not referring to the Senator from North Carolina. He said, ''I'd never do this for you.'' The point being, not that BIDEN is a good guy or BIDEN is a stupid guy, the point being that the court is in desperate trouble in a number of jurisdictions. In southern California and south Florida, and in a number of places where there are drug cases that are backed up, a number of places where there are significant civil case backlogs, a number of places where population growth is straining the court, they need these vacancies filled.

I respectfully suggest that it is a rare—it is a rare—district court nominee by a Republican President or a Democratic President who, if you first believe they are honest and have integrity, have any reason to vote against them. I voted for Judge Bork, for example, on the circuit court, because Judge Bork I believed to be an honest and decent man, a brilliant constitutional scholar with whom I disagreed, but who stood there and had to, as a circuit court judge, swear to uphold the law of the land, which also meant follow Supreme Court decisions. A circuit court cannot overrule the Supreme Court.

So any member who is nominated for the district or circuit court who, in fact, any Senator believes will be a person of their word and follow stare decisis, it does not matter to me what their ideology is, as long as they are in a position where they are in the general mainstream of American political life and they have not committed crimes of moral turpitude, and have not, in fact, acted in a way that would shed a negative light on the court.

So what I want to say, and I will yield because I see my friend from South Carolina—North Carolina, I beg your pardon. I am used to dealing with our close friend in the Judiciary Committee who is from South Carolina. I seem to have the luck of getting Carolinians to deal with, and I enjoy them. I will yield the floor by saying, I will come back to the floor at an appropriate time in the near term, immediately when we get back from the recess, and I will, as they say, Madam President, fill in the blanks in terms of what the absolute detail and each of the numbers are, because I have tried to recall some of them off the top of my head, not having intended to speak to this issue when I walked across the floor earlier.

Let it suffice to say at the moment, at least for me, that it is totally appropriate for any U.S. Senator to voice his or her opposition to any nominee for the Court, and they have a full right to do that. In my study of and teaching of constitutional law and separation of powers issues, there is nothing in the Constitution that sets the standard any Senator has to apply, whether they vote for or against a judge.

But I also respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.

We had a tie vote in the committee, Madam President, on one of the Supreme Court nominees. I was urged by those who opposed him—and I opposed this particular nominee—to not report it to the floor. My reading of the Constitution, though, is the Judiciary Committee is not mentioned in the Constitution. The Judiciary Committee is not mentioned. The Senate is. We only in the Judiciary Committee have the right to give advice to the Senate, but it is the Senate that gives its advice and consent on judicial nominations.

I sincerely hope, and I have urged the administration to confer with Republican Senators before they nominate anyone from that Senator's State. I think that is totally appropriate. I think it is appropriate, as well, that Republican Senators, with a Democratic President, have some input, which Democrats never had with the last two Republican Presidents. I think that is appropriate.

But I do not think it is appropriate, if this is the case—and I do not know for certain, it just appears to be—if the real hangup here is wanting to reach an informal agreement that for every one person the President of the United States gets to nominate, the Republican Party will get to nominate someone, the Republican Party in the Senate. Or for every two persons that the President nominates, the Republicans get to nominate one.

It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to allow a vote, and it is not appropriate to insist that we, the Senators—we, the Senators—get to tell the President who he must nominate if it is not in line with the last 200 years of tradition.

Again, I did not intend speaking at all on this, other than the fact I walked through and it was brought up, and since I was in that other capacity for so long, I felt obliged to speak up.

I see my friend from North Carolina is here. I do not know if he wishes to speak on judges or foreign policy matters, but whichever he wishes to speak on, I am sure it will be informative. I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, let me say that I always enjoy my friend, Senator BIDEN—all of it. You have to wait awhile sometimes, but the enjoyment is nonetheless sincere.

CHEMICAL WEAPONS CONVENTION

Mr. HELMS. Mr. President, the remarks I am about to make will probably be the best kept secret in Washington, DC, tomorrow morning in the Washington Post or whatever. Instead, I am sure there will be ample coverage given to the various statements made by several Senators earlier in the day about how they are having trouble getting a treaty through the U.S. Senate. And certain comments were made that just had no basis in fact whatsoever.

So this is a speech that I am going to make to set the record straight so that it will be in the CONGRESSIONAL RECORD tomorrow morning in the hopes that some soul somewhere may decide to look to see what the facts really are.

In any case, I listened with great interest to the—what do we call it—the colloquy this morning regarding the Chemical Weapons Convention, and I think it is important to remind the Senate of some facts about the debate surrounding this controversy and, I believe, this dangerous treaty, which is perilously flawed.

First of all, I am puzzled at the insistence of some of my Democratic colleagues on a date certain for a vote on this treaty. It appears that the supporters of the treaty want only a date certain when it suits their needs, their desires. I remember last year, they wanted a date certain for hearings on this very same subject, the Chemical Weapons Convention Treaty. They wanted a date certain for committee action on the treaty; they insisted on it.

The committee took action on the treaty. Then they wanted a date certain for floor debate and consideration of the treaty —this was last year—and we obliged them in every instance. But hours before the vote on the Chemical Weapons Convention, on their date certain, that was supposed to happen, it was announced by the majority leader the night before, but what happened? The White House called up and said, ''Please withdraw the treaty.''

Now, it was not this Senator from North Carolina or any other Senator who asked it be withdrawn. It was not TRENT LOTT, the majority leader. It was the Clinton administration who asked the Senate not to vote on the Chemical Weapons Convention. Do you know why? Because they didn't have enough votes to ratify the treaty. And why did they not have the votes to ratify the treaty? Because in their zeal to force this treaty down the throats of Senators, they refused flat out to address any of the serious concerns that I had and a growing number of other Senators had about this treaty.

I remember thinking last year, and I am thinking now, about what Sam Ervin said so many times. He said, ''The United States had never lost a war or won a treaty.'' And you think about the treaties that we have gotten into, and Sam Ervin—I think he got that from Will Rogers—but wherever it came from, it is true, and particularly in a document such as the Chemical Weapons Convention.

So the suggestion, whether stated or implied, that we are somehow holding this treaty hostage is not only fraudulent, it is simply untrue. You will not

read about that in the Washington Post in the morning and CBS will not have it. They might say something about JESSE HELMS holding up consideration of this treaty. But the fact is that I met for 4 hours yesterday evening with the distinguished Senator, JOE BIDEN, and we went down a list of many issues in that proposed treaty. And we resolved most of them.

Let me talk a little bit about the suggestion that the committee, the Foreign Relations Committee, of which I am chairman, is failing to fulfill its responsibilities to address the Clinton administration priorities. That simply is not so.

The Foreign Relations Committee was the first to convene a confirmation hearing for a Cabinet-rank official this year. In fact, the Foreign Relations Committee expeditiously considered and reported both of the President's Cabinet-rank nominations by the end of January. Indeed, we have cleared the calendar of nearly all of the administration's appointees, including one Assistant Secretary of State and several Ambassadors.

Let us set the record straight with respect to negotiations concerning the Chemical Weapons Convention.

I personally met with the National Security Adviser in my office on February 5 of this year. In that meeting, I told him that my staff was prepared to begin discussions with his staff immediately. Well, day after day after day passed, and I received not one syllable of reply whatsoever to that offer.

