

South Dakota is a perfect example of a program that enhances communities through education. It is a model for future efforts to improve the overall quality of life in rural America. I invite you to join me in congratulating the following members of the PDC for receiving the Distinguished Program in Teacher Education Award at the recent Association for Teacher Educators conference: University of South Dakota interim president, Dr. Paul Olscamp; dean of the College of Education, Dr. Larry Bright; Dr. Sharon Lee, Dr. Michael Hoadley, Dr. Don Monroe, Dr. Lana Danielson, Dr. Royce Engstrom, Donna Gross, Dr. Sharon Ross, Dr. Rosanne Yost, Dr. Roger Bordeaux, and Mindy Crawford.●

THE URGENT NEED TO OUTLAW POISON GAS

● Mr. BIDEN. Mr. President, today I intend to address one of the most important matters that should come before the Senate in the next several weeks: the Chemical Weapons Convention. This convention—negotiated under Presidents Reagan and Bush—would outlaw poison gas weapons.

The Chemical Weapons Convention represents a significant step forward in our efforts to contend with the greatest immediate threat to our national security—the proliferation of weapons of mass destruction.

The Chemical Weapons Convention will make it illegal under international and domestic laws for a country to use, develop, produce, transfer, or stockpile chemical weapons.

The CWC will help protect our citizens from the use of poison gas weapons by terrorist groups. It will benefit our military by requiring other nations to follow our lead and destroy their chemical weapons. It will improve the ability of our intelligence agencies to monitor chemical weapons threats to our Armed Forces and our Nation. The convention has the strong support of the American chemical industry, which was centrally involved in the negotiation of the CWC. It also takes into account all of the protections afforded Americans under our Constitution.

This is a bipartisan treaty, initiated and negotiated under President Reagan, further negotiated, finalized, and signed under President Bush, and strongly endorsed and submitted for the Senate's advice and consent to ratification by President Clinton.

The costs of the CWC are small, but its benefits are potentially enormous.

At present, international law permits the Libyas and the North Koreans of the world to produce limitless quantities of chemical weapons. That will change when the CWC enters into force.

The CWC will make pariahs out of states that refuse to abide by its provisions. Through the sanctions required by the convention, it will make it more difficult for those pariah states to obtain the precursor chemicals they need to manufacture poison gas. It will cre-

ate international pressure on these states to sign and ratify the CWC and to abide by its provisions. The CWC will create a standard for good international citizens to meet. It will brand as outlaws those countries that choose to remain outside this regime.

The entry into force of the Chemical Weapons Convention will mark a major milestone in our efforts to enlist greater international support for the important American objective of containing and penalizing rogue states that seek to acquire or transfer weapons of mass destruction.

Ironically, should the Senate fail to give its advice and consent, this milestone will pass with the U.S. On the same side as the rogue states.

CONSEQUENCES OF INACTION

Mr. President, with just over 2 months remaining until entry-into-force, we have reached the eleventh hour.

The convention has been signed by 161 countries and ratified by 68. It will enter into force on April 29 of this year, with or without the participation of the United States. While the United States led the effort to achieve the CWC, the Senate, which received the convention from President Clinton in 1993, has not yet given its advice and consent to ratification.

Our failure to ratify this convention before April 29 will have direct and serious consequences for the security of this country.

First, the CWC mandates trade restrictions that could have a deleterious impact upon the American chemical industry. If the United States has not ratified, American companies will have to supply end-user certificates to purchase certain classes of chemicals from CWC members. After 3 years we will be subject to trade sanctions that will harm American exports and jobs.

Second, an overall governing body known as the Conference of States Parties will meet soon after April 29 to draw up rules governing the implementation of the convention. If we are not a party to the CWC, we will not be a member of that conference. This body with no American input could make rules that have a serious negative impact on the United States.

Third, there will be a standing executive council of 41 members, on which we are assured of a permanent seat from the start because of the size of our chemical industry—that is, if we have ratified the convention by April 29. If we ratify after the council is already constituted, then a decision on whether to order a requested surprise inspection of an American facility may be taken without an American representative evaluating the validity of the request and looking out for the facility's interests.

Fourth, there will be a technical secretariat with about 150 inspectors, many of whom would be American because of the size and sophistication of our chemical industry. If we fail to ratify this convention in the next 2

months, there will be no American inspectors.

Finally, and most importantly in the long term, by failing to ratify we would align ourselves with those rogue actors who have chosen to defy the CWC. This would do irreparable harm to our global leadership on critical arms control and non-proliferation concerns.

Mr. President, I would now like to address some of the benefits we will derive by joining the CWC.

TERRORISM

One clear benefit of the CWC is that it will help protect us against the threat of terrorist groups acquiring poison gas and using it against our citizens at home or our troops abroad. Imagine for a moment if those responsible for the Oklahoma City bombing or last year's attack on our troops in Saudi Arabia had used poison gas instead of conventional devices. How many more Americans would have been killed?

The CWC will make it more difficult for terrorists to get their hands on chemicals that would allow them to blackmail us with the threat of killing thousands of Americans with a single device. This convention will require countries to destroy their stockpiles of chemical weapons, eliminating the risk that these weapons could fall into the wrong hands. It also will control the transfer of those chemicals that can be used to make chemical weapons, thus restricting and improving the monitoring of chemicals that terrorists need to manufacture weapons.

