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Short Description
Memo to Berger re: CWC

Description
Memo to Sandy Berger from Senator Helms expressing his "offense" at letter circulated in the Senate by ACDA Director Holum's advisor, Dr. Lori Esposito Murray. Helms writes: "If there is to be a constructive dialogue in this area, all of us on both sides of the issue must refrain from such erroneous assertions wrongfully attacking distinguished Americans who deserve better than to be mischaracterized by Dr. Murray or anyone else on Director Holum's staff."

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UNITED STATES SENATE
COMMITTEE ON FOREIGN RELATIONS
WASHINGTON D.C.

1997 FEB -4 PM 5:16

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DATE: 2/4/97

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NUMBER OF PAGES (including cover sheet): 5

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

February 4, 1997

Mr. Sandy Berger
 National Security Advisor
 The White House
 Washington, D.C. 20500

Dear Mr. Berger:

I read with some interest the letter circulated in the Senate by ACDA Director Holum's advisor on the Chemical Weapons Convention (CWC), Dr. Lori Esposito Murray. I found it offensive that this letter accuses an impressive array of more than 50 cabinet members, officials, generals, and admirals from the Reagan and Bush Administrations of "significant misinformation" and "misstatement" in their September 6, 1996 letter to Senate Majority Leader Lott regarding the perilous deficiencies of the CWC.

It goes without saying that I share, and have voiced, many of the same concerns expressed by this distinguished group of foreign policy experts whom Dr. Murray in essence attacked. Accordingly, let me set the record straight on three key issues regarding the Convention.

First, the CWC does not -- in fact -- effectively cover the types of chemicals used to manufacture chemical weapons. The CWC contains Schedules which identify specific chemicals for the application of verification measures. However, those lists fail to include more than one-third of the chemical weapons precursors already controlled by the United States and its allies under the Australia Group. In other words, everything from Sarin and Soman to VX can be manufactured using a variety of chemicals which are not identified by the Schedules for the application of the verification regime.

Moreover, there is mounting evidence that Russia continues to pursue the development of new chemical agents. Two obvious means by which the CWC's verification regime can be evaded are: (1) production of non-classical agents which are not on the CWC's Schedules and therefore are beyond the capability of inspectors to detect; and (2) development of binary agents which can be stored separately and readily explained as commercial chemicals. Mr. Berger, as you well know, this is not science fiction. Other countries have already seized upon this serious deficiency in the treaty.

There was an article in this morning's *Washington Times* that should serve as a wake-up call for the Administration and others who are using puzzling tactics in pushing ratification of the CWC. Under a headline reading "Russia Dodges Chemical Arms Ban" it was reported that Russia has developed new agents "as toxic as VX, as resistant to treatment as soman, and easier to manufacture than VX." This article confirms statements by Dr. Vil Mirzayanov, former chief of counterintelligence at the State Union Scientific Research Institute for Organic Chemistry and Technology, that the Russian Federation may continue work on novel nerve agents far more lethal

than any other known chemical agents. In an article in *The Wall Street Journal* on May 25, 1994, Dr. Mirzayanov noted:

It is very easy to produce binary weapons without detection under the guise of agricultural petrochemicals. The products easily pass all safety tests and become registered with the government as legitimate commercial products. The plant receives a license for production and goes into operation. Neither the firm's leaders, its staff, nor international inspectors know that the chemicals are a component of a new binary weapon... This new weapon, part of the ultra-lethal "Novichok" class, provides an opportunity for the military establishment to disguise production of components of binary weapons as common agricultural chemicals; because the West does not know the formula, and its inspectors cannot identify the compounds.

Dr. Mirzayanov and other dissident Russian scientists have stated that Russia's binary weapons program is specifically crafted to evade detection under the verification regime of the CWC. They allege that components for the binary agents have been given legitimate commercial applications, that they are not covered under the CWC's Schedules, and that OPCW inspectors will not know what they are examining when they come across such chemicals. Lending support to this concern, a declassified portion of a May 1995 National Intelligence Estimate (NIE) puts it: "Production of new binary agents would be difficult to detect and confirm as a CWC-prohibited activity."

Second, I am at a loss as to how Dr. Murray could accuse anyone of "misstatement" for correctly noting that the CWC will not do one thing to reduce the chemical weapons arsenals of terrorist countries and other nations hostile to the United States. Roughly one third of the countries identified by our government as possessing chemical weapons have not even signed the CWC, let alone ratified it. Yet those countries -- among them Libya, Syria, Iraq, and North Korea -- are the countries most likely to use chemical weapons against America or our allies. Moreover, not one country of concern to the United States has ratified this Convention. Neither the People's Republic of China nor Iran, for example, have deposited their instruments of ratification.

Furthermore, Russia -- the country that possesses the largest and most sophisticated chemical weapons arsenal in the world -- has consistently refused to agree to implement its commitments to eliminate its chemical weapons stockpile, despite the 1990 U.S.-Russian Bilateral Destruction Agreement (BDA). To the contrary, Russia consistently has refused to accurately declare the size of its chemical weapons stockpile, and to provide information on the status of its binary chemical weapons program. This, coupled with Russian withdrawal from the BDA and the Russian Parliament's rejection of the chemical weapons destruction plan, portends ominous things to come in terms of Russia's ratification of the Chemical Weapons Convention (CWC).