In an effort to get around the impasse, I wrote a seven-page letter to Mr. Berger, dated February 13, reiterating my request to begin staff-level negotiations and proposing concrete solutions for addressing the concerns that I and other Senators have about this treaty.

Another 2 weeks elapsed before I finally received a response from Mr. Berger—four paragraphs long—in which he did not respond to one single proposal contained in my letter. Indeed, he reiterated his refusal to send any of his staff to meet directly with the staff of the Foreign Relations Committee.

Then, on February 27, the chief of staff of the Foreign Relations Committee, Adm. Bud Nance—who, by the way, is recovering nicely from a near-fatal automobile accident that occurred last December, just before Christmas—came from his home in McLean to the Senate for the sole purpose of attempting to bridge this impasse. On that day, Admiral Nance met with the heads of legislative affairs of both the State Department and the NSC.

Well, then, we move forward to March 5. Mr. Berger finally allowed the NSC staff to begin discussion with the staffs of interested Senators. So those Senators who are counting every day from now until April 29 should ask Mr. Berger why he dillied and dallied away the month of February and refused to work with the chairman of the Foreign Relations Committee or the committee staff.

Notwithstanding all of that, since March 5, the staff of the Foreign Relations Committee has participated in more than 50 hours of negotiations with the administration and other proponents of this treaty. And I must add that the distinguished majority leader, to his credit, has already devoted an extraordinary amount of time and energy to this issue.

Last night, the distinguished ranking member of the Foreign Relations Committee and I, as I said earlier, spent 4 hours in my office negotiating specific provisions with some success. So, in light of all those efforts, I am perplexed as to how anyone could conclude that we are not working in good faith to resolve this matter.

Having said that, I think the time has come for the administration to address several key concerns. Thus far, I regret to report we have not had as much success as I would have hoped. Indeed, it is becoming clear that the administration is treating these negotiations as an empty exercise, a perfunctory hurdle over which they must jump so that they can argue that they ''tried to negotiate'' with me and with the Foreign Relations Committee.

As a result of this unfortunate attitude on the part of the White House, very little progress is being made to bridge the wide gap between us on a number of important provisions of the chemical weapons treaty.

Our staffs have been able to reach definitive agreement with the administration on only 8 of 30 provisions. Of those, three are simple reporting requirements and one is a nonbinding sense-of-the-Senate declaration. Not one of the issues that can be regarded as critical has yet been resolved.

But, Mr. President, having said all that, I am still determined to work with the administration and others to see if we can resolve our differences on a chemical weapons treaty. But if we are going to do that, the administration needs to return to the bargaining table and negotiate with my staff and with me in good faith. The way they have been acting, they said, ''Well, we'll work it out.'' ''I'll do what I think is right,'' they say. ''And you do what we think is right.'' So that does not make it a 50–50 proposition, which I am not going to accept.

The administration needs to realize, in no uncertain terms, that unless and until they satisfy the number of concerns that various Senators, including this Senator, have relating to the treaty's universality, verifiability, constitutionality, and crushing impact on business, I am not going, personally, to move on the CWC, period.

The chemical weapons treaty, as it now stands, is not global, as it is claimed to be. It is not verifiable. And it imposes costly and potentially unconstitutional regulatory burdens on American business.

This treaty will do nothing—will do nothing—to reduce the dangers of poison gas.

Almost none of the rogue nations that pose a chemical weapons threat to us—such as Iraq, Syria, Libya, North Korea—are signatories to the treaty. They are free to pursue their chemical weapons programs unimpeded by this treaty. And the intelligence community has made clear—I do know whether it has been reported in the news or not—but the intelligence community says it is not possible to monitor the compliance of signatory nations with a high level of confidence. This is a matter of record. This is a matter of testimony before the Senate.

By the way, Russia is already violating its existing bilateral chemical weapons treaty with the United States. And the Russian military is reportedly working to circumvent the CWC with a new generation of chemical agents that are specifically crafted to evade the treaty's verification regime.

So if the chemical weapons treaty will not do anything to reduce the dangers of chemical weapons, what will it do? Good question.

Well, for one thing, it will, in fact, increase access to dangerous chemical agents to those terrorist states that do sign the treaty. Now, Douglas Feith, a chemical arms control negotiator in the Reagan administration, pointed out last week in the New Republic that the CWC will give the terrorist regimes in Iran and Cuba the right to demand access to the chemical markets of the United States and all other signatory nations and will create a treaty obligation for signatory nations to sell or give them chemical defensive gear, which is essential for any offensive program.

Well, the treaty will also endanger American troops by its forbidding commanders in the field from using tear gas and other ground control agents.

Worst of all, on top of all of these other deficiencies, it will impose dozens of new regulations and unprecedented and unconstitutional inspections on between 3,000 to 8,000 American businesses. Under the chemical weapons treaty, foreign inspectors will be authorized to swoop down on American businesses—without a criminal search warrant or even probable cause—and they can rifle through the records of these businesses, interrogate the employees, and even remove chemical samples. That is not only an infringement on the constitutional rights of Americans, it is an invitation to industrial espionage. Any treaty that gives foreign inspectors greater powers of search and seizure than those granted American law enforcement officials under the U.S. Constitution is a treaty in need of serious modifications.

Last, this treaty has already begun to lull the United States and our allies into a false sense of security by creating the false impression that something is being done about the problem of chemical weapons when, in fact,

nothing, nothing is being done by the treaty. I could come up with no other explanation for why the then-Vice Chairman of the Joint Chiefs of Staff, Admiral Owens, would try to strip more than $800 million in chemical defensive funding from the fiscal years defense plan, or why the Chairman of the Joint Chiefs of Staff, General Shalikashvilli, would recommend that $1.5 billion be taken out of our defense spending.

Do not take my word for it. Listen to constitutional scholars such as Robert Bork, Ed Meese. Listen to foreign policy experts such as Jeanne Kirkpatrick, and Alexander Haig, and former Secretaries of Defense Dick Cheney, Caspar Weinberger, Donald Rumsfeld, and James Schlesinger, or ask Henry Kissinger about it. Defense Secretaries of every Republican administration since Nixon have come out against this treaty, along with literally dozens of generals, admirals and senior officials from the Reagan, Bush, Nixon, FORD, and even the Carter administrations. If the Clinton administration chooses not to address the concerns that these distinguished experts and a number of Senators have enumerated, that is their decision, but they will not get the CWC unless they sit down and talk about the problems that some of us have.

Now, we have already sat down. We have begged to sit down before. We have scheduled. We have written letters, all to no avail.

One other myth about the treaty, the myth of this April 29 deadline. We hear over and over again, ''If we miss this deadline, it will be terrible.'' Now, let me say, Mr. President, there has to be an end to the administration's Chicken Little pretense that the sky is going to fall if an agreement is not reached by April 29. This artificial deadline is a fraud created by the administration when they gave the Hungarian Government the green light to drop its instrument of ratification. The Hungarians had sought U.S. guidance on how to proceed, and the administration expressly told the Hungarians to go right ahead.

