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United States Department of State
Washington, D.C. 20520

January 4, 1991

UNCLASSIFIED
(With ~~SECRET~~ attachment)

DECLASSIFIED IN PART
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: FEB 12 2013

MEMORANDUM TO:

MR. BRENT SCOWCROFT
National Security Affairs Advisor
The White House

MR. ROBERT E. HOWARD
Associate Director
National Security
and International
Affairs
Office of Management
and Budget

MS. ANN LAVIN
Director
Executive Secretariat
Department of Energy

COL. JOHN A. DUBIA
Executive Secretary
Department of Defense

MR. MARK J. ALBRECHT
Executive Secretary
National Space Council

COL. GEORGE L. SUMRALL
Executive Assistant
to the Chairman
Joint Chiefs of Staff

MS. BARBARA GOLDKAMP
Director, Executive Secretariat
Department of Commerce

MS. BARBARA STARR
Executive Secretary
Arms Control and
Disarmament Agency

Subject: Non-Proliferation PCC Meeting

OSD 3.3(b)(1)

Please transmit the attached invitation to principals of
the Policy Coordinating Committee on Non-Proliferation to
attend a meeting on January 9.

J. Stapleton Roy
Executive Secretary

Attachment:

As stated

Office of the Secretary of Defense
Chief, RDD, ESD, WHS
Date: 12 FEB 2013 Authority: EO 13526
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Declassify in Part: X
Reason: 3.3(b)(1)
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United States Department of State

*Assistant Secretary of State
for Politico-Military Affairs*

Washington, D.C. 20520

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DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: FEB 12 2013

TO: PCC Principals
FROM: Richard A. Clarke *RA*
SUBJECT: Meeting of Non-Proliferation PCC

You are invited to attend a meeting of the Non-Proliferation PCC on Wednesday, January 9, from 10 am to noon in the State Department Operations Center Conference Room (Room 7516). I will chair the meeting. Attendance should be at the Assistant Secretary/Deputy Assistant Secretary level.

The purpose of the meeting will be to give final approval to the draft legislation on Chemical and Biological Weapons (attached), as tasked by the Deputies Committee.

Attendance is limited to principals plus one. Please advise PM/PRO, Delores Jones or Monyetta Jones (647-1129) of the name, SSN, and clearances of those attending, by 10 am, Tuesday, January 8.

Attachment: draft legislation

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**CHEMICAL AND BIOLOGICAL WEAPONS
PROLIFERATION CONTROL ACT OF 1991**

Be it enacted by the House of Representatives and Senate of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "Chemical and Biological Weapons Proliferation Control Act of 1991".

Section 2. Purposes.

The purposes of this Act are--

(1) to mandate United States sanctions, and to encourage international sanctions, against countries that use chemical or biological weapons in violation of international law or use lethal chemical or biological weapons against their own nationals, and to impose sanctions against companies that aid in the proliferation of chemical and biological weapons;

(2) to support multilaterally coordinated efforts to control the proliferation of chemical and biological weapons, including the early achievement of a comprehensive global convention to prohibit the use, development, production and stockpiling of chemical weapons;

(3) to urge continued close cooperation with the Australia group and cooperation with other supplier nations to devise ever more effective controls on the transfer of goods, technology and services applicable to chemical or biological weapons production;

(4) to support the President's decisive action in issuing Executive Order 12735 on Chemical and Biological Weapons Proliferation, which imposes comprehensive sanctions on countries that unlawfully use such weapons and foreign persons that assist in the proliferation of chemical and biological weapons; and

(5) to provide additional authority to impose sanctions and to control any activity by United States citizens that might contribute to chemical or biological weapons proliferation, such as financial or other professional assistance.

**Section 3. Measures to Enforce United States
Non-proliferation Policy**

The President shall, in accordance with the requirements of this Act, impose strict controls on exports and financial and

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IAW EO 13526, Section 3.5
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other transactions that contribute to the proliferation of chemical and biological weapons, and impose sanctions on foreign persons and countries to further the non-proliferation objectives of the United States.

TITLE I - Measures to Prevent the Proliferation of Chemical and Biological Weapons.

Section 101. Multilateral efforts.

(a) **Multilateral Controls on Proliferation.** - It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. In furtherance of this policy, the United States shall --

(1) set as a top priority the early conclusion of a comprehensive global agreement, with adequate verification provisions, to ban the use, development, production and stockpiling of chemical weapons;

(2) support multilateral efforts such as those underway in the Australia Group to stop the proliferation of chemical and biological weapons through strict national export control systems and close contact and cooperation with the relevant sectors of industry; and

(3) seek early negotiations with foreign governments to adopt effective measures comparable to those imposed pursuant to section 102 of this Act.

Section 102. United States Export Controls.

(a) (1) **In General.** - The Secretary of State and the Secretary of Commerce shall use their authorities, including the Arms Export Control Act and the Export Administration Act of 1979,* respectively, to control any exports that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver or use chemical or biological weapons.