Third, the CWC is not "effectively verifiable," and Dr. Murray should not have made representations to the contrary. I am aware that ACDA Director Holum testified on March 22, 1994, that "the treaty is effectively verifiable" and that the Deputy Under Secretary of Defense for Policy, Walter Slocombe, made similar claims on May 13, 1994. However, just because Administration officials have declared the CWC to be "effectively verifiable" does not make it so.

Indeed, by making such claims the Clinton Administration has done great violence to the standard of "effective verification" developed and refined by the Reagan and Bush Administrations as a key criteria for arms control treaties. The definition of "effective verification" was first offered to the Foreign Relations Committee by Ambassador Paul Nitze during hearings on the INF Treaty in 1988 and subsequently further refined on January 24, 1989, by ACDA's Director, Major

General William Burns, and again in January 1992 by Secretary of State James Baker. The components of effective verification, as defined during testimony, are: (1) a "high level of assurance" in the intelligence community's ability to detect (2) a "militarily significant" violation in (3) a "timely fashion."

In my view, this standard cannot be met by the CWC. On March 1, 1989, then-Director of Central Intelligence (DCI) William Webster stated that monitoring the CWC "is going to be costly and difficult, and, presently, the level of confidence is quite low." On January 24, 1989, Director Burns noted that "verification of any chemical ban is going to be extremely difficult." ACDA's Section 37 Report on the CWC, submitted on March 18, 1994, states that the CWC's verification provisions, together with National Technical Means (NTM), "are insufficient to detect, with a high degree of confidence, all activities prohibited under the Convention." Then-DCI Woolsey testified on June 23, 1994 that "I cannot state that we have high confidence in our ability to detect noncompliance, especially on a small scale."

Most significantly, declassified portions from the August 1993 NIE note:

The capability of the intelligence community to monitor compliance with the Chemical Weapons Convention is severely limited and likely to remain so for the rest of the decade. The key provision of the monitoring regime -- challenge inspections at undeclared sites -- can be thwarted by a nation determined to preserve a small, secret program using the delays and managed access rules allowed by the Convention.

With respect to military significance, General Shalikashvili testified on August 11, 1994 that "In certain limited circumstances, even one ton of chemical agent may have a military impact... With such variables in scale of target and impact of chemical weapons, the United States should be resolute that the 1 ton limit set by the Convention will be our guide." The bottom line is that a stockpile of less than 100 tons of chemical agent can prove of military significance. Unclassified portions of the NIE on U.S. Monitoring Capabilities indicate that it is unlikely that the U.S. will be able to detect or address violations in a timely fashion, if at all, when they occur on a small scale. And yet, even small-scale diversions of chemicals to chemical weapons production are capable, over time, of yielding a stockpile far in excess of a single ton. Moreover, few countries, if any, are engaging in much more than small-scale production of chemical agent. For example, according to today's *Washington Times*, Russia may produce its new nerve agents at a "pilot plant" in quantities of only "55 to 110 tons annually."

In other words, the intelligence community has low confidence in its ability to detect in a timely fashion the covert production of chemical weapons which could produce militarily significant quantities. We should not cheapen the norm of effective verifiability by claiming that the CWC meets this standard -- for it patently does not.

In conclusion, verification of the CWC is plagued by the fact that too many chemicals are dual-use in nature. Chemicals used to make pen ink can be used to make deadly agent. It is impossible to monitor every soap, detergent, cosmetic, electronics, varnish, paint, pharmaceutical, and chemical plant around the world to ensure that they are not producing chemical weapons, or that toxic chemicals are not being diverted to the production of weapons elsewhere. Countries such as Russia are well aware that if they ratify the CWC, they can cheat with impunity. Indeed, on May 6, 1996 the Defense Intelligence Agency informed the Chairman of the Senate Select Committee on Intelligence that Russia intends to maintain the capability to produce chemical weapons, regardless of whether or not it ratifies the CWC.

What the Chemical Weapons Convention will do is have a major impact upon industry. On May 14, 1996, Director Holum wrote to me stating that "we are operating on the assumption that up to 3,000 companies could potentially be affected in some manner by the CWC." (For this reason, there are obvious questions about Dr. Murray's assertion that only "approximately 2,000 companies" will be affected.) In fact, my review of a database supplied to the Committee by ACDA persuades me that as many as 8,000 companies potentially will have data declaration and/or inspection obligations under the CWC. Firms that manufacture anything from dyes and pigments, insecticides, pharmaceuticals, ceramics, nylon, paint and varnish, electronics, textiles, and soap and detergent -- just to name a few -- all will be subject to multinational regulation under the CWC.

These companies will be forced to spend more money to hire more people to fill out more government forms. Some will be forced to submit to routine inspections. Others may be subject to intrusive and potentially unconstitutional challenge inspections by an international inspectorate. In fact, we should fully expect some of those foreign inspectors to practice economic espionage against our companies. For all of the aforementioned reasons, scores of companies wrote to members of the Senate last fall urging them to vote against the CWC. Member companies of the Chemical Manufacturers Association joined with small chemical manufacturers, companies from a wide variety of other industries, and organizations such as the National Federation of Independent Business to oppose the treaty.

Mr. Berger, I believe that rather than engaging in verbal barrages we must address the substantive concerns regarding the CWC's impact upon the U.S. economy and our national security. If there is to be a constructive dialogue in this area, all of us on both sides of the issue must refrain from such erroneous assertions wrongfully attacking distinguished Americans who deserve better than to be mischaracterized by Dr. Murray or anyone else on Director Holum's staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Helms". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

JESSE HELMS