The administration has one purpose, and that was to manufacture, to contrive, to pretend, to have a drop-dead date to blackmail the Senate into rubberstamping this dangerously defective treaty. Now, I for one am not going to be blackmailed into permitting a flawed treaty to be approved by such tactics. Further, the administration is disingenuous in arguing that the United States will be ''shut out'' of the Executive Council that implements this chemical weapons treaty, and that the U.S. personnel will be barred from the inspection regime if the United States does not ratify by April 29. Horse feathers.

As former Defense Secretaries James Schlesinger, Caspar Weinberger, and Donald Rumsfeld noted recently in an Op-ed in the Washington Post, ''In the event that the United States does decide to become a party to the CWC at a later date—perhaps after improvements are made to enhance the treaty's effectiveness—it is hard to believe its preferences regarding implementing arrangements would not be given considerable weight. This is particularly true,'' this is what they wrote in the op-ed piece, ''This is particularly true since the United States would then be asked to bear 25 percent of the total cost of the implementing organization's budget.''

Now, Mr. President, it will be a concession of diplomatic incompetence to try to argue that the U.S. Government is incapable of negotiating a seat on the Executive Council and the U.S. participation in the inspection regime of a treaty for which the American taxpayers are footing 25 percent of the bill. In fact, U.S. inspectors will be hired if and when the Congress agrees to fork over millions upon millions of American taxpayers' dollars to finance this new organization.

As for the effects on industry, Secretaries Schlesinger, Weinberger, and Rumsfeld made very clear there will be very few, if any. ''The preponderance of trade in chemicals would be unaffected by the CWC's limitations, making the impact of staying out of the treaty regime, if any, fairly modest on American manufacturers.''

It turns out that the Chemical Manufacturers Association has acknowledged that it will not lose, as it had previously claimed, $600 million in export sales. The Chemical Manufacturers Association now admits that less than one-half of 1 percent of U.S. chemical exports will be affected by this treaty, and even that number, even that number is highly suspect.

Mr. President, it is time that the contrived myth of cataclysmic consequences of April 29 be put to rest once and for all. More important than any artificial deadline is the need to resolve the substantive issues that divide us. Without significant changes governing U.S. participation, agreed to in a resolution of ratification, there is no point in ratifying the CWC. In that case, what happens, if anything, after April 29, is academic.

On the other hand, if the administration does come to agreement with us on these and other matters after April 29, or even before, I am confident that the distinguished Secretary of State Madeleine Albright can and will ensure the United States' interests are protected. Madeleine Albright is a tough lady and a capable negotiator.

Mr. President, if the administration really wants this treaty by the artificial deadline that they deliberately created, they will have to return to the negotiating table and begin working in good faith with the staff of the Foreign Relations Committee and with me. Let me reiterate that I spent 4 hours last evening with the distinguished Senator from Delaware, [Mr. BIDEN]. He operated in good faith and so did I. That is what it is going to take. But there is going to have to be a lot of action going a long way in our direction on a number of substantive issues.

For the information of anybody who may be interested, I remain of the opinion, as I indicated in my January 29 letter of this year to the majority leader, that once we have succeeded in having comprehensive reform of U.S. foreign affairs agencies, reform of the United Nations, and once the modification of the ABM and CFE treaties are submitted to the Senate for advice and consent, I will be more than willing to turn my attention to the matter of the CWC. I might be persuaded to turn to it earlier than that. Even so, any resolution of ratification for the CWC must provide key protections relating to the treaty's verification, lack of applicability to rogue states, constitutionality, and its impact on business.

Now, I am very sincere when I say that I hope we can work out our differences. I am certainly willing to try. I hope I demonstrated that last evening and on occasions earlier than that. But, in the end, whether or not we reach agreement is a decision that only the Clinton administration can make. I think they ought to get about it and let us see what we can work out together on a fair and just basis.

I yield the floor.

Mr. BIDEN. Mr. President, again, I did not anticipate that I would be speaking to this issue. Fortunately, or unfortunately, I am on the floor, and I understand why the Senator from North Carolina came over to speak in light of things that were said earlier today when he was not here and I was not here. I would like to respond, at least in part, to what my distinguished colleague has said.

Let me begin by parcelling this out into three pieces. First, is the issue of whether or not the administration has acted in good faith; second, is not whether or not the substantive issues raised by the distinguished Senator from North Carolina are accurate, but whether or not there is a response to them; I think his concerns are not accurate; and third, whether or not the ultimate condition being laid down by the Senator from North Carolina, as I understand it—and I could be wrong—is appropriate.

Let me begin, first, by talking about the administration. It is true that the distinguished Senator from North Carolina and I spent almost 4½ hours last night addressing, in very specific detail—apparently without sufficient success—the concerns the Senator from North Carolina has about this treaty. I note—and I will come back to this—that the universe of concerns expressed by the Senator from North Carolina were submitted to me in writing some time ago. Although they have expanded slightly, they total 30, possibly 31, concerns.

When I became the ranking member of this committee, I approached the distinguished chairman and said I would very much like to work with

him, I would very much like to cooperate, and I would very much like to work out a forum in which we could settle our differences relating to what is sound foreign policy.

The agreement made by the Senator from North Carolina with regard to the Senator from Delaware was this: I said I am willing to meet with your staff—you need not be there, Mr. Chairman—and discuss in detail every single concern you have. I am even willing to go out to Admiral Nance's home, because he was seriously injured. I am willing to go to his home and conduct these discussions. And to the credit of the chairman, he dispatched his staff to do that with me, my staff included, and I do not know, I will submit for the RECORD, the total number of hours we did this. But I know that I, personally, in addition to meeting with the Senator from North Carolina, have met with the staff for hours and hours. And our staffs have met for a considerably longer period of time—not in a generic discussion of this treaty, but on specific word-by-word analyses, negotiations, and agreement on the detail of proposals made by the distinguished Senator from North Carolina about how he feels the treaty has to be remedied.

So what has the administration been doing? I think, to use an expression my grandmom used to use, ''Sometimes there is something missed between the cup and the lip.'' The administration—as I tried to explain to my friend from North Carolina last night, and his staff on other occasions—was giving conflicting marching orders. The administration, after direct discussions with Majority Leader LOTT prior to January 29, agreed to meet and discuss this in detail with a task force that Senator LOTT named. Senator LOTT named a task force of interested Republicans.

They included the distinguished chairman of the Foreign Relations Committee; the distinguished senior Senator from Alaska, Senator STEVENS; Senator SMITH of New Hampshire; Senator KYL of Arizona; Senator WARNER of Virginia, and others, who were to sit down and discuss with the administration their concerns about this treaty and how they felt the treaty had to be changed. The first meeting of that task force, of which Senator HELMS was a part, appointed by Senator LOTT, occurred on January 29.

Now, my friend from North Carolina—I can understand why there may be confusion here. He said that Sandy Berger, the National Security Adviser, dallied away the month of February. He was dallying with Senator LOTT; he was dallying with Senator WARNER; he was dallying with Senator SHELBY; he was dallying with Senator BOB SMITH; he was dallying with Senator KYL; he was dallying with a task force appointed by the Republican leader.

I can understand why the distinguished Senator from North Carolina, the chairman of the Foreign Relations Committee, might not feel that is an appropriate forum. I can understand that. Those of us who have been chairmen do not like the fact that a majority leader will sometimes come along and say, ''By the way, even though this is within your jurisdiction, we are going to appoint a task force beyond your jurisdiction.''

