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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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November 5, 2001

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INDEPENDENT

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

My staff recently met with Ambassador Donald A. Mahley at the State Department to discuss the pending international negotiations to require mandatory inspections under the Biological Weapons Convention. In light of the terrorist attacks of September 11, and especially in the context of the ongoing anthrax crisis, I was surprised to learn that the Administration plans to reverse the course of the previous Administration and actively oppose negotiations for mandatory inspections. This position appears to make little sense, and I urge you to reconsider before the next meeting of signatories in Geneva on November 17.

According to an article in Friday's *Washington Post*, your advisors assert that the Administration wants to strengthen the Biological Weapons Convention.<sup>1</sup> In fact, however, the positions you are taking would undermine -- not strengthen -- international efforts to fight bioterrorism.

At its core, this issue appears relatively simple. On one hand, there is a strong national security and public health interest in deterring and preventing the use of biological weapons against our country and our citizens. On the other hand is the desire of pharmaceutical companies to avoid inspections that may cause inconvenience and potential expense. In my opinion, all of these concerns should be taken into account, but the balance ultimately should weigh heavily in favor of the safety of our country and citizens.

In 1972, the international community recognized the dangers posed by biological weapons and banned their production, possession, and use. Today, 144 nations have ratified the Biological Weapons Convention. Unfortunately, the treaty included no provisions regarding inspections to verify that its provisions are being met. For example, the Soviet Union was able to hide its ongoing biological weapons program until 1992, when Boris Yeltsin revealed its existence.

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<sup>1</sup>Dana Milbank, *Bush Would Update Germ Warfare Pact*, *Washington Post* (Nov. 2, 2001).

After 1992, the Clinton Administration led the effort to negotiate a new amendment to the treaty requiring mandatory inspections. John Holum, the former Under Secretary of State for Arms Control and International Security Affairs, argued, "If we cannot find the will to codify effective compliance mechanisms to the BWC [Biological Weapons Convention], we will have turned away from an opportunity to diminish a threat we all face. None of us wants to be a part of such a failure."<sup>2</sup> Mr. Holum described the goal of these negotiations as follows:

[T]here must be means to get investigators on-site, quickly and with a mandate flexible enough to do their job efficiently. These mandates should include responding to legitimate concerns about possible use of biological weapons, or suspicious outbreaks that may be from unnatural causes, or inspecting suspect locations where there is real concern that activities in violation of the Convention are being conducted. Investigations and visits must be conducted in ways to protect legitimate proprietary and national security sensitivities, but they must also be conducted vigorously, to provide confidence in compliance.<sup>3</sup>

This approach was balanced: it recognized the legitimate concerns of pharmaceutical companies, but ensured that the security interest of the American people was paramount. It envisioned a small, but efficient international body of inspectors with the authority to investigate both governmental and private commercial facilities with the capacity to produce these weapons. When your Administration took office, however, Ambassador Mahley initiated an inter-agency review of these negotiations. According to press reports, Ambassador Mahley concluded as a result of that review that a mandatory inspection protocol would not be effective.<sup>4</sup>

This argument is flawed. Indeed, Ambassador Mahley himself argued under the previous Administration that even if inspections failed to detect every violator, they would still provide "real value in increasing the transparency associated with biological activity."<sup>5</sup> Though placing more police on the street will not stop every crime, such a preventative measure would make it

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<sup>2</sup>Statement to the Biological Weapons Convention Ad Hoc Group, Session XII (Oct. 6, 1998).

<sup>3</sup>*Id.*

<sup>4</sup>See Judith Miller, *U.S. Seeks Changes in Germ War Pact*, New York Times (Nov. 1, 2001); Michael R. Gordon and Judith Miller, *U.S. Germ Warfare Review Faults Plan on Enforcement*, New York Times (May 20, 2001).

