

restrictions on anything related to chemical weapons short of use including development, production, storage, deployment, or transfer. Iraq demonstrates that states interested enough to develop and produce chemical weapons have a reason to use them and would likely do so, regardless of the Geneva Protocol. There is no certainty that states who may have—undeclared—CW stockpiles will be under obligation to destroy them, as the United States has already unilaterally decided to do.

Without the CWC the international norms against chemical weapons will erode, increasing the likelihood of their use. Despite the emphasis on power in international politics, norms do count. They provide the standards by which acceptable behavior of states can be judged and serve as the basis for action by the international community when certain behavior is deemed unacceptable. Strong global norms against chemical weapons could be one factor shaping the decision not to pursue them by countries who might consider exploring the option.

U.S. credibility in pushing its specific positions in arms control forums will be undermined. Why should other countries pay attention to the United States and seek to accommodate its concerns if the United States is not going to support the final product at the end of the day? The standards on which the CWC is based are those put forward by President Reagan and President Bush. The balance of intrusion and constitutional and commercial protection displayed in the CWC is the end product of a long and deliberate debate by both Republican administrations in an attempt to reach an appropriate balance.

Second, a credibility problem: If the United States is not a state party to the treaty, the United States will have no legal basis—no legal basis—to take actions against other nonstates parties. On what grounds, for example, could we contemplate action against Libya for proceeding with the Tarhuna facility if it decided to proceed? Nor would the United States have any moral grounds for criticizing the decision of others to stay outside the treaty.

U.S. credibility and leadership will be undermined, not just on arms control but more broadly. Washington will have to deal with a perception that already exists but that nonparticipation in the CWC will only reinforce: that the United States bullies countries into assuming obligations that it is not willing to assume itself. Such views only strengthen the sense that others already have that the United States sees itself as not bound by the constraints it tries to impose on others. In a world that increasingly requires cooperation to accomplish major objectives, such a perception is damaging to the point of endangering vital American interests.

Third, lacking U.S. leadership: If the United States is not a state party to

the CWC when it enters into force on April 29 we will have no role in the governing body of the CWC. This is important because while the procedures for conducting the OPCW's business will be agreed on paper, how they are in fact translated into actual practice will be the real point at which precedents are set and work habits established.

The United States will not have a seat on the executive council, the critical policy decisionmaking group of the CWC. The United States will not have any representation in the inspection regime. We will have no access to the information that inspectors and others accumulate on chemical weapons use, proliferation, and terrorism.

The information that will be provided to the governing body through declarations and inspections will be important in its own right. Even more important, when it is put together with other information available to our intelligence community, it will help to provide a more accurate picture of a state's activities which may provide leads to uncover illicit, noncompliant activities. Not being a part of the governing body will mean that this valuable source of information for the intelligence community will be closed off.

Why do the critics wish to hamstring our own intelligence community and deny it the additional pieces of information that could prove critical to an intelligence determination and finding that bears on threats to our national security interests.

Fourth, U.S. industry will pay the price: On April 29 the clock will start on the 3-year period after which trade in schedule 2 chemicals—those which can serve as direct pre-cursors to chemical weapons—with nonstates parties will be cut off. The U.S. chemical industry estimates that as much as \$600 million in overseas chemical trade could be at risk. In fact, the impact of the cutoff is likely to be felt sooner than the 3 years, as trading partners begin to change their trading patterns—that is, shifting to new suppliers—in anticipation of the cutoff.

If the United States is not a party to the CWC, it will also play no role in the OPCW's decision regarding whether or not the trade cutoff will be extended to schedule 3 chemicals—dual-purpose chemicals which can be used in chemical weapons—a decision that will likely be made soon after entry into force. Given the chemicals on schedule 3, if the decision is made to extend the trade cutoff, the economic impact on the U.S. chemical industry could be enormous, making the \$600 million look like small change.

Some critics have sought to intimidate American business by spreading unsubstantiated rumors and fears that "Iranian inspectors are coming" or that proprietary information will be at risk. But those large firms that might, in fact, be inspected support the treaty and the small firms have determined it will have no impact on them.

THE DEFENSE SECRETARIES

Many of the arguments of CWC critics were crystallized in the comments of three former defense Secretaries.

