
United States House of Representatives

Excerpts From:

A Special Investigations Briefing for Members of Congress

"The Biological Weapons Convention: Rethinking Our Priorities After September 11"

November 15, 2001

SUMMARY:

Representative Henry A. Waxman is the Ranking Democrat on the Committee on Government Reform in the United States House of Representatives. On November 15, 2001, he invited members of Congress to attend a briefing regarding the Bush Administration's rejection of international negotiations to establish a mandatory inspection regime under the 1972 Biological Weapons Convention. Three former high-ranking U.S. government officials presented at the briefing:

Elisa Harris was the Director for Nonproliferation and Export Controls for the National Security Council from 1993 to 2001. She was responsible for coordinating U.S. policy on chemical, biological, and missile proliferation issues.

Douglas MacEachin spent over 32 years with the United States Central Intelligence Agency. In his first 25 years, he worked as a Soviet/Warsaw Pact military analyst. He was later chief of the Arms Control and Intelligence staff and was then appointed to the post of Deputy Director of Intelligence.

Ambassador James F. Leonard has had a distinguished career as a diplomat, arms control negotiator and foreign affairs expert. He served as United States adviser to Cyrus Vance for the Olof Palme Commission on Disarmament and Security; Deputy Special Negotiator for the Middle East Peace Negotiations from 1979-81; and Assistant Director of the U.S. Arms Control and Disarmament Agency. He was instrumental in the

original negotiations for the Biological Weapons Convention in 1972.

These presenters raised serious concerns regarding the potential short and long term effects of the Bush Administration's position. In the aftermath of the September 11 terrorist attacks and the ongoing anthrax crisis, members of Congress who attended the briefing expressed their view that the Administration should reevaluate its position and continue negotiations for a mandatory inspection regime when signatories meet in Geneva later this month.

EXCERPTS:

The Threat

Mr. MacEachin: I would argue that the principal concern today, the thing that I would be most worried about . . . would be a state program using a terrorist mechanism to deliver it. What I am saying is that it is supported by the state, but they could find the terrorist group to make the delivery and then deny any connection with it.

Ms. Harris: [M]any experts believe that terrorists are more likely to seek assistance from a country with experience in making biological weapons.

Mr. MacEachin: [T]he concern now is not a state, in my own view, developing programs like the former Soviet Union that are massive . . . but, rather, a covert state program done on a scale which is difficult to detect and in which the means of delivery of the weapon is not the traditional military

means but some kind of terrorist mechanism
And I worry about that more than any other.

Ms. Harris: Key countries . . . that are both state sponsors of international terrorism and that are biological weapons proliferation concerns are Iraq, Iran, North Korea, Syria, and Libya. And I would emphasize that, except for Syria, all of these countries are parties to the Biological Weapons Convention.

Mr. MacEachin: [I]f one says, “where is the best place to carry out an illicit program?,” the best way to hide it is to bury it in a legal program. So the first step is to say that all legal programs must be declared and they must be subject to these transparency measures.

Ms. Harris: Although the anthrax incidents have shown how much needs to be done to improve our public health system, our law enforcement capabilities, and our intelligence collection and analysis, it would be a grave mistake to stop there. The catastrophic potential of biological weapons in the hands of national or sub-national groups is so great that the goal must be prevention.

Congressman Waxman: Well, I think that is the key point In the past they have been evaluated as if they are theoretical, a realistic possibility. But now, in light of what we have experienced since September 11th and the anthrax scare in the United States and the fact that we have seen terrorism, biological terrorism in action, it is not theoretical any longer.

Ms. Harris: Americans expect their Government to do all it can to protect them against this newly perceived threat to civilians. But the United States cannot cut off the sources of the threat by acting alone. We must continue to work with the international community if we want to prevent future exploitation of disease either as a weapon of war or of terror.

Value of Inspection Regime

Ms. Harris: [G]iven the link between large-scale terrorist potential in the biological weapons area and the need that many experts believe for assistance from a national biological weapons

program, it is absolutely critical that we move forward with mechanisms that make it harder for countries pursuing those national programs to carry out their activities.