But the truth of the matter is, picture the quandary of the President of the United States after a discussion with the majority leader of the U.S. Senate, and the majority leader said, ''Here are the folks you are supposed to deal with.'' I challenge anyone on Senator LOTT's staff who are the main players in this to suggest that the administration didn't deal in good faith with them. There were hours and hours and hours of detailed negotiations with this group.

I say to my friend from North Carolina, put the shoe on the other foot. He is the President of the United States. Here is a Democratic majority leader. He wants a treaty passed. The Democratic majority leader goes to him and says, ''I have appointed a committee of Democrats interested in this subject. I would like you to negotiate with them, not with BIDEN, the chairman of the committee. He is part of this group.''

So, beginning on January 29, Sandy Berger, Bob Bell, his chief negotiator, and the administration met for scores of hours. I don't mean 2. I don't mean 10. I don't mean 20. I mean 30 or 40 hours worth of negotiations with the principals, with the Republican Senators, as well as without them. Guess what. They reached an agreement. There is a universe of 30-some amendments. I hold it up now. This is what was presented to the administration by this coalition of Republican Senators concerned about the treaty. It, in fact, lists every known objection, every objection raised by any Republican that we are aware of or that the administration is aware of about the treaty. The number is 30.

This document I have here listing those 30 concerns—not only concerns, 30 specific conditions—which the Republican task force, staffed by Senator LOTT's staff and all other members' staff, listed. And they are listed. The specific proposals are listed that were made by the Republican task force.

No. 1, enhancement to robust chemical and biological defenses. And they propose then two pages of language, three pages that relate to the conditions they would like attached to the treaty. That was repeated 30 times as is appropriate. The administration spent 30 or more hours sitting with these members and/or their staff and coming to an agreement on 17 of them, disagreeing on 13.

So, simultaneously, later Senator HELMS and I began a process that was tracking the same process. I was not part of the Republican group, obviously, and I did not represent the administration in this group. But the administration sat down and in detail responded to every single concern raised by the Republican task force named by the majority leader, and instructed by the majority leader to deal with that group. Simultaneously, I sat for hours and hours with Senator HELMS' staff, and then last night, at the end of the process, with Senator HELMS himself for 4 hours. I will estimate that I sat with the staff and my staff sat with HELMS' staff 20 hours or more.

Again, Senator HELMS was very straightforward with us. He gave us a document listing his 30 concerns, some of which were the same and some of which were different. This is the document presented to me. Over a period of hours and hours and hours of negotiation, I agreed on 21 of the 30 issues raised by Senator HELMS, disagreed on 9, 3 of which I indicated I would not take opposition to but I didn't support.

So with all due respect to my distinguished chairman, he may not have been aware and his staff may not have informed him of the hours and hours and hours and hours of detailed negotiation between the Lott task force, including his staff and the administration. But had he been informed, he would know that those negotiations began at the instruction of Senator LOTT on the 29th of January.

So I am sure when the Senator reads this in the RECORD or is informed by his staff, he will realize that the fact he didn't meet with Sandy Berger until February 15 should not be a surprise. Sandy Berger thought he was meeting with Senator Helms when he met with Senator Lott's task force.

Let me tell you what was the agreed objective of the task force and of my negotiations. It was this, that we would put all of the universe of objections—and I hope those who follow this in the press, watching this now or reading it later, will understand precisely what I am about to say. The objective was—I think the Presiding Officer, who has been involved in and interested in this issue, may be aware of this as well. It was agreed that the Republican objections—legitimate—would be put in writing, which they did. All of them would be laid down, which they were. They said they totaled 30. They would be talked about, fought over, negotiated, to see if there could be a compromise reached, and, at the end of the day, there would be two lists. Every one of those 30 amendments would fall in either column A, where there was agreement between the Lott task force and the administration, and hopefully BIDEN and HELMS. Those things which could not be agreed to in column B. They got this picture.

Thirty written conditions seeking to alter the interpretation of the treaty, or defend the intent of the treaty, put on paper, negotiated between the administration and the Lott group, and at the end of the day, they would be, to use the jargon of the Senate, ''fenced.'' That would be the universe of concerns, because, obviously, you can't address a concern unless you know what it is. They are the universe of concerns

raised about the treaty. And there would be either conditions 1 through 30 placed in column A, where there is agreement to alter the treaty, or to add a condition to the treaty, I should say to be precise, or column B, where there is no agreement.

Then what was envisioned was at the end of that process, within time, sufficient time to consider this in this Chamber, there would be the following process. The treaty would be brought up from the desk, stripped of any conditions that were reported out of the Foreign Relations Committee last time—this was the hope—and we would have the following procedure. Senator HELMS and Senator BIDEN, as envisioned by the Lott group, would offer on behalf of the Lott group, Democrats and Republicans and the administration, a package in column A.

That package with the administration would number 17, and if I were willing to add to that package with Senator HELMS over the objection of the administration, that could be brought up to 21 out of the 30 concerns that everyone agreed on or 17 of the 21 the administration agreed on and BIDEN would support HELMS on 4 additional ones whether the administration liked it or not, leaving maximum 13, minimum 9, conditions that could not be agreed upon.

That was done. They are the numbers that we were left with. Then it was envisioned that after passing the agreed-to conditions, we would then move to the conditions upon which we did not agree, and the Republicans under the leadership of Senator HELMS would offer those conditions as we do on other treaties. I would be given the right to offer an alternative or to amend them, and we would vote ad seriatim. Then at the end of the day, after having disposed of all 30 of the concerns, we would then vote up or down on the treaty.

Now, I call that a negotiation. I have been here for 24 years. I have been involved in a lot of serious negotiations. I have never been involved in negotiations where more people who were appointed to participate have acted in good faith. Think about this now. Name me a circumstance where a treaty has been presented by a Democrat or Republican President where there have been 19 conditions agreed to on that treaty, or 21 conditions in my case, 17 in the case of the administration, and then we vote on another either 13 or 9 additional changes.

What I think my friend is saying—maybe he does not mean to say it—what I read him to say is, unless you agree with us on the other nine, we are not going to let you vote.

Now, look, I doubt whether my friend from North Carolina would find it appropriate if the American textile workers sat down with Burlington Mills or any other textile owner and said, we are going to negotiate a new collective bargaining agreement and we are going to go on strike unless you agree on every one of our conditions.

How is that a negotiation? That is an ultimatum. That is not a negotiation. So I hope he does not mean it.

I cannot believe, I do not believe Senator HELMS means that if the administration does not come up now and separately negotiate with him after having settled the negotiation with the group called the Lott group, unless the administration agrees to Senator HELMS' version of universality, Senator HELMS' version of verifiability, and Senator HELMS' version of constitutional requirements, et cetera, he will not let the treaty be voted on, because when you cut through everything, that is what it sounded like.

I said at the outset I divided this into three pieces. One, whether or not there was negotiation by the administration in good faith. I will just let the record stand. And I repeat again, Senator LOTT—and I do not know the exact circumstances under which it came about, but I assume it was after discussion with the President of the United States of America, President Clinton—set up a task force that included Senator STEVENS, Senator HELMS, Senator KYL, Senator WARNER, Senator SHELBY, Senator NICKLES, Senator Bob SMITH, and Senator MCCAIN. The President of the United States was told by the distinguished majority leader, Senator LOTT, these are the people I want you to sit down with and try to work out their concerns.

