered into between the contracting states. The differences are fundamental and substantive as to how the duties and obligations of states are interpreted and applied, because the law of war is subjected in this process of application to the positions and practices of states in general. Arms control agreements are interpreted and applied solely by the contracting parties to those agreements with such interpretation or applications reflecting their "separate" interests, or leading to compromise and accommodation amongst the contracting parties.

By way of further and major distinction, the law of war applies whether or not the states want it to be invoked and applied, and whether or not they want its sanctions to be imposed. Arms control agreements apply solely within the terms of the agreements entered into and apply in conformance with the undertakings of states, subject to legal standards and criteria applicable to treaty commitments. They are therefore subject to termination or modification by the contracting states.

3. The Failure to Make Situation Assessments. The failure to make situation assessments with respect to regulation within the framework of the law of war and to distinguish these from the framework of arms control policy leads to confusion, and to the detriment of clear and effective national security policy. It is in the interest of the United States to establish a clear policy, and for the United States to be able to be fully aware of the full reach and limits of what is recognized or restrained under the law of war. It is also in the interest of the United States to know the limits and conditions imposed upon the restraints arising out of or established through arms control policy, and therefore under the agreements resulting from the implementation of such policy. The two are fundamentally distinguished by differences in their application, the sanctions to be imposed in the event of breach, and the obligations to be assumed by the United States and other states with regard to implementing their separate security policies.

The draft proposals seeking to restrain or regulate certain uses of environmental modification techniques have led to confusion because a single instrument is used for differing purposes. These proposals are currently being treated as an arms control agreement in the CCD. The same instrument however seeks to impose a common legal order and policy upon wartime, hostile and peacetime activities. Verification and compliance which differ in substance with respect to activities during armed conflict, to "hostile" uses, and during peacetime are subjected to the same compliance procedures.

This confusion of purposes creates a confusion in policy. It denies the United States an opportunity to promote amongst states in general a law of war, because that law depends upon an entirely different regime for regulation than that applied for arms control. It also confuses the policies of the United States as to what can be done with environmental modification techniques for a potentially wide number of peacetime applications. This occurs because the draft proposals fail to establish the fundamental policy and criteria under which they will be regulated and recognized. Peacetime use may be confused in terms of results, which other states may identify as "hostile" uses and banned by the agreement. Finally, it fails to respond to a major concern of other states which has been directed to seeking protection from harm in the use of such techniques, or protection from environmental damage in general, as anticipated in the Stockholm Principles on Environment.

4. Recommendations.

An appropriate interagency review assessing in full the policy and legal factors should be undertaken with respect to the draft proposals presently involving the restraints on environmental modification techniques.

This policy and legal review should be extended to examine the overall question, raised by the negotiations relating to environmental modification techniques, with a review to avoiding the confusion of arms control issues with law of war issues in the future.





OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

Staff w/lay up
id 33

7 JUN 1976

MEMORANDUM FOR DEPUTY ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY
AFFAIRS

SUBJECT: Environmental Modification (ENMOD) Treaty Negotiations

Currently, the USG is involved in negotiations at the Conference of the Committee on Disarmament (CCD) on a possible treaty to prohibit the "military or other hostile use of environmental modification techniques having widespread, long-lasting, or severe effects...." At the recent spring session of the Conference, the various delegations presented many questions and some criticisms of the draft treaty tabled jointly by the U.S. and U.S.S.R. Based on these presentations, the USG is now determining future negotiating positions and tactics.

During the process of interagency deliberations on these matters, it has become apparent that serious interagency differences exist in how these ENMOD treaty negotiations should be approached. At the source of the dilemma is the fact that the draft ENMOD treaty encompasses both arms control and law of war issues and attempts to treat them together in regard to the regulation of obligations undertaken by states party to the treaty. In our opinion, this situation leads to confusion which can adversely affect national security policy.

In view of the fact that this matter may impact on future treaty negotiations as well as on the present ENMOD deliberations, Department of Defense recommends that a special interagency legal review be made of the issues involved and that we arrive at a formal USG position thereon before proceeding further with substantive ENMOD negotiations. The attached terms of reference summarize our concerns and provide the basis for the review.

Your prompt consideration of this important matter would be appreciated. As we see it, an extensive inquiry should not be necessary; about two working days should suffice. ACDA/State/DOD should of course participate, and outside consultants would be appropriate.