Ms. Harris: I think preventing use is tremendously important, but it is not enough. Preventing acquisition of these capabilities in the first place ought to be our first objective and our first line of defense.

Congressman Waxman: Ambassador Donald Mahley, the chief State Department negotiator on this issue, testified before one of our subcommittees. In arguing in favor of inspections, he said, “Actually talking to scientists and production workers on the ground as well as observing the atmospherics of a facility are ways for experienced observers to detect anomalies.” So if you are there, one, you are making it harder if something is going on that they have to cover it up, and you can pick up just through an inspection that something is going on that deserves further scrutiny. That was his opinion, and I gather you agree with that.

Mr. MacEachin: Absolutely, sir. In fact, that is exactly the point. Now I tell you, Mr. Cheater, do you want to take a chance? Maybe you can get away with it, and maybe this anomaly will be spotted. If you want to take the ultimate safe way, now you have to go into a totally sequestered operation.

Mr. MacEachin: [H]ow many people at that facility are going to be aware that that program is going on? How many people are going to be aware of the concealment measures that are taken when an inspection is announced? And how many of those people are going to talk about it later?

Congressman Waxman: Are there examples of whistle-blowers who have disclosed biological weapons programs in the past?

Mr. MacEachin: Yes, sir. The best example that I can possibly give you was — you described President Yeltsin’s admission in 1992 And up to the time of that whistle-blower, the issue was still being heavily debated within this community as to whether they did or did not have this program, which actually began literally the day they signed

the BWC in 1972 or 1973.

Congressman Waxman: Ms. Harris, your point seems to me to be very clear that if we are going to be taking a preventive approach, we need some enforcement mechanism Is that your view?

Ms. Harris: Absolutely, Congressman. As my colleagues have said, no one expected that this protocol would solve the entire problem, but it is an important part of a comprehensive approach to dealing with biological weapons threats.

Mr. MacEachin: A state may sign up to the Convention or refuse. Refusal carries a certain burden of its own. Maybe a refusal could be seen as confession. If you sign up, you will subject all of these facilities to mandatory transparency measures. And then if you want to carry out an illicit program, you have to choose between carrying it out at one of these facilities which is subject to mandatory inspections or you can try to carry it out in a total secret compartment. Now, if an evaluation is going to be made about the value and effectiveness of such measures, the evaluation has to be made in terms of how it affects this overall architecture. To simply say whether or not this inspection will detect this or that is totally incomplete.

Ms. Harris: [The protocol] will make it harder for cheaters to cheat. It will get us more information about activities that we can then add to our own national information and help put together a more complete picture of what may be going on in the country.

Mr. MacEachin: No one really, as I said, expected to walk into these mandatory inspections and detect a cheater, but what we did want is to force the cheating off into a totally compartmented operation.

Ambassador Leonard: [W]hen [UNSCOM] entered Iraq, [UNSCOM] was told by the Iraqi Government quite formally and officially, "We have no biological weapons program at all." They didn't believe it. They carried out all sorts of inspections, and they worked for years. They were not lulled into a false sense of security by their failure to find a smoking gun at the beginning of that process They kept at it. They found, gradually, indications in the atmosphere, as you

spoke and Mr. MacEachin spoke, of what one sees if you are going around laboratories and so on, even the absence of explanations for certain things. And eventually they did come up with the whole vast program that the Iraqi Government had been carrying out That is precisely the way that inspections can work. If the whole process is looked at as an integral operation, then the truth will eventually come out.

Bush Administration Reversal

Ambassador Leonard: [E]verything changed after the review that took place this spring, and we got — instead of suggestions that further measures needed to be developed, we got a categorical, blunt, total rejection of not only the text of the protocol but of the whole approach that it embodied. That was a reversal, a diplomatic reversal of the type that I don't recall ever seeing on the part of a major government in my 40 years of experience in this field.