Most importantly, parties to the convention will be required to pass implementing legislation to place the same prohibitions on persons under their jurisdiction that states themselves accept under the convention. This will mean that states will control strictly all toxic chemicals and their precursors. Any prohibited activity under the convention will be criminalized.

That was not the case with the 1995 attack on the Tokyo subway in which lethal sarin gas caused thousands of casualties. At that time, there was no Japanese law against the manufacture and possession of chemical weapons. Following that horrible incident, Japan moved swiftly to enact legislation to criminalize chemical weapons activities of the sort banned by the convention. Under the CWC, all parties must do the same.

In conjunction with the legislation we will introduce in our Congress to implement the CWC, the convention will provide American law enforcement officers the tools they need to investigate terrorist groups that are trying to acquire chemical weapons and improve the prospects for early detection and prosecution.

In short, while it cannot entirely eliminate the threat of chemical terrorism—and I would submit that no treaty can—the CWC will make it much harder for terrorists to obtain poison gas and to use it against Americans.

MILITARY

The CWC also has benefits for our Armed Forces.

Let me make two facts absolutely clear. First, the U.S. has foresworn the use of chemical weapons once the CWC enters into force. Second, the Defense Department is required by law to destroy nearly all U.S. chemical weapons by 2004. Failure to ratify the CWC will not change these two facts.

However, the CWC will require other nations to follow our lead and destroy their chemical weapons.

As the gulf war demonstrated, we do not need chemical weapons to deter potential adversaries like Iraq and Libya from using chemical weapons against our troops. The threat of overwhelming and devastating nonchemical retaliation will serve as a sufficient deterrent. Thus, the Chemical Weapons Convention will enhance, not damage, the capabilities of the U.S. military to carry out its mission.

Several current and former distinguished military officers have spoken to the benefits of this convention.

Gen. Norman Schwarzkopf in his recent testimony before the Senate Veterans' Affairs Committee stated:

We don't need chemical weapons to fight our future wars. And frankly, by not ratifying that treaty we align ourselves with nations like Libya and North Korea and I'd just as soon not be associated with those thugs in this particular matter.

Gen. John Shalikashvili, Chairman of the Joint Chiefs of Staff, has stated before the Foreign Relations Committee: "From a military perspective, the Chemical Weapons Convention is clearly in our interest."

Adm. Elmo Zumwalt, former Chief of Naval Operations, wrote last month in the Washington Post:

This treaty is entirely about eliminating other people's weapons—weapons that may some day be used against Americans. For the American military, U.S. ratification is high gain and low or no pain. In that light, I find it astonishing that any American opposes ratification.

In addition, several prominent veterans and military groups, including the V.F.W. and the R.O.A., have endorsed the CWC. I will ask that Admiral Zumwalt's op-ed and statements by these groups be printed in the RECORD.

The CWC does not diminish our ability and duty to provide our troops with defenses against those that would contemplate the use of chemical weapons against us. Indeed, the administration plans to maintain a robust program of upgrading defenses against chemical weapons. Should chemical weapons be used against us after the CWC is in force, we will be ready.

Furthermore, the CWC will place the weight of world opinion behind us to take whatever action is necessary to respond to or prevent an adversary using chemical weapons.

I emphasize again that the most important aspect of the CWC from a military perspective is that it will place most of the world in the same situation we are in—not relying upon chemical

weapons as a part of military doctrine. This can only be considered a positive development for our military.

VERIFICATION

Another great benefit of the Chemical Weapons Convention is that it increases our ability to detect production of poison gas.

Regardless of whether we ratify this convention, regardless of whether another country has ratified this convention, our intelligence agencies will be monitoring the capabilities of other countries to produce and deploy chemical weapons. The CWC will not change that responsibility.

What this convention does, however, is give our intelligence agencies some additional tools to carry out this task. In short, it will make their job easier.

In addition to on-site inspections, the CWC provides a mechanism to track the movement of sensitive chemicals around the world, increasing the likelihood of detection. This mechanism consists of data declarations that require chemical companies to report production of those precursor chemicals needed to produce chemical weapons. This information will make it easier for the intelligence community to monitor these chemicals and to learn when a country has chemical weapons capability.

In testimony before the Senate Foreign Relations Committee in 1994, R. James Woolsey, then Director of Central Intelligence, stated: "In sum, what the Chemical Weapons Convention provides the intelligence community is a new tool to add to our collection tool kit."

Recently, Acting Director of Central Intelligence, George Tenet, re-emphasized this point before the Senate Select Committee on Intelligence. Mr. Tenet stated: "There are tools in this treaty that as intelligence professionals we believe we need to monitor the proliferation of chemical weapons around the world. . . . I think as intelligence professionals we can only gain."

No one has ever asserted that this convention is 100 percent verifiable. It simply is not possible with this or any other treaty to detect every case of cheating. But I would respectfully submit that this is not the standard by which we should judge the convention. Instead, we should recognize that the CWC will enhance our ability to detect clandestine chemical weapons programs. The intelligence community has said that we are better off with the CWC than without it—that is the standard by which to judge the CWC.