They repeat several old arguments used by other critics of the CWC.

Many critics act as if this is the first time these concerns have been expressed and that Members have not taken actions to deal with them. How many of these critics are familiar with the resolution of ratification passed out of the Committee on Foreign Relations last year for example? How many of them are familiar with the draft resolution of ratification that has been under negotiation this year? A resolution of ratification is precisely the vehicle through which contentious matters of interpretation are taken up and conditions added to conform U.S. domestic law to U.S. interpretations.

First, the complacency argument: One old argument is about the complacency situation; namely, that the CWC would lull the country into a false sense of security and a tendency to neglect defenses against chemical weapons.

This is a matter of political will at home in the United States; it has nothing to do with the treaty. This is what we pay Secretaries of Defense to guard against. This is what we are paid in the U.S. Senate to guard against.

Perhaps I have more faith in the U.S. Senate's willingness to carry out its responsibilities under the Constitution than do critics of the treaty. There is nothing inevitable about arms control agreements contributing to a lessened perceived need and therefore support for defenses against such threats. But there is something wrong with the notion that by allowing our potential adversaries to have chemical weapons, we are sure to be reminded to defend against them.

It may be that the Defense Department was willing to reduce its request in 1995 for funds for chemical defenses, but the Congress has never had any problem in the past in plusing up administration requests for defense situations. Funding for ballistic missile defense is a perfect example. Indeed, Secretary of Defense Cohen recently indicated that an additional \$225 million is being requested for chemical defenses.

One should have little sympathy for the complacency argument employed against the CWC. Rather than whining about complacency, Congress ought to do its job and authorize and appropriate what funds are necessary to provide for a robust chemical defense capability.

By the same token, concerns are expressed about a possible reduction in the priority accorded to monitoring emerging chemical weapons threats. That is not the way recent budget requests from the intelligence community came across. Moreover, the community itself wants the CWC precisely because it will provide additional tools to the community to monitor the chemical weapons situation. Again,

Congress has every ability to add or shift funds to ensure that CWC monitoring remains a funding priority.

In fact, one of the conditions included in the resolution of ratification deals with the preservation of robust defenses against chemical weapons. It states the necessity for preserving and further developing robust defenses against chemical and biological weapons. Increased readiness must be emphasized at the highest levels and supported with the necessary funding within the executive branch of the Government and the United States Armed Forces.

Second, Article XI: Some critics have placed much emphasis on the so-called poisons for peace argument—namely, that the CWC will obligate member states to facilitate transfers of CWC-specific technology, equipment and material to member states of the convention. Further, they charge that the treaty commits new member states not to observe any agreements that would restrict these transfers.

It is tragic that American critics of the CWC would swallow the Iranian interpretation of Article XI rather than that of the American delegation to the convention, and the interpretation of the Commerce Department, and the U.S. chemical industry. Why are these critics so intent on giving credibility to the Iranian interpretation? Why do they wish to align themselves with the rogue states on this issue?

To be sure, the issue of assistance, Article XI, was one of the more contentious issues during the end game of the CWC negotiations. The more radical, nonaligned states, led by Iran, demanded that this provision be interpreted so as to require the elimination of any export controls in the chemical arena for states parties in good standing.

But the United States and others rejected that argument and maintained that their interpretation of article XI did not require them to do so, that mechanisms such as the Australian Group were legitimate under the CWC, and that the work of the Australia Group would continue. The members of the Australia Group did propose to review their practices and procedures at some undefined time in the future, but only after they had a period of experience with the treaty in force, during which they could judge whether that practical experience might justify a reconsideration of their export controls.

The basic CWC obligation is contained in article I—this is, to “never under any circumstances: . . . (d) to assist, encourage or induce in any way, anyone to engage in any activity prohibited . . .” And it means what it says. This basic obligation overrides any requirement—any requirement—to facilitate trade or technical cooperation when there is a proliferation concern.

