

Krepon
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May 6, 1992

Dr. Matthew Meselson
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Harvard University
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Dear Matthew,

Thank you for your letter of May 2nd, with enclosures. I remain willing to compose a joint statement on permissible uses of riot control agents under the Chemical Weapons Convention -- as the staff of the Foreign Relations Committee appears to want -- if we are able to reach a meeting of the minds. I am also willing to edit and "correct" my testimony if I have mischaracterized your views. It is still not clear to me, after reading your testimony of May 1st and issues no. 14 and 15 of the Chemical Weapons Convention Bulletin, what your views are. Perhaps your response to this letter will clarify matters.

As you state in your testimony, "many although not all" uses of riot control agents envisioned in President Ford's Executive Order "would occur on territory under the clear and direct control of the using state." (Emphasis added.) As such, you state that "it might therefore be possible to devise generally acceptable language to include them among those that are not prohibited under the Chemical Weapons Convention." It is hard for me to tell from this testimony which uses of riot control agents you are prepared to bless.

The hard cases, of course, relate to potential uses not on territory under the user state's control. I would include among these cases rescue missions in remotely isolated areas, such as rescuing downed air crews, and quelling rioting prisoners of war. A third exception that has validity, in my view, is the possible use of riot control agents to counter terrorist operations against American citizens or property on the high seas or in foreign lands, such as U.S. embassies or airliners.

Would you agree with me that these exceptions to the general prohibition against the use of riot control agents for military purposes are valid? An unsigned editorial, "No Gas," in issue no. 14 of the Chemical Weapons Convention Bulletin, co-edited by you and Julian Perry Robinson, argues against any exceptions other than domestic law enforcement and riot control. An unsigned editorial in issue no. 15 endorses a solution to this issue "short of

permitting use as a means of warfare." Do the exceptions suggested above constitute, in your view, "a means of warfare"?

As I stated in my testimony, I disagree on substance with the arguments used on behalf of a complete prohibition of riot control agents for military-related purposes in the Chemical Weapons Convention. Given my assessment, and given my concerns that a flat prohibition could jeopardize prompt Senate consent to ratification, I believe it would be most unwise to push for a flat prohibition on the use of riot control agents on territory not under the clear and direct control of the using state.

Your letter acknowledges the fact that "the U.S. has hardly ever resorted to any of the uses of riot control agents that are authorized" under President Ford's Executive Order. This argument strikes me as reinforcing the case for limited exceptions under the CWC. Your most recent unsigned editorial cites the risk of escalation as the reason to prohibit the use of riot control agents in areas not under control of the using state. But escalation arising from limited exceptions has not been an issue for the United States since 1975. Escalation might be an option for states that choose not to join the Convention, however.

As you know from my testimony, I recommend that the executive branch and the Senate consider an approach to the CWC similar to, but more narrow than, the understanding worked out to facilitate ratification of the Geneva Protocol in 1975. I realize that this position leaves open the possibility of serious abuses arising from these limited exceptions. As such, those who are in favor of the course of action I endorse bear a special responsibility to monitor compliance and speak out when we perceive abuses are taking place.

To sum up, please clarify where you stand on exceptions to the use of riot control agents in the CWC. If I have mischaracterized your views, I would be pleased to correct the record. If we see eye to eye, I would be pleased to issue a joint statement. If we disagree, we should be able to do so agreeably.

Sincerely,



Michael Krepon

cc: David Hafemeister
Julian Robinson
Elisa Harris

ADDITIONAL TESTIMONY OF MICHAEL FREPON ON CWC, 1 MAY 1992

The Senate Committee on Foreign Relations has asked me to provide my views on efforts to include a complete prohibition on the use of riot control agents (RCAs) for military purposes in the Chemical Weapons Convention (CWC). In my view, such an absolute prohibition would be valid if the following assumptions were true:

- 1) Any battlefield use of RCAs is an unnecessary evil, OR
- 2) Even limited uses of RCAs will inevitably lead to widespread abuses, including the possible use of lethal chemical weapons, AND
- 3) Allowing RCAs for limited military purposes will inevitably lead to development and production of new, more sinister agents that could also be used on the battlefield and lead to further abuses, AND
- 4) These negative implications clearly outweigh the potential benefits of limited, carefully circumscribed future uses of RCAs on the battlefield or against terrorist groups, AND
- 5) Any future understandings reached between the executive branch and the Senate to carefully circumscribe RCA use are doomed to fail.

I believe that ALL of these assumptions are subject to question.

** Assumption #1 was rejected by the executive branch and the Senate in their 1975 understanding which permitted the ratification of the Geneva Protocol.

** Assumption #2 carries the greatest weight, given the historical record and its principal exception, the Vietnam War, where widespread abuses occurred regarding the use of RCAs. In Vietnam, the progression from RCAs to blister or nerve agents did not occur. Nor can this progression be assumed from other cases. Can we be sure, for example, that the combatants in World War I would have refrained from the use of blister agents if they hadn't used tear gas?

** Assumption #3, like Assumption #1, presumes that novel RCAs of all kinds are an unnecessary evil. But even if novel RCAs are prohibited for military forces, their development would not be prohibited for domestic or anti-terrorist purposes -- in the U.S. or in other countries.

** Assumption #4 awaits the judgment of history yet to be made, not past events. How much have the United States and other nations learned from past errors, and are we doomed to repeat them? The negotiation of the CWC gives reason for hope in this regard. Against its significant accomplishments, carefully limited exceptions for RCA use do not appear to be an open invitation to backsliding.

** Assumption #5 may be true or false -- again, only time will tell. Available evidence suggests, however, that the 1975 understanding between the executive branch and the Senate has worked satisfactorily to date for U.S. military forces. This understanding provides a means to check the widespread use of RCAs that was not present in cases prior to 1975.

I believe that limited and carefully circumscribed uses of RCAs have validity for such purposes as rescuing downed air crews, controlling rioting prisoners of war, and combatting terrorist groups. Given this belief, and given my concerns that an absolute prohibition on RCAs in military or anti-terrorist activities could jeopardize the Senate's consent to ratification of the CWC, I oppose such a blanket prohibition. Instead, I recommend that the executive branch and the Senate consider an approach to the CWC similar to, but more narrow than, the understanding worked out to facilitate ratification of the Geneva Protocol.

I also believe that serious abuses to these limited exceptions cannot be ruled out in the future. As such, those who are in favor of the course of action I endorse bear a special responsibility to monitor compliance and speak out when we perceive abuses are taking place.

Michael Krepon