Mr. President, having discussed some of the clear benefits of joining the CWC, I now would like to address some of the costs associated with not joining, as well as some of the objections that have been raised to the convention.

INDUSTRY

Perhaps no single aspect of this debate has seen more misinformation than that having to do with the affect

the CWC would have on the U.S. chemical industry.

Mr. President, the chemical industry plays a larger role in the economy of the State of Delaware than it does in any other State. Over half of Delaware's industrial output comes from our 47 chemical plants. Their sales represent more than 10 percent of our State's economic output. The chemical industry employs tens of thousands of Delawareans.

The people who own, manage, and work at chemical plants know they have no greater friend than this Senator. If I for one moment thought that the convention would harm the American chemical industry, as some have alleged, I would raise this issue. But the fact of the matter is that the only thing about the Chemical Weapons Convention that would hurt the American chemical industry would be the Senate's failure to give its advice and consent.

In 1995, the American chemical industry exported \$60 billion around the world, accounting for fully 10 percent of all American exports and making it the single largest exporting industry. More than 1 million Americans are employed by the U.S. chemical industry.

Should we fail to ratify the CWC, we will put a portion of these exports and these good-paying jobs at risk by leaving our chemical manufacturers open to sanctions, the very sanctions that American negotiators insisted should be a part of this convention as a way to pressure rogue states. In fact, the Chemical Manufacturers Association estimates that failure to ratify the CWC could jeopardize \$600 million of our chemical exports.

The charge that the CWC will harm American business appears all the more preposterous when one considers the fact that the convention was negotiated with the unprecedented input of the U.S. chemical industry.

Thanks to their help, the convention contains thresholds and exemptions that protect businesses, small and large alike, from bearing an undue burden. The American chemical industry helped develop the ground rules under which inspections will occur, including provisions for protecting confidential business information. Chemical company representatives also helped design the brief, three-page form that represents the only reporting obligation for 90 percent of the approximately 2,000 companies that will have obligations under the CWC.

I will ask that a statement by Mr. Fred Webber, the president of the Chemical Manufacturers Association, be printed in the RECORD.

To quote from another statement of Mr. Webber's:

The U.S. Chemical Industry worked hard to help Government negotiators craft a CWC that provides strong protections against future uses of chemical weapons, at a minimum burden and intrusion on commercial chemical facilities. The protection our industry achieved in the CWC can only be realized if the Senate acts quickly to ratify the convention.

U.S. chemical companies recognize that while they produce goods intended for peaceful uses, their products and inputs could be misused for nefarious purposes. That is why they so actively have supported this convention. Their involvement in the CWC has been a model of good corporate citizenship.

Unfortunately, we will reward this responsible behavior with a slap in the face if we fail to ratify the CWC and subject the U.S. chemical industry to international sanctions.

CONSTITUTIONALITY

One of the issues that should not be contentious, and I hope will not continue to be a focus of attention, is whether the convention, and particularly its inspection regime, is constitutional.

Every scholar that has published on the subject, and virtually every scholar that has considered the issue, has concluded that nothing in the convention conflicts in any way with the fourth amendment or any other provision of the U.S. Constitution.

Indeed, to accommodate our special constitutional concerns, the United States insisted that when parties to the convention provide access to international inspection teams, the Government may "[take] into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures."

In plain English, this means that inspectors enforcing the chemical weapons Convention must comply with our constitution when conducting inspections on U.S. soil.

It also means that the United States will not be in violation of its treaty obligations if it refuses to provide inspectors access to a particular site for legitimate constitutional reasons.

In light of this specific text, inserted at the insistence of U.S. negotiators, I am hard pressed to understand how anyone can seriously contend that the convention conflicts with the constitution.

There is nothing in the convention that would require the United States to permit a warrantless search or to issue a warrant without probable cause. Nor does the convention give any international body the power to compel the U.S. to permit an inspection or issue a warrant.

This is the overwhelming consensus among international law scholars that have studied the convention, two of whom have written to me expressing their opinion that the convention is constitutional. I ask unanimous consent that the letters of Harvard Law Professor Abram Chayes and Columbia Law Professor Louis Henkin be included in the RECORD following my statement.

So let me make this point absolutely clear, despite what opponents of the convention have said, there will be no involuntary warrantless searches of U.S. facilities by foreign inspectors under this convention.

In light of this, I hope that the constitutionality of this convention will not become an issue in this debate.

AMERICAN LEADERSHIP

Mr. President, let me stress that the CWC will go into effect with or without us on April 29. The only way we can ensure fully effective American leadership is to ratify this convention before that date. We will needlessly pay a price if we ratify after that date.

Let us remember that this is not a partisan issue before us. After more than 8 years of negotiation under two Republican administrations, President Bush signed the final version of the CWC in January 1993.

To demonstrate the bipartisan support for the CWC, I ask unanimous consent to insert in the RECORD a statement made earlier this month by former President Bush in which he restated his strong support for ratification of the CWC.

I also ask unanimous consent to insert into the RECORD a recent op-ed by former Secretary of State James Baker.