There is nothing automatic about the assistance provisions of article XI, and it will certainly not mean that the floodgates will be open for the ex-

change of chemical materials and equipment with rogue states, as critics have stated. It merely affirms the right of the parties to engage in chemical commerce for peaceful purposes, that is, industrial, agriculture, research, pharmaceutical, medical or other pursuits as they do today. A state with chemical weapons aspirations has no treaty right to anything that furthers those aspirations. And nothing in the treaty requires the elimination of our export controls on chemical materials and equipment. The United States and other Western countries have made clear to the Organization for the Prohibition of Chemical Weapons, the OPCW, the governing board, as well as all states parties that the provision in question does not entail any obligation to eliminate existing export control regulations on chemical material and equipment.

One condition in the resolution of ratification deals specifically with the issue of interpretation over article XI. It states in part that: “the various provisions of the CWC preserve the right of State Parties to maintain or impose export controls for foreign policy or national security reasons, and that nothing in the Convention obligates the United States to accept any weakening of its existing national export controls.”

If, as the critics state, the CWC would likely leave the United States more, not less, vulnerable to chemical attack, then the blame resides with political leaders in the United States, not with the convention. The treaty in no way constrains our ability as a nation to provide for a robust defense against chemical weapons or to impose or maintain export controls for foreign policy and national security reasons.

Third, Dumbing Down of Intelligence: There is also the charge that, if the United States is not a CWC participant, the danger is lessened that American intelligence about foreign chemical programs will be dumbed down or compromised. This is a variation on the politicizing of intelligence argument taken to the extreme. Again, any dumbing down of intelligence has nothing to do with the convention. Moreover, a willingness to act in the face of noncompliance by other signatories is a political decision, not an intelligence decision. If critics want to fault American political leadership, fine, but this has nothing to do with the strengths or weaknesses of the convention.

Fourth, Costs and the Constitution: Fourth, various critics worry about the costs associated with U.S. participation in a multilateral regime and cite the outlandish estimate of \$200 million annually. This hardly squares with the estimates offered by the Congressional Budget Office and fails to take account what the administration has actually requested for fiscal year 1998—namely \$46 million. And quite predictably, the critics drift from the cost charge into the constitutional charge that U.S.

participation in the convention could leave U.S. citizens and companies vulnerable to burdens associated with reporting and inspection arrangements, jeopardize confidential business information, and other charges.

Industry is expected to pay its own costs associated with reporting and receiving an inspection. Industry does not contribute to the cost of carrying out international inspections. Inspection costs are covered in the OPCW budget to which the U.S. Government will contribute. Annual costs to industry are expected to be about \$4 million in the first year and less in subsequent years. Inspection costs are not expected to be more than an EPA or OSHA inspection—this means no more than \$10,000 per inspection and probably much less. Based on practice inspections, no shutdown of facilities is anticipated, which would be an important cost factor.

U.S. industry would not support the CWC, as it does, if it posed significant risks to confidential business information. Protections against the loss of confidential business information are incorporated into the CWC and the administration's proposed implementing legislation. Industry has worked intensively on both to ensure these protections are adequate.

Unlimited inspector access is not required. For routine inspections, each facility has the right to define the degree of access through a negotiated facility agreement and may thus protect sensitive information. Furthermore, routine inspections can be anticipated, providing ample time for preparation.

In challenge inspection scenarios access to the site must be provided 120 hours after a request for a challenge inspection is received by the OPCW. Once access is granted, the principles of managed access apply. Under managed access, the inspected facility can negotiate the degree of access on the spot, and, while obligated to provide alternative means to satisfy concerns about compliance, the facility is not obligated to allow inspectors to go anywhere they like.

Allegations that the CWC will require violations of the Constitution are wrong. The proposed implementing legislation provides for search warrants if routine or challenge inspections must be carried out without consent. So does the resolution of ratification. The CWC also allows the United States to take into account constitutional obligations regarding searches and seizures and proprietary rights in providing access under challenge inspections.

When CWC negotiations commenced, President Reagan wisely decided to include representatives from the American chemical industry in the formation and evolutionary decisionmaking process of U.S. negotiating positions. Thus, the American chemical industry has participated every step of the way in the development of the convention and played a major role in crafting the language with regard to constitutional

safeguards and protection of industry rights and information during any inspections.

In September 1996, the National Federation of Independent Business expressed some concern regarding the potential impact of CWC reporting requirements on the U.S. small business community.