M. STASER HOLCOMB
REAR ADMIRAL, USN
MILITARY ASSISTANT

Attachment 1
a/s



ENVIRONMENTAL MODIFICATION

Conference of the Committee on Disarmament
Geneva, June 22 - August 26, 1976

Position Paper

I. Introduction

This paper provides guidance for the U.S. delegation to the summer session of the CCD with respect to the negotiations on ^{the} Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. It supplements the basic guidance set out in the position paper approved for the spring session and the cleared questions and answers of April 2, 1976.

Section II of the paper briefly sets out our general approach to the negotiations and Section III addresses substantive issues raised at the spring session.

II. General Approach

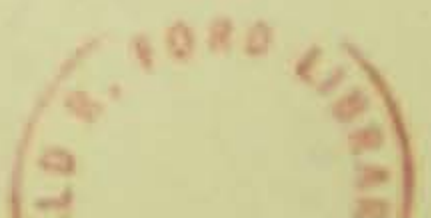
A basic consideration underlying our posture toward the negotiations is continuing US support for the convention as presently drafted and for the approach that it represents. Accordingly, in considering changes in the



text our concern will be to determine the minimum modifications required to gain the support of key delegations and ensure sufficiently broad international acceptance of the convention. While it would be desirable to conclude the negotiations during 1976 and to forward a final text acceptable to key delegations to the 31st session of the UNGA, and while we are prepared to work actively toward that goal, we are not willing to sacrifice important U.S. interests in order to meet any deadline.

Relations with the Soviets. It will continue to be important to maintain close contact with the Soviets throughout the negotiations. With a view to coordinating our approach, we have approached the Soviets through diplomatic channels, offering our preliminary views and seeking theirs on several substantive issues (State 121266, Annex A) and on tactical and procedural issues (State 138391, Annex B), and we will want to take their views into account in reaching final decisions on the acceptability of possible changes in the text and on how to present such changes.

At the earliest opportunity, the delegation should review the negotiating situation with the Soviets, including in particular the substantive and tactical issues set out in the two telegrams and following sections of this paper. T



delegation should seek agreement on the suggested changes set out below and on the most opportune timing and manner of presentation of any agreed changes. The delegation should establish an understanding with the Soviets that in cases where changes acceptable to us are not acceptable to them, we would refrain from unilaterally indicating to others that we might agree to make such changes; we would expect the Soviets to act in the same manner in cases where we cannot agree to changes they may support.

Pursuant to the overall approach to enmod indicated above, the delegation should keep Washington apprised of the state of play of the negotiations, paying particular attention to the attitudes of key delegations toward significant issues of the draft convention and making any recommendations deemed appropriate.

III. Issues

1. Preamble

We have already indicated at the Committee that we are flexible with respect to the preamble, and have suggested to the Soviets in general terms the changes we would be willing to make.



A. Third paragraph. The delegation should seek Soviet agreement to the Canadian-Argentine proposal for division of the third paragraph into two, as a means of making a clearer distinction between the peaceful and hostile potential of enmod techniques. The phrase "military or any other hostile use" should replace "hostile use" in the second paragraph, to be consistent with Article I.* The revised text would thus read:

* See page 5 for guidance on question of "military or other hostile use."



"Realizing that the use of environmental modification techniques for peaceful purposes could improve the interrelationship of man and nature and contribute to the preservation and improvement of the environment for the benefit of present and future generations;

"Realizing, however, that military or any other hostile use of environmental modification techniques could have widespread, long-lasting, or severe effects harmful to human welfare;"

B. Fourth paragraph. There are two questions here. First, we have already indicated our willingness to (potential danger) replace the word "limit"/with a reference to "effective elimination", in response to criticism that the present wording sets too restricted an objective.

Second, Canada has questioned the use of the phrase "means of warfare involving the use of environmental modification techniques," on the grounds that "means of warfare" suggests a focus on wartime use of enmod, thus downplaying hostile use in situations when no armed conflict exists. Although we believe the phrase serves a useful purpose in pointing to the convention's concern with the use of such techniques as [a] weapons, we would be willing to modify it to remove any ambiguity or confusion.



