

Statement of Donald A. Mahley
Deputy Assistant Secretary for Arms Control Implementation
Arms Control Bureau
Department of State

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Chemical Weapons Demilitarization

I am very pleased to have been invited here today to testify on the Chemical Weapons Convention (CWC) implications of the United States chemical weapons demilitarization program. You have already heard from my colleagues information on the current state of activity and the plans for future activity and budgeting. I will try to be brief and to outline mostly what the Chemical Weapons Convention requires, as well as my view on the implications for the United States role under that Convention of the demilitarization activities you have had described today.

Before I do so, however, I would ask your indulgence to relate just a bit of history. I first became involved in the United States chemical weapons demilitarization program back in 1985 when, while serving on active duty with the United States Army, my responsibilities as a member of the National Security Council staff included chemical weapons. I make this note to remind all of us that the United States began destroying its chemical weapons stockpile long before there was a Chemical Weapons Convention. When the United States began production of binary chemical weapons - a process we terminated in 1991, again before there was a Chemical Weapons Convention - we recognized that as a corollary to the production of binary weapons as a newer and safer chemical deterrent, we should dispose of our existing stocks in a safe and ecologically sound manner.

One of the aspects of our long history of chemical weapons destruction is the gradual process of realizing just how difficult and technologically demanding such a program is. When the U.S. Army first started this program, it was very confident that it could be completed - for unitary stocks - by 1994, and would cost less than a billion dollars. The briefings you have heard from my Department of Defense colleagues today is stark evidence of

how much more complicated the process is than we recognized when we started down this path.

The Chemical Weapons Convention, the international treaty banning possession and use of chemical weapons, was negotiated over a lengthy period in the Conference on Disarmament in Geneva. Realistic activity toward completing a workable convention actually began in April of 1984, when George H.W. Bush, then vice-president of the United States, presented to the Conference a draft treaty that became the basis for negotiations and ultimately the foundation of the Convention. Negotiations on the Convention were completed by the Conference on Disarmament in September of 1992, and the Convention was opened for signature in Paris on January 13, 1993. Lawrence Eagleburger, as Secretary of State, signed the treaty in Paris on behalf of the United States. The Convention entered into force both internationally and for the United States on April 29, 1997, following lengthy ratification proceedings in the Senate.

Article IV of the Chemical Weapons Convention requires all parties to the Convention to destroy completely their chemical weapons stockpiles. Paragraph 6 of Article IV states that such destruction "...shall finish not later than 10 years after entry into force of this Convention." Part IV (A) of the Verification Annex of the Convention provides additional details on the destruction of chemical weapons. Paragraph 13 of Part IV (A) specifies that "...the following processes may not be used: dumping in any body of water, land burial, or open-pit burning." Paragraph 24 provides that if a country is not able to complete destruction of its chemical weapons within ten years of entry into force of the Convention, it may apply for extension of the deadline. However, "any extension shall be the minimum necessary, but in no case shall the deadline for a State Party to complete destruction of all chemical weapons be extended beyond 15 years after the entry into force of this Convention."

What all of that language combines to mean is that the United States, in order to comply with its obligations under the Chemical Weapons Convention, must complete destruction of its chemical weapons inventory by April 29, 2012. That date assumes the maximum possible extension under the Convention. Obtaining the extension should be feasible, especially considering the number of briefings we have provided to other parties at the OPCW and the demonstration - through money and effort - of our intentions to carry out destruction as rapidly as feasible. However, obtaining extensions

beyond that date is not an available option under the provisions of the Convention.

Having been involved in the negotiation of the Chemical Weapons Convention, let me make it clear that those deadlines were inserted into the text with the vigorous support of the United States. With the information then available to us and the program projections then being used, the deadlines offered what we judged as a very safe margin while not allowing other states to procrastinate indefinitely in their own destruction programs.