More recently, the National Federation of Independent Business has revised its position on the CWC. A February 14, 1997, Wall Street Journal article by Carla Robbins quoted Dan Danner, vice president of Federal Government Affairs, as saying, "It is now our belief our members are not going to be impacted." The article went on to convey NFIB's view that treaty opponents who suggested that NFIB was opposed to the CWC were "100% incorrect."

Mr. Danner reiterated the National Federation of Independent Business position in a March 5 letter to me in which he said, "It is now our belief that the small business owners that we represent will not likely be included in the reporting requirements and, therefore, not affected by the CWC. Our concerns have been answered to our satisfaction."

Fifth, Russia and the CWC: Some critics claim that Russian activities with regard to its stockpile will be unaffected by whether the United States joins the convention and that Russia has, in any event, been developing new chemical agents that would circumvent the treaty's constraints.

Let us be clear about one thing. Russian activities will surely be unaffected if the United States does not ratify the CWC. Some Russians are grateful for the support they find for their position on the CWC from many American critics of the convention. One thing is certain: The Russians do not want the United States to ratify the Chemical Weapons Convention. Why? Because they know they cannot afford to have the United States participating in the OPCW without them. By the same token, if the United States does not join, the Russian Government has very little incentive to expend the political resources necessary to bring various elements of the military-chemical complex into line with treaty provisions. However, the Russian Government and the branches of the Russian Parliament are moving the CWC through the ratification process to the point where it could be acted upon in short order if the United States ratifies.

Second, the point is not that Russia is developing agents that would circumvent the treaty's constraints. Rather, the point is that we know that they are developing them, they are or can be added to the treaty's prohibited list, and that without the CWC, there is absolutely nothing illegal or non-compliant about Russian activities in this area.

The CWC is not perfect, but it is necessary for the additional tools it provides the United States,

No. 1, giving us leverage not just for the United States, but for the entire international community to pressure Russia to destroy its huge chemical weapons stockpile;

No. 2, it acts as a means to reinforce the norms against chemical weapons;

No. 3, it gives an ability to track chemical trade;

No. 4, it gives procedures for evaluating important information for the intelligence community;

No. 5, it gives a requirement for state parties to pass domestic legislation criminalizing activities prohibited by the treaty; and

No. 6, the CWC gives a legal basis for the international community to take action in the face of unacceptable behavior.

A SUBSTITUTE?

What are the critics of the treaty offering to accomplish these same tasks? What are they proposing that will help diminish the international chemical weapons threat?

To be sure, a piece of legislation was passed last week—Senate bill 495—which overlaps the CWC and its implementing legislation in several areas. But by no means can one consider this domestic piece of legislation equal to or a substitute for an international multilateral treaty which not only bans use of chemical weapons but bans the manufacturing, stockpiling, trade, and deployment of chemical weapons.

Senate bill 495 calls for U.S. leadership in adding "teeth" to the 1925 Geneva Protocol banning chemical weapons use. But the United States has already done this and the final product is the document before us today—the Chemical Weapons Convention. The Reagan and Bush administrations wisely decided to pledge not to manufacture, produce, or stockpile chemical weapons; the CWC forces other members to do the same. Without the CWC, the rest of the world would be allowed to make, stockpile, and deploy chemical weapons, and the United States would only be able to react after a Syria, Libya, Iraq, or North Korea has used chemical weapons on its population, its neighbors, or on American troops. At that point it will be too late for the victims.

S. 495 does nothing to address the concerns of the U.S. chemical industry. In a letter signed by 53 chief executive officers of America's largest chemical companies they state: "our industry's status as the world's preferred supplier of chemical products may be jeopardized if the U.S. does not ratify the [CWC]. If the Senate does not vote in favor of the CWC, we stand to lose hundreds of millions of dollars in overseas sales, putting at risk thousands of good-paying American jobs." S. 495 does nothing to solve industry's concerns regarding the negative impact the CWC would have on their international competitiveness if the United States does not ratify the convention before April 29.

Indeed, S. 495 is designed primarily to deal with the consequences of a chemi-

cal incident on American soil, not on its prevention or deterrence, as is the case with the CWC.