Many of the strongest supporters of this convention are Republicans. The distinguished senior Senator from Indiana, Senator LUGAR, has led the effort to ratify the CWC. All of us, Republicans and Democrats alike, need to recognize that this convention is a matter of our national interest.

Mr. President, I fear that our status as the world's non-proliferation leader would be irreversibly compromised by our unwillingness to ratify the CWC.

Already, all of our G-7 partners have ratified the CWC.

What will be their reaction when we try to enlist their support for proliferation initiatives targeting rogue states if we cannot even take the simple step of joining a regime that we led the way in creating?

Make no mistake. If we fail to ratify the CWC, we will forfeit the high ground on global proliferation matters. And that is not something to be taken lightly, for the result will be a far more dangerous world.

CONCLUSION

Mr. President, in conclusion, the burdens of the chemical weapons convention are small, but its benefits are great.

The American chemical industry strongly supports this convention.

Our military is already committed to destroying our poison gas stockpile, and the convention will require the same of every other CWC member state.

The CWC will improve our ability to monitor the chemical weapons capabilities of other states.

In short, Mr. President, the CWC will improve the security of Americans.

The CWC may not be perfect—and no treaty is—but it is considerably better than the alternative of doing nothing. Ultimately, the question we will have to ask is—are we better off with the CWC or without it? I hope that I have demonstrated today why we would be

far better off joining a treaty regime that we created, rather than turning our backs in favor of the status quo or worse.

We need to disregard arguments that are superfluous to the core reality of what this convention will accomplish: It bans poison gas, period.

This convention is the best means available to ensure that there will be no more victims of poison gas like the soldiers in the trenches of World War I or the innocent victims of a murderous Iraqi regime.

I understand that a task force of Republican Senators has been working with the White House to address concerns raised by some of our colleagues. I hope that this process soon will yield a resolution of ratification that merits strong bipartisan support.

But I cannot emphasize enough the importance of this convention to our national security. We have a very real deadline hanging over our heads.

I would urge my colleagues to learn more about this convention in the next few weeks so that they can make an informed decision about its necessity for our national security. Please contact me or my staff if you have questions about the cwc and what it will and will not do.

If we bring this convention to the floor and engage in a full, frank, and open debate on its merits, I am confident that two-thirds of the Senate will be convinced that the Chemical Weapons Convention is good for American business, good for the American military, and good for the American people. Mr. President, we owe it to them to have this debate at the earliest possible time.

I ask that the material to which I referred be printed in the RECORD.

The material follows:

[From the Washington Post, Jan. 6, 1997]

A NEEDLESS RISK FOR U.S. TROOPS

(By E.R. Zumwalt, Jr.)

It has been more than 80 years since poison gas was first used in modern warfare—in April 1915 during the first year of World War I. It is long past time to do something about such weapons.

I am not a dove. As a young naval officer in 1945, I supported the use of nuclear weapons against Japan. As chief of naval operations two decades ago, I pressed for substantially higher military spending than the nation's political leadership was willing to grant. After retiring from the Navy, I helped lead the opposition to the SALT II treaty because I was convinced it would give the Soviet Union a strategic advantage.

Now the Senate is considering whether to approve the Chemical Weapons Convention. This is a worldwide treaty, negotiated by the Reagan administration and signed by the Bush administration. It bans the development, production, possession, transfer and use of chemical weapons. Senate opposition to ratification is led by some with whom I often agree. But in this case, I believe they do a grave disservice to America's men and women in uniform.

To a Third World leader indifferent to the health of his own troops and seeking to cause large-scale pain and death for its own sake, chemical weapons have a certain attraction. They don't require the advanced

technology needed to build nuclear weapons. Nor do they require the educated populace needed to create a modern conventional military. But they cannot give an inferior force a war-winning capability. In the Persian Gulf war, the threat of our uncompromising retaliation with conventional weapons deterred Saddam Hussein from using his chemical arsenal against us.

Next time, our adversary may be more berserk than Saddam, and deterrence may fail. If that happens, our retaliation will be decisive, devastating—and no help to the young American men and women coming home dead or bearing grievous chemical injuries. What will help is a treaty removing huge quantities of chemical weapons that could otherwise be used against us.

"Militarily, this treaty will make us stronger. During the Bush administration, our nation's military and political leadership decided to retire our chemical weapons. This wise move was not made because of treaties. Rather, it was based on the fact that chemical weapons are not useful for us.

Politically and diplomatically, the barriers against their use by a First World country are massive. Militarily, they are risky and unpredictable to use, difficult and dangerous to store. They serve no purpose that can't be met by our overwhelming conventional forces.

So the United States has no deployed chemical weapons today and will have none in the future. But the same is not true of our potential adversaries. More than a score of nations now seeks or possesses chemical weapons. Some are rogue states with which we may some day clash.

This treaty is entirely about eliminating other people's weapons—weapons that may some day be used against Americans. For the American military, U.S. ratification of the Chemical Weapons Convention is high gain and low or no pain. In that light, I find it astonishing that any American opposes ratification.