That first meeting took place on January 29. I began my meetings with Senator HELMS on February 11. Again Senator HELMS and his staff were part of the Lott task force.

So although I understand that Senator HELMS might not have liked that arrangement, I ask him to consider the dilemma that the administration was placed in when being told by the majority leader: negotiate with this group. I assure you, I promise you, I commit to you, to every Member of the Senate in my discussions with the President, with the Secretary of State and with the National Security Adviser, they all believed they were negotiating with the appropriate parties in the Senate because that is what the majority leader told them to do.

The second point. They conducted a negotiation which culminated in an agreement that ended last Thursday when Bob Bell, representing the administration, sat down with the principals as well as all the staffers of those eight Senators, including Senator LOTT's staff, and produced the document I have in my hand listing all 30 conditions raised by the Republican task force, including Chairman HELMS, and placing every condition either in column A or column B—column A meaning those conditions where they have been worked out and agreed to, where the Lott task force, representing the Republicans in the Senate, and the administration reached an agreement on a condition they could both accept; and column B, where they could not accept, they could not reach an agreement.

That was the product of hours and hours and hours and hours of detailed negotiation. I say to the Presiding Officer and anyone who is listening to this, I am not talking about general agreement. I am talking word-by-word specific agreement on every comma, whether it should say ''shall'' or ''should,'' every single word of their conditions, the majority of which were agreed to, compromise was reached on; the minority of which there was no compromise.

I then was informed by the administration in the person of Bob Bell and Sandy Berger that to their surprise either Senator HELMS' staff or someone purporting to represent Senator HELMS at last Thursday's meeting, which was supposed to tie this in a knot, define the universe of conditions, place them all in one of two categories, and get about the business of proceeding on the treaty, at the last minute—literally the last minute—as I understand it. I mean, the meeting was over—the administration walked in the meeting, as I understand the Lott group thought they were walking in the meeting, to tie this knot, everything in column A or column B. Someone suggested that the chairman of the full committee did not find that appropriate. So I met with the Democratic leader and the administration. I went in the leader's office. I said I believe Senator HELMS is still operating in good faith, as I believe he still is. I don't want to confuse this negotiation, but why don't you authorize me, Democratic leader, to speak for the Democrats? Why don't you let me go sit down with Senator HELMS and try to get to the bottom of what appears to be a misunderstanding here? Because the understanding by the Lott group and the administration was that this was supposed to be all tied up with a unanimous-consent agreement last Thursday.

So I sought a meeting with Senator HELMS and he graciously agreed. And I kept him very late. He had a very busy day. I sat with him in his office last night until 8:30. The meeting began around 4 o'clock in the afternoon, without any break, without any interruption. I took out a document that his staff had prepared. It is dated March 13, ''To the Honorable TRENT LOTT, majority leader, from JESSE HELMS, Chairman of the Foreign Relations Committee, subject: Status of negotiation over key concerns relating to the CWC.''

And then Senator HELMS, in that memo to Senator LOTT, listed—and they are numbered—listed 30, ''concerns relating to CWC.'' Each of those concerns had, and it was very helpful the way it was organized, listed, No. 1 through 30, and then at the top of each of the numbers it said, ''status,'' status relative to the administration: No agreement with the administration or agreement with the administration.

So I sat down with Senator HELMS, because I am very jealous of the prerogatives of the Senate versus any administration, and feel very strongly

about the role of the Senate in treaties. I sat down with Senator HELMS with the understanding and knowledge on the part of the administration, who knew I might not agree with them on everything, and my Democratic leader, and for 4½ hours went through all 30 issues, point by point. I reached agreement with Senator HELMS, not on eight or 13 or 17, depending on whose number you take as to whether the Lott group and the administration agreed. The administration thinks they agreed on 17. Senator HELMS said they only agreed on eight. I don't want to get into that fight. But I can tell you what I did. I agreed on 21 of the 30. I disagreed with the administration on several points Senator HELMS raised because I think he was right. They relate to the prerogatives of the Senate.

Let me give an example. Under the Constitution, the U.S. Senate has a right to reserve on any treaty. We wanted to restate that right. The administration didn't want that right restated in the treaty as a condition. I agreed with Senator HELMS, it should be restated; notwithstanding the fact we are not reserving on this treaty, we had a right to reserve if we wanted to. That is called preserving the prerogatives of the Senate delegated to the Senate in the Constitution of the United States of America. That is an example of one of the areas where the administration was unwilling to agree with Senator HELMS and I was willing to agree.

So at the end of the day we agreed to 21 items, and I was willing to make the case to my Democratic leadership, to put into column A. So that we would have one vote on 21 conditions to the treaty when it was brought up, leaving only 9 areas where we disagree. Of those nine, we were perilously close to agreement on several. I call that, in the universe of negotiations, good-faith negotiations.

But, if by negotiating one means that the President or those who support the treaty, like Senator LUGAR, a Republican, or Senator BIDEN a Democrat, have to agree to a condition that would kill the treaty, then that is not a negotiation. That is an ultimatum. Now, I am confident the Senator from North Carolina cannot mean that, and I am hopeful that we will continue to talk about the nine that remain unresolved. But at the end of the day, with all due respect, the Senate has a right to work its will.

I am a professor of constitutional law at Widener University law school. I have taught, now, for a half a dozen semesters, a seminar to advanced students in constitutional law on separation of powers. One of the things I expressly teach is the treaty power in the Constitution. That is, for lack of a better shorthand, those powers separated between the executive, the legislative, and judiciary. And among those things, in terms of that horizontal separation, there are areas that have been in dispute for the last 200 years. One of them is appointment powers, second is treaty powers, and the other is war powers.

Then there is the so-called vertical question of the separation of powers: State government versus Federal Government; individuals versus State or Federal Government. On the issue of the treaty power, I would observe what I observed earlier about the appointment power. Nowhere in the Constitution does it say that the Judiciary Committee shall decide who should or should not be a judge. It says, the Senate. Nowhere in the Constitution does it mention the Foreign Relations Committee. It mentions the Senate. So, I do think it is inappropriate, from a constitutional perspective, to deny the Senate, if that were anyone's intention, and I am not convinced it is yet, the right to vote ''yea'' or ''nay'' on ratifying a treaty or any conditions thereto.

So now let me leave the item I mentioned I would speak to first, whether or not there were good-faith negotiations on the part of the administration. I hope I have amply demonstrated that there were. They thought they were supposed to deal with the task force the majority leader of the Senate said deal with, and they did it in good faith. I would be very surprised if any member of that group—I have not spoken to any of them because I am not part of that group, from Senator WARNER to Senator STEVENS to Senator MCCAIN to Senator KYL—would come to the floor and say the administration did not negotiate in good faith to us, tirelessly, hour after hour after hour.

(Mr. SESSIONS assumed the chair.)

Mr. BIDEN. Mr. President, let me move to the next point that relates to the merits of this treaty. That is a legitimate area of disagreement. I will be brief because I am keeping the staff and the pages, who have to go to school tomorrow morning, very late.