Whereas the CWC specifies illegality without qualification or condition—the use or possession of chemical weapons is absolutely prohibited—the enactment of S. 495 without CWC ratification would mean that the United States is not obligated to destroy those chemical weapons that is not already committed to destroy under the 1986 law. In this respect S. 495 is most certainly for the United States a law that authorizes the retention of the most dangerous chemical weapons. Thus, while the CWC would establish a clear and binding international prohibition against the possession of chemical weapons, enactment of S. 495 without CWC ratification would establish a clear U.S. position in support of those nations, including the United States, who choose to maintain these weapons.

In fact, S. 495's prohibitions against possession or use, and so forth, of chemical weapons are merely antiterrorism provisions, without significant transnational strategic implications, which are already provided for by existing United States law. As to the law's provisions that the U.S. will impose sanctions against nations that use chemical weapons, it is highly questionable whether such sanctions will be effective; in any event, these sanctions expressly do not apply to nations that stockpile but do not use chemical weapons.

S. 495 merely reinforces the status quo. Without the CWC, states interested in developing chemical weapons—Syria, Libya, Iran, Iraq, and North Korea—will have free rein to pursue their programs. As we saw in the case of Iraq, existing policy tools are not adequate.

THE RESOLUTION OF RATIFICATION: EXECUTIVE RESOLUTION 75

I have spent considerable time reviewing the resolution of ratification to the Chemical Weapons Convention to be laid before the Senate, Senate Executive Resolution 75, and measuring the proposed conditional remedies against perceived and/or real shortcomings in the convention and against the benefits to the United States of full participation in the convention.

Exhaustive negotiations over the past several months have produced a set of 33 conditions to the resolution of ratification; 28 of these conditions enjoy the support of those involved in the negotiations. I support them. Under a unanimous-consent agreement, the Senate will consider these 28 conditions as a package—on a voice vote.

Then the Senate will turn to the remaining five conditions which are in dispute. I have concluded that the effect of these remaining conditions proposed in Senate Executive Resolution 75 would be to destroy the Chemical Weapons Convention in a supposed effort to save it.

I firmly believe that these remaining conditions—the Senate will have a separate vote on each—would, if accepted,

be tantamount to killing the Chemical Weapons Convention outright, or would have a significant adverse impact on its implementation.

Any condition that requires, as the price of ratification that all or parts of the treaty be renegotiated before it can enter into force is a killer. It is unrealistic to expect that we can renegotiate a treaty with over 160 signatories. Additionally, a U.S. condition of this nature would not only prevent U.S. participation in the convention but could encourage other signatories contemplating ratification to attach similarly unacceptable conditions.

Four of the proposed conditions would require the President to make certain certifications to the Senate prior to depositing instruments of ratification, certifications that certainly cannot be made by April 29, if ever. Consequently, approval of any of these conditions would prevent the United States from joining the treaty. The fifth would be very bad policy, at once undermining two U.S. objectives: to maintain an effective onsite inspection regime and to have U.S. inspectors participate in inspections of suspect states.

The unanimous-consent agreement is carefully configured so that no substitute amendments or conditions in these five areas of disagreement can be offered. Only motions to strike will be in order.

Let me deal with each of the five conditions.

CONDITION NO. 29 ON RUSSIA

One of the items on which the Senate will be asked to vote is a condition—proposed condition 29—that would prohibit the United States from ratifying the CWC until the President certifies that Russia has done the following: ratified the CWC, complied with the 1990 Bilateral Destruction Agreement [BDA], fulfilled its obligations under the 1989 Wyoming Memorandum of Understanding [MOU], and ceased all chemical weapons activities.

This is a killer condition that would prevent the United States from joining the CWC. It must be struck.

This condition effectively holds hostage U.S. participation in the CWC to a group of hardliners in the Duma. It would let Russia off the hook and give them an excuse to withhold ratification. Why should we let Russia decide our foreign policy?

This condition would hold hostage our ability to join the CWC to the hardliners in the Russian Duma. As the President said, "this is precisely backwards. The best way to secure Russian ratification is to ratify the treaty ourselves. Failure to do so will only give hardliners in Russia an excuse to hold out and hold on to their chemical weapons."

The prospect of Senate ratification is clearly putting pressure on Russia to ratify. The Duma announced last week that it will begin debate on the CWC today. Russia does not want to be left behind, especially if the United States is on the inside setting the rules.