To take care of these two points, the delegation should indicate that we could accept reformulation of paragraph four as given below. We would not insist on this wording, however, and could accept a variant that includes the essential elements - the concepts of affirming an objective or desiring a result, and effective elimination of the potential danger.

"Affirming the objective of effectively eliminating the potential danger to mankind from military or any other hostile use of environmental modification techniques;"

We believe this language might ^{also} at least partly satisfy Romania's desire to include a commitment to continue negotiations toward a comprehensive prohibition of the hostile use of environmental techniques, without prejudging whether such negotiations would have to take the form of an additional or supplemental convention. (The Romanian proposal is discussed below in connection with Article I.)

C. Reference to general and complete disarmament.

We do not believe it is necessary to propose

specific language for a preambular reference to GCD, but we are prepared to accept a new paragraph if the language tracks with previous treaty commitments on GCD.



2. Article I

Scope: "Having or that may reasonably be expected to have". While some delegations at the CCD's spring session called for a comprehensive ban on all hostile use of environmental modification techniques, we believe there was a significant degree of acceptance of the limited scope of the draft as embodied in its reference to techniques "having widespread, long-lasting, or severe effects." We are not prepared to agree to a comprehensive ban, for reasons that we have stated at the CCD. However, in order to help gain the support of key delegations (e.g., Sweden) that have indicated they could accept a threshold treaty if the approach in Article I were expanded, we would be willing to amend the Article so that it refers to techniques "having or that may reasonably be expected to have" widespread, long-lasting, or severe effects. This phrase would be consistent with the interpretations of the Article I language, and of the illustrative list in Article II, that we have already placed on record.

Threat of Use. We continue to believe, as we stated at the spring session, that a ban on the threat of use of enmod techniques would not add significantly to the substantive context of the Article I prohibition. We are not prepared at present to agree to the addition of such a ban. We recognize that some delegations consider a ban



on threat as a possible means of placing some restraint on research and development on hostile uses of enmod, to the extent that an active R and D effort involving techniques whose use would be prohibited could be regarded as a potential threat. If the delegation finds indications that this view is widely shared, and that a ban on threat would be acceptable as a compromise to proponents of a ban on R and D, we would want to reexamine our position.

Defining the Scope. Several delegations have suggested that the terms "widespread, long-lasting, or severe" should be clarified, some adding/that/agreed definitions should be incorporated in the text itself, in an annex or protocol, or in agreed minutes of the negotiations. In this connection, we have requested clarification of Soviet views on the meaning of the terms -- particularly whether the Soviets are prepared to associate themselves with the definitions we offered at the spring session--and their views on the suggestions for formalizing definitions.

We would not object in principle to giving formal status of some kind to definitions of the terms, although careful consideration would have to be given to the most desirable manner of doing so. An attempt to incorporate definitions into the text of the convention might make it difficult to reach agreement on specific language



and would suggest a degree of precision that might not be appropriate, since the definitions are necessarily qualitative to some extent. The same problems would be likely to occur if the definitions were to be set out in an annex or protocol. Thus, it might be preferable to seek agreement on a set of definitions that could be included in the negotiating record. Before reaching a final decision on the most appropriate means of setting out definitions, we would want to take into consideration the views of the Soviets as well as other delegations that would favor giving formal status to the definitions.

"Military or any other hostile use." A number of delegations have made proposals to modify this phrase, to refer to "hostile use" (Sweden), "use" (Netherlands), or to "use in armed conflict or in any other hostile manner" (FRG). However, we continue to prefer the present phrase and are not prepared at present to accept any of the proposed alternatives. The delegation should continue to draw on the guidance on this issue prepared for the spring session. If in its judgment opposition to the use of this phrase threatens to become a major obstacle to conclusion of the negotiations, the delegation may request reconsideration of our position.

"State Party." A number of delegations have called for the deletion of "Party" at the end of Article I so that



against any other state. The guidance for the spring session on this issue remains valid. We continue to believe that the deletion of "Party" would be undesirable, in that it could reduce incentives for adherence and increase the likelihood of reservations by adhering states. The Soviets appear to share this view (even though their 1974 draft did not contain a "State Party" restriction).