Mr. MacEachin: As somewhat of an outside observer, who went from totally inside — I was at the meetings in Moscow when that trilateral agreement was put together — to the total outside . . . there was a surprising unanimity ranging from Iran, London, to Germany, that there was a trend in the United States attitude toward security: post-Cold War, it is over, we won, we can go it alone from now on. And I think that the perception of the way this move is seen as simply further down that path.

Congressman Waxman: I want to point out that our colleague, Congressman Tierney, at a subcommittee hearing asked the State Department to furnish to the members of the Committee an evaluation done by the State Department that led them to this conclusion that the draft protocol should be rejected. And he asked Ambassador Donald Mahley, who was the principal State Department negotiator . . . and he agreed when he was there that he would provide it to us. That was in last July. It is now the middle of November, and we still haven't received it.

Ambassador Leonard: [T]he whole effort to do something about biological weapons has been led by the United States [I]t was Mr. Nixon and

Dr. Kissinger and Melvin Laird who sold it to the United States Government, to our military — who didn't resist, by the way. They didn't like biological weapons either, and they were, I think, rather glad to be told to get out of the business, as happened in 1969. But we led from then on, and we led all through Republican administrations and Democratic administrations.

Ambassador Leonard: [T]he effort to strengthen the treaty went on during the Carter administration, during the Reagan administration, the Bush administration, and the Clinton administration. And that is why it is so painful to see this reversal now.

Congressman Waxman: Unfortunately, press accounts indicate that the administration will continue its opposition to further negotiations on mandatory inspections. This is bewildering. It is my understanding that the United States was the only country to oppose the draft protocol this summer in Geneva. I do not understand why the administration would be so soft on bioterrorism at this point in our history.

Ambassador Leonard: I would hope that the leaders of the Democratic Party, as they think what can be done about this, will consider any means to bring Republicans, thoughtful Republicans, into collaboration with them in trying to bring the administration to take a more moderate view. Because I fear that, as things stand right now, the administration next week in Geneva will be taking an extremely hard line. They tried their best on July 23rd to slam the door shut and lock and shoot the bolt, close it tight, toward any further work on a treaty or agreements or anything of this kind. From all I can make out, they remain in that same general disposition today

Ms. Harris: I think many of us hoped that the events of September 11th and the subsequent anthrax incidents would, indeed, force the administration to reconsider its position on the value of legally binding measures to strengthen the Biological Weapons Convention. But by all indications that has not happened.

Objections by Pharmaceutical Lobby

Ambassador Leonard: [T]he pharmaceutical industry, from my understanding of this from a great many witnesses that I have talked to, have fought every step of the way, a rear-guard action, so to speak, to keep reasonable measures from being included in the Convention. And the Convention, if anything . . . goes too far to protect proprietary interests. It goes farther than the Chemical Weapons Convention does to protect those same interests.

Congressman Waxman: I would hope that, as we look at this Biological Weapons Convention, we are not going to stand up and fight for the privacy of the pharmaceutical industry even when it puts the world at greater risk of bioterrorist threat.

Ambassador Leonard: The pharmaceutical industry has not behaved as well in this negotiation as did the chemical industry in connection with the Chemical Weapons Convention.

Congressman Waxman: The inspection regime supported by the Clinton administration was modeled on the successful inspection regime established under the Chemical Weapons Convention. Although the chemical companies expressed similar concerns about inspections under that treaty, in fact, these problems never materialized. To the contrary, the United States General Accounting Office found that chemical companies were able to protect proprietary information, avoid negative publicity, and keep costs down.

Congressman Waxman: It is hard for me to understand why an administration would ask the American people to take less individual privacy protections and then stand up for the privacy protections of the pharmaceutical industry.