Opponents argue that the treaty isn't perfect: Verification isn't absolute, forms must be filled out, not every nation will join at first and so forth. This is unpersuasive. Nothing in the real world is perfect. If the U.S. Navy had refused to buy any weapon unless it worked perfectly every time, we would have bought nothing and now would be disarmed. The question is not how this treaty compares with perfection. The question is how U.S. ratification compares with its absence.

If we refuse to ratify, some governments will use our refusal as an excuse to keep their chemical weapons. Worldwide availability of chemical weapons will be higher, and we will know less about other countries' chemical activities. The diplomatic credibility of our threat of retaliation against anyone who uses chemical weapons on our troops will be undermined by our lack of "clean hands." At the bottom line, our failure to ratify will substantially increase the risk of a chemical attack against American service personnel.

If such an attack occurs, the news reports of its victims in our military hospitals will of course produce rapid ratification of the treaty and rapid replacement of senators who enabled the horror by opposing ratification. But for the victims, it will be too late.

Every man and woman who puts on a U.S. military uniform faces possible injury or death in the national interest. They don't complain; risk is part of their job description. But it is also part of the job description of every U.S. senator to see that this risk not be increased unnecessarily.

[Chemical Weapons Convention News Alert, Feb. 20, 1997]

VETERANS, MILITARY GROUPS ENDORSE CWC

Veterans organizations and military associations representing millions of Americans who have served in this nation's armed forces have endorsed the Chemical Weapons Convention.

The Veterans of Foreign Wars Commander in Chief James E. Nier said:

"The treaty will reduce world stockpiles of such weapons and will hopefully prevent our troops from being exposed to poison gases. . . . As combat veterans we support this treaty. . . ."

The Vietnam Veterans of America included in its priorities:

"Ratification of the Chemical Weapons Convention to take a substantive step toward preventing chemical weapons exposure problems for veterans in the future similar to those experienced by Persian Gulf War veterans and the veterans of prior wars."

The Reserved Officers Association of the United States in a Resolution declared:

"... failure to ratify the CWC will place us among the great outlaw states of the world, including Libya, Iran, and North Korea. . . ."

"... United States ratification of the CWC will enable us to play a major role in the development and implementation of CWC policy, as well as providing strong moral leverage to help convince Russia of the desirability of ratifying. . . ."

"... the Reserve Officers Association of the United States, chartered by Congress, urge the Senate to quickly ratify the Chemical Weapons Convention."

American Ex-Prisoners of War National Commander William E. "Sonny" Mottern said:

"... I wish to express my support for the ratification of the Chemical Weapons Convention. This is an important step in reducing the price that Americans who serve their country on the field of battle must pay in defense of our freedom.

"... America must play a leadership role in international efforts to reduce this price to the extent possible."

Jewish War Veterans of the U.S.A. National Commander Bob Zweiman said:

"There are meaningful provisions in the CWC which will afford an opportunity to impose economic restrictions and sanctions against those who develop chemical weapons. . . ."

"... We are honor bound to protect our Nation and our troops by minimizing the chances from all obvious or hidden means of chemical attack in the future."

[Chemical Manufacturers Association, Jan. 13, 1997]

RATIFY THE CHEMICAL WEAPONS CONVENTION

(By Fred Webber, President and CEO)

Today marks the fourth anniversary of the Chemical Weapons Convention, an international treaty outlawing poison gas. The treaty is the brainchild of the United States. Since the treaty was opened for signature in Paris, 67 nations have ratified the treaty (China is poised to become the 68th member of the club). The United States is not among the 67. Now, with the Convention poised to become international law on April 29, our nation's continuing absence from a treaty of its making is fast becoming a source of international embarrassment. The Senate should act quickly to rectify this situation by ratifying the treaty at the earliest opportunity.

Opposition to the Convention, led by conservative think tanks, is rooted in longstanding suspicions of arms control agree-

ments. But the critics have taken to embellishing this argument by also claiming the Convention will have a devastating impact on American businesses, large and small.

The critics are simply wrong. The members of our association, large and small, produce over 90 percent of the nation's industrial chemicals and they strongly support the Convention. Ratifying it is the right thing to do.

No American business makes chemical weapons. Chemical companies do, however, make products which can, in the wrong hands, be processed into weapons agents. Some poison gases for example, can be made in part from chemicals designed to treat cancer patients and prevent fires.

Chemical manufacturers have a responsibility to make sure that their products are safely produced and properly used. That's why we support the Chemical Weapons Convention. It's the best way to reduce the threat of future poison gas attacks.

Some advocacy groups, and their allies on Capitol Hill, are trying to scare the business community into opposing the Convention. It's time to answer the critics and set the record straight.

Here's how the chemical industry answers three commonly-heard criticisms of the treaty:

The treaty will impose a "massive new regulatory burden" on more than 25,000 American businesses, most of which are not chemical companies. The terms of the treaty place most of the private-sector reporting requirements squarely on the shoulders of chemical manufacturers. No more than 2,000 facilities here in the U.S. face treaty obligations. Nearly all are chemical makers, not their customers. And most regulated businesses will be required to do more than fill out a two-page form, once a year.