(2) **Establishment of a List.** - The Secretary of Commerce and the Secretary of State shall develop a list of goods, technology and services subject to the export jurisdiction of the Secretary of Commerce that the Secretary of Commerce and the Secretary of State determine, in accordance with the regulations issued pursuant to this Act, could assist a country in acquiring the capability to develop, produce, stockpile, deliver or use chemical or biological weapons.

*This provision presupposes extension of the EAA.

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- (3) Requirement of a License. - Except as provided in paragraph 5, the Secretary of Commerce shall require a validated license for any export covered by the list established under paragraph 3 and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.
- (4) License Denials - The Secretary of Commerce shall deny any license for an export covered by the list established in paragraph 2 that the Secretary of state and the Secretary of Commerce determine would substantially and materially contribute to a country's capability to develop, produce, stockpile, deliver or use chemical or biological weapons.
- (5) Exception. - Paragraph 3 shall not apply to exports if their destination is a country - (A) with whose government the United States has entered into a bilateral or multilateral arrangement for the control of chemical or biological weapons - related goods (including delivery systems) and technology, (B) which maintains domestic export controls that are comparable to those imposed by the United States with respect to such goods and technology, or (C) which the Secretary of State shall designate consistent with the purposes of this Act.

(b) Other Activities - Notwithstanding any other provision of law, the President is authorized to control any activity in the United States, or by a United States national abroad, to the extent such activity could enhance a foreign country's capability to develop, produce, stockpile, deliver or use chemical or biological weapons. As provided in regulations promulgated pursuant to this Act, such controls will include, but need not be limited to, a prohibition on financial or other non-technical (e.g., accounting, basic engineering) support of chemical or biological weapons development in countries other than those designated pursuant to subsection (a)(5) of this section. The President is authorized to impose such controls pursuant to Section 38 of the Arms Export Control Act, the Export Administration Act of 1979,* or the International Emergency Economic Powers Act.

Section 103. Sanctions Against Certain Foreign Persons

(a) Amendment to the Export Administration Act. - The Export Administration Act of 1979* is amended by inserting after section 11B, the following:

*Chemical and Biological Weapons Proliferation Sanctions

*Section 11C. (a) Imposition of Sanctions.

*This provision presupposes extension of the EAA.

"(1) Determination by the President. - Except as provided in subsection (d), the President shall impose both of the sanctions described in subsection (b) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed -

"(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act,

"(B) through the export from any other country of any good or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

"(2) Countries Receiving Assistance. - Paragraph (1) applies in the case of -

"(A) any foreign country that the President determines has, at any time after the date of enactment of this Act -

(i) used chemical or biological weapons in violation of international law;
(ii) used lethal chemical or biological weapons against its own nationals; or
(iii) made substantial preparations to engaged in the activities described in clause (i) or (ii); or

"(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism.

"(3) Persons Against Which Sanctions Are to be Imposed. - Sanctions shall be imposed pursuant to paragraph (1), to the extent specified in implementing regulations, on-

"(A) the foreign person with respect to which the President makes the determination described in that paragraph;

"(B) any successor entity to that foreign person;

"(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

"(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

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"(b) Sanctions.-

"(1) Description of Sanctions. - The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

"(A) Procurement Sanction. - The United States Government shall not procure or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

"(B) Import Sanction. - The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

"(2) Exceptions. - The President shall not be required to apply or maintain sanctions under this section -

"(A) in the case of procurement of defense article or defense services -

(i) under existing contracts of subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are necessary to the national security under defense coproduction agreements;

"(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

"(C) to -

(i) spare parts,

(ii) component parts, but not finished products, necessary to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

"(D) to information and technology necessary to United States products or production; or

"(E) to medical or humanitarian items; or

"(F) to any foreign person with respect to which the President determines that the government with primary jurisdiction over that person has taken specific and effective actions, including appropriate penalties, to terminate the involvement of such person in the activities described in subsection (a)(1).

"(c) Termination of Sanctions - The President shall remove the sanction imposed on any foreign person pursuant to this section if the President determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a)(1), or (2) that to do so is significant to the foreign policy or national security interests of the United States.

"(d) Waiver. - The President may waive the application of sanctions required under this section if the President determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a)(1) or that the sanctions should not be applied because of significant foreign policy or national security reasons.

"(e) Definition of Foreign Person. - For the purpose of this section, the term 'foreign person' means -

"(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States' or

"(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States."

(b) Amendment to Arms Export Control Act. - The Arms Export Control Act is amended by inserting after chapter 7, as added by section 303 of this Act, the following:

**"CHAPTER 8 - CHEMICAL OR BIOLOGICAL WEAPONS
PROLIFERATION**

"Section 81. Sanctions Against Certain Foreign Persons.

"(a) Imposition of Sanctions.

"(1) Determination by the President. - Except as provided in subsection (d), the President shall impose both of the sanctions described in subsection (b) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed -

"(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

"(B) through the export from any other country of any goods or technology, subject to the jurisdiction of the United States, or

"(C) through any other transaction not subject to sanction pursuant to the Export Administration Act of 1979, to the efforts by any foreign country described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

"(2) Countries Receiving Assistance. - Paragraph (1) applies in the case of -

"(A) any foreign country that the President determines has, at any time after the date of enactment of this Act, -

(i) used chemical or biological weapons in violation of international law; or
(ii) used lethal chemical or biological weapons against its own nationals; or
(iii) made substantial preparations to engaged in the activities described in clause (i) or (ii); or

"(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism.