Congressman Waxman: Well, let's look at the other side of it. We are balancing out protection of the public against the privacy interests of the pharmaceutical industry. This is the only industry that has raised a concern, and it is very similar, as I pointed out in my opening statement, to the way the chemical industry responded when they had the Chemical Convention, because they raised all the same issues. Their privacy, business secrets, trade

secrets would be exposed, and they would be put at a competitive disadvantage, all of that. It turned out not to have been true, but they didn't prevail. Now you have got the pharmaceutical industry arguing against the enforcement mechanisms, and they seem to be prevailing with this administration. Of course, I must say the pharmaceutical industry seems to prevail with this administration on a whole range of issues, but we won't go into all of that now. Any response to their arguments? I mean, they feel obviously sincerely about it. They think they are going to be hurt.

Ms. Harris: Congressman, we in the Clinton administration were very sensitive to this need to strike a balance between, on the one hand, securing information about what other countries were doing that could be potentially of concern in the biological area and at the same time protecting our military biodefense programs and proprietary information in the pharmaceutical industry. And the protocol that emerged from this negotiation in the spring I believe does strike the right balance and, in fact, contains more protections than are contained in the Chemical Weapons Convention, which was ratified by the Senate in 1997.

Congressman Waxman: It seems like the United States is all alone in opposing going forward with some enforcement mechanisms. The European Union seems to favor it. Great Britain seems to favor it. Great Britain, of course, is our ally right now, lending intelligence, lending troops, doing everything in the fight against Osama bin Laden, yet they want us to go forward with negotiations on an enforcement mechanism with inspections that will be mandatory. Do they care any less about their pharmaceutical industry in the European Union? They have an advanced pharmaceutical — in fact, some of the drug companies are really headquartered in Europe.

Ambassador Leonard: Yes, in fact, sir, many of these companies are binational. They are half-British and half-American, or 60/40, or whatever. And the British side of it has not got these programs.

Military Issues

Ms. Harris: In addition to saying that the protocol would not catch cheaters, the other two points that have been made by administration officials are that, first, it will put at risk proprietary information in the industry; and, second, it will jeopardize sensitive biological defense activities that are being undertaken by the military.

Congresswoman Janice Schakowsky: Will you respond then to the military concern?

Ms. Harris: [T]his protocol has built into it more protections than exist in the Chemical Weapons Convention, protections in terms of the types of information that have to be declared, the level of detail, protections in terms of much more stringent limits on what can happen on site during a visit or during an inspection; and, again, that the challenge investigations, which are the most intrusive part of the regime, are indeed modeled after the Chemical Weapons Convention. And, clearly, the military in the context of that agreement found those procedures for what are called managed access to be adequate to protect sensitive military programs and activities.

Ambassador Leonard: [I]t was asserted by the Deputy Secretary of Defense that this protocol would have opened us up, opened our military and our chemical and biological industry up to inspection by Iraqi and Iranian, or who knows what kind of inspectors. That simply was not the case. He either didn't read the protocol, I think, or he would have seen that the provisions there were for United Nations inspectors and that countries had the right to refuse inspectors of a nationality that they didn't choose to admit into this process.

Ambassador Leonard: I find it hard to believe that the military in this country were so unanimously opposed to these inspections as to be the principal factor in the rejection of the protocol by this administration. It seems to me that the chemical — the pharmaceutical industry almost certainly played a larger role in that, and that the military in effect simply went along with the situation.

Ambassador Leonard: Ms. Harris [as the Clinton Administration's negotiator] was constantly

struggling with all of these elements, the Commerce Department, representing the pharmaceutical industry, the Defense Department, naturally, representing our defense programs, and yet she was able and the protocol that emerged was able to find acceptable solutions.

Reaction to Bush Administration “Alternatives”

Ms. Harris: At the BWC review conference next week, the United States is expected to propose an “alternatives package” meant to replace the protocol it rejected in July. Most of the items in the package are likely to take the form of recommendations for national measures to be enacted by individual States Parties to the BWC The United States is also expected to propose international mechanisms for clarifying and resolving compliance concerns and for investigating suspicious disease outbreaks and alleged use of biological weapons.