The treaty threatens vital industry trade secrets by allowing international inspectors free access to manufacturing sites. The chemical industry worked with treaty negotiators for more than a decade to help devise inspection procedures. We tested these procedures during trial inspections held at our commercial facilities. Our top priority was to protect legitimate commercial secrets. The treaty does just that—it does not permit unlimited inspector access to any facility.

The treaty tramples on the U.S. Constitution by voiding Fourth Amendment protections against unreasonable searches and seizures. This argument does not pass the red-face test. A simple reading of the Convention reveals that the treaty respects all constitutional protections.

The chemical industry spent years examining this treaty. We have opened our plants to trial inspections. We have put the treaty to the test—over and over again. Honest businesses have nothing to fear from this treaty. Its benefits far outweigh the costs.

What the critics fail to mention is the price to pay for failing to ratify the Convention. The treaty imposes trade sanctions on countries which don't participate. The price of U.S. non-participation will be paid by the chemical industry and by American workers, for it is our products, and our businesses, that will be hurt. Treaty opponents purport to represent American business interests in the Convention, but they aren't telling business the true story.

The Senate's vote on the treaty will send a powerful signal to the rest of the world. A vote *against* the treaty will surely be perceived as a vote for chemical weapons.

Those who oppose this treaty have yet to offer a credible alternative. Chemical weapons are a serious threat to world security. The Chemical Weapons Convention is a serious response to that threat. The treaty's merits have been debated for years. It's time

to stop talking and take action. It's time for the U.S. to ratify the Chemical Weapons Convention *before* it goes into effect in April 1997.

HARVARD LAW SCHOOL,

Cambridge MA, September 9, 1996.

Hon. JOSEPH R. BIDEN, Jr.,
Ranking Member, Senate Judiciary Committee,
Dirksen Senate Office Building, Washington
DC.

DEAR SENATOR BIDEN: You have asked me to comment on the suggestion that the Chemical Weapons Convention (the Convention), now before the Senate for its advice and consent, conflicts with the provisions of the Fourth Amendment of the Constitution prohibiting unreasonable searches and seizures. In my view, the suggestion is completely without merit.

The Convention expressly provides that:

"In meeting the requirement to provide access . . . the inspected State Party shall be under the obligation to allow the greatest degree of access *taking into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures.*" (Verification Annex, Part X, par. 41) (emphasis supplied).¹

As you know, this provision of the Convention was inserted at the insistence of the United States after earlier drafts, which provided insufficient protection in regard to unreasonable searches and seizures, had been criticized by a number of U.S. scholars. The plain meaning of these words, which seems too clear for argument, is that the United States would have no obligation under the Convention to permit access to facilities subject to its jurisdiction in violation of the provisions of the Fourth Amendment. It was the clear understanding of the negotiators that the purpose of the provision was to obviate any possibility of conflict between the obligations of the United States under the Convention and the mandate of the Fourth Amendment. The Convention in its final form is thus fully consistent with U.S. constitutional requirements.

Inspections required by the Convention will be conducted pursuant to implementing legislation to be adopted by Congress that will define the terms, conditions and scope of the inspections to be conducted in the United States by the Technical Staff of the Organization for the Prohibition of Chemical Weapons (OPCW) established by the Convention. I understand that draft implementing legislation entitled the Chemical Weapons Convention Implementation Act, now before the Congress, specifies the procedures that will be followed in the case of both routine and challenge inspections carried out pursuant to the Convention. The Act requires, at a minimum, an administrative search warrant before an inspection can be conducted, and has elaborate provisions for notice and other protections to the owner of the premises to be searched. These provisions of the Act are modeled on similar administrative inspection regimes already authorized by Acts of Congress such as the Toxic Substances Control Act and upheld by the courts. However, if Congress is concerned that these provisions are constitutionally insufficient, it is free under the Convention to revise the Act to include more stringent requirements that conform to constitutional limitations. Finally, a person subject to inspection may challenge the inspection in a U.S. court, which in turn will be bound to invalidate any inspection that fails to comply with constitutional requirements. In view of the provisions of the Verification Annex quoted above, the United States would not

be in violation of any international obligation in such an eventually.

For these reasons I conclude that there is no constitutional objection to the Convention, and that the rights of individuals under the Fourth Amendment will be fully protected under the Convention and implementing legislation of the character presently contemplated.

In addition, I have been involved in the field of arms control as a scholar and practitioner for many years, going back to the Limited Test Ban Treaty in 1963, in connection with which I appeared before the Senate Foreign Relations Committee as Legal Adviser of the State Department. I have also closely followed the negotiations for the Chemical Weapons Convention. The United States has been a prime mover in the development of the Convention under both Republican and Democratic administrations. I am convinced that the prompt ratification of the Chemical Weapons Convention is overwhelmingly in the security interest of the United States and should not be derailed by constitutional objections that are so plainly without substance.

Sincerely,

ABRAM CHAYES.

COLUMBIA UNIVERSITY,

SCHOOL OF LAW,

New York, NY, September 11, 1996.

DEAR SENATOR BIDEN: As requested, I have considered whether, if the United States adhered to the Convention on Chemical Weapons, the inspection provisions of the Convention would raise serious issues under the United States Constitution. I have concluded that those provisions would not present important obstacles to U.S. adherence to the Convention.