UNIVERSALITY

Critics charge that the CWC will be ineffective because rogue states such as Syria, Iraq, North Korea, and Libya—all of whom are suspected of or confirmed to have chemical weapons—have not joined the convention.

Therefore, the argument goes, the United States should withhold its ratification until these states join.

I could not disagree more.

Just think of it. The logic of this argument would lead us to a world where rogue actors—not good international citizens—determine the rules of international conduct.

Such a policy would amount, effectively, to a surrender of U.S. national sovereignty to the actions of a few.

Instead of the United States actively leading international coalitions and setting tough standards on nonproliferation matters, the convention opponents would have us do nothing until every two-bit rogue regime would decide for us when we should act.

This reasoning is contrary to the record of the past 40 years, during which the United States has led the way in nonproliferation initiatives.

From the nuclear nonproliferation treaty, to the missile technology control regime, to the comprehensive test ban treaty, and to the chemical weapons convention itself, we have fought for establishing accepted norms of behavior.

I happen to believe that international norms count.

In a recent article that I coauthored with my distinguished colleague, Senator RICHARD LUGAR, we noted that such norms provide standards of acceptable behavior against which the actions of states can be judged. They also provide a basis for action—harsh action—when rogue states violate the norm.

Suggesting that we should now take a back seat to the likes of North Korea and Libya does a grave injustice to our record of international leadership and leaves such nations free to act as free operators without fear of penalty or retaliation by the nations whose armies and citizens they threaten.

The fact that there is now no international legal prohibition against the development of chemical weapons should not be lost here.

The suspected programs that treaty opponents are so concerned about are right now entirely legitimate according to international law, and we have already had a telling example of what can result from this perverse situation.

The Japanese police were aware, before a cult attacked the Tokyo subway with sarin nerve gas in 1995, that the cult was manufacturing the gas—but they had no basis in Japanese law to do anything about it.

That will change, both internationally and domestically, once the CWC enters into force.

The convention will establish an international norm against the development of chemical weapons. It will provide the legal, political, and moral basis for firm action against those that choose to violate the rules. If the goal of treaty opponents truly is to target the chemical weapons programs of suspect states, then joining the convention is the best way to achieve this objective—and refusing to join is the surest way to protect the world's bad actions.

VERIFIABILITY

A 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 onsite 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, reemphasized 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.

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 United States 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.

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

(See exhibit 1.)

Mr. BIDEN. 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.

Let me conclude that portion by suggesting to my distinguished colleague from Alabama, who is presiding, that I believe, on the merits, this is a good treaty. It is not merely me. The Senator from North Carolina listed people who do not think it is a good treaty. I will submit for the RECORD everyone, from General Schwarzkopf to the Joint Chiefs of Staff to Senator LUGAR, people who believe very, very fervently, as I do, this is clearly in the overwhelming national interest of the United States of America. I ask unanimous consent that a list of supporters of the CWC be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. BIDEN. Now let me move to the third issue. The notion of, as my friend from North Carolina stated, that there is an artificial date of April 29 made up by the administration to put undue pressure on the Senate to act. Let me point out for the Senate that there is nothing artificial about that date. It is real.

What does that mean? It means that our failure to ratify before the 29th will have consequences. First, the chemical weapons treaty mandates trade restrictions that could have a deleterious impact upon the American chemical industry. If the United States has not ratified, as long as they have not ratified, American companies will have to supply end user certificates to purchase certain classes of chemicals from the CWC signatories. After 3 years, they will be subject to trade sanctions that will harm American exports and jobs.

I know that my friend says a lot of chemical companies do not like this. I come from a State that has a little bit of an interest in chemicals, the single most significant State in America that deals with chemicals. A little company called Du Pont; a little company called Hercules; a little company called ICI Americas; a little company called Du Pont Merck—little pharmaceutical outfits who are among the giants in the world. They are not what you call liberal Democratic establishments. They are ardently—I can testify—they are ardently in favor of this treaty. They believe it is desperately in the interest of the United States of America and their interest. This is not a bunch of lib labs out there who are arms controllers running around saying, ''Disarm, ban the bomb.'' These are Fortune, not 500, not 100, 10, Fortune 10 companies that are saying, ''We want this treaty.'' And further, ''We will be harmed if we do not enter this treaty.''

This overall governing body, known as the Conference of State Partners, is going to meet soon after April 29 to draw up the rules governing the implementation of this treaty. If we, to use the vernacular, ''ain't'' in by the 29th, if we are not on by the 29th, we do not get to draw up those rules.

There used to be a distinguished Senator from Louisiana I served with for a long time. My friend, the Presiding Officer, knew him from his days up here. His name was Russell Long. He used to say kiddingly, ''I ain't for no deal I ain't in on.'' But the chemical industry, which is our largest exporter—hear what I just said—the biggest fish in the pond are saying, ''We want to be in on the deal.''

That is why the 29th is important. If we are not a party to the CWC, we will not be a member of that conference. And this body, with no American input, could make rules that have a serious impact upon the United States.

Third, there will be a body called the executive council with 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 by the 29th. If we ratify after the council is already constituted, then a decision on whether to order a required surprise inspection on an American facility may be taken without an American representative evaluating the validity of the request and looking out for a facility's interest because we will not be on the standing executive council that makes that decision.

Fourth, there will be a technical secretariat with about 150 inspectors, many of whom would be Americans because of the size and sophistication of our chemical industry. If we fail to ratify the convention by the 29th, there will be no American inspectors.

And finally, and most importantly, in the long term, by failing to ratify, we would align ourselves with those

rogue actors, those rogue states who have chosen to defy the Chemical Weapons Convention. There would be irreparable harm to our global leadership on critical arms control and nonproliferation issues.

I will not take the time now to address other concerns that have been raised, because I said I would limit myself to these three points.

Concluding, Mr. President, first, there has been good-faith, long and serious negotiations resulting in significant movement by the administration on conditions to the Chemical Weapons Convention.

Second, this treaty is in the overwhelming national interest of the United States of America, a topic I am ready, willing, and anxious to debate with my distinguished colleague from North Carolina and others who think it is not. But at a minimum, Mr. President, the Senate should get a chance to hear that debate and vote on whether or not the distinguished Senator from North Carolina is correct or the Senator from Delaware is correct.

Third, Mr. President, April 29 is not an artificial date. Because the triggering mechanism was when we got to 65 signatories, and that 6 months after that date the treaty would enter into force.

Well, 65 have signed on. And 6 months after they got to the No. 65, happens to be April 29. This is not artificial. We did not make up the date. That is what the treaty says.

So, Mr. President, I sincerely hope that my friend from North Carolina, having reflected on the quandary the administration was placed in, which was to negotiate with the Lott group—they thought they were negotiating with Senator HELMS; they thought they were negotiating with every Republican who had an objection, under the auspices of Senator LOTT—if they had known that Senator HELMS did not view that as the appropriate forum for this negotiation, they would have simultaneously met with him.

But now at the end of the process, when we are about to go out on recess, to say that we are not ready to bring this treaty up when we get back unless there is a new negotiation, I find unusual, particularly since I have agreed with the Senator from North Carolina that I will sign on to additional conditions with him.