"Never under any circumstances." The Netherlands proposal for an undertaking "never under any circumstances" to make hostile use of environmental modification techniques raises the question of whether a party may make such use in response to a ^{treaty} violation by another party. In our view, the present text would not affect existing international law with respect to the remedies of one party in response to breaches by another. Under present international law, the injured party may withhold performance of its own obligations as a means of compelling the other party to perform, provided that the action taken is reasonably related to the injury suffered from the breach; and if the breach is so serious as to undermine the whole object and purpose of the treaty, the injured party may be entitled to terminate the treaty or suspend its operation in whole or in part.

The phrase "never under any circumstances" was used in the Biological Weapons Convention: (1) to make clear



against any other state. The guidance for the spring session on this issue remains valid. We continue to believe that the deletion of "Party" would be undesirable, in that it could reduce incentives for adherence and increase the likelihood of reservations by adhering states. The Soviets appear to share this view (even though their 1974 draft did not contain a "State Party" restriction).

"Never under any circumstances." The Netherlands proposal for an undertaking "never under any circumstances" to make hostile use of environmental modification techniques raises the question of whether a party may make such use in response to a ^{treaty} violation by another party. In our view, the present text would not affect existing international law with respect to the remedies of one party in response to breaches by another. Under present international law, the injured party may withhold performance of its own obligations as a means of compelling the other party to perform, provided that the action taken is reasonably related to the injury suffered from the breach; and if the breach is so serious as to undermine the whole object and purpose of the treaty, the injured party may be entitled to terminate the treaty or suspend its operation in whole or in part.

The phrase "never under any circumstances" was used in the Biological Weapons Convention: (1) to make clear that the Convention continued to apply in wartime; and (2)



in retaliation against their acquisition or use by another party. It has already been made clear in the CCD discussions that the ENMOD Convention does indeed continue to apply in wartime, and the delegation should reiterate this point if the question arises. However, the U.S. Government has not decided whether it is prepared to forego the possibility of retaliation in the environmental warfare context except for climate modification, where our renunciation is categorical. The delegation should therefore indicate that, for the present, we are not prepared to accept the Netherlands proposal and should, if appropriate, add that the present language of the treaty does not affect the existing remedies of parties under international law in response to a breach.

Commitment to continue negotiations. Romania has called for an undertaking to continue negotiations toward the complete prohibition of hostile use of all environmental modification techniques. We would prefer to avoid such a commitment in an operative article, and consider that the idea would be adequately expressed by the revised fourth preambular paragraph discussed above, affirming the objective of effectively eliminating the potential dangers of hostile use of enmod techniques.



3. Article II

Apart from one clarifying change in terminology (see below), we are not persuaded that any modifications are needed in Article II; in particular, we are concerned that opening the illustrative list of environmental phenomena to specific changes might create complications by encouraging yet more proposals. As it stands, the list has two basic characteristics: it illustrates phenomena taking place in each of the environments referred to in the article and it is limited to phenomena that if produced for hostile purposes would result, or could reasonably be expected to result, in widespread,



long-lasting, or severe destruction, damage, or injury and that therefore would constitute a violation of the convention.

FRG Proposal. The proposed addition of "altering the course of rivers and modifying natural drainage systems" raises several difficulties. First, the proposal in its present form refers to techniques rather than phenomena (this of course could easily be cured by redrafting). More importantly, although destruction, etc. caused by river diversion and watershed modification obviously could be WSLLS in scope, it cannot be assumed that the effects would have been produced by manipulating natural processes. River diversion in particular would most likely be accomplished by erecting or destroying dams or dikes, which in most cases would not involve use of enmod techniques. Thus, although it is theoretically possible that river diversion could be caused through manipulation of natural forces (e.g. landslides), and in such case would probably meet one or more criteria for treaty violation, we think reference to such an effect in the Article II illustrative list would introduce undesirable ambiguities. Modifying "natural drainage systems" is an even more ambiguous concept. We therefore believe that inclusion of either element of the FRG proposal could be more misleading than helpful.

Japanese proposal. Japan has proposed adding "changes in distribution of ice and snow masses on land surfaces and



in that they could be produced by use of enmod techniques. However, it is not clear that these effects -- as formulated in the Japanese proposal -- would result, or could reasonably be expected to result, in widespread, long-lasting, or severe destruction, damage or injury. Thus, adding the Japanese language would change the present character of the illustrative list. We would be prepared to consider a revised formulation that would indicate effects on the scale of the other examples as a possible addition, if there is significant support for the idea.