Like domestic laws, treaties of the United States are subject to constitutional restraints. The Fourth Amendment to the United States constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." Constitutional jurisprudence has established that the right to be secure applies also to industrial and commercial facilities and to business records, papers and effects.

The Constitution, however, protects the rights of private persons; it does not protect governmental bodies, public officials, public facilities or public papers. As to private persons, the Fourth Amendment protects only against searches and seizures that are "unreasonable." Inspection arrangements, negotiated and approved by the President and consented to by the Senate, designed to give effect to a treaty of major importance to the United States, carry a strong presumption that they are not unreasonable.

The Chemical Convention itself anticipated the constitutional needs of the United States. Part X of the Convention, "Challenge Inspection pursuant to Article IX," provides:

"41. In meeting the requirement to provide access as specified in paragraph 38, the inspected State party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligation it may have with regard to proprietary rights or searches and seizures."

As applied to the United States, that provision is properly interpreted to mean that the United States must provide access required by the Convention, but if the Constitution precludes some access in some circumstances, the United States must provide access to the extent the Constitution permits. And if, because of constitutional limitations, the United States cannot provide full access required by the Convention, the United States is required "to make every

reasonable effort to provide alternative means to clarify the possible noncompliance concern that generated the challenge inspection." (Art. 42.)

The United States would be required also to adopt measures to overcome any constitutional obstacles to any inspection or interrogation required by the Convention. If it were determined to be necessary, the United States could satisfy the requirements of the Fourth and Fifth Amendments by arranging for administrative search warrants, by enacting statutes granting immunity from prosecution for crimes revealed by compelled testimony, by providing just compensation for any "taking" involved.

Sincerely,

LOUIS HENKIN,
University Professor Emeritus.

STATEMENT OF FORMER PRESIDENT GEORGE
BUSH

President BUSH. Welcome. Let me just say that we've had a most enjoyable breakfast. Barbara and I are very flattered that the Secretary of State, in what is obviously a busy schedule, took time to come and have breakfast with us.

I told Secretary Albright that she would have my enthusiastic support in her quest for bipartisanship and foreign policy. I think Jim Baker, my esteemed friend and former colleague, told her the same thing, so it's for real from us and I know she feels strongly about that.

I told her I would strongly support her efforts to get this Chemical Weapons Treaty approved. This should be beyond partisanship. I have a certain fatherhood feeling about that. But leaving that out, I think it is vitally important for the United States to be out front, not to be dragged, kicking and screaming to the finish line on that question. We don't need chemical weapons, and we ought to get out front and make clear that we are opposed to others having them. So that's important.

The funding for the State Department: When I heard Madeleine telling me some of the problems that she might face—hopefully, she won't, but she might face—it was *deja vu* because I remember Jim Baker coming to me, as President, and saying "We must keep adequate funding levels for State." I couldn't agree more. There is a stupid feeling in some quarters that we don't have any more concerns on foreign policy, that we don't have any more threat in the world. The Secretary knows so well that we do.

So I hope that Congress will do what's right on a bipartisan basis in terms of proper levels of funding. She can determine what those levels should be. But all I know is, these arguments that we ought to cut back on spending for foreign affairs—I think it's very shortsighted. We do that at our own risk for generations to come, too.

We talked about several others. But, Madeleine, welcome, and I'm so pleased you came to Houston.

OUR BEST DEFENSE

(By James A. Baker 3d)

HOUSTON.—The Chemical Weapons Convention — an international treaty that commits member nations to destroy their chemical weapons and to forswear future production, acquisition or use of them—is before the Senate for approval. Despite the fact that the treaty was negotiated under Presidents Ronald Reagan and George Bush, a number of Republicans have expressed reservations about it. I respect their motives, but their concerns are misplaced.

For instance, some have argued that we shouldn't commit to the treaty because rogue states like Libya, Iraq and North

¹The Verification Annex is, of course, an integral part of the convention.

Korea, which have not signed it, will still be able to continue their efforts to acquire chemical weapons. This is obviously true. But the convention, which has been endorsed by 68 countries and will go into effect in April whether or not we have ratified it, will make it more difficult for these states to do so by prohibiting the sale of materials to nonmembers that can be used to make chemical weapons.

In an ideal world, rogue states and terrorist groups would simply give up the use of chemical weapons. But ours is not an ideal world. The Chemical Weapons Convention recognizes that, and so should its opponents. It makes no sense to argue that because a few pariah states refuse to join the convention the United States should line up with them rather than with the rest of the world.

Others have argued that if we ratify the treaty, we will not be able to verify that all members will abide by it. No international agreement, of course, is perfectly verifiable—just as no domestic law is perfectly enforceable. But the treaty sets up a verification system, including international inspections on short notice, that will be far more effective than what we possess today. Moreover, the treaty would strengthen information-sharing among member states. It would increase, not diminish, our understanding of chemical weapons threats.

Some opponents of the treaty claim that it would create yet another costly international bureaucracy and place an onerous regulatory burden on American business. Both assertions are overstated. Our share for administering the treaty would be about \$25 million a year, a truly modest amount in a Federal budget of about \$1.7 trillion. Only about 140 companies would have significant reporting requirements, while some 2,000 others would be asked to fill out a short form.