<sup>5</sup>Testimony of Ambassador Donald A. Mahley, Subcommittee on National Security, Veterans Affairs, and International Relations, *Hearing on The Biological Weapons Convention: Status and Implications*, 107th Cong. (Sept. 13, 2000).

more difficult for criminals to act undetected. Similarly, an enhanced international presence with increased monitoring offers value by making biological weapons production more difficult. Ambassador Mahley described these deterrence benefits in this way:

Actually talking to scientists and production workers on the ground, as well as observing the atmospherics at a facility, are ways for experienced observers to detect anomalies. One can never discount either the “whistleblower” prospect of an employee or the ineptitude of a cover-up of an illicit activity. While there is no way to judge the likelihood of such an outcome, the deterrence component is useful since it complicates the life of a potential proliferator.<sup>6</sup>

I am bewildered as to why Ambassador Mahley’s previous rationale does not apply with even greater force in today’s climate of active bioterrorism. Inspections would give potential violators a choice. They could either operate in a clandestine manner at otherwise legitimate companies, or they would be forced to go underground and operate in more rudimentary and dangerous facilities. Either way, potential violators would face greater risk than they do now without inspections. As Ambassador Mahley said at the time, an inspection regime “complicates the life of a potential proliferator.”

Ambassador Mahley attributed the recent change in Administration position to the review he conducted among various executive agencies. In order to evaluate this review, our Committee requested a copy. Specifically, at a July 10, 2001, hearing of the Subcommittee on National Security, Veterans Affairs, and International Relations, Rep. John Tierney requested that Ambassador Mahley provide a copy of his review to the Committee. This request was adopted on the record without objection. Yet, despite Ambassador Mahley’s agreement to produce this document, to date he has failed to do so.

Without further information, it appears that the interests of pharmaceutical companies in avoiding inspections are being given more weight than the benefits international inspections could provide. The primary lobbying organization for the pharmaceutical industry, PhRMA, has testified numerous times in opposition to the inspection protocol. Ambassador Mahley noted at the staff briefing that he had been meeting with representatives from PhRMA about his proposal to reject mandatory inspections. At the same time, he also conceded he had not been meeting with representatives from nongovernmental organizations and arms control groups who favor the protocol.

As you know, many allies and experts were critical of your decision in the spring to reject years of negotiations to establish mandatory international inspections of facilities that could be

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<sup>6</sup>*Id.*

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used to produce biological weapons.<sup>7</sup> Your current position is marginally better than the position your negotiators took last spring by including requirements for states to criminalize activities prohibited by the Convention, to monitor disease outbreaks, and to provide assistance after such outbreaks occur. But these provisions are inadequate compared to mandatory inspections. 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. Your proposal omits the core component of preventative deterrence -- a requirement for mandatory inspections before an incident occurs.

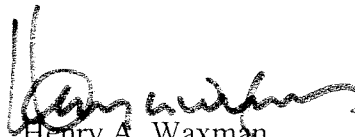
According to the staff briefing by Ambassador Mahley, your proposal would make facility inspections completely voluntary, again relying on the intentions of foreign governments. The only instance in which your proposal envisions mandatory inspections is when the United Nations Secretary General investigates the outbreak of a disease -- again obviously much too late. Moreover, it is my understanding that the Secretary General and the U.N. Security Council already enjoy similar authority. This suggests that your current proposal for inspections offers little more than current law.

I urge you in the strongest possible terms to reassess your position. You and Secretary of State Colin Powell have worked to assemble a wide-ranging and diverse coalition to fight international terrorism. Supported by strong U.S. leadership, this coalition could provide an historic opportunity to reinvigorate the negotiations for a mandatory inspection regime under the Biological Weapons Convention. For the security of our entire nation, I believe a thorough re-evaluation of the true risks and benefits of this proposal is in order.

The appropriate course of action is not to reject further negotiations on mandatory inspections. Rather, I believe you should take advantage of your international leadership role to propose a stronger version that requires wider and more detailed inspections that effectively address your concerns.

In light of the upcoming meeting of signatories in Geneva, I would appreciate it if you could respond as soon as possible regarding this matter. I also request that you instruct Ambassador Mahley to deliver his inter-agency review immediately.

Sincerely,



Henry A. Waxman  
Ranking Member

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<sup>7</sup>See, e.g., Martin Fletcher and Richard Beston, *Bush to Reject Deal on Germ Warfare Prevention*, The Times (London) (May 21, 2001); Toby Harnden, *U.S. May Reject Agreement on Germ Warfare*, The Daily Telegraph (May 21, 2001).