In sum, we should not give Russia the power to decide our participation in and leadership of this crucial treaty. As General Rowny testified, "I think if we fail to ratify this Chemical Weapons Convention, it is going to give the Russians an excuse on a silver platter to say well, the United States did not ratify and we won't either."

Vil Mirzayanov, a Russian scientist who blew the whistle on the Soviet Union's chemical weapons programs and strongly supports the treaty, recently wrote to me and said: "Senate ratification of the Convention is crucial to securing action on the treaty in Moscow * * * the Russian government does not want America to dominate the Organization for the Prohibition of Chemical Weapons and the important decisions that the body will soon be making about the Convention's implications."

By not ratifying, the United States would be giving a present to hardline opponents of the CWC and of relations with the West more generally. By ratifying, the United States would not be giving a Christmas present to Russia; instead, it would provide a powerful tool for bringing further pressure to bear on Moscow to get on with chemical disarmament—and to stay engaged more generally in cooperative international measures that promote arms control and nonproliferation.

The 1990 BDA was never ratified by the United States or Russia. It was explicitly designed to provide a boost to negotiations on the CWC and gain Russian ascent to the United States position for an immediate cessation of chemical weapons production and the destruction of the chemical weapons stockpiles. It served that purpose. Many of the BDA's provisions were adopted by the CWC. The BDA has several shortcomings that are corrected in the CWC. For example, the BDA allows both countries to retain 5,000 tons of chemical weapons, while the CWC requires the destruction of all chemical weapons. Also, the BDA has no provision for challenge inspections that are contained in the CWC.

The 1989 Wyoming MOU was also designed to jumpstart CWC negotiations by providing for reciprocal data exchanges and inspections of chemical weapons facilities by the United States and Russia. It, too, served its purpose. The United States has some questions that linger over Russian data, but we can gain valuable information about Russia through the CWC's verification provisions.

Key officials in Moscow do not dispute that there are individuals, both civilian and military, who wish to retain an offensive chemical weapons capability and thus oppose CWC ratification. This is hardly surprising, given the fact that we have individuals in an out of the American Government who oppose CWC ratification for the same reason. Many of these individuals associated with Russian chemical weapons research and development as well as

production are the very ones tasked to provide the data called for under the Wyoming MOU. Moreover, various Russian military officials have argued that, given the near disintegration of the Russian conventional military capability, only nuclear and chemical weapons may be able to compensate for such conventional weaknesses.

While Russian Government officials express their concerns about the political and economic costs of finalizing the BDA and/or ratifying the CWC before it enters into force, they do acknowledge, however grudgingly, that only United States ratification of the CWC will force them to deal decisively with the economic, political, and military dilemmas associated with chemical weapons. They also acknowledge that if the United States fails to ratify the CWC, then those military and civilian voices in Russia who favor the retention of an offensive chemical weapons capability could well become the majority.

The fourth certification requirement of this condition is apparently driven by reports of Russian "novel" chemical agents. If these reports are correct, then the CWC and its challenge inspection regime is the best tool for exposing and ending such activities. Without the CWC, we will be denied important information and Russia will be under no legal obligation to end its suspected activities.

CONDITION NO. 30 ON ROGUE STATES

Proposed condition 30 would prohibit the United States from ratifying the CWC until all states determined to possess offensive chemical weapons programs, including China, North Korea, Libya, Syria, Iran, and Iraq, as well as other state sponsors of terrorism, have ratified.

This is a killer condition that would prevent the United States from ever joining the CWC. It, too, must be struck.

This condition would make our joining this treaty hostage to Saddam Hussein, Qadhafi, other leaders of rogue states. This condition would allow these outlaw states to continue business as usual with no constraints, while our industry suffers, our leadership is undermined, and our ability to influence and benefit from the CWC regime is compromised.

By allowing the world's most recalcitrant regimes to decide for us when we join the CWC, this condition borders on a dangerous surrender of U.S. national sovereignty. It effectively lets the world's villains write the rules of international conduct.

Supporters of this condition say that we should not have a CWC because there will be cheaters. As Secretary of State Albright has said, that is a bit like saying that we shouldn't have laws because people will break them. But the CWC was not written with the illusory expectation that all of the world's bad actors would immediately sign up. Instead, it was negotiated with the cold-eyed recognition that rogue states