Moreover, failure to ratify the treaty would actually cost the American chemical industry hundreds of millions of dollars in sales by making United States exporters subject to trade restrictions by convention members. Our joining the convention could help American business—which is why the chemical industry supports ratification.

Other critics assert that the treaty would somehow infringe on our national sovereignty—in particular, the Fourth Amendment ban on unreasonable search and seizure. In fact, it explicitly permits members to abide by their constitutional requirements when providing access to international inspectors. Under the treaty, involuntary inspection of American manufacturing and storage sites would still require legally acquired search warrants. The idea that ratifying the treaty would repeal part of our Bill of Rights is simply wrong.

But by far the most important argument against the treaty is that ratification would somehow undermine our national security.

Nothing could be further from the truth. Let me be blunt: The idea that Ronald Reagan and George Bush would negotiate a treaty detrimental to this nation's security is grotesque.

The United States does not need chemical weapons as a deterrent. Any nation or group contemplating a chemical attack against us must reckon with our overwhelming conventional force and vast nuclear arsenal. Each is more than sufficient to deter a chemical attack.

Chemical weapons are relatively easy to develop and cheap to manufacture, so it is no coincidence that the rogue nations now seeking to build chemical arsenals are economically impoverished and technologically backward. Unlike Iraq or Libya, we don't need such weapons to project our influence. In fact, we are already committed—under a

law signed in 1985 by President Reagan—to destroy our existing chemical weapons stockpile by 2004. We will do this whether or not we ratify the treaty.

What we need is a way to limit the risk that American troops or civilians may someday face a chemical weapons attack. The convention can help do precisely this by controlling the flow of illicit trade materials and by making it easier to marshal international support for the political, diplomatic and economic isolation of countries that refuse to ratify it.

If we fail to ratify the convention, we will not only forgo any influence in the continuing effort against chemical weapons, we will also risk postponing indefinitely any progress on an international ban on the equally dire threat of biological weapons. More generally, we will imperil our leadership in the entire area of nonproliferation perhaps the most vital security issue of the post-cold-war era.

Today we face a monumental choice requiring a bipartisan consensus, just as we did in ratifying the North American Free Trade Act in 1993. Failure to ratify the Chemical Weapons Convention would send a message of American retreat from engagement in the world. For this reason—and because our national interest is better served by joining the convention than by lining up with pariah states outside it—I support the treaty and urge my fellow Republicans to do the same.●

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 6968(a), appoints the Senator from Arizona [Mr. MCCAIN], from the Committee on Armed Services, to the Board of Visitors of the U.S. Naval Academy.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 9355(a), appoints the Senator from Idaho [Mr. KEMPTHORNE], from the Committee on Armed Services, to the Board of the U.S. Air Force Academy.

The Chair, on behalf of the Vice President, pursuant to 10 U.S.C. 4355(a), appoints the Senator from Indiana [Mr. COATS], from the Committee on Armed Services, to the Board of Visitors of the U.S. Military Academy.

ORDERS FOR WEDNESDAY, FEBRUARY 26, 1997

Mr. ENZI. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Wednesday, February 26. I further ask that immediately following the prayer, the routine requests through the morning hour be granted and the Senate then resume consideration of Senate Joint Resolution 1, the constitutional amendment requiring a balanced budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ENZI. For the information of all Senators, tomorrow morning, the Senate will begin debate on the Feinstein

amendment to the balanced budget resolution, with a vote on or in relation to the Feinstein amendment occurring at 11 a.m. Then Senator TORRICELLI will be recognized to offer an amendment relating to capital budgeting. There is a limitation of 3 hours for debate on that amendment.

I want to remind Senators that under a previous order, Members have until 5 p.m. on Wednesday to offer their amendments to the balanced budget amendment. We appreciate the cooperation of the Democratic leader in working with us for this unanimous-consent agreement outlining the remaining adjustments that will be in order to the constitutional amendment. It is our hope that when we continue to make progress and complete consideration of this important legislation. Also, I want to remind Senators that on Thursday, February 27, His Excellency Eduardo Frei, President of Chile, will address a joint meeting at 10 a.m. All Senators are asked to meet in the Senate Chamber at 9:40 a.m. to proceed as a group to the joint meeting.

ORDER FOR RECESS

Mr. ENZI. If there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order following the remarks of Senator TORRICELLI, who will be making his initial floor speech, and Senator BENNETT.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I don't mean to intrude upon the Senator from New Jersey, if he is prepared to speak next. I was going to ask unanimous consent for up to 10 minutes to speak as if in morning business.

I ask unanimous consent that I may proceed for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. BENNETT. Mr. President, I ask unanimous consent that Ricardo Velazquez and Cordell Roy be granted floor privileges for the balance of this session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized as in morning business.

(The remarks of Mr. BENNETT pertaining to the introduction of S. 357 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. ENZI). The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President.

JOURNEY OF GENERATIONS

Mr. TORRICELLI. Mr. President, I rise to address the Senate for the first