Italian proposal. We see no advantage in adding the words "influencing or affecting" to the phrase "changing ... the dynamics, composition," etc., and believe the words could create an undesirable element of ambiguity.

Perfecting change in terminology. Although no other delegation has remarked upon it, we perceive a needless ambiguity in use of the word "effects" with different significance in Articles I and II of the present text. This ambiguity would be cured by replacing "effects" with "phenomena" in Article II, a change which also would more accurately depict what the list in that Article is intended to illustrate. The delegation should gain Soviet concurrence



in this change and, on behalf of the co-sponsors, volunteer it with an appropriate explanation when Article II is taken up in negotiations.

4. Article III

The delegation should confirm that the Soviets can accept "do not apply to" in place of "shall not hinder" peaceful enmod uses. Assuming this change is acceptable to the Soviets, the delegation may agree to it publicly at any time regarded as opportune.

Our views with respect to the Argentine proposal for inclusion of a commitment like Article X (1) of the BW Convention have not changed. We would not consider such



a provision desirable, in view of the early stage of development of enmod techniques and the uncertainties surrounding their potential benefits.

If, however, it becomes clear that some concession on this point is necessary to gain the support of key delegations, we would be prepared to accept a provision limited to facilitating exchange of information on research and development activities with respect to peaceful use of enmod. We do not consider that such a provision would obligate parties to promote peaceful uses.

5. Article IV

Although Article IV (undertaking by parties to prevent treaty violations) appears to cause difficulties for a few delegations (e.g. the Netherlands, Japan, Italy), we believe it serves a useful purpose and should be retained. However, we would be willing to consider suggestions for clarifying the purpose and scope of the Article. We would have no objection, if others consider it desirable and the Soviets agree, to the replacement of the phrase "anywhere under its jurisdiction and control" with the words (used in the BW Convention) "within the territory of such state, under its jurisdiction or under its control anywhere."
(FYI. If substantial opposition to the Article develops among other delegations, we would be prepared to consider its deletion. However, the Article is considered important by the Soviets, and we would not want to indicate willingness



6. Article V

The complaints procedure set out in Article V has been the most widely and strongly criticized element of the draft, with opposition to it coming not only from the nonaligned but also from our allies. Some delegations, above all Sweden, have indicated they would not accept the convention unless the Article is changed.

The most common objection to the Article concerns its provision for investigation of complaints by the Security Council; this is regarded as discriminatory in view of the veto rights of permanent members. There are other objections as well. Some countries view the complaints procedure as too "political" and involving too prominent a body, while others object to the possibility that a complaint could be reviewed by a body that includes non-parties to the convention. Several delegations have expressed special concern that the procedure in adoption of/present Article V (which is virtually identical to corresponding provisions in the BW Convention) would cement recourse to the Security Council as a precedent for subsequent arms control agreements. In light of this asserted relationship, we would not wish to take a public position at variance with that of the Soviets on Article V, or to press them on changing the complaints procedure. However, we see no reason against reiterating our estimate regarding negotiability of the present provisions.



Accordingly, the delegation should make clear to the Soviets that while we can continue to support the present text of Article V, we doubt that the negotiations can be completed this year if the Article is not revised. We will not take the initiative in suggesting a revision to others; however, if the Soviets are interested, we are prepared to cooperate in finding an alternative solution that will meet our mutual concerns. Assuming the Soviets indicate willingness to explore possible solutions, the delegation should suggest they consider the alternatives set out below.

(1) The Soviets will recall we stated an interest in their views on suggestions for modifying Article V, inter alia those by the FRG and the Netherlands regarding establishment of an investigation mechanism outside the Security Council. We think it would be worthwhile to consider a variant of those suggestions in the form of a consultative body of treaty parties, established in the context of the provision for consultation and cooperation in the solution of problems (Article V(1)). Such a body could be authorized to receive communications from parties in cases of ambiguous or suspicious situations; to seek to determine the facts of the situation by various means, including an investigation if considered necessary; and to report the results to the parties. It would not draw conclusions concerning violation of the convention, but rather would gather factual information.

On the basis of the evidence gathered by the consultative body, any state party would be entitled under the UN Charter to lodge a complaint with the Security Council, which might take action in accordance with the Charter.