Congressman Waxman: [T]hese provisions are inadequate compared to a mandatory compliance regime. They either rely on the good faith of foreign governments, which has been the flaw of the Convention to date, or they apply only after a bioterrorist incident occurs.

Ms. Harris: [T]he alternatives package falls seriously short of what is needed. Neither of the U.S. proposals in this area significantly advance existing mechanisms. Given the very real potential for national biological weapons programs to be a source of technical and material assistance to aspiring biological terrorists, stronger international measures clearly are required.

Congressman Waxman: [T]he United States official policy doesn’t really make sense in light of the real world that we are now seeing with anthrax attacks and terrorist actions, not theoretical threats but real ones.

Mr. MacEachin: Based on my 30-some years, I don’t want to be an advocate, but that is the basic argument that I was trying to outline I want the inspection to have an impact, an overall impact on this program, this illicit biological weapons program It seems to me that is where the debate needs to be taking place and it needs to have

the scientists deeply involved, both in terms of describing what the risks are and what the means are in order to be able to have the scientific capability from these inspections or these visits to detect the anomaly.

Congressman Waxman: I am going to be a devil’s advocate and raise an issue that has been suggested in opposition, and that is, these inspections, especially since those involved in doing something surreptitiously could try to hide it, may not be effective. Of course, that to me is ludicrous on its face. If you can’t always find wrongdoing through inspections, you don’t abandon inspections. You try to make sure inspections work.

Calls for Administration to Reevaluate Position

Congressman Waxman: I share your concern that many people look at the United States as acting unilaterally, [a]nd there was this clear impression that all of us had that perhaps the United States was going off on its own, unwisely. But I think President Bush grew enormously after September 11th and immediately mobilized the international community that sympathized with us because of the grievous harm that occurred to us as a result of the attack, and is now working together in a very cooperative way with allies and bringing in new allies. We may see dramatic changes that are taking place right now with the U.S.-Russian relationship as President Putin is now meeting with President Bush. So I hope that the President will reevaluate this whole issue and overrule those within his administration who recommended that we next week refuse to go along with the negotiations on this protocol.

Ms. Harris: Clearly, this matter cannot wait for the next review conference in 5 years. Some form of ongoing discussion among all parties is essential to avoid weakening the norm against biological weapons still further and signaling to potential proliferators and terrorists that the international community lacks the will to enforce the ban on biological weapons.

Congressman John Tierney: I join Mr. Waxman and many others, I know, in believing that it is essential to try to move forward and put into place

some mechanism by which we can have inspections, that we can verify. And in Mr. Mahley's own words, while it may not be perfect, there are a lot of benefits that they add to the equation and we ought to pursue them.

Congressman Waxman: Ambassador Leonard, let me just ask you a question because you were involved with this treaty and Convention from the very beginning. In your opinion, would the completion of these current negotiations to put in place ratification of a protocol like the one being discussed for enforcement be in our national security interest? It wasn't in the original agreement. Now I guess we are talking about 30 years, almost 30 years later, we are now revisiting it and suggesting that there needs to be a better enforcement mechanism? If you would, speak into the mike. Do you think we ought to go forward with negotiations on this enforcement protocol?

Ambassador Leonard: I do very strongly, sir I think we should move forward. I don't think that the protocol was by any means perfect. It certainly was not going to solve in a comprehensive and unconditional way the whole problem of controlling and preventing biological weapons attacks on us or anybody else But the protocol was a very sensible and reasonable step forward to be built on in the future

Congressman Waxman: In light of the events of September 11th and the subsequent anthrax attacks, I hope the administration will change course. The idea of bioterrorism is no longer merely a theoretical possibility. We are currently under attack. Without any sort of compliance regime or inspection provisions under the Convention, the current situation allows foreign governments and terrorist groups associated with them to develop biological weapons programs.

Congressman Waxman: I hope that by showing some concern or shedding some light on this issue that we can get the attention of the President and people in this administration to rethink their previous position, as they have been forced to do in other areas They show they have the potential for growth, and I hope that this will lead them to reconsider their position that I think is not in our best interests.