I have been asked specifically to address the implications for the United States with respect to the Chemical Weapons Convention if we do not complete one hundred per cent destruction of our chemical weapons inventory by April 29, 2012. The most obvious but most central point, should this occur, is that we will unequivocally become noncompliant with our obligations. There is no automatic procedural or substantive impact of such non-compliance on our participation in the CWC and the OPCW. That is, we do not automatically lose our vote in either the Executive Council or the Conference of State Parties, we are not barred from selection to the Executive Council, and we are not subject to any additional inspections. However, Article XII lists a range of measures that can be taken by the Conference in different stages of non-compliance. It provides that "where a State Party has been requested by the Executive Council to take measures to redress a situation raising problems with regard to its compliance, and where the State Party fails to fulfill the request within the specified time, the Conference may ... restrict or suspend the State Party's rights and privileges under [the] Convention until it undertakes the necessary action to conform with its obligations under [the] Convention." It also provides that in cases where serious damage to the object and purpose of the Convention may result from activities prohibited under the Convention, the Conference "may recommend collective measures to States Parties in conformity with international law," and "in cases of particular gravity, bring the issue, including relevant information and conclusions, to the attention of the United Nations General Assembly and the United Nations Security Council."

Further, it does not appear that Article XII was intended to restrict the rights of Parties to the Chemical Weapons Convention to take the actions allowed under international law in response to a breach. As codified in the Vienna Convention on the Law of Treaties, a party specially affected by a material

breach may "invoke it as a ground for suspending the operation of the treaty in whole or in part between itself and the defaulting State." Other parties may do the same if the treaty is of such a character that a material breach of its provisions radically changes the position of every party with respect to the further performance of its obligations.

Given that the United States operates by rule of law and under the overall national policy objective of complying with its international legal obligations, it obviously is a highly undesirable circumstance if we were not to adhere to those obligations. There is also great difficulty in pressing other countries to comply with the Chemical Weapons Convention if the United States is non-compliant. The particular dilemma we face here, however, is that attempting to alter the CWC obligations in such a way as to avoid non-compliance is fraught with real risk.

We could attempt to amend the Convention. I would strongly recommend against any such effort for two reasons.

First, if we were successful, we would then be establishing the very situation we strenuously tried to avoid during the negotiation of the Convention: we would be making the destruction obligation essentially open-ended, and thus gravely undermine the incentive for other possessors to continue to make chemical weapons destruction a priority in their own national planning. For the record, based on the current situation, the only other possessor likely facing the situation of not being done with destruction by 2012 is Russia. Indeed, it would be a major challenge for Russia to have even half its declared stockpile destroyed by 2012.

Second, in opening the Convention to amendment, we run the real risk of other countries adding their own favorite subjects to the amendment effort. Any and all such proposals would need to be taken seriously, because the CWC amendment procedures in effect give each State Party a veto, and thus the ability to hold any amendment hostage to their own proposals. Seeking to amend the destruction deadline potentially could undermine the very object and purpose of the Convention, since there is a real desire on the part of a number of countries to convert the document from being an arms control and security agreement to being a technology transfer and chemical industry assistance agreement.

If current assumptions hold and we are non-compliant for not having completed our stockpile destruction, there inevitably will be some countries that will argue that the United States has lost its right to offer opinions on the activities of other countries – at least with respect to chemical weapons. Frankly, this argument is made today even before the deadline has been reached, on the basis that we have an inventory at all. Responsible countries will not credit such arguments. I do not believe that we will damage our international influence fatally, if we have not completed our destruction by the deadline, so long as we are continuing to devote obvious and extensive effort and resources to the program and so inform the other parties.

The Russian Federation could seize on any failure of the United States to complete destruction by 2012 as an excuse to further submerge its own destruction program in competing budget priorities, and to justify its own failure to meet the treaty deadline. In response, we would need to emphasize that our performance which far outstrips theirs in both effort expended and results achieved, should not distract anyone from examining Russia's performance on its own merits.

In summary, Mister Chairman, there are absolute requirements under the Chemical Weapons Convention for complete destruction of chemical weapons stockpiles by a date certain. It is not possible to excuse or alter those deadlines, and the treaty was deliberately written to make them inflexible beyond the 5-year extension allowed under the existing text. If the United States does not complete its destruction program by April 29, 2012 -- a situation that appears increasingly inevitable absent fundamental change -- the United States will be in non-compliance with the Chemical Weapons Convention. While clearly undesirable, assuming continued priority is given to chemical weapons destruction by the Department of Defense and this Committee, such non-compliance should not be viewed by reasonable people as the United States trying to evade its legal obligations to eliminate chemical weapons or its commitment to the rule of law. There can be no assurance, of course, that those with a particular political agenda might not seek to exploit the situation, by making the matter an issue in the OPCW or elsewhere.

Thank you very much for your attention.