

Chayes

sent 17Apr.97

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Date: 17 April 1997

To: Professor Abram Chayes

From: Matthew Meselson

Number of Pages including this sheet: 54

Dear Abe:

Attached is the updated version of the letter on Article X and XI which will be sent to Senator Bidden on Monday afternoon, April 21. It was sent by Melinda Lamont-Havers at the Henry L. Stimson Center in Washington.

If you wish to be a signature to this letter please contact either Melinda at:

(202) 223-5956(TEL)

(202) 785-9034(FAX)

or myself at the above numbers.

Matt

The Henry L. Stimson Center

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FACSIMILE TRANSMISSION

To: Matthew Meselson

Fax: 1-617-496-2444

From: Melinda Lamont-Havers

Date: April 17, 1997

Subject: Article X and XI letter to Senator Biden, 4 pages

Attached is the latest updated version of the letter on Article X and XI which will be sent to Senator Biden on Monday afternoon, April 21.

Please send me any additional changes you may wish to add or names of people who wish to sign on to the letter by Monday morning.

Thanks very much,

Melinda

Senator Joseph R. Biden, Jr.
221 RSOB
US Senate
Washington, DC 20510

Dear Senator Biden:

RESPONSE TO CRITICISM OF CWC ARTICLES X AND XI

In recent testimony, opponents of the Chemical Weapons Convention (CWC) alleged that CWC Article X pledges the parties to "undertake to share everything that is hard to achieve in a chemical weapons capability," implying that the United States will be required to hand over advanced chemical technology to, AMONG OTHERS, rogue states.

Furthermore, opponents allege that Article XI tends very much in the same direction and will have a similar result. These allegations are a false and unjustified reading of the CWC both by the treaty's own terms and by general principles of international law.

It is axiomatic that all treaty provisions must be interpreted in view of the purposes and objects of that treaty. Accordingly, a subsidiary obligation should never be read out of context to authorize behavior that would contravene a primary obligation. Yet, by alleging that Articles X and XI will contribute to the proliferation of chemical weapons programs, opponents are committing this fallacy precisely.

Article I, which states the CWC's general obligations, provides that:

Each State Party to this Convention undertakes never under any circumstances:

- (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
- (b) To use chemical weapons;
- (c) To engage in any military preparations to use chemical weapons;
- (d) **To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.**

Clearly, by suggesting that Article X authorizes States Parties to develop a "militarily effective chemical weapons capability," CWC opponents ignore the incontrovertible fact that nothing in Article X can undermine Article I and that any cooperative, bilateral, or other effort to assist a country in developing such a capability would violate Article I (d).

This conclusion is supported by the voluntary language of Article X, paragraphs 2, 3, & 6. In brief, these paragraphs serve to clarify that the CWC does not restrict a State Party from researching CW protection capabilities (para. 2), does not restrict trade in equipment, material and scientific and technological information concerning means of protection (para. 3), nor restrict bilateral assistance agreements concerning the emergency procurement of assistance (para. 6).

Each of these paragraphs clarify that the CWC, should not be interpreted to restrict transnational cooperation regarding chemical weapons production capabilities; they do not create new affirmative obligations for State Parties. Nothing in these paragraphs allows, under any circumstances, that a State Party engage in behavior that would contravene its Article I obligations.

The only obligation in Article X is contained in paragraph 7 which requires a State Party to provide assistance through the organization by (a) contributing to a voluntary fund for assistance; (b) agreeing with the OPCW concerning the "procurement, upon demand, of assistance"; or (c) declaring what kind of assistance might be provided in response to an appeal by the Organization. While each State Party is required to provide some type of assistance, it is not bound to provide assistance that would encourage a CW capability; again, a proper reading of the treaty as a whole would prohibit the provision of assistance that would encourage such a result.

Article XI follows essentially a similar structure as Article X and should be understood in the same context. Its only requirement is that each State Party review its existing national regulations to make them consistent with the CWC (para. 2 (e)). The remainder of its provisions clarify that the CWC should not restrict the free trade, research, and exchange of chemicals. Yet, all of these clarifications are conditioned on the explicit statement that they are "[s]ubject to the provisions of this Convention and without prejudice to the principles and applicable rules of international law" (para. 2).

Throughout, the Chemical Weapons Convention is a manifest effort to balance the elimination of chemical weapons with the legitimate security requirements of States as well as their legitimate need to use, develop and trade chemicals for commercial purposes. CWC opponents have focused on selected provisions of the CWC which reflect one side of this balancing effort, misread them to render them obligatory instead of voluntary or conditional, and wholly ignored the language of the treaty as well as principles of international law which require that these provisions never be used to contravene or undermine Article I.

At the endgame of the negotiation, the Bush Administration, with other members of the Australia Group, actively fought against an interpretation by Iran and others similar to that which is being offered by treaty opponents on Articles X and XI. The position of the US and its allies prevailed; thus preserving the right to impose national export controls.

Sincerely,

* Abram Chayes
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Harvard Law School

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And others