As indicated by Soviet interest, the delegation may offer more details about possible arrangements for such a consultative body, drawing on the following points:

-- The body could be composed of all parties, or, preferably, of a limited number of parties; in this connection, we would consider it important to develop a formula that would ensure US and Soviet participation. Provision would probably have to be made for rotation of the membership.

-- The body would meet only when a communication was received from a party, so requesting and describing a situation that the party considered might reflect a violation of the convention.

-- Meeting to consider such a communication, the body would review the material brought before it and determine whether an investigation of the situation was called for. It could decide, perhaps by a two-thirds vote, to initiate a fact-finding inquiry.

-- The results of the body's deliberations, including the results of any inquiry it undertook, would be reported to all states party. Any state party believing that the report indicated a violation could lodge a complaint with the Security Council in accordance with the Charter.



-- Recourse to the consultative body would not be a mandatory first step; if a state party wished to proceed directly to the Security Council, it could do so.

-- Provision might be made for services to be provided by the UN Secretariat, which could be made the "mail box" of the consultative body.

(2) Another possible way of meeting at least some objections to Article V would be to find a means of reassuring other state parties about intentions regarding use of a Security Council veto by a state party permanent member should the question arise of initiating an investigation.

-- As we informed the Soviets last April, the US delegation is authorized to state that the United States has never used the veto against decisions to undertake investigations necessitated in connection with the Council's dispute-settling functions under Chapter 6 of the UN Charter, and that we intend to maintain this practice with respect to investigations of substantial allegations submitted under Article V of the draft convention.

-- The delegation also is authorized to state US willingness to support a Security Council resolution embodying the pertinent language of the draft resolution submitted in a letter of April 25, 1972 (S/10619) by Poland, the UK and Yugoslavia regarding the complaint procedures of the Biological Weapons Convention. (The resolution was not tabled for



reasons unrelated to its substance). In the operative part of the resolution, the Council would have declared its readiness: (a) to consider immediately any complaints lodged under the relevant article of the BWC; (b) to take all necessary measures for investigation of a complaint; and (c) to inform BWC parties of the results of the investigation.

The delegation should ask whether the USSR has considered the possibility of making parallel declarations. It also should tell the Soviets that while we are willing to consider either of the approaches set out in (1) and (2) above, we think the former would be more likely to meet the concerns of the critics of present Article V.



Article VI

Guidance on Article VI prepared for the spring session remains valid. Although Article VI can be left to the final stage of negotiations, it will eventually be necessary to fill in the present blanks in the draft. We would be interested in any views the Soviets may have on amendment procedure and on when the subject should be raised during the course of negotiation.

We could accept the Canadian suggestion that, as in the Biological Weapons Convention, amendments enter into force (for parties accepting them) upon approval by a majority of parties.

Article VIII

Our position on the depositary question remains ^{as} set out in the position paper for the spring session. The delegation may indicate to the Soviets and others that we would favor naming the Secretary General as depositary.

Review Provisions

In view of the widely expressed desire to include a review provision in the Enmod convention, we would like to reach an understanding with the Soviets on a formula for such a provision that would be acceptable to both sides. We would be prepared to accept a provision for a review conference to be held (a) at intervals of five years or more and (b) on request of a majority of parties.



CONFIDENTIAL

Convention on the Prohibition of
Military or any Other Hostile Use of
Environmental Modification Techniques

The States Party to this Convention,

Guided by the interest of consolidating peace,
and wishing to contribute to the cause of limiting
the arms race, and of bringing about disarmament,
and of saving mankind from the danger of using new
means of warfare;

Recognizing that scientific and technical advances
may open new possibilities with respect to modification
of the environment;

Realizing that military use of environmental
modification techniques could have widespread, long-
lasting or severe effects harmful to human welfare,
but that the use of environmental modification techniques
for peaceful purposes could improve the interrela-
tionship of man and nature and contribute to the
preservation and improvement of the environment
for the benefit of present and future generations;

Desiring to limit the potential danger to mankind
from means of warfare involving the use of environ-
mental modification techniques;

CONFIDENTIAL

DECLASSIFIED

E.O. 12958, SEC. 3.5

NSC MEMO, 11/24/96, STATE DEPT. GUIDELINES

BY lwh NARA DATE 3/10/05



Desiring also to contribute to the strengthening of trust among nations and to the further improvement of the international situation in accordance with the purposes and principles of the Charter of the United Nations,

Have agreed as follows:

ARTICLE I

1. Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to another State Party.