Let us vote on the only nine outstanding issues that I am aware of that have been raised. None other has been raised that I am aware of, that the administration is aware of, anyone in the Lott group is aware of, to the best of my knowledge.

So, Mr. President, let me conclude by saying, the Senator from North Carolina has dealt with me in good faith. We have negotiated in great detail. He has listed his 30 objections. We have agreed on 21 of the 30. We disagree on nine. We agree on a method to vote on those nine.

I sincerely hope—I sincerely hope—for the interest of the United States of America, after having already decided in the Bush administration that we would do away with the use of chemical weapons regardless of what anybody else did, that we would not now lose our place of leadership in the world and our ability to engage in the moral suasion that relates to nonproliferation and the diminution of weapons of mass destruction, that we would not now forgo that position merely because 1, 2 or 5 or 10 Senators said we should not even bring it on the floor to debate.

I do not believe that will happen. But then again, my wife thinks I am a cockeyed optimist. But I do not think I am being unduly optimistic or a cockeyed optimist. I think having been here this long, that the Senate will get a chance to work its will. That is all I am asking. All I am asking is the Senate get a chance between now and the 29th of April to decide whether it likes this treaty or not. I believe every Member of this Senate has the national interests of the United States of America in mind when they act and when they vote.

Let each of them vote their conscience on this treaty. If it turns out that 66 do not agree with me, then we have spoken, as we did in the League of Nations. The consequences of that vote I think were disastrous. I think the consequence of failure to ratify this treaty would be disastrous. But I think the consequence of not even letting the Senate vote will be catastrophic.

I yield the floor, Mr. President.

EXHIBIT 1

HARVARD LAW SCHOOL,
Cambridge, MA, September 9, 1996.

Hon. JOSEPH R. BIDEN, Jr.,
Ranking Member, Senate Judiciary Committee, 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 eventuality.

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,
Felix Frankfurter, Professor of Law Emeritus.

COLUMBIA UNIVERSITY IN THE
CITY OF NEW YORK,
New York, NY, September 11, 1996.

Senator JOSEPH R. BIDEN, Jr.,
U.S. Senate, Washington, DC.

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

[1] The Verification Annex is, of course, an integral part of the Convention.

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 of searches and seizures.''

As applied to the United States, that provision is properly interpreted to mean that the United States must provide access as 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 yours,

LOUIS HENKIN,
University Professor Emeritus.

EXHIBIT 2

DISTINGUISHED INDIVIDUALS AND ORGANIZATIONS SUPPORTING THE CWC

William Jefferson Clinton.
George Bush.
Madeleine Albright.
James A. Baker III.
Warren Christopher.
William Cohen.
John M. Deutch.
Lawrence Eagleburger.
John Holum.
Nancy Kassebaum.
Stephen Ledogar, U.S. Representative to the Conference on Disarmament.
Ronald Lehman, former Director of the Arms Control and Disarmament Agency.
Vil Mirzayanov, whistleblower on the Soviet/Russian novichok program.
Sam Nunn.
William Perry.
Gen. Colin Powell.
William A. Reinsch, Under Secretary of Commerce for Export Administration.
Janet Reno, Attorney General.
Gen. Norman Schwartzkopf, U.S.A. (Ret.).
Gen. Brent Scowcroft.
Gen. John Shalikashvili.
Walter B. Slocombe, Deputy Under Secretary for Policy, Department of Defense.
George Tenet, Acting Director of Central Intelligence.
R. James Woolsey, former Director of Central Intelligence.
Adm. E.R. Zumwalt, former Chief of Naval Operations.
Kenneth Adelman, Columnist, The Washington Times.

INDUSTRY ORGANIZATIONS

The Chemical Manufacturers Association (CMA)—(approximately 200 member companies).
The Synthetic Organic Chemical Manufacturers Associations (SOCMA)—(over 260 member companies).
The Pharmaceutical and Research Manufacturers of America (PhRMA)—(over 100 member companies).
The Biotechnology Industry Organization (BIO)—(over 650 member companies and organizations).
The American Chemical Society (ACS)—(over 150,000 members).
The American Physical Society (APS)—(over 40,000 members).
The Council for Chemical Research (CCR)—(approximately 200 University, business & governmental laboratories).
The American Institute of Chemical Engineers (AIChE)—(approximately 60,000 members).
The Business Executives for National Security (BENS)—(approximately 750 members).

LEADERS OF THE FOLLOWING U.S. BUSINESSES

AEA Investors.
Air Products and Chemicals, Inc.
Akzo Nobel Chemicals, Inc.
ARCO Chemical Company.
Ashland Chemical Company.
Automatic Data Processing.
BASF.
Bayer Corporation.
Bear Stearns & Company, Inc.
Betz Dearborn, Inc.
The BF Goodrich Co.
Borden Chemicals and Plastic, LP.
BP Chemicals, Inc.
Capricorn Management.
Carus Chemical Company.
C.H.O. Enterprises, Inc.
The CIT Group, Inc.
Compton Development.
Crompton & Knowles Corporation.
Dow Chemical Company.
Dow Corning Corporation.
Eastman Chemical Company.
E.I. duPont de Nemours.
Elf Atochem North America.
Enthone-OMI Inc.
Ethyl Corporation.
Eugene M. Grant and Company.
Exxon Chemical Company.
FINA, Inc.
FMC Corporation.
General Investment & Development Co.
Givaudan-Roure Corporation.
Great Lakes Chemical Corporation.
Harman International.
Harris Chemical Group.
HASBRO Inc.
The Hauser Foundation.
Hechinger Company.
Hercules, Inc.
Hoechst Celanese Corporation.
International Financial Group.
International Maritime Systems.
Kansas City Southern Industries.
Lippincott Foundation.
Lonza Inc.
McFarland Dewey & Company.
Mallinckrodt Group, Inc.
Monsanto Chemical.
Morton International, Inc.
Nalco Chemical Company.
National Starch & Chemical Company.
NOVA Corporation.
Occidental Chemical Corporation.
Olin Corporation.
Oxford Venture Corporation.
Perstorp Polyols, Inc.
PPG Industries, Inc.
Quantum Chemical Company.
The R & J Ferst Foundation.
RCM Capital Management.
Reichhold Chemicals, Inc.
Reilly Industries, Inc.
Rhone-Poulenc, Inc.
Rohm and Haas Company.
Rosewood Stone Group.
R.T. Vanderbilt Company, Inc.
The Sagner Companies, Inc.
Sargent Management.
Sartomer Company.
Scott Foresman/Addison Wesley.
Sonesta International.
Stepan Company.
Sterling Chemicals, Inc.
Tennant Company.
Texas Brine Corporation.
Tica Industries, Inc.
Union Carbide Corporation.
Uniroyal Chemical Company, Inc.
United Retail Group, Inc.
Velsicol Chemical Corporation.
Vulcan Chemical: John Wilkinson.
W.R. Grace & Company: Albert J. Costello.

VETERANS ORGANIZATIONS

American Ex-Prisoners of War.
American GI Forum of the United States.
AMVETS.
Jewish War Veterans of the U.S.A.
Korean War Veterans Association.
National Gulf War Resource Center.
Reserve Officers Association.
Veterans for Peace.
Veterans of Foreign Wars.
Vietnam Veterans of America, Inc.