"(3) Persons Against Which Sanctions are to be Imposed. - Sanctions shall be imposed pursuant to paragraph (1), to the extent specified in implementing regulations, on-

"(A) the foreign person with respect to which the President makes the determination described in that paragraph'

"(B) any successor entity to that foreign person;

"(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

"(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

"(b) Sanctions.-

"(1) Description of Sanctions. - The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

"(A) Procurement Sanction. - The United States Government shall not procure or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

"(B) Import Sanction. - The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

"(2) Exceptions. - The President shall not be required to apply or maintain sanctions under this section -

"(A) in the case of procurement of defense article or defense services -

(i) under existing contracts of subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles are essential, and that alternative sources are readily or reasonably available; or

(iii) if the President determines that such articles or services are necessary to the national security under defense coproduction agreements;

"(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

"(C) to -

"(i) spare parts,

"(ii) component parts, but not finished products, necessary to United States products or production, or

"(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

"(D) to information and technology necessary to United States products or production; or

"(E) to medical or humanitarian items; or

"(F) to any foreign person with respect to which the President determines that the government with primary jurisdiction over that person has taken specific and effective actions, including appropriate penalties, to terminate the involvement of such person in the activities described in subsection (a)(1).

"(c) Termination of Sanctions. - The President shall remove the sanction imposed on any foreign person pursuant to this section if the President determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a)(1), or (2) that to do so is significant to the foreign policy or national security interests of the United States.

"(d) Waiver. - The President may waive the application of sanctions required under this section if the President determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a)(1) or that the sanctions should not be applied because of significant foreign policy or national security reasons.

"(e) Definition of Foreign Person. - For the purpose of this section, the term 'foreign person' means -

"(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States' or

"(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States."

TITLE 2 -Sanctions Against the Use of Chemical and Biological Weapons

Section 201. Determination Regarding Use of Chemical and Biological Weapons.

(a) Determination by the President. - The President shall determine whether any foreign country has, on or after the date of enactment of this Act, (1) used chemical or biological weapons in violation of international law or against their own nationals; or (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, or stockpiled chemical or biological weapons in violation of international law.

(b) Matters to be Considered. - In making the determination under subsection (a), the President should include among the factors considered the following:

(1) All physical and circumstantial evidence available bearing on the possible use of such weapons.

(2) All information provided by alleged victims, witnesses, and independent observers.

(3) The extent of the availability of the weapons in question to the purported user.

(4) All official and unofficial statements bearing on the possible use of such weapons.

(5) Whether, and to what extent, the government in question is willing to honor a request from the Secretary General of the United Nations to grant timely access to a United Nations fact-finding team to investigate the possibility of chemical or biological weapons use or to grant such access to other legitimate outside parties.

Section 202. Sanctions Against Use of Chemical or Biological Weapons.

(a) Imposition of Sanctions. - If, at any time, the President makes a determination pursuant to Section 201(a)(1) with respect to the government of a foreign country, the President shall forthwith impose the sanctions set forth below. If the President makes such a determination pursuant to Section 201(a)(2) or (3), the President may impose any or all of the sanctions. The sanctions to be imposed are the following:

(1) Foreign Assistance. No assistance shall be provided to that country under the Foreign Assistance Act of 1961 or the Arms Export Control act other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) Multilateral Development Bank Assistance. The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act [22 U.S.C. 262d].

(3) Bank Loans. - The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products.

(4) Denial of Credit or Other Financial Assistance. The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(5) Prohibition on Arms Sales. The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(6) Exports of National Security-Sensitive Goods and Technology. No exports shall be permitted of any goods or technology controlled for national security reasons under Export Administration Regulations.

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(7) Further Export Restrictions. The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services [excluding agricultural commodities and products otherwise subject to control].

(8) Import Restrictions. Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(9) Landing Rights. At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with the international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 [49 U.S.C. App. 1301(10)]).

(b) Removal of Sanctions. - The President may remove any or all of the sanctions imposed with respect to a country pursuant to this section if the President determines that to do is significant to the foreign policy or national security interests of the United States. In making this determination, the President should include among the factors considered the following:

(1) whether the government of that country has provided reliable assurances that it will not use chemical or biological weapons in violation of international law and will not use lethal chemical or biological weapons against its own nationals;

(2) whether that government is making, or has continued to make, preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals;

(3) whether that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers to verify that it is not making preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals, or whether other reliable means exist to verify that it is not making such preparations; and

(4) whether that government is making restitution to those affected by any use of chemical or biological weapons in violation of international law or by any use of lethal chemical or biological weapons against its own nationals.

(c) Waiver. - The President may waive the application of individual sanctions required under this section if the

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President determines that any such sanction should not be applied because of significant foreign policy or national security reasons.

TITLE III - Reporting Requirement

Section 301. Presidential Reporting Requirement. - Twelve months after the date of enactment of this Act, the President shall transmit to Congress a report which shall describe the actions taken to implement the provisions of this Act.