2. Each State Party to this Convention undertakes not to assist, encourage or induce any State, group of States or international organization to engage in activities contrary to the provision of paragraph 1 of this Article.

ARTICLE II

As used in Article I, the term "environmental modification techniques" refers to any technique for changing -- through the deliberate manipulation of natural processes -- the dynamics, composition or



structure of the Earth, including its biota, lithosphere, hydrosphere, and atmosphere, or of outer space, so as to cause such effects as earthquakes and tsunamis, an upset in the ecological balance of a region, or changes in weather patterns (clouds, precipitation, cyclones of various types and tornadic storms), in the state of the ozone layer or ionosphere, in climate patterns, or in ocean currents.

ARTICLE III

The provisions of this Convention shall not hinder the use of environmental modification techniques for peaceful purposes by States Party, or international economic and scientific cooperation in the utilization, preservation and improvement of the environment for peaceful purposes.

ARTICLE IV

Each State Party to this Convention undertakes, in accordance with its constitutional processes, to take any necessary measures to prohibit and prevent any activity in violation of the provisions of the Convention anywhere under its jurisdiction or control.

CONFIDENTIAL



CONFIDENTIAL

-4-

ARTICLE V

1. The States Party to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of this Convention. Consultation and cooperation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

2. Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

3. Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United

CONFIDENTIAL



CONFIDENTIAL

-5-

Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Party to the Convention of the results of the investigation.

4. Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been harmed or is likely to be harmed as a result of violation of the Convention.

ARTICLE VI

1. Any State Party may propose amendments to this Convention. The text of any proposed amendment shall be submitted to (blank for depositary, which could be US, USSR, and possibly others, or UN SYG) which shall circulate it to all States Party.

2. An amendment shall enter into force for all States Party which have accepted it, upon the deposit with (either "a majority of States Party including the depositary Governments" if the US and USSR are depositaries or if they are not depositaries, "two-thirds of the States Party.") Thereafter it shall enter into force for any remaining State Party on



CONFIDENTIAL

-6-

ARTICLE VII

This Convention shall be of unlimited duration.

ARTICLE VIII

1. This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph (3) of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with (blank for depositary).

3. This Convention shall enter into force after the deposit of instruments of ratification by (blank for number) Governments ("including the depositaries" if US and USSR are depositaries) with Paragraph 2 of this Article.

4. For those States whose instruments of ratification or accession are deposited after the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

CONFIDENTIAL



CONFIDENTIAL

-7-

5. The (blank for depositary) shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

6. This Convention shall be registered by (blank for depositary) in accordance with Article 102 of the Charter of the United Nations.

ARTICLE IX

This Convention, the Chinese, English, French, Russian, and Spanish texts of which are equally authentic, shall be deposited with (blank for depositary) who shall send certified copies thereof to the Governments of the signatory and acceding States.

In witness whereof, the undersigned, duly authorized thereto, have signed this Convention.

Done in _____ on _____

CONFIDENTIAL



THE WHITE HOUSE

WASHINGTON

NISC

CONFIDENTIAL

MEMORANDUM FOR

Dep Dep.
The Secretary of State
The Secretary of Defense
The Director, Arms Control and
Disarmament Agency

Subject: Negotiation of the ENMOD Treaty

legal raised a question concerning the
DOD has expressed concern that the draft ENMOD treaty now being negotiated at the CCD ~~may contain a legal dilemma as it relates to the regulation of the obligations undertaken by states party to the treaty, and that this confusion could impact not only the ENMOD treaty itself but future treaty negotiations.~~

questions

An interagency study group should be formed to assess these ~~issues~~ as outlined in the attached terms of reference provided by DOD. The interagency group should be chaired by the representative of the Secretary of State, ~~and can as appropriate make use of outside consultants.~~

~~Since the U.S. is scheduled to hold bilateral discussions with the Soviets in Geneva prior to the opening of the summer CCD session, it is important that this group complete its assessment and forward its findings by June 16.~~

Should

recommendations for any supplementary instructions to the US delegation within ~~two weeks~~ one week.

Brent Scowcroft

CC. Chan JCS

CONFIDENTIAL/GDS

WH 3/10/05