U.S. NOBEL LAUREATES

Julius Adler.
Sidney Altman.
Philip W. Anderson.
Kenneth J. Arrow.
Julius Axelrod.
David Baltimore.
Helmut Beinert.
Konrad Bloch.
Baruch S. Blumberg.
Herbert C. Brown.
Thomas R. Cech.
Stanley Cohen.
Leon N. Cooper.
Johann Deisenhofer.
Renato Dulbecco.
Gertrude B. Elion.
Edmond H. Fischer.
Val L. Fitch.
Walter Gilbert.
Dudley Herschbach.
David Hubel.
Jerome Karl.
Arthur Kornberg.
Edwin G. Krebs.
Joshua Lederberg.
Wassily W. Leontiel.
Edward B. Lewis.
William N. Lipscomb.
Mario J. Molina.
Joseph E. Murray.
Daniel Nathans.
Marshall Nirenberg.
Arno A. Penzias.
Norman F. Ramsey.
Burton Richter.
Richard J. Roberts.
Martin Rodbell.
F. Sherwood Rowland.
Glenn T. Seaborg.

Herbert A. Simon.
Phillip A. Sharp.
R. E. Smalley.
Robert M. Solow.
Jack Steinberger.
Henry Taube.
James Tobin.
Charles H. Townes.
Eric Wieschaus.
Robert R. Wilson.

RELIGIOUS GROUPS

American Friends Service Committee.
The American Jewish Committee.
American-Jewish Congress.
Anti-Defamation League.
B'nai B'rith.
Church of the Brethren, Washington Office.
Church Women United.
Commission on Social Action of Reform Judaism.
The Episcopal Church.
Episcopal Peace Fellowship.
Evangelical Lutheran Church of America.
Friends Committee on National Legislation.
Maryknoll Justice and Peace Office.
Mennonite Central Committee.
Methodists United for Peace with Justice.
National Council of Churches.
National Jewish Community Relations Advisory Council.
NETWORK: A National Catholic Social Justice Lobby.
Presbyterian Church (USA).
Union of American Hebrew Congregations.
Unitarian Universalist Association.
United Church of Christ, Office for Church in Society.
United Methodist Board of Church and Society.
United States Catholic Conference.
The United Synagogue of Conservative Judaism.

PUBLIC INTEREST GROUPS

American Association for the Advancement of Science.
American Bar Association.
Americans for Democratic Action.
American Public Health Association.
Arms Control Association.
Association of the Bar of the City of New York.
Center for Defense Information.
Chemical Weapons Working Group.
Council for a Livable World.
CTA/Bellona Foundation USA.
Demilitarization for Democracy.
Economists Allied for Arms Reductions.
Federation of American Scientists.
Friends of the Earth.
Fund for New Priorities in America.
Greenpeace.
Henry L. Stimson Center.
Human Rights Watch.
International Center.
Lawyer's Alliance for World Security.
League of Women Voters.
National Resources Defense Council.
Peace Action.
Physicians for Social Responsibility.
Plutonium Challenge.
Public Education Center.
Saferworld.
Sierra Club.
Taxpayers for Common Sense.
20/20 Vision National Project.
Union of Concerned Scientists.
Women's Action for New Directions.
Women's International League for Peace and Freedom.
Women Strike for Peace.
World Federalist Association.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HELMS. I thank the Chair.

Mr. President, I was able to hear part of the brief address by my friend from Delaware. What he apparently does not know is that I was a part of the Lott group to which he referred. I attended the meetings. I participated. That group did accomplish a few things of minor significance, but they could not do anything of importance, not in the really serious issues.

So then they fell back, and there have been no more meetings of the Lott group. My suggestion has been followed about trying to do it on the staff level. But if the Senator from Delaware, or anyone else, thinks they can drive a stake between the majority leader and me, they will have to think again.

I am not going to try to answer the many erroneous statements he has made. And I know he was ad-libbing and he was not hearing his staff whisper to him, and so forth. So he was operating under difficult circumstances.

But I say, again, I want this treaty to be made into an instrument that will be beneficial to the American people and to this country. It is my intent to continue to insist upon that. It is my intent, along with the approval of the distinguished majority leader, inasmuch as we have so many new Senators who were not here last year, the distinguished occupant of the Chair being one of them, and did not have the benefit of the testimony of witnesses, pro and con, who are highly respected in the foreign relations community.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

TRIBUTE TO MAJ. GEN. DONALD EDWARDS

Mr. LEAHY. Mr. President, I rise today to pay tribute to Maj. Gen. Donald Edwards, who has served for the last 16 years as the Adjutant General of the Vermont National Guard. Ever since Ethan Allen and his famous Green Mountain Boys took the British fort at Ticonderoga, Vermonters have had a propensity to serve their nation as citizen-soldiers. That tradition is alive and well today, and thanks to Don Edwards, the Vermont National Guard is stronger today than ever before. Don was instrumental in starting the Army National Guard Mountain and Winter Warfare School, which trains soldiers from around the Nation in the rigors of winter warfare. He also excelled at being an advocate of Vermont's interests within the Pentagon.

I remember the case of the 1–86th artillery battalion, which in 1992 was abruptly threatened with elimination, even though it had one of the highest readiness and retention rates in the entire U.S. Army. It was the kind of short-sighted bureaucratic decision that Don Edwards could not tolerate, and he made a strong case to me. I helped save that battalion, although I had to hold up a defense bill to do it. Don never wavered in his devotion to do what was right for the men and women of the Vermont National Guard.

Recently, the Vermont Air Guard received four first-place awards at the Air Force's premier air combat competition, known as William Tell. Don always stressed to the soldiers and airmen under his command the importance of training hard and as realistically as possible.

During Desert Storm, his philosophy paid off, as several Vermont Guard units deployed to Southwest Asia and performed flawlessly during that conflict. Those were anxious times, and Vermonters saw a side of Don Edwards that they had never seen before. He was a tireless advocate for our deployed soldiers, and he acted with great compassion to do whatever he could to help the families of those who were deployed overseas.

I am sure that some of that attitude was shaped by his own experiences in Vietnam. I know that his tireless devotion to Vermont veterans of all wars has helped Vermonters appreciate the extraordinary sacrifices that were made by ordinary citizens. It seemed like whenever two or three veterans gathered together, Don Edwards was there to lend weight to their cause.

As Don Edwards hangs up his uniform for the last time, I want to give him my personal thanks for all he has done for Vermont, and to wish him good luck and Godspeed in his future endeavors.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, March 18, 1997, the Federal debt stood at $5,367,674,335,377.56.

One year ago, March 18, 1996, the Federal debt stood at $5,055,610,000,000.

Five years ago, March 18, 1992, the Federal debt stood at $3,859,480,000,000.

Ten years ago, March 18, 1987, the Federal debt stood at $2,246,620,000,000.

Fifteen years ago, March 18, 1982, the Federal debt stood at $1,050,784,000,000 which reflects a debt increase of more than $4 trillion ($4,316,890,335,377.56) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING MARCH 14

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending March 14, the U.S. imported 7,849,000 barrels of oil each day, 704,000 barrels more than the 7,145,000 imported during the same week a year ago.

Americans relied on foreign oil for 55 percent